

Holland Township Planning Board

Minutes of the Regular Meeting

September 10, 2018

The meeting was called to order by the Chairman Rader:

“I call to order the August 13, 2018 Regular Meeting of the Holland Township Planning Board. Adequate notice of this meeting was given pursuant to the Open Public Meeting Act Law by the Planning Board Secretary on December 21, 2017 by:

1. Posting such notice on the bulletin board at the Municipal Building.
2. Published in the December 21, 2017 issue of the Hunterdon County Democrat
3. Faxed to the Express Times for informational purposes only.

Flag Salute

Chairman Rader asked all to stand for the Pledge of Allegiance

Identification of those at the podium

Present: Casey Bickhardt, Dan Bush, Ken Grisewood, Dave Grossmueller, Michael Keady, Carl Molter, Mike Miller, Dan Rader, Tom Scheibener, Duane Young, John Gallina, Esq., Rick Roseberry, Engineer, Darlene Green, Planner, and Court Reporter Lucille Grozinski, CSR and Maria Elena Jennette Kozak, Secretary.

Excused Absent: Elizabeth McKenzie, Alternate Planner (professional excused per the Chairman).

Let the record show there is a quorum.

Minutes

A motion was made by Tom Scheibener and seconded by Mike Keady to dispense with the reading of the minutes of the August 13, 2018 meeting and to approve the minutes as recorded. All present were in favor of the motion with the exception of Ken Grisewood and Carl Molter who abstained. Motion carried.

Discussion

There were no Discussion items scheduled to discuss.

Old Business:

There was no Old Business scheduled to discuss.

New Business:

There was no New Business scheduled to discuss.

Completeness Review:

There was no Completeness Reviews scheduled to discuss.

Resolution

Public Hearings

- Block 4 Lot 1 – Milford Solar Farm LLC - Cyphers Rd – Minor Subdivision (Mill Road Solar Project) – farm house - Received into the office on April 26, 2018. The 45-day completeness deadline is June 10, 2018. Deemed complete June 11, 2018. Carried to the August 13, 2018 meeting. Board Action Required.

MEMORANDUM

To: Members of the Holland Township Planning Board

From: William H. Burr, IV, P.E.
C. Richard Roseberry P.E., P.P., AICP

Date: August 10, 2018

Re: Milford Solar Farm, LLC - Technical Review #2
Minor
Subdivision
Application
Block 4, Lot 1 –
Cyphers Road
MC Project No.
HLP-024A

This office is in receipt of revised documents for the above referenced Minor Subdivision application. The following were submitted in response to discussions at the May 14, 2018 and June 11, 2018 Planning Board meetings as well as in response to the review memorandum issued by this office on June 8, 2018:

Current Submission:

- Plan entitled “Minor Subdivision Plan, Mill Road Solar Project, Block 4, Lot 1, Tax Map Sheet 4, Situated in Holland Township, Hunterdon County, New Jersey” prepared by William P. Schemel, P.L.S. of FWH Associates, P.A., dated March 14, 2018, last revised July 25, 2018.
- Fully Executed Agreement dated July 25, 2018, conveying the John Fine Farmstead parcel from Fiberville Estates, LLC to the Pohatcong History and Heritage Society, and outlining the responsibility of the foregoing parties and Milford Solar Farm, LLC, following the development of the photovoltaic energy facility and the preservation of the historic farmhouse and associated structures.

Second Submission:

- June 1, 2018 letter from Jarred M. Fredricks of FWH Associates, PA to Maria Kozak responding to this office’s completeness comments of May 11, 2018.
- Township of Holland Escrow Agreement dated May 14, 2018.
- June 1, 2018 Minor Subdivision Plan – Milford Road Solar Farm, LLC – Waiver Requests, prepared by FWH Associates, PA

Holland Township – Tax Collectors Stub – dated May 14, 2018 indicating no taxes are due.

- Lot Number Assignment by Holland Township Tax Assessor dated June 7, 2018
- Submission letter and Minor Subdivision Plan Application from Jarred M. Fredricks of FWH Associates, PA to Sue Pena at the Hunterdon County Planning Board, dated May 11, 2018.
- NJDEP Freshwater Wetlands Letter of Interpretation (LOI)/ Line Verification for Block 4 Lot 1, in Holland Township, Hunterdon County, New Jersey, dated September 12, 2011.
- NJDEP Freshwater Wetlands Letter of Interpretation (LOI) - Extension for Block 4 Lot 1, in Holland Township, Hunterdon County, New Jersey, dated January 17, 2017.
- Certified List for Block 2, Lot 1.01 and Block 4, Lot 1, prepared by the Michelle Trivigno, CTA, Township of Holland Tax Assessor, date March 5, 2018.
- Consistency Determination Letter from the New Jersey Highlands Council

confirming that no consistency determination is required for the Minor Subdivision Application, dated June 1, 2018.

- Completed Applicant Certification and Owner Disclosure Forms, dated April 12 and 13, 2018, signed and notarized.
- Plan entitled “Minor Subdivision Plan, Mill Road Solar Project, Block 4, Lot 1, Tax Map Sheet 4, Situated in Holland Township, Hunterdon County, New Jersey” prepared by William P. Schemel, P.L.S. of FWH Associates, P.A., dated March 14, 2018, last revised June 7, 2018.
- Plan entitled “Overall Existing Conditions Plan, Mill Road Solar Project, Block 4, Lot 1, Tax Map Sheet 4, Situated in Holland Township, Hunterdon County, New Jersey” prepared by William P. Schemel, P.L.S. of FWH Associates, P.A., dated April 10, 2017, last revised April 19, 2018.

Original Submission:

- Holland Township Planning & Board of Adjustment Application Form;
- Checklist Section A – Minor Subdivision;
- Plan entitled “Minor Subdivision Plan, Mill Road Solar Project, Block 4, Lot 1, Tax Map Sheet 4, Situated in Holland Township, Hunterdon County, New Jersey” prepared by William P. Schemel, P.L.S. of FWH Associates, P.A., dated March 14, 2018.

PROJECT & PROPERTY DESCRIPTION

The subject property is known as Block 4, Lot 1 and consists of 92.498 acres. The property is located within the IND – Limited Industrial Park District and has frontage on Cyphers Road. The Musconetcong River runs along the north side of the property. Block 4, Lot 1 contains a number of farm related buildings along with other related improvements and the property contains a mix of agricultural and wooded areas, along with numerous environmental constraints.

This property was the subject of a 2016 site plan application to the Planning Board to develop portions of the agricultural areas on the subject property for a photovoltaic (PV) solar farm. After

a number of public hearings on the application, in 2017, site plan approval was granted by the Board and a memorializing resolution was adopted at the June 12, 2017 Board meeting.

Page 26 of the June 12, 2017 Resolution includes a section labeled “Jonathon Fine Farmstead” with the following conditions:

52. The structure known as the “Jonathon Fine Farmhouse” and all related accessory structures are to be the subject of a subdivision application to be filed by the Applicant not later than twelve (12) months from the date of this herein Resolution;

53. The Applicant, recognizing the historic impact of the Fine Farmhouse, will undertake good faith efforts to ensure that the Fine Farmhouse is both maintained and/or restored.

54. The location of all wells and septic systems are to be depicted to Board Engineer’s satisfaction.”

This subdivision application is in response to Condition

#52 above. **COMPLETENESS**

The Board granted checklist waivers and deemed the application **complete** at their June

11, 2018 hearing.

On July 31, 2018, this office received a fully executed copy of an agreement between Fiberville Estates, LLC, the Pohatcong History and Heritage Society and Milford Solar Farm, LLC. This agreement conveys Proposed Lot 1 (The John Fine Farmstead) from Fiberville Estates, LLC to the Pohatcong History and Heritage Society. The agreement also outlines the responsibilities of each party in the preservation of the historic property and structures.

The Applicant should review this agreement in testimony to the Board and address any questions the Board might have.

Summary of Plan Changes:

The applicant has revised the plans in response to discussions at the Planning Board hearing and the review letters of the Board's Professionals. Below are the most notable revisions:

1. The Proposed farmstead lot (Lot 1) area has been increased from 1-acre to 6-acres to exceed the ordinance minimum requirement of 5-acres.
2. Topography is now depicted on the plan as required by the Minor Subdivision Checklist.

The existing well and septic system are depicted and labeled on the plan.

TECHNICAL REVIEW

Upon review of the Minor Subdivision Plan against the provisions of the Land Use Ordinance, and the Title Recordation Act – NJSA §46:26 ('Map Filing Law'), we have the following comments:

1. A single bulk variance will be necessary for newly proposed Lot 1, specifically the Minimum Lot Depth. A 350-foot lot depth is required, while a 334.88-foot lot depth is proposed. Given the scope of the project we believe this 15-foot deviation could be considered a minor nonconformity. Testimony should be provided justifying the granting of the requested variances.
2. The Schedules of Bulk Requirements must be revised as follows:
 - a. To indicate a Minimum Lot Depth of 334.88-FT for Proposed Lot 1.
 - b. To indicate a Minimum Setback from Street Line of 110-FT for Proposed Lot 1.
 - c. To indicate a Minimum Lot Frontage of 1251.22-FT for Proposed Lot 1.01.
 - d. To indicate a Minimum Lot Width of 920-FT for Proposed Lot 1.01.
3. Minimum setback dimensions should also be provided on the plan for the accessory structures on Proposed Lot 1.
4. The Applicant should clarify whether they intend to file this Minor Subdivision by plat, or deed. If by deed, legal descriptions for Proposed Lots 1 and 1.01 must be submitted to this office and to the Board Attorney for review and approval prior to recording.
5. Per the certifications in the Title Recordation Act and on the Minor Subdivision Plan, monuments must be set prior to the recording of deeds, or filing of a plat with the County Clerk's office. The Monument reference in the legend must be revised to state "Monument Set". The Applicant will be required to certify that monuments have been set prior to the Minor Subdivision Plan being signed by the Township and filed at the County.

6. The Owner Certification must be revised to reference Hunterdon County, and not Ocean County as currently presented.
7. The plan should be revised to indicate that the Variable Width ROW along Cyphers Road is **to be** dedicated to Holland Township. Additionally, the Applicant must confirm that ROW was dimensioned from the Cyphers Road centerline, a minimum of 16.5-feet (1/2 of the 33-foot width) and update the plan as necessary. There are some locations which scale less than 16.5 feet. Dimensions should be provided along Cyphers road to indicate the variations in the ROW width along Cyphers Road.
8. The plan should be revised to confirm that all outbound bearings and distances are provided on the existing and proposed property lines comprising the parcels. The bearing and distance along the frontage of Lot 9, Block 2 does not appear on the plan.
9. Monuments must be provided along each intersection of outside boundaries of newly created lots with the ROW line or the side of any existing street per the provisions in the Title Recordation Act, 46:26B-3.b(10).

An additional Monument must be added to the plan at the northern terminus of Curve 1 defining the Cyphers Road ROW.
10. The plan must be updated to identify all line segments, points of tangency and points of curvature along the outbound boundary. It is unclear where each course of the property boundary begins, or ends (i.e. add tick marks, or other symbols to the plan).

If you have any questions regarding this correspondence, please contact this office at your earliest convenience.

WHB/ATW/

Cc: Holland Township Land Use Board Members (via email)
Darlene Green, AICP, PP
John Galina, Esq., Board Attorney
William Schemel, P.L.S.
Mark Bellin, Esq., Applicants Attorney

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August 8, 2018

PLANNING REPORT

Planning Board
Township of Holland
61 Church Road
Milford, NJ 08848

Re: Milford Solar Farm, LLC
Cyphers Road
Block 4, Lot 1
Review Letter #1
MC Project No. HLP-024B

Dear Board Members:

Milford Solar Farm, LLC seeks minor subdivision approval to subdivide an existing 92.5-acre parcel located along Cyphers Road. The property was the subject of a 2016 site plan application to the Planning Board to develop portions of the property into a photovoltaic solar farm facility. During the multiple public hearings on the application, the Applicant received site plan approval from the Planning Board by Resolution memorialized on June 12, 2017. Page 26 of the June

12, 2017 Resolution includes a section entitled “Johnathon Fine Farmstead” with the following conditions:

52. The structure known as the “Johnathon Fine Farmhouse” and all related accessory structures are to be the subject of a subdivision application to be filed by the Applicant not later than twelve (12) months from the date of this herein Resolution;
53. The Applicant, recognizing the historic impact of the Fine Farmhouse, will undertake good faith to ensure that the Fine Farmhouse is both maintained and/or restored;
54. The location of all wells and septic systems are to be depicted to Board Engineer’s satisfaction.

This Application seeks to subdivide the Fine Farmstead from the larger site. Variances are detailed in Section B and design waivers are listed in Section D. The following documents, which were submitted in support of the Application, have been reviewed:

1. Plans entitled “Minor Subdivision Plan”, prepared by William P. Schemel, P.L.S. of FWH Associates, P.A., dated March 14, 2018, revised through July 25, 2018, consisting of 1 sheet.
2. Planning and Board of Adjustment Application Form, dated April 13, 2018.
3. Check List for Determining Completeness of Application Minor Subdivision, no date.
4. Plans entitled “Preliminary and Final Site Plan Mill Road Solar Project”, prepared by Christopher P. Rosati, P.E., Leroy Webb, Jr., LA, P.P. and William P. Schemel, P.L.S. of FWH Associated, P.A., dated April 10, 2017, revised through July 13, 2018, consisting of 32 sheets.
5. Development Review Application Form, Hunterdon County Planning Board, no date.
6. Letter entitled “RE: Milford Solar Farm, LLC”, prepared by Margaret Nordstorm, Executive Director of the New Jersey Highlands Council, dated June 1, 2018, consisting of 1 page.
7. Executed Agreement between Pohatcong History and Heritage Society, Fiberville Estates, LLC and Milford Solar Farm, LLC, dated July 25, 2018.

A. Existing Zoning and Surrounding Land Use

The property is located in the Limited Industrial District (IND) on the west side of Cyphers Road. The property surrounds single-family homes located on Willow Lane. To the north and west across the Musconetcong River are single-family homes and a vineyard in Pohatcong Township. An old industrial use is located to the east while single-family dwellings are to the south. See the image on next page for the general location of the site.¹

Article V of the Zoning Code provides the parameters for the IND District. As per Section 100- 21L, single-family residences are subject to the requirements of the R-5 Residential District, which are as follows:

Minimum Lot Area – 5 acres
Minimum Lot Width – 325 feet
Minimum Lot Frontage – 260 feet²
Minimum Lot Depth – 350 feet
Minimum Setback from Street Line – 75 feet
Minimum Rear Yard Setback – 75 feet

Minimum Side Yard Setback – 75 feet
Maximum Building Height – 35 feet/ 2.5 stories

B. Variances

The Application requires the following “C” variance:

1. Section 100-45D. – Variance for barn and silo setback. The Ordinance permits barns and silos associated with permitted agricultural uses subject to the required setbacks of the District. Therefore a 75-foot setback from the street line, side and rear yards is required for barns and silos.

The existing barn is approximately 11 feet from the proposed side lot line to the north and approximately 10 feet from the proposed rear lot line. The existing silo is located on the proposed lot line and therefore has a zero-foot setback from the proposed rear lot line.

Additionally, the following pre-existing non-conforming condition exists on the property:

1. Section 100-10B. – The Ordinance requires accessory buildings to be at least five feet from any other building.

The property contains a two-story garage and one-story garage located closer than five feet from each other. Additionally, the barn is closer than five feet to another accessory structure.

2. Section 100-45A. – The Ordinance allows one private garage for the storage of automobiles.

There are two existing garages on the property.

3. Section 100-45B.(1) – The Ordinance limits accessory structure floor area to 1,000 square feet.

The existing shed, stable, two garages, barn and additional accessory structure total more than 1,000 square feet.

C. Variance Proofs

“C” Variances

NJSA 40:55D-70(c) sets forth the criteria by which a variance can be granted from the bulk requirements of a zoning ordinance. The first criteria is the C(1) or hardship reasons including exceptional narrowness, shallowness or shape of a specific piece of property, or exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or extraordinary and exceptional situation uniquely affecting a specific piece of property.

The second criteria involves the C(2) or flexible “C” variance where the purposes of the MLUL would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.

D. Design Waiver

The following design waiver is required by this Application:

1. Section 100-175B. – Waiver for right-of-way width. The Ordinance requires all arterial, collector, minor and marginal access streets to be at least 50 feet wide.

The Applicant proposes to dedicate a right-of-way to the Township that varies in width from approximately 65 feet at the widest and approximately 15 feet at the narrowest.

E. Comments

Based on our review of the above-referenced materials, we offer the following comments:

1. The Applicant's professionals must provide testimony to support the grant of the variance required. Testimony must address both the negative and positive criteria requirements of the MLUL.
2. The Applicant should provide a survey of existing conditions that illustrates any structures that have been demolished after the February 23, 2017 "Boundary and Topographic Survey" that the Plan references. This could be in the form of an exhibit at the hearing.
3. The proposed subdivision line divides the existing silo between proposed Lots 1 and 1.01. The Applicant shall provide testimony regarding the lot line placement through the silo.
4. It is this office's understanding that the Planning Board specifically directed the Applicant to return to the Board with a detailed milestone calendar outlining the steps following the Application process to restore the Farmstead. This office received an Agreement between Pohatcong History and Heritage Society, Fiberville Estates, LLC and Milford Solar Farm, LLC. The agreement provides the following:
 - a. Pohatcong History and Heritage Society would repair and restore the house and barn within 12 months of the date Fiberville Estates, LLC deeds the lot to the Society
 - b. Fiberville Estates, LLC will deed the lot to the Society 30 days from the date that all non-appealable approvals have been granted, including a qualifying designation as Solar Renewable Energy Credit

The Board should note that Section 4 of the agreement indicates that the Agreement may be terminated by any party in the event the Applicant does not obtain all the approvals within 12 months of the date of the agreement, but the Applicant has the right to extend the agreement for an additional 12 months

d. Based on the above, we offer the following comments:

- The Applicant should provide testimony on what the phrase "repair and restore" means. Does this mean the house and barn would be fully restored on the interior and exterior?
 - It appears that the house and barn may not be restored for up to three years (due to the provisions in Section 4). Is this timeframe acceptable to the Board? Based on previous conversations, this office is under the impression that the house will fall into a state of disrepair if stopgaps ("mothballing") are not put in place in the near future.
 - The Agreement contemplates a developer's agreement between the Township and the Society to ensure the house and barn are restored. If the Board is inclined to approve the Application, this should be a condition of approval.
5. Sections 1.05 and 1.06 of the Agreement discuss the necessary steps to deed restrict the farmstead lot for affordable housing, if required by the Township or the Planning Board. This needs to be discussed further by the Board and testimony shall be provided by the Applicant. If the use of the home is to be restricted to affordable housing, then we offer the following conditions of approval:
 - a. The Applicant shall deed restrict the affordable housing unit for a minimum of 30 years. The deed restriction shall be provided to the Township Planner and Township Attorney for review and approval prior to recording.

- b. The Applicant shall be responsible for retaining a qualified Administrative Assistant that is approved by the Township.
 - c. An affirmative marketing shall be submitted to the Township's Municipal Housing Liaison for review and approval at least 130 days prior to the issuance of any Certificate of Occupancy or continuing Certificate of Occupancy.
5. The Applicant shall be prepared to discuss the intended use of the entire Farmstead. The Agreement does not clearly indicate the ultimate use of the Farmstead.

Should you have any questions with regard to the above comments please do not hesitate to contact my office. We reserve the right to make additional comments based upon further review or submission of revised plans or new information.

Very truly yours,

MASER CONSULTING P .

Darlene A. Green,
P.P., AICP Township
Planner

DAG:dc

cc: Maria Elena Kozak, Planning Board Secretary (via email planningboardahollandtownship.org)
Bill Burr, Board Engineer (via email wburt@maserconsulting.com)

August 9, 2018

PLANNING REPORT

Planning Board
Township of Holland
61 Church Road
Milford, NJ
08848

Re: Milford Solar Farm, LLC
Cyphers Road
Block 4, Lot 1
Review Letter #2
MC Project No. HLP-024B

Dear Board Members:

This letter is written in response to my August 8, 2018 review letter (Review Letter #1). The Application before the Board is quite unique in that the land owner, Applicant and end user are three different entities. Furthermore, the pending Application is a condition of approval of a previously approved application.

Section E of my August 8, 2018 letter contained comments. Item 3d references a developer's agreement between the Township and the Society to ensure the restoration is completed. It was suggested that this be a condition of approval. As noted above the Applicant and the end user are two different entities. Instead of a condition of approval, I believe that the execution of a developer's agreement could be enforced through other means and that alternative solutions could be discussed at our meeting Monday night and the Board and the Applicant could come to a mutual agreement.

Item 4 references affordable housing and offers conditions of approval. For the reasons noted above, we believe these requirements would be more appropriately memorialized in a developer's agreement.

Should you have any questions with regard to the above comments please do not hesitate to contact my office. We reserve the right to make additional comments based upon further review or submission of revised plans or new information.

Very truly yours,

MASER CONSULTING P.A.

Darlene A. Green, P.P., AICP Township Planner

cc: Maria Elena Kozak, Planning Board Secretary (via email planningboard@hollandtownship.org)
Bill Burr, Board Engineer (via email wburr@maserconsulting.com)
John P. Gallina, Board Attorney (via email jpgesq@embarqmail.com)
Dan Rader, Board Chair (via email daniel.rader2@aol.com)
Milford Solar Farm, LLC, Applicant (via email jfredericks@fwhassociates.com)
Mark Bellin, Applicant's Attorney (via email marksbellin@aol.com)

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Attorney Bellin was present.

Exhibits:

- A1 - Affidavit
- A2 – Copy of the Notice of Hearing
- A3 – Owners List
- A4 – List from Pohatcong
- A5 - Certifications
- A6 – Affidavit from the Hunterdon Democrat

Attorney Gallina stated that the board has jurisdiction to proceed with the Public Hearing. Attorney Gallina indicated that the Applicant assumes the risk of any jurisdictional challenge regarding a defective notice, and neither Holland Township nor the Planning Board will defend any suit involving either deficient notice or the Board's lack of jurisdiction.

Witness #1 – Chris P. Rosati – FWH – licensed in NJ since 1999 and is a graduate of Rutgers. He is a principal in the firm. He has testified before Holland Township with regards to this project. He is a Planner and an Engineer. He has appeared before many boards in the state of New Jersey. The Planning board accepted him as an expert witness.

The John Fine Farm house subdivision was a condition of the approved solar project resolution. The house is located on the westerly portion of the tract known as Block 4 Lot 1. The land consists of approximately 92 acres and is in the industrial zone with frontage on Cyphers Road. The Musconetcong is to the side with a tree line on Willow Lane and to the south of the property as well. The minor subdivision will be a carved lot consisting of the Jonathan Fine Farmhouse and a few outbuildings. Lot 1 will consist of approximately 6 acres and proposed Lot 1.01 will consist of the remaining lands. Variance 100-45d is required and says that 75' property lines are required on all sides. In saving the farmhouse and trying to get the most out of the solar arrays as possible, the silo will be 10' from the rear and the barn will be 50'9" from the property line. In trying to save the historic structures the applicant reduced the array size. The tree line will remain. Other variance needed at 100 110b and 100 145b1. All the conditions are preexisting non-conforming. A design waiver on the south side as the applicant is dedicating more than 50 feet on the Cyphers Road right of way which means they are giving more land on the north side to keep the line better

In a C2 variance the board can grant this and the item j and n has been satisfied. This is for a historic project and for renewable energy. The Memo of Understanding is being worked on with the Pohatcong History and Heritage Society, the township and the property owners. There is need to revisit the math with the setback requirement of a conforming lot. A revision will be done. The meets and bounds will be worked on with Engineer Roseberry. Road descriptions will also be supplied to Engineer Roseberry. Planner Green was in favor of the testimony given.

Attorney Bellin asked that the resolution be amended to reassign the maintenance, repair and operation of the house to the Pohatcong History and Heritage Society working with the township. The land owner is the contact with the house discussions and the a applicant is not really involved with the negotiations as it does not pertain to the actual solar project. Attorney Bellin has looked over the Memo of Understanding (MOU) and supports it but requests the resolution conditions 53 and 54 be amended. The future operations of the farmhouse is between Pohatcong History and Heritage Society and Holland Township.

Exhibit A7 – the Memo of Understanding (MOU)

DRAFT NO 5
July 25 2018 MO

AGREEMENT

This Agreement is made this 26th day of July 2018 (the "Effective Date") by and between Pohatcong History and Heritage Society with a mailing address of 20 Municipal Drive, Phillipsburg, New Jersey 08865 (hereinafter referred to as "HA"), Fiberville Estates LLC with a mailing address of 410 Princeton Hightstown Road, Princeton Junction, New Jersey 08550 (hereinafter referred to as "FE") and Milford Solar Farm LLC, with a mailing address of 20A South Beers Street, Holmdel, NJ 07733 (hereinafter referred to as "MSF"), each of HA, FE and MSF hereinafter collectively referred to as the "Parties."

WITNESSETH

WHEREAS FE is the owner in fee of those lands and premises known as Lot 1.02 in Block 2 and Lot 1 in Block 4 as the as the same area is depicted on the tax maps of the Town of Holland, County of Hunterdon, State of New Jersey (hereinafter referred to as the "Premises.") and

WHEREAS MSF is a renewable energy company whose business is to develop grid supply photovoltaic solar panel solar farms on grounds throughout the State of New Jersey; and

WHEREAS HA is a duly constituted 501 3 C not for profit corporation whose purposes include but are not limited to the acquisition of historically significant properties, their ownership, restoration and preservation; and

WHEREAS FE has entered into a Ground Lease with MSF dated October 17, 2017 pursuant to which MSF shall develop, construct and operate a 10 MW DC grid supply solar farm (the "Project") on portions of the Premises as the same are depicted on Exhibit 1 attached hereto and made a part hereof (the "Ground Lease"); and

WHEREAS there exists on the Premises a farm house and related structures which are known as the John Fine Farmstead (hereinafter referred to as the "Farmstead"), a contributing resource to the Finesville Seigletown Historic District Boundary Increase (COE:) and

WHEREAS the Project is adjacent to the New Jersey and National Register-listed (SR/NR) Finesville Seigletown Historic District (SR:3/4/2010; NR 11/20/2010); (the Finesville-Seigletown Historic District hereinafter referred to as the "Historic District"); and

WHEREAS as a condition of the resolution of approval dated June 12, 2017 (hereinafter the "Resolution") of the Holland Township Planning Board (hereinafter the "Planning Board"), Condition 52 required that the Farmstead be subdivided from the Premises and Conditions 53 and 54 required that the Farmstead be maintained and restored and that the location of the septic system and well be located; and

DRAFT NO 5
July 25 2018 MO

AGREEMENT

This Agreement is made this 26th day of July 2018 (the "Effective Date") by and between Pohatcong History

and Heritage Society with a mailing address of 20 Municipal Drive, Phillipsburg, New Jersey 08865 (hereinafter referred to as "HA"), Fiberville Estates LLC with a mailing address of 410 Princeton Hightstown Road, Princeton Junction, New Jersey 08550 (hereinafter referred to as "FE") and Milford Solar Farm LLC, with a mailing address of 20A South Beers Street, Holmdel, NJ 07733 (hereinafter referred to as "MSF"), each of HA, FE and MSF hereinafter collectively referred to as the "Parties."

WITNESSETH

WHEREAS FE is the owner in fee of those lands and premises known as Lot 1.02 in Block 2 and Lot 1 in Block 4 as the as the same area is depicted on the tax maps of the Town of Holland, County of Hunterdon, State of New Jersey (hereinafter referred to as the "Premises.") and

WHEREAS MSF is a renewable energy company whose business is to develop grid supply photovoltaic solar panel solar farms on grounds throughout the State of New Jersey; and

WHEREAS HA is a duly constituted 501 3 C not for profit corporation whose purposes include but are not limited to the acquisition of historically significant properties, their ownership, restoration and preservation; and

WHEREAS FE has entered into a Ground Lease with MSF dated October 17, 2017 pursuant to which MSF shall develop, construct and operate a 10 MW DC grid supply solar farm (the "Project") on portions of the Premises as the same are depicted on Exhibit 1 attached hereto and made a part hereof (the "Ground Lease"); and

WHEREAS there exists on the Premises a farm house and related structures which are known as the John Fine Farmstead (hereinafter referred to as the "Farmstead"), a contributing resource to the Finesville Seigletown Historic District Boundary Increase (COE:) and

WHEREAS the Project is adjacent to the New Jersey and National Register-listed (SR/NR) Finesville Seigletown Historic District (SR:3/4/2010; NR 11/20/2010); (the Finesville-Seigletown Historic District hereinafter referred to as the "Historic District"); and

WHEREAS as a condition of the resolution of approval dated June 12, 2017 (hereinafter the "Resolution") of the Holland Township Planning Board (hereinafter the "Planning Board"), Condition 52 required that the Farmstead be subdivided from the Premises and Conditions 53 and 54 required that the Farmstead be maintained and restored and that the location of the septic system and well be located; and

all monetary liens and monetary encumbrances other than those created by regulation or of record, or otherwise through the approval process. Title shall be good and marketable and insurable at regular rates.

3. Obligations of MSF. From and after the Effective Date of this Agreement, MSF agrees to perform the following obligations.

3.01. MSF shall exercise commercially reasonable efforts to perfect the Approvals and enable FE to record the minor subdivision deed.

3.02. Pay to the HA the sum of \$100,000.00 in the following manner.

3.02.01 The sum of \$50,000 shall be paid within 10 days of the date that MSF issues the NIP to its contractors.

3.02.02. The sum of \$25,000 shall be paid within 10 days of the date the Project becomes commercially operable (the "Commercial Operation Date.") The Commercial Operation Date is the date that the Project has been energized and accepted and approved in writing or by certificate by all entities and authorities having jurisdiction over its construction and operation.

3.02.03. The sum of \$25,000 shall be paid within ten days of the expiration of six (6) months from the Commercial Operation Date.

4. Termination of Agreement. This Agreement may be terminated by any one of the parties in the event MSF does not obtain the Approvals within 12 months of the date of this Agreement, provided however that MSF shall have the right to extend the Agreement for an additional 12 months in the event that MSF is

pursuing **the Approvals** or the Project by application and or by way of an appeal or litigation. In the event the Agreement is terminated, this agreement shall be **null and void and no** Party shall have any recourse against the other.

5. Default by a Party. In the event any Party defaults in its obligations hereunder, the parties shall have all rights and remedies provided by law or in equity. Notice of a default shall be given by the nondefaulting within 30 days of the occurrence of any default. The defaulting Party shall be given 30 days to cure the default provided that if the default cannot be reasonably cured with the foregoing cure period, the defaulting Party shall be given a reasonable period of time to cure the default provided that the defaulting Party is exercising commercially continual efforts to remedy the default.

6. Notices. All notices, communications and waivers under this Agreement shall be in writing and shall be delivered (a) in person, (b) mailed, postage prepaid, **either** by registered or certified mail, return receipt requested, (c) sent by reputable overnight express courier; or (d) sent via email, in each case to the persons at the addresses set forth on the first page of this document. Notices shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by reputable overnight express courier, then on the next business day immediately following the day sent, (iii) if sent by registered or certified mail, then on the earlier of **the third business day after the day sent, or, if earlier, when actually received; or (iv) if sent by email, when written confirmation of**

7. Cumulative Remedies. Except as set forth to the contrary herein, any right or remedy of the Parties shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

8. Limited Effect of Waiver. The failure of any Party to enforce any of the provisions of this Agreement, or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

9. Severability. If any term or provision of this Agreement shall be held invalid or unenforceable to any extent under applicable law by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term and provision shall be valid and enforceable to the fullest extent permitted by law.

10. Relation of Parties. The relationship between the Parties shall not be that of partners, agents or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes.

11. Successors and Assigns. This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assigns. The duties and obligations of the Parties under this Agreement shall not be assignable by any Party without the written consent of the other Parties, which consent shall not be unreasonably withheld conditioned or delayed. Notwithstanding the foregoing, on notice to the other Parties, MSF shall be entitled **to** assign its duties and obligations under this Agreement without any other Party's consent to a public utility or in addition thereto any credit worthy qualified purchaser of the Project as part of an asset sale by MSF or as part of a merger or acquisition, or as a result of a sale of the Project as an asset provided that the successor Party is financially capable of meeting MSF's duties and obligations and expressly assumes such duties and obligations under this Agreement in a writing provided to the other Parties, and further provided that such successor Party expressly assumes all of MSF's duties and obligations under the Ground Lease.

12. Governing Law. This Agreement and the performance thereof shall be governed, interpreted, construed, and regulated by the laws of the State of New Jersey, without giving effect to any conflict of laws principles.

13. Merger. This Agreement constitutes the entire agreement among the Parties hereto with respect to the subject matter hereof and supersedes all prior agreements between the Parties with respect to the subject matter hereof.

Attorneys' Fees. In any lawsuit or action under this Agreement in addition to any other relief granted by the court or an arbitrator, each Party shall bear its own attorneys' fees and costs.

15. General Representations and Warranties. Each *Party* represents and warrants that (a) the individuals executing this Agreement on behalf of the Party are authorized to do so by requisite action of

that **Party** to this Agreement; each has provided the other **Party** with the relevant corporate governance documents indicating such authority; it is duly organized, validly existing and in good standing in under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform this Agreement; **it** has or will obtain when required all regulatory authorizations necessary to legally perform its obligations hereunder with no additional third **Party** consents; and there are no bankruptcy, insolvency, reorganization, receivership or other comparable proceedings pending or being contemplated by it or threatened against it.

16. joint Preparation. This Agreement has been negotiated by all Parties hereto with the assistance and input of their respective attorneys, and therefore no ambiguity herein shall be construed for or against any Party based upon the identity of the author of this Agreement or any portion hereof.

17. Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. Emailed and/or faxed signatures are binding.

Signatures on the following page.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date hereof.

FIBERVILLE ESTATES LLC, a New Jersey limited liability company

By: _____^I

Name: _____ 0/ _____ is

Title: Member
MILFORD SOLAR FARM LLC

By: _____

Name:

Title:

POHATCONG HISTORY AND HERITAGE SOCIETY

By: _____

Name:

Title:

Title:

EXHIBIT 1.

Reserved for Site Plan of Project.
EXHIBIT 442

The public portion of the public hearing was open to the public. Let the record show, no one from the public had a comment and the public portion of the public hearing was closed.

Planner Green stated that she has been in touch with the Township Attorney and Mayor and that it was decided that the property does not have to be an affordable component but would still like it to be a consideration. Planner Green has reviewed the MOU and finds it acceptable. It gives the Township Committee the teeth to enforce.

A motion was made by Dan Bush and seconded by Tom Scheibener to approve the application as presented with the amending of conditions 53 and 54 with all the normal conditions associated

with an approval as well as a conforming plat being submitted for signatures, the right of way showing meets and bounds, the MOU being perfected with the appropriate agencies, approving the variances requested and acknowledging this minor subdivision by also granting a waiver of width pertaining to Cyphers Road. At a roll call vote, all present were in favor of the motion. Motion carried. Attorney Gallina will prepare a resolution for the board to memorialize at the next scheduled meeting

- Block 24 Lots 3 and 13 – Huntington Knolls LLC – Minor Subdivision & Final Site Plan – Phases 2, 3, 4 – Received into the office on July 24, 2018 and July 27, 2018 – The 45-day-completeness deadline is September 7, 2018. Deemed complete August 13, 2018 for Minor Subdivision & Final Site Plan – Phases 2 and 3 only. Board Action Needed.

For the record, Board Members Mike Keady and Ken Grisewood recused themselves and left the building at 7:55 pm.

Applicant's Attorney William Caldwell is present.

The applicant wants to move forward but is NOT prepared for the public hearing this evening. Ongoing discussions took place between the board attorney and the applicant's attorney regarding the notice requirement. The applicant did not notice but will notice for the next scheduled Planning Board meeting.

Attorney Caldwell would like to clarify some issues so as to notice properly. Discussion opened with the TWA and how it is based on units. Engineer Roseberry stated that the board needs the applicant to comply with the COAH requirements. Bedroom distributions are vital in how the town receives its affordable housing credits. The board needs to see floor plans as the applicant has continued to respond that they would comply but have not presented floor plans.

The conversation continued into water allocation with Attorney Caldwell stating that "it is what it is" and an outside agency agreed. Engineer Roseberry brought up that Phase 4 can be in the future but for now Phase 4 was not submitted and the applicant does not have water for phase 4. The applicant will need to work on permits with the DEP. Attorney Caldwell questioned this as part of Phase 3 however Engineer Roseberry said it can be a waiver at this time and a condition of the approval.

The next topic discussed was siding and roofing. In 2006 there were approvals of the Architectural design, however no one can locate a rendering. The applicant is asked to present an original at the public hearing. This is discussed in the prior Maser letter and the applicant needs to review the requirement. The board approved the building. The COAH units foot print needs to match the building approved in June of 2006. The notation on the plan to extend feasibility still stands. The note on the plan was to the developer's description and Engineer Roseberry is reminding everyone that conditions approved in the prior resolutions stand and resolution compliance is necessary unless the applicant seeks to request a change which requires a process including a public hearing and the board making a determination.

The subdivision, compliance of the farmette is required and includes a bio filter issue needing to be addressed. Engineer Roseberry also mentioned maintenance easements needing to be addressed as well as everything outlined in prior Maser memos.

In a discussion about the non-residential property to consist of 12 acres, a reorientation of property lines is needed however it presents some technical issues that Planner McKenzie outlined and includes dividing out the 2 apartments, what kind of road Clairmont will be and what kind of variances will be needed. Engineer Roseberry suggested that the applicant stick with the minor subdivision first and address the five comments in the Maser memo prepared by Engineer Roseberry and to address the concerns of Planner Green outlined in her memo.

Attorney Caldwell asked about further subdivision which would be to take out the 26 COAH units which would have no frontage and the lot issues would require bulk variances. Engineer Roseberry said you would need to comply with the ordinance. Attorney Gallina will investigate individual zoning requirements in this project. A condominium discussion took place but subdivision of lots would need to be fully explained for board members to understand and make

a determination. This is NOT part of the approved plan so the board members were not educated on the topic to have an opinion.

The developer would like to build a model at its own risk with no CO. Engineer Roseberry said that upon the approval of Phase 3 that the applicant could get permits for building but conditions of the resolution must be satisfied first.

Attorney Caldwell asked Engineer Roseberry to address outstanding issues from his memo. Attorney Caldwell is working with the Township Attorney to address the issue of the developer's agreement. In Phase 2 bio retention is required along with an easement for the driveway. Planner Green outlined potential variances needed and understands that she could have missed something but tried to get an understanding for what was approved in preliminary as well as for final. All the documents need to match. Plans to the resolution need to match. The affordable housing component does not match and it needs to match. The landscape plan also has a discrepancy. Attorney Caldwell stated that it was approved and Planner Green responded that there are some errors in the numbers and that it is just some housekeeping that needs to be done.

Engineer Roseberry stated that the plans are pretty good but just need a few revisions. The bedroom distribution is an outstanding issue that needs to be addressed. At this time, Mr. Roseberry did not have technical issues.

Planner Green wants to address the affordable housing component and it was suggested that a conference call between the professionals take place to make sure everyone is on the same page. All agree that was the best way to move forward.

The public hearing will be on Monday October 8, 2018 at 7:30 pm.

Board member Miller had a question about the 3rd party income qualified households and Planner Green stated that an Administrative Agent is what is needed.

Sub-Committee Status and Updates:

- Ongoing work to be discussed – Holland Township Highlands Plan Conformance Subcommittee –The Stormwater Mitigation Plan has been adopted by the Township Committee. The Water Use and Conservation Management Plan are being worked on with CDM Smith and Maser Consulting along with the sub-committee reviewing documents and offering comments. The major question proposed is “Who is going to do all the work?” The major uses in the township are farming so improvements in irrigation have potential but we have limited power in controlling the Agriculture. The Right to Farm Act trumps the Highlands Act. As a reminder, an application was made to the DEP to divert a lot of water for agricultural irrigation and the township and some residents had comments that have yet to be addressed including improper notification. The DEP has failed to respond to the letters submitted by the Planning Board attorney as well as some Holland Township residents.
- Housekeeping – Proposal by Maser regarding an update of the Planning Board submission checklists - the professionals are working on this. More information to follow.

Board Member Discussion:

- Bock 15 Lot 1 – Phillips Farm on the corner of Rt 519 and Rt 614. Nothing to report at this time.

Public Comment

There was no public comment at this time.

Executive Session

There was no Executive Session scheduled at this time.

Adjournment

Tom Scheibener made a motion to adjourn. Motion approved. The meeting ended at 8:25 p.m.

Respectfully submitted,
Maria Elena Jennette Kozak

Maria Elena Jennette Kozak
Secretary