

OPEN SESSION

Chairman Steven Misiura called the meeting to order at 7:38 p.m. and read the Open Public Meetings Act statement which stated that adequate notice and posting of the meeting had taken place in accordance with the requirements of P.L. 1975, Chapter 231.

The flag salute was followed by the roll call.

ROLL CALL

	PRESENT	ABSENT
<i>Mayor Patten</i>	✓	
<i>Mr. Searing</i>	✓	
<i>Mr. Sikorski</i>		✓
<i>Ms. Laudenberger</i>	✓	
<i>Mr. Montferrat</i>	✓	
<i>Mr. Pratt</i>		✓
<i>Mr. Misiura</i>	✓	
<i>Mr. Emigholz</i>	✓	
<i>Ms. Hutchinson</i>		✓
<i>Mr. Olsen</i>	✓	
<i>Mr. Byrne</i>	✓	

Also in attendance: Leona Baylor, Planning Board Secretary and Gary Rosensweig, Esq., Planning Board Attorney.

APPROVAL OF AGENDA

The agenda as presented was moved by Ms. Laudenberger, seconded by Mr. Emigholz and approved by all.

APPROVAL OF THE MINUTES

Minutes of the January 14, 2008 Executive Session was moved by Mr. Montferrat, seconded by Mr. Searing and approved by all.

Minutes of the March 10, 2008 Regular Meeting was moved by Mr. Montferrat, seconded by Ms. Laudenberger and approved, Mr. Emigholz abstained.

PUBLIC COMMENT

None

RESOLUTION 2008-04, WORLDWATER SOLAR TECHNOLOGIES

Resolution 2008-04 was moved by Mr. Searing and seconded by Mr. Montferrat.

Roll Call: Mr. Misura, Ms. Laudenberger, Mr. Montferrat, Mr. Olsen, Mr. Byrne, Mr. Searing and Mayor Patten voted yes. Mr. Emigholz abstained and Mr. Pratt, Mr. Sikorski and Ms. Hutchinson were absent.

Resolution approved 7-0.

RESOLUTION 2008-04 WORLDWATER AND SOLAR TECHNOLOGIES CORPORATION APPROVAL OF SOLAR ARRAYS AT MUNICIPAL SITES ON BANK STREET AND OAK LANE

WHEREAS, WorldWater and Solar Technologies Corporation, 200 Ludlow Drive, Ewing, NJ, as contractor, developer and applicant has made application for preliminary and final site plan approval, required variances and waivers in order to install a photovoltaic system (solar energy collection system) at two municipal locations:

1. at the Hightstown Advanced Wastewater Treatment Plant located on Oak Lane, Block 7, Lots 41-43;
2. at the Hightstown Water Treatment Plant located on Bank Street, Block 18, Lots 8-12, and

WHEREAS, a public hearing was held on March 10, 2008, at which time the applicant and all interested parties were provided an opportunity to be heard, and

WHEREAS, WorldWater and Solar Technologies Corporation has entered into an Amended and Restated Power Purchase Agreement (PPA) with the Borough of Hightstown through its special purpose entity, WWST-Hightstown, LLC (WWST), the terms of which have been agreed to by the Mayor and Council by Resolution 2008-82, dated March 3, 2008, and

WHEREAS, the Water Treatment Plant located on Bank Street is located in an R-4 District and Advanced Wastewater Plant located on Oak Lane is located in the R-3 District and Public Utility facilities like the proposed systems are permitted uses in both zones, and

WHEREAS, the developer has made various accommodations at both municipal sites in order to permit the continued unrestricted municipal use of both sites and at the same time in order to develop functional, workable and efficient solar collection systems at both sites. A height variance is required at the Oak Lane site due to the proposed height of the arrays (14 feet - 24 feet) and a setback variance from the property line permitting arrays at the property line if necessary. Variances may be granted and the granting of same is consistent with the purposes of the Municipal Land Use Law, a purpose of which (N.J.S.A. 40:55D-2(n)) is "to promote the utilization of renewable energy resources" and, further, the installation of these solar systems will not substantially impair the purpose and intent of the Borough's Zone Plan as these facilities are similar to public utilities as electric power producing units and, therefore, deemed permitted as a public utility facility in the R-3 and R-4 zones. Therefore, the benefits of a deviation for the proposed facilities outweigh any possible detriments. Further, the locations are at the Borough's Advance Wastewater Treatment Plant site and Water Treatment Plant site and, therefore, are consistent with the long standing use of these properties and will not substantially impair surrounding land uses, the Borough's Zone Plan, or the public good.

NOW, THEREFORE, BE IT RESOLVED, that preliminary and final site plan approval, all requested waivers and height and setback variance(s) are approved subject to compliance with the following:

1. Compliance with the Report of the Borough Engineer, dated January 10, 2008, and such other directives as may be necessary.
2. Compliance with the Amended and Restated Solar Energy Power Purchase Agreement to be executed by the Borough and WWST.
3. Compliance with all other laws, local, state and federal.
4. Publication of a notice of this decision in an official newspaper of the Borough.
5. Posting of all required performance guaranties, inspection fees and escrows prior to the granting of any required building permits.
6. The developer shall obtain all required environmental permits, if any, for the proposed solar facilities.
7. Approval of the Mercer County Planning Board, if required.

8. This approval is conditioned upon the applicant's compliance with the revised plans submitted to the Planning Board at the hearing of March 10, 2008, including Exhibits A-3 and A-4 (Option 2).
9. The addition of stone as required by the Borough Engineer at the drip line to aid in storm water runoff control.
10. Investigation by the Borough Engineer of a possible increase of array heights at the Oak Lane site in order to accommodate on site equipment and vehicle movements. If an additional height variance is required to accommodate circulation and management under ground arrays at the Oak Lane Site, it is hereby approved, if recommended in writing by the Borough Engineer with notice to the Planning Board.
11. The Planning Board hereby authorizes the Borough Engineer, in her discretion to approve all diminimis site plan changes in the locations of the solar arrays so long as they remain in substantial compliance with this approval, the PPA, and no additional variances are required or any variance condition is increased.
12. The applicant is bound by all representations made at the Planning Board public hearings as if said representations were set forth in this Resolution.

RESOLUTION 2007-07, CUMBERLAND FARMS

Resolution 2007-07 was moved by Ms. Laudenberger and seconded by Mr. Montferrat.

Roll Call: Mr. Misura, Ms. Laudenberger, Mr. Montferrat, Mr. Olsen, Mr. Byrne, Mr. Searing and Mayor Patten voted yes. Mr. Emigholz abstained and Mr. Pratt, Mr. Sikorski and Ms. Hutchinson were absent.

Resolution approved 7-0.

RESOLUTION 2007-07 CUMBERLAND FARMS, INC. - PRELIMINARY AND FINAL SITE PLAN APPROVAL

WHEREAS, the applicant Cumberland Farms, Inc. (former property owner) of 777 Dedham Street, Canton, Massachusetts 02021, has applied for preliminary and final site plan approval with a variance to install a temporary soil and groundwater remediation system on property owned by SHIL Corporation, 315 Mercer Street, Hightstown, New Jersey 08520 (same address of property), known as Block 61, Lot 20 in the Borough of Hightstown; and

WHEREAS, this application was the subject of two hearings held on January 14, 2008 and February 11, 2008, at which time the applicant and all interested parties were provided an opportunity to be heard; and

WHEREAS, the Planning Board considered the testimony of the applicant's witnesses, considered all plans, report(s) of the Borough Engineer, Borough Planner and other officials, as well as all other documents submitted with this application, and all exhibits submitted at the public hearings (see attached exhibit list), as well as the representations of the applicant made on the record of the hearings; and

WHEREAS, the Planning Board finds as follows:

1. The applicant requests approval of preliminary and final site plan to install a temporary soil and groundwater remediation system at a currently operating gasoline service station and convenience store. The remediation system consists of air sparge wells, soil vapor extraction wells, subsurface pvc piping, and an 16 ft. long by 8 ft. wide by 9.5 ft. high (exterior dimensions) remedial equipment trailer to be located at the southeast corner of the site.
2. The purpose of the remedial system is to absorb and dissolve hydrocarbons located in the site's soil and groundwater, in accordance with NJDEP soil clean-up criteria and groundwater quality standards. The temporary system needs to operate on a continuous basis until appropriate clean-up levels have been achieved and NJDEP approves the termination of the clean-up.
3. The property itself has a 1,560-square-foot convenience store with a gas station owned by Shil Corp., who has preliminary and final site plan approval for construction of a 3,564-square-foot, two-story commercial building addition

from the Hightstown Planning Board, pursuant to Resolution 2003-05, dated August 11, 2004. Cumberland Farms, Inc., the previous owner of the site, is contractually responsible for site remediation.

4. The property itself is located in the HC, Highway Commercial, district. The applicant is requesting variance relief from Ordinance Section 28-3-15(b)-5 from the 25-foot perimeter setback to install the temporary remedial trailer and fence enclosure parked 10 feet from the side (eastern) and rear (southern) property boundaries. The application requests no design waivers.
5. There are several checklist waivers requested for mostly preexisting conditions.
6. At the beginning of the hearing on the application, the applicant had several issues to contend with.
 - a. There are several adjacent properties containing homes located very close to the proposed mediation compound. The Environmental Status Summary supplied by the applicant stated that there would be certain noise levels emanating from the trailer during mitigation, but that these would be in compliance with NJDEP regulations for noise emissions. (This will be a 24-hour, 7-day a week operation which must not affect the quality of life of nearby residents.) The report does not state exactly what those noise levels will be, nor if there will be any discharge of odors and/or chemicals used in the treatment. The applicant also needed to provide testimony as to the length of the remediation.
 - b. The current owner of the site states that the remediation will not affect any construction activities that he will pursue in accordance with prior approvals for expansion of the site. However, a review of the plans shows that there are conflicts and therefore there will need to be testimony as to whether or not expansion will be affected by remediation.
7. At the January 14, 2008 hearing, the Board had in attendance its engineer, Carmela Roberts of Roberts & Reymann, and its planner, Tamara Lee. Substituting in for Board Attorney Gary S. Rosensweig, Esq., who had a conflict, was Michael W. Herbert, Esq., of the law firm of Herbert, Van Ness, Cayci & Goodell. Applicant was represented by Brian H. Harvey, Esq., of Giordano, Halleran & Ciesla. Mr. Harvey introduced the applicant's engineer, Craig A. Kunz, P.E., of Kleinfelder East, Inc., who functions as an environmental consultant for Cumberland Farms. He was accepted by the Board as an expert.
8. Mr. Kunz reviewed Exhibit A-1, which is a site plan for the property dated September, 2007, which he prepared. Specifically, he reviewed with the Board the various buildings on the property as well as the site and location for the trailer.
9. Mr. Kunz stated that the clean-up of the site will take place under the direction of NJDEP and that this system of remediation was effective for clean-up of hydrocarbon contamination. He states that there will be two machines in the trailer that will place compressed air into the ground in order to pump out and treat vapors.
10. Mr. Kunz then reviewed Exhibit A,1, the environmental impact assessment dated January 14, 2008. He reviewed the document with the Board, stating that there would be no soil erosion or need for sediment control nor any change in topography. Furthermore, he stated that there would be little or no impact upon flooding or flood plain, surface water, ground water, sewage disposal, solid waste, vegetation or disruption of endangered species of wildlife or scenic or historic districts. He stated that there would be very little degradation of air quality, and that the noise level of 75 to 79 decibels inside the trailer which would be insulated, and as a result of the insulation, the decibel level outside of the trailer will be reduced by approximately 30 decibels.
11. Mr. Kunz then turned to the history of the site. He stated that in 1996 Cumberland Farms removed gas tanks from the site and samples were taken. The ongoing investigation revealed some soil contamination, and in 2000 a groundwater monitoring well was installed. After negotiating with NJDEP, it was ordered that groundwater remediation take place.
12. Mr. Kunz stated that it is estimated that remediation could take anywhere from six months up to two years, and that one year is the estimated minimum amount of time. He opined that the background noise from the traffic that runs in front of the property might be similar to the noise level generated by the proposed temporary remedial system.
13. After being questioned by the Board Engineer, Mr. Kunz stated that the current owner of the property will not expand the structure, pursuant to approval by the Planning Board, until remediation is completed. The applicant agreed to

provide the environmental impact assessment for review by the Board Planner and the Environmental Commission. He also agreed to carry the application to the next meeting date so that the documents could be reviewed.

14. At the February 11, 2008 hearing, applicant again appeared, this time represented by Laurence I. Rothstein, Esq., of Giordano, Halleran & Ciesla. Mr. Rothstein reviewed the letter from the Environmental Commission to the Planning Board dated February 4, 2008, regarding Cumberland Farms. He then introduced Matthew Pickard of Kleinfelder, who is a Certified Industrial Hygienist. He was brought to the Board by the applicant to testify as a noise assessment expert. He was accepted by the Board as an expert. He introduced Exhibit A-3, which is an aerial photo of the site showing the location of the wells as well as where the trailer will be placed. He stated that on February 6, 2008, he did a survey of noise at the site which showed that the ambient noise was approximately 57 decibels at night and 63 decibels during the day from nearby traffic. He therefore stated that there was no detrimental impact upon the neighbors. As a potential reference, Mr. Pickard opined that the temporary remedial system may have a similar decibel level as a commercial air conditioning unit.
15. Next to testify on behalf of the applicant was Craig Kunz, P.E. He stated that the trailer location in the front of the property was the best place for it to operate efficiently. He said the NJDEP wanted the unit to operate 24 hours, 7 days a week in order to speed up the clean-up. Mr. Kunz opined that there is no average time period for the completion of a site remediation, some have required 6 months while others have taken 10 years; Mr. Kunz estimated that this site may require approximately 2 to 3 years to remediate.
16. Applicant maintained that the application was required to be approved pursuant to *N.J.S.A. 40:55D-66.9*, which provides that a variance required for the a remedial action shall be deemed necessary to avoid exceptional and undue hardship and that "[t]he zoning board of adjustment or planning board, as appropriate, shall review and take final action on an application for a Subsection c variance for groundwater corrective action at the next meeting of the zoning board of adjustment or planning board, as appropriate, occurring no less than 20 days following the filing of an application therefore, unless the zoning board of adjustment or planning board, as appropriate, determines that the application lacks information indicated on a checklist adopted by ordinance and made available to the applicant, and the applicant has been notified in writing of the specific deficiencies prior to the expiration of the 20-day period."
17. No members of the public appeared or spoke with regard to this application.

WHEREAS, the applicant requested and was granted certain checklist waivers. The Board found that waivers could be granted because most of them are preexisting conditions at the site and there was no negative impact upon the public's health, safety and welfare. Regarding the setback variance requested by applicant, Board found that the requested variance to permit the proposed location of the temporary remedial trailer and fencing on the property is necessary to avoid exceptional and undue hardship.

NOW, THEREFORE, BE IT RESOLVED that preliminary and final site plan approval with a variance is granted to Cumberland Farms, Inc., subject to the following **conditions**:

1. Although requested by the applicant to be waived, the Board professionals believe that the following should be required: applicant shall submit boundary and topographical survey of the total tract, as required by *N.J.A.C. 13:40-7.2*, signed and sealed by a licensed land surveyor.
2. The trenches for pvc piping located within the existing paving area shall be repaired to match existing pavement material thickness.
3. Except as modified during the hearings, compliance with all applicable conditions contained in the Borough Engineer's memoranda dated December 26, 2007 and January 22, 2008, as well as the Borough of Hightstown Environment Commission memorandum dated February 4, 2008.
4. The posting of all inspection fees, escrows and performance guarantees, pursuant to *N.J.S.A. 40:55D-53a.(1)*, for the excavation, paving, and compacting (if required) pertaining to the installation of piping on the property associated with the temporary remediation system.
5. If requested by the Board, Cumberland will petition NJDEP to permit the installation of a timer to permit the temporary remediation system to be shut down during the night-time hours.

6. Cumberland will submit copies of the bi-annual NJDEP reports to the Board's engineer, Carmela Roberts, P.E.
7. Applicant is required to gain approval or a "letter of no interest" from the Mercer County Planning Board.
8. Compliance with any and all other local, county state and federal regulations that may apply to this application, including those for groundwater remediation pursuant to the memorandum of agreement between the applicant the New Jersey Department of Environmental Protection.

DISCUSSION: ENCHANTMENT – ALLOWANCE OF PATIOS IN AA ZONE

Mr. Rosensweig stated that he reviewed the current code and there is only language for decks and that he researched his notes from the original creation of the ordinance and at that time there was no conversation regarding patios. He recommended that if the Board agrees that it is allowable that they amend the ordinance at the next meeting. Mr. Rosensweig spoke with Ms. Roberts prior to the meeting regarding this and she agreed that there was no reasoning for omitting patios. It is suggested that it be approved with review by the Engineer and Construction Official with the use of a plot plan and not require surveys or plans. Mr. Rosensweig stated that he would have the language for the amendment to the ordinance available at the meeting.

PROFESSIONAL REPORTS

Mr. Rosensweig reported East Windsor Hi-Tech has agreed to adhere the traffic sign posting regulations as approved in their NJDOT permit which required a stop sign and a no left turn sign be posted.

Ms. Laudenberger moved to adjourn. The motion was seconded by Mr. Montferrat, and the meeting was adjourned at 7:52 p.m.

Respectfully submitted,

Leona Baylor
Planning Board Secretary