

**TOWNSHIP OF HOWELL
ZONING BOARD OF ADJUSTMENT**

**RESOLUTION DENYING USE VARIANCE, PRELIMINARY AND FINAL
MAJOR SITE PLAN AND SUBDIVISION**

RESOLUTION NO.: 2022-3
CASE NO.: BA21-14
APPLICANT: IPP SOLAR, LLC (Stavola Construction)
PROPERTY: Victory Road, Block 41, Lots 17, 27 & 28
MEETING DATES: November 22, 2021, December 13, 2021, February 14, 2022,
February 28, 2022
RESOLUTION DATE: March 28, 2022

WHEREAS, pursuant to the applicable provisions of the Township Code (herein defined as Howell Township Land Use Ordinance, Chapter 188 et seq.), an application has been submitted to the Township of Howell Zoning Board of Adjustment (the "Board") by IPP SOLAR, LLC (the "Applicant") for a Use Variance, Preliminary and Final Major Site Plan and Subdivision Approval to construct a solar facility with associated equipment, access ways, fencing, gates, and stormwater facilities at the property identified as Block 41 Lots 17, 27 & 28, located on Victory Road in the Township of Howell and situated in the SED & ARE-6, Special Economic Development & Agriculture Rural Estate Zone Districts (the "Property"); and

WHEREAS, the Application reviewed by the Board consisted of the following plans, documents, and reports:

<u>EXHIBIT/DOCUMENT NO.</u>	<u>DESCRIPTION</u>
Applicant's Documents:	
A-1	Development application
A-2	Application Checklist
A-3	Preliminary and Final Major Site Plan consisting of fifteen (15) sheets prepared by FWH Associates, P.A. dated 2/11/21, last revised 10/1/21
A-4	Natural Resource Inventory Report prepared by Trident Environmental dated 5/11/21, with no revisions.
A-5	Stormwater Management Report prepared by FWH Associates, P.A. dated May 2021, last revised October 2021.
A-6	Boundary & Topographic Survey consisting of two (2) sheets prepared by Control Layouts, Inc. dated 8/17/20, with no revisions.
A-7	Environmental Impact Statement prepared by Trident

- Environmental dated 9/29/21
- A-8 Checklist waiver request letter dated 5/10/21, last revised 10/1/21
 - A-9 Conditional use standards compliance statement dated 5/10/21
 - A-10 A Decommissioning Plan prepared by FWH Associates, P. A. dated September 2021
 - A-11 Stormwater Management Operation and Maintenance Manual prepared by FWH Associates, P. A. dated October 2021
 - A-12 Final Plat – Major Subdivision consisting of one (1) sheet prepared by FWH Associates, P.A. dated 9/29/21
 - A-13 Proof of Service dated November 16, 2021
 - A-14 Aerial Exhibit prepared by FWH Associates, P.A. dated 11/18/21
 - A-15 Overall Site and Phasing Plan prepared by FWH Associates, P.A. dated 2/11/21 last revised 11/15/21
 - A-16 Deed of Consolidation for Block 41, Lots 26 and 26.01 into new lot 26.02 dated 9/5/12
 - A-17 Stormwater Management Report prepared by FWH Associates, P.A. dated May 2021, last revised December 2021.
 - A-18 Operation and Maintenance Manual prepared by FWH Associates, P.A. dated October 2021, last revised December 2021.
 - A-19 Environmental Impact Statement prepared by Trident Environmental dated 9/29/21, last revised 12/1/21
 - A-20 Letter from the Applicant clarifying aspects of the project dated 12/03/21
 - A-21 Final Plat – Major Subdivision consisting of one (1) sheet prepared by FWH Associates, P.A. dated 9/29/21, last revised 12/1/21
 - A-22 Preliminary and Final Major Site Plan consisting of fifteen (15) sheets prepared by FWH Associates, P.A. dated 2/10/21, last revised 12/1/21
 - A-23 Aerial Map from 2002 prepared by Trident Environmental dated 11/22/21
 - A-24 Aerial Map from 1984 prepared by Trident Environmental dated 11/22/21
 - A-25 Aerial Map from 1940 prepared by Trident Environmental dated 11/22/21
 - A-26 Overall Site and Phasing Plan prepared by FWH Associates dated 2/11/21, last revised 12/1/21
 - A-27 Warehouse Concept Plan prepared by Menlo Engineering Associates dated 12/2/21
 - A-28 Aerial Exhibit showing solar farm prepared by FWH Associates dated 11/18/21
 - A-29 Preliminary and Final Major Subdivision consisting of fifteen (15) sheets prepared by FWH Associates, P.A. dated 2/10/21, last revised 01/10/22 (plans say 1/10/21)
 - A-30 Overall Site and Phasing Plan with note on tree clearing limits

- A-31 prepared by FWH Associates dated 2/11/21, last revised 1/10/22
- A-32 Grading Exhibit prepared by FWH Associates dated 1/20/21
- A-32 Aerial Exhibit with insert prepared by FWH Associates dated 11/18/21
- A-33 Aerial Map – 2020 showing contours as prepared by Trident Environmental dated 1/21/22
- A-34 Colorized Site Rendering prepared by FWH Associates dated 2/11/21 last revised 1/10/22
- A-35 Preliminary and Final Major Subdivision consisting of fifteen (15) sheets prepared by FWH Associates, P.A. dated 2/10/21, last revised 02/03/22

INTEROFFICE REPORTS:

- B-1 Shade Tree Commission site plan review dated 5/1/21
- B-2 Fire Bureau site plan review dated 5/21/21
- B-3 Farmers Advisory Committee site plan review dated 6/2/21
- B-4 Monmouth County Planning Board Letter of No Interest dated 5/24/21
- B-5 Environmental Commission site plan review dated 6/9/21
- B-6 Monmouth County Board of Health memo dated 6/21/21
- B-7 Board Engineer’s review letter dated 6/27/21
- B-8 Shade Tree Commission site plan review dated 7/2/21
- B-9 Board Planner’s review letter dated 7/7/21
- B-10 Fire Bureau site plan review dated 10/18/21
- B-11 Environmental Commission site plan review dated 10/13/21
- B-12 Shade Tree Commission site plan review dated 10/20/21
- B-13 Board Engineer’s review letter dated 11/03/21
- B-14 Board Planner’s review letter dated 11/09/21
- B-15 Farmers Advisory Committee site plan review dated 10/28/21
- B-16 Board Licensed Tree Expert’s review letter dated 11/19/21
- B-17 Monmouth County Board of Health memo dated 11/17/21
- B-18 Farmers Advisory Committee site plan review dated 10/28/21
- B-19 Fire Bureau site plan review dated 12/8/21
- B-20 Monmouth County Board of Health memo dated 12/8/21
- B-21 Environmental Commission site plan review dated 12/8/21
- B-22 Shade Tree Commission site plan review dated 12/15/21
- B-23 Board Engineer’s review letter dated 6/27/21, last revised 12/13/21
- B-24 Board Engineers Supplemental Memo dated 1/19/22
- B-25 Monmouth County Board of Health email dated 1/20/22
- B-26 Board Licensed Tree Expert’s review letter dated 1/20/22
- B-27 Shade Tree Commission site plan review dated 1/19/22
- B-28 Board Engineer’s review letter dated 2/8/22
- B-29 Board Licensed Tree Expert’s review letter dated 2/9/22

- B-30 Board Planner's review letter dated 2/9/22
- B-31 Environmental Commission site plan review dated 2/9/22
- B-32 Monmouth County Board of Health site plan review dated 2/10/22
- B-33 Shade Tree Commission site plan review dated 2/16/22

PUBLIC DOCUMENTS:

- P-1 Letter and documentation from Betty Lou Velez Gimbel and Charles S. Gimbel, 97 Victory Road which includes a submission letter, maps, drainage narrative for Victory Farms and memorandums from the Township regarding bonding for Victory Farms.
- P-2 Report of Phase I Environmental Site Assessment for Block 52, Lot 16 (Victory Farms) as prepared by Envirotactics, Inc. dated March 2002

WHEREAS, the Board held public hearings with regard to this application, at its regularly scheduled meetings, on November 22, 2021, December 12, 2021, February 14, 2022 and February 28, 2022 and the Applicant provided notice of the public hearing pursuant to and in full satisfaction of *N.J.S.A. 40:55D-12*; and

WHEREAS, the Board took action on this application at its meeting of February 28, 2022 and this Resolution constitutes a memorialization of that action in accordance with *N.J.S.A. 40:55D-10(g)*; and

WHEREAS, the application initially filed with the Board did not include the request for a subdivision, but under NJAC regulations, for this type of net meter installation, the solar energy generation facility must be contiguous with the lot where the solar energy is consumed, and Lots 27 & 28 were not contiguous, therefor the Applicant proposed to subdivide a portion of Lot 17 and add it to NJNG's Lot 18 so that the western part of the proposed solar array would arguably be contiguous with the NJNG property where to solar power would be consumed; and

WHEREAS, the application initially presented to the Board requested additional variances and waivers, but the application was amended during the course of the hearings and at the time of the vote, the application was substantially as presented on the plan titled Preliminary and Final Major Subdivision consisting of fifteen (15) sheets prepared by FWH Associates, P.A. dated 2/10/21, last revised 02/03/22, and the Applicant was requesting a d(3) conditional use variance to permit a solar array and related improvements on the Property because the Property is split zoned that is Lots 27 & 28 are in the ARE-6 Zone where the use does not meet all of the

conditional use requirements for the zone and Lot 17 is in the SED zone where solar facilities are a permitted use. The Application also requested preliminary and final major site plan and subdivision approval and for the operation of the Property as one solar facility. The application as set forth herein was considered and voted upon by the Board on February 28, 2021; and

WHEREAS, the Board, after reviewing the evidence presented, as well as considering the testimony of the Applicant's and the Board's professionals and the public comments provided at the hearings makes the following findings of fact:

FINDINGS OF FACT

1. The Property is located on the south side of Victory Road, approximately 2,500 ft. east of Maxim Southard Road. The tract is split by railroad right-of-way (CONRAIL – New Jersey Southern Branch), with Lots 27 & 28 located on the west side of the railroad and Lot 17 located on the east side of the railroad. Lots 27 & 28 are zoned ARE-6 Agricultural Rural Estate Zone and Lot 17 is zoned SED Special Economic District. All three lots are vacant wooded lots, with the exception of Lot 17 which contains the remains of an old masonry foundation and a well. Lots 17 and 28 have frontage on Victory Road while Lot 27 has no frontage. Lot 17 is owned by Stavola Realty Company and Lots 27 & 28 are owned by Stavola Construction Materials, Inc.

2. The properties surrounding Lots 27 & 28 to the north, located on the north side of Victory Road, include a residential use on Lot 16.02 and a QFARM use on Lot 16.01. Lot 29 to the west contains a residential use. Lot 26.02 to the south has approval to construct 4 new multi-tenant warehouse structures in two phases. To the east is railroad right-of-way.

3. The properties surrounding Lot 17 to the north, located on the north side of Victory Road, include a commercial use in the SED zone on Lot 9. Lot 12 to the east contains a New Jersey Natural Gas (NJNG) plant and is located in the SED zone. Lot 18 to the south is a vacant parcel, zoned SED and owned by NJNG. To the west is railroad right-of-way. As shown on the site plans, Lot 17 contains several wetlands areas with associated buffers.

4. The applicant is seeking a conditional use variance and a preliminary and final major site plan approval to develop a +/- 28 acre, 4.06 megawatt (5.5 million Kilowatt- hours) solar farm facility with associated improvements. The applicant is proposing two (2) solar panel arrays, two (2) concrete pads for equipment, a chain link fence with a gate, and two (2) associated

gravel access drives on Lots 28 and 17. Additional site improvements include stormwater facilities, wires and conduits for connecting the two solar arrays and for connection with the NJNG facility and buffer landscaping.

5. The property is located in the ARE-6 Agricultural Rural Estate Zone District and the SED Special Economic Development Zone District. The applicant requires d(3) variance relief for Lots 27 and 28 located in the ARE-6 zone to permit a conditionally permitted use upon which all of the conditions associated with the use have not been met. The conditional use requirements for a solar energy generation facility in the ARE-6 zone require four conditions which the application does not meet. (1) The minimum lot area permitted is 65 acres, whereas the subject property has a combined lot area of +/-28 acres, 8.08 acres in Lots 27 and 28 and 19.92 acres in Lot 17. (2) A PJM feasibility report is required. The Applicant has not provided a PJM feasibility report and although a PJM report is not applicable to this type of behind the meter facility proposed by the applicant, a variance is still technically required. (3) No portion of a solar energy generation facility shall occupy areas of land designated and regulated by NJDEP as floodplains, flood hazard areas, wetlands, wetland transition areas or riparian corridors. The proposed solar array will occupy areas of wetlands on Lot 17. We note that while the wetlands are located within the portion of the project in the SED zone, because the project is split zoned and solar energy generation facilities are a conditional use in the ARE-6 zone district, a d(3) variance is technically required. (4) As per §188-69C(4), all applications for a solar energy generation facility shall be accompanied by a decommissioning plan to be implemented upon abandonment, or cessation of activity, or in conjunction with removal of solar energy systems. The decommissioning plan shall be submitted in accordance with the requirements of §188- 69.C(4). The Applicant had agreed as a condition of approval to provide a decommissioning plan, but had not agreed to provide revegetation of restored soil areas required as part of the decommissioning plan.

6. Mr. Salvatore Alfieri, Esq. represented the Applicant and presented the application to the Board at the several nights of hearings.

7. Mr. Chris Rosati, PE, the Applicant's Professional Engineer, presented the site plan, stormwater plan and landscape plan and testified at the hearings on several dates. Mr. James

Kyle, PP, the Applicant's Professional Planner, also presented testimony and he cited the *Coventry Square* case as applicable to the Board's review of this application.

8. Mr. Maziar Dalaeli, was sworn and testified that he is a co-founder of IPP Solar, LLC. He testified that since 2008 the company has installed 70 commercial and industrial solar arrays. He described the solar facilities and the purpose of the project. He testified that the solar field would provide power to the New Jersey Natural Gas (herein after "NJNG") facility behind the grid, meaning that the power would go directly to the NJNG property. After questioning by the Board about why the project does not include battery storage for excess power or nighttime use, he explained that if the solar field produces more power than NJNG needs the extra power would go into the grid and NJNG would get a credit. He explained that the electric meter for NJNG flows both ways so that they are still charged when they take power, and they are given credits when they flow power into the grid. At night NJNG would take power from the grid but during the daytime hours they would flow power into the grid and the credits would be adjusted back and forth. He testified that the project essentially uses the electric grid as a battery.

9. On the second from final night of hearings, when Mr. Dalaeli testified it was determined that the Board was under a misconception as to the kilowatt per hour requirements of the solar project. The Board's professionals and Board members had been proceeding under the belief that the project could not proceed unless it was at least a 4.7 megawatt facility, but the newest plans reduced that to 4.06 megawatts. They had understood that the size drove the need for the use of all three lots proposed as part of the solar facility project. At the hearing Mr. Dalaeli finally explained that there was no minimum size for the solar facility, only a maximum that could not be exceeded. He testified that the electrical regulations will not permit them to generate more than 110% of NJNG's average electrical use for the past three years, because any power not used by the facility goes into the grid. Therefore, a slightly smaller solar field does not jeopardize the entire project it just means that on peak energy usage days the facility may be drawing more power from the grid because the solar field may not cover the entire power usage. Mr. Dalaeli testified that there is no minimum just a maximum permitted. He testified that they reviewed the past three years of electric usage and determined what the average use is for the facility so they would not exceed that 110%. The usage ranges between 4.5 to 12 million kilowatt

hours depending on the season and the demand for natural gas. A 4.06 megawatt facility, which is what is now proposed, would produce 5.5 million kilowatt hours which is on the low end of what NJNG usage is.

10. The Board asked why the facility was proposed to be installed in two phases. The Applicant's Engineer explained that they need approval from Conrail to do directional drilling to connect the two sides of the solar facility, and they wanted the ability to start with the east- side if that approval is delayed. The Board questioned if the west side was never connected would the facility work. The Applicant responded that the system would work it would just be smaller, with less set off, and more need to pull from the grid. The Board asked how much power would be supplied if just the east side were used. The answer was that 4.2 million kilowatt hours would be provided out of the proposed total of 5.5 million kilowatt hours for the entire solar facility.

11. The Board's Professional Engineer, Charles Cunliffe, PE, also reviewed the application and questioned the Applicant's Engineer on the plans presented. Mr. Cunliffe provided five separate review letters of the various versions of the plans presented and provided testimony at each of the nights of hearings.

13. The Board's Professional Planner, Jennifer Beahm, PP, reviewed the application, questioned the Applicant's Planner and Engineer, provided three separate review letters of the various plans presented, and provided testimony at each of the nights of hearings.

14. In addition, the Board's Licensed Tree Expert provide three reports, the Township Shade Tree Commission provided six reports, the Environmental Commission provided four reports, and the Farmers Advisory Board provided three reports, all commenting on the application and its impact.

15. Several members of the public testified in opposition to the application, and many echoed the concerns raised by the Shade Tree Commission and the Environmental Commissions.

16. The Shade Tree Commission report states that it "strongly opposes the removal of 15 acres of forested land with over 1,721 trees for the purpose of installing a solar array. Based

on data from the Arbor Day Foundation the 1,721 trees will provide the community of Howell with the following benefits:

- (1,721) trees will absorb more than 82,608 pounds of carbon dioxide per year The removal 1,721 trees will negatively affect the air quality for Howell residents
- (1,721) trees will produce 447,460 pounds of oxygen each year
- One Howell resident requires 24,200 pounds of oxygen per day
- According to the National Science Institute (1) tree supports over 2.3 million living species”

17. The Shade Tree Commission was also critical that the environmental report provided by the Applicant, commenting that it did not give sufficient information regarding the presence of endangered or threatened species on the site. The site is located within the Pinelands Landscape Region. According to the NJDEP Landscape Project, the site is mapped as a Rank 1 Deciduous Forest and Wetland habitat patch. The Township Environmental Commission also concluded in its report that the Applicant did not give sufficient information about the full impact of the tree removal on this site required for the solar array.

19. A neighbor located across Victory Road from the property also testified to the high-water table in the area and a ground fed pond on her property. She does not have a basement in her house because the water table is so high. She questioned how much the removal of large mature trees and the creation of several infiltration basins would cause the ground water to rise. She argued that the existing trees absorb the water and without them there would be significantly more ground water going into the aquifer which would negatively impact her property, raise the already high-water table, and cause flooding. The Board Engineer did confirm that the removal of trees would affect the amount of water recharge. The Applicant did not address the water table issue except to say that they are complying with the state stormwater regulations.

20. Another neighbor questioned the materials that make up the solar panels and the galvanized steel support structure. She requested assurances that no pollutants would come off the panels and support structures and enter the ground water. She was concerned with toxins

that would affect the plants and animals on her property that use the ground water. The Applicant responded that they were not aware of any pollution created by the solar equipment.

21. A neighbor questioned why the environmental study did not include the threatened and endangered species that they have sighted in the area and questioned how a three-hour site visit by the environmental consultant was sufficient to establish that there were not wildlife of concern in the area. The neighbors have identified, blue heron, roadside skipper, bard owl, and coopers hawk in the area.

22. The Board considered all of the testimony of the Applicant and its experts, of the Boards experts, the Township commissions reports, the exhibits presented, and considered the questions and comments from the public. At the end of the hearings a motion was made to approve the application and the Board voted four to three to approve it, but since a minimum of five votes is needed for approval of a conditional use variance per NJSA 40:55D-70 d., the application was denied.

CONCLUSIONS OF LAW

NOW, THEREFORE, BE IT RESOLVED that the Township of Howell Zoning Board of Adjustment, based upon the above findings of fact, makes the following conclusions:

1. The Board finds and concludes that the application for a use variance, preliminary and final major site plan and subdivision can not be approved. The use is permitted on Lot 17 in the SEC zone as proposed however, the use is only a conditionally permitted on Lots 27 and 28 and the application does not meet the conditions. The application is for a single project that includes all three lots and therefore the failure to satisfy the conditional use requirements as to the ARE-6 portion of the project requires denial of the entire project.

2. The Applicant has the burden to establish both the positive and negative criteria for the variances requested. The inherently beneficial use of a solar array is presumed to satisfy the positive criteria and the focus of the Board is therefore generally on the negative criteria, courts however, have recognized that “some [inherently beneficial] uses are more compelling than others” and the Board is permitted to weigh that in its deliberations. *Sica v. Wall Twp.*, 127 N.J. 165 (1992). The Board is also directed to identify the detrimental effects that would result

from the granting of a variance and lastly determine if there are conditions that could be imposed to reduce the impact of any detrimental effects before balancing the positives and the negatives of the application. *Sica* at 166.

3. The Court in *Sica* established a four-step balancing test for Boards to employ in balancing the positive and negative criteria: the board must (1) identify the public interest at stake and how compelling it is; (2) identify the detrimental effects that would be created by the grant of the variance; (3) determine if reasonable conditions are available to reduce the detrimental effects; and (4) weigh the positive and negative criteria (the public interest against the public detriment) and determine whether, on balance, the grant of the variance would cause a substantial detriment to the public good. *Sica* at 164-167.

4. In addition, the Court in *Coventry Square v. Westwood Zoning Bd. of Adjust.*, 138 N.J. 285 (1994) imposed a standard of proof for a NJSA 40:55D-70d(3) conditional use variances because a conditional use is allowed in the zone under certain conditions, whereas a d(1) use variance is the introduction of a nonpermitted use into the zone. Proofs to support a conditional use variance should justify the permission for a use notwithstanding a deviation from one or more of the conditions. The focus of the negative criteria in a d(3) use variance is on the impact of the deviation, not the impact of the use.

5. Solar facilities are included as inherently beneficial uses in N.J.S.A. 40:55D-4. The Board recognizes that there are benefits from the solar array to the NJNG facility, the rate payers, and the environment. However, the Board did not understand nor did the Applicant convince the Board why Lots 27 and 28 were required for the solar project if the majority of the power required could be accommodated with using only the eastern part of the site where it is a permitted use. The Applicant failed to establish that Lots 27 and 28 were required to provide a solar facility for the benefit of NJNG, and that using just Lot 17 would not provide a sufficient benefit. The Applicant failed to establish that the minimal amount of additional solar power that would be provided from Lots 27 and 28 was sufficient to be considered a compelling inherently beneficial use. The benefits to the environment from solar energy should not be at the expense of clear

cutting a mature forested area on almost the entirety of Lots 27 and 28 and all of the negative environmental impacts that such clearing creates for such a minimal return in kilowatt hours.

6. The Board concluded that clearing of a good portion of an 8.08 acre site in the ARE-6 zone will have a significant negative effect on the groundwater levels, the threatened and endangered species and other wild life in the area. Neighboring properties will also be impacted as wild life, such as deer, are forced out of Lots 27 and 28 and onto neighboring properties where they will eat their plants and crops. The Applicant failed to provide sufficient answers to the questions raised by the Board and the public regarding these environmental issues. The Applicant's environmental statement was not detailed enough to establish that there would not be impacts on threatened and or endangered species that have been identified in the area. Also the Applicant failed to provide any information to counter the argument that removing so many mature trees that absorb ground water would not significantly impact the already high water table in the area. Therefore, the Board was not satisfied that granting the variances would not have a substantial negative impact on the public good. The railroad track is a natural dividing line between the ARE-6 and SED zone and in essence continuing the SEC zone by granting the variances across to this portion of the Township would impair the zone plan and the master plan and the intentional rural area established by the ARE -6 zone. Additionally, no conditions were identified that would satisfactorily reduce the negative affects.

7. The Board concludes that the proposed use does not meet the requirements of the conditional use. The lot size requirement is not satisfied because Lots 27 and 28 are 8.08 acres and even when Lot 17 is added the entire facility is only 28 acres where 65 acres is required. The facility does not have PJM approval which is a moot point because that approval is not applicable to this type of project. The solar project will require the filling of wetlands on Lot 17, which is not permitted in the conditional use, and the Applicant has not agreed to a full decommissioning and revegetation of restored soils when the solar facilities are no longer operational. The lot size required under the conditional use standards is 65 acres and the proposed total facility is only 28 acres. If the property were the 65 acres required a much smaller portion of the property would need to be cleared and a larger percentage of the property would be left forested. This would relieve many of the environmental impacts by still providing

significant habitat for local wildlife and mature trees for storm water absorption. The PJM requirements is not applicable, however the filling of wetlands on Lot 17 is significant. The conditional use prohibition on filling wetlands is significant because it is a mechanism for ensuring that solar facilities are not located on environmentally sensitive lands, and if there are environmental constraints on a property, that the property is large enough that wetlands can be avoided in the design. The need to fill the wetlands for this solar facility reinforces the conclusion that the property is too small for the proposed use. Finally, the Applicant has not agreed to revegetate the disturbed soils after decommissioning of the solar facility. The Applicant discussed the fact that the solar facility has about a 20-year life and that the panels become inefficient. The decommissioning of the facility is an important part of making the use permissible in the ARE-6 zone, because when the facility is no longer useful there is a guarantee that the lands will be restored. The Applicant failed to demonstrate that deviation from these conditions would not substantially impair the zone plan and zoning ordinance. Nor did the Applicant demonstrate that the proposed use was still acceptable in the ARE-6 zone, and Lots 27 and 28 specifically, without meeting the lot size requirement, the prohibition on impacting wetlands and the decommissioning requirement.

8. The Board concludes that the benefits of the minimal amount of additional kilowatt hours of solar power do not outweigh the negatives which include loss of wooded area; mature trees and their clean air benefit; the impact on, groundwater recharge, flooding and drainage along the railroad right of way; destruction of wildlife habitat; and the damage to the zone plan and the rural neighborhood established in the ARE-6 zone.

9. Despite the Boards clear concerns, as discussed at the hearings, the Applicant did not amend the application to remove Lots 27 and 28 from the solar facility and maximize the number of solar panels on Lot 17. The Applicant, of course, was not required to amend its

application and the Board therefore, voted to deny the application that was presented at the hearings.

10. The Board concludes that the application for preliminary and final site plan is also denied because it is dependant on the approval of the use variance.

11. The Board concludes that the application for subdivision approval of a 50-foot-wide strip of Lot 17, to artificially create a connection to make Lots 27 & 28 contiguous with NJNG's Lot 18, in an attempt to comply with NJAC §14:8-4.1. is also denied. This subdivision does nothing to improve zoning in the Township or to support the purposes of zoning in the MLUL it was requested solely as a contrivance of the Applicant to address a statutory requirement with which the Property did not comply.

NOW, THEREFORE, BE IT RESOLVED by the Township of Howell Zoning Board of Adjustment this 28th day of March 2022, that the Board hereby memorializes, by the adoption of this Resolution, the action taken by the Board on February 28th, 2022, denying the Applicant's request for a Use Variance, Preliminary and Final Major Site Plan and Subdivision, as more particularly set forth above.

BE IT FURTHER RESOLVED, that under the Municipal Land Use Law an approval of a use variances requires an affirmative vote of 5 Board members and therefore, although the vote on the motion from February 28, 2022, to approve this application was 4 in favor and 3 opposed, the motion was denied, and the application is thereby denied.

BE IT FURTHER RESOLVED, that the Board Administrator shall publish notice of this decision with an official newspaper of the Township within 10 days of the date hereof and shall provide proof of such publication to the Board Attorney and Applicant's Attorney.

BE IT FURTHER RESOLVED, that the Board Administrator shall provide a certified copy of this resolution to the Township Construction official, Township Engineer, Township Clerk, Zoning Board Engineer, Township Manager, Township Assessor, Township Water and Sewer Department, Township Attorney, and the Applicant within 10 days of the date of this resolution.

February 28, 2022 Vote for Motion for Approval – DENIED

Motion: Sayah

Second: Orozco

Yes: Moretti, Orozco, Sayah, Nanson

No: Cantor, Hughes, Mertens

Abstain:

March 28, 2022 Vote for Memorialization

Motion: Mr. Mertens

Second: Mr. Orozco

Yes: Mr. Cantor, Mr. Hughes and Mr. Mertens

No:

Abstain:

Certification

I hereby certify that the above Resolution is a true copy of the memorializing Resolution adopted by the Zoning Board of Adjustment of the Township of Howell on March 28, 2022.



Richard Mertens
Zoning Board Secretary

State of New Jersey:

SS:

County of Monmouth:

I hereby certify that on March 28, 2022 RICHARD MERTENS personally came before me and acknowledged under oath, to my satisfaction that this person:

- (a) Is the Secretary of the Howell Township Zoning Board of Adjustment; and
- (b) signed this Resolution as his own act and deed; and



Eileen Rubano
Notary Public of New Jersey
2392030
My Commission Expires 12/14/2024

IN THE MATTER OF THE APPLICATION	:	
	:	
OF	:	
	:	
IPP Solar, LLC	:	NOTICE
Case No. 21-14	:	
	:	
TO	:	
	:	
THE ZONING BOARD OF ADJUSTMENT OF	:	
THE TOWNSHIP OF HOWELL	:	

PLEASE TAKE NOTICE that the Zoning Board of Adjustment of the Township of Howell did, on the 28th day of March 2022 adopt a Memorialization Resolution denying an application for a use variance, preliminary and final site plan and subdivision to construct a solar facility with associated equipment, access ways, fencing, gates, and stormwater facilities on property located in the SED Special Economic Development Zone and the ARE-6 Agricultural Rural Estate Zone and, known and designated on the Tax Map of the Township of Howell, as Block 41, Lots 17, 27 & 28, located on Victory Road as a result of a hearings held on November 22, 2021, December 13, 2021, February 14, 2022, and February 28, 2022 with memorialization of the decision on March 28, 2022, and that this decision for denial is on file in the office of the Zoning Board Administrator of the Township of Howell.

DATED: March 28, 2022

THE ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF HOWELL