

**READINGTON TOWNSHIP BOARD OF ADJUSTMENT  
MINUTES  
February 16, 2012**

- A. Vice Chairperson Denning called the meeting to order at 7:34 p.m. announcing that all laws governing the Open Public Meetings Act had been met and that the meeting had been duly advertised.**
- 1. Attorney Moore stated for the record that it is his recommendation to begin the meeting with an amended re-organization agenda. Betty Ann Fort has resigned from the Board of Adjustment, and is now a member of the Township Committee. Mr. Denning was appointed Vice Chairperson at the reorganization meeting held January 19, 2012. Mr. Moore requested nominations for Chairman. Mr. Simon made a motion to appoint Michael Denning as Chairman. Mrs. Goodwin seconded the motion. Motion was carried with a vote of Ayes all, Nays none recorded.**
  - 2. Chairman Denning asked for a nomination for Vice Chairman. Mrs. Flynn nominated Britt Simon for Vice Chairman. Mr. Stettner seconded the motion. Motion was carried with a vote of Ayes all, Nays none recorded.**

**Members present**

<b>Mrs. Flynn</b>	<b>present</b>
<b>Ms. Hendry</b>	<b>absent</b>
<b>Mr. Hendrickson</b>	<b>present</b>
<b>Mr. Simon</b>	<b>present</b>
<b>Mr. Stettner</b>	<b>present</b>
<b>Mrs. Goodwin</b>	<b>present</b>
<b>Mr. Thompson</b>	<b>present</b>
<b>Mr. Denning</b>	<b>present</b>

**Donald Moore, Esq., Kelleher & Moore  
John Hansen, Ferriero Engineering  
Michael Sullivan, Clark Caton & Hintz**

**B. APPROVAL OF MINUTES:**

**January 19, 2012 - Mr. Simon made a motion to approve the minutes. Mrs. Goodwin seconded the motion. Motion was carried with a vote of Ayes all, Nays none recorded.**

**C. CORRESPONDENCE:**

**There were no comments regarding correspondence.**

**D. TECHNICAL REVIEW COMMITTEE:**

**Meredith Goodwin volunteered to serve on the Technical Review Committee.**

**No applications were reviewed by the TRC.**

**E. RESOLUTIONS:**

**1. Professional Services Resolution**

**Mr. Simon made a motion to approve the resolution. Mr. Stettner seconded the motion.**

**Roll call:**

<b>Mrs. Flynn</b>	<b>aye</b>
<b>Mr. Simon</b>	<b>aye</b>
<b>Mr. Stettner</b>	<b>aye</b>
<b>Mr. Thompson</b>	<b>aye</b>
<b>Mr. Hendriksen</b>	<b>aye</b>
<b>Mrs. Goodwin</b>	<b>aye</b>
<b>Chairman Denning</b>	<b>aye</b>
<b>Mr. Denning</b>	<b>aye</b>

**F. VOUCHER APPROVAL: (sent electronically to Board)**

**Mr. Simon made a motion to approve the vouchers as submitted. Mr. Stettner seconded the motion. Motion was carried with a vote of Ayes all, Nays none recorded.**

**G. PUBLIC HEARINGS**

- 1. 21 County Line Road, LLC & Precision Graphics, Inc.  
Use Variance  
21 County Line Road  
B. 39, L. 58.01**

**Attorney Angowski from the firm of Schwartz, Simon, Edlestein & Celso stated that he is the attorney for the applicant.**

**Mr. Moore swore in the following witnesses: Kevin Pierret, Van Guard LLC; Scarlet Doyle, James Hill of Frey Engineering; Mr. Sullivan and Mr. Hansen.**

**Mr. Pierret identified his educational background for the board. He has a degree from Penn State University and graduated in 1999. He has over 10 years' experience in his field. The board accepted his credentials.**

**Exhibit A-1 Photos of existing installation at Raritan Valley Community College dated within the last 4 months.**

**Mr. Pierret referred to the picture exhibit so that the board could envision how the solar panels would appear once they're constructed. There is a 14 foot clearance in order to allow emergency vehicles access to the parking area. The structure will consist of 300 solar panels. Mr. Pierret informed the board that it will take 4 to 7 weeks to construct the facility. They anticipate that there will be 10 installers on the site at a time. The work hours for the construction crew will be 7:00 a.m. to 3:00 p.m. The framework will be constructed out of galvanized steel. The overall height of the structure is 19 feet.**

**Exhibit A-2 colorized site plan prepared for Vanguard Energy.**

**Mr. Pierret stated that the structure is screened from the residents. He testified that there are 18 rows of solar panels. The area where the cars park is a graveled lot. The panels have a 25 year warranty. They are wind resistant. Currently there are solar panels on the roof of the building. The roof is at full capacity. This is the reason they're applying for ground mounted solar system. The electricity produced is for their consumption. If there is additional electricity created, it goes back to the grid and will be used without compensation to applicant.**

**Mr. Hill of Frey Engineering stated his credentials for the board's consideration. He was licensed in 1985.**

**Exhibit A-3 Plan 9/18/11, revised 12/20/11, prepared by James Hill.**

**He testified that they are not exceeding any prior approvals. He stated that they are proposing an 8,400 square foot canopy that is going to be situated behind the building. The structure will expand the existing driveway. The inverter is located on the southeast side of the canopy which is at the back of the building. The only disturbance of the ground is for the wiring and column construction. They are proposing to construct bollards around the columns to prevent cars from causing structural damage. The lighting for the structure is an acorn light that is hung up between the carrier beams for the canopy. They are not proposing planting additional landscaping.**

**Exhibit A-4 – Photos of existing conditions taken by James Hill taken in September and January.**

**Mr. Hill stated that there are no drainage issues. This is an open canopy. All of the water slides off and hits the parking lot as it does currently. The manufacture noise calculations were added to the plan. ETI, Environmental Technical, provided a letter of presence or absence on the property and they provided proof that there is nothing of concern within 150 feet of the property. The applicant is requesting a waiver from the requirement to submit an EIS. Mr. Denning wanted to know if**

there were truck deliveries. Mr. Hill answered that there are deliveries, but there is adequate height to accommodate the trucks. The parking area consists of 36 parking stalls. They are proposing to install a bollard to protect the inverter.

Mrs. Goodwin wanted to know if the north side buffer is located on the applicant's property. Mr. Hill answered that the majority of it is on the applicant's property. Mrs. Goodwin was concerned about the lighting schedule. Mr. Hill informed her that there is a note on the plan indicating that the lights will be turned off whatever time the board would require.

David Weissman, owner of Precision Graphics was sworn. He testified that currently the latest an employee would be at the site is 8:00 p.m. A few years ago, they had a second shift. He can't guarantee that a second shift will not be required in the future. The last person leaving the site was 11:00 p.m. The worst case the lights would stay on to 12:00 a.m. He stated that they design and build print circuit board assemblies. Mr. Weissman testified that that he moved into the site in 1999.

Mrs. Goodwin wanted to know if the neighboring residents will see the lights at night. Mr. Hill answered they will not see the lights, but they might see a glow.

Mr. Moore state that there has been a change in the State Statute which now deem solar powered generating facilities as inherently beneficial, therefore, the positive criteria has also been given.

Scarlet Doyle, Professional Planner, stated her credentials on the record. She was licensed in the State in New Jersey

Ms. Doyle stated that Readington Township does not have solar ordinance. She stated that the applicant is appearing before the board as a non-permitted use. The legislature determined that renewable energy is inherently beneficial. Therefore, the Zoning Board of Adjustment will review the application differently. She referenced *Sica v. Board of Adjustment of Township of Wall* established the four prongs when a board considers the use variance. First of all the board will have to evaluate the public interest, identify the detrimental effect; the board should consider reasonable conditions to lessen the detrimental effect and lastly the board should weigh a balancing test of the negative and positive criteria and determine if the granting of the variance would cause a substantial impairment to the public good and the intent and purpose of the zone plan in the zoning ordinance. She stated that the functioning of the array does not cause additional traffic. There is no increase in water usage. The visual impacts could be a matter of concern. There is an existing buffer. The noise impact could pose a detrimental effect. In addition, the lack of maintenance could be a detriment. A reasonable condition that could be imposed if there is a lighting problem, that the applicant would be required to shield or remove the offending light source. The site is buffered from the neighbors. A reasonable condition would be that the buffer should remain. The noise issue has been demonstrated that if the inverter is placed on the plan, the noise will be in a

reasonable level. The next condition is to have the applicant have a maintenance and decommissioning plan. She stated that the township promotes green energy. The introduction of this array at this location is something that will not affect the zone plan. The solar array will not require the need to hire additional employees. The building will not have to alter to accommodate the solar array.

Mr. Sullivan asked if she could explain how this would affect this particular zone. The zone is Research Office Manufacture Zone in the Land Use Element. He didn't hear that this would not impact this zone. Conversely how would this foster continuation of that vision for this area? Mrs. Doyle answered that the MLUL for industrial zones of certain size makes it an automatic approved use. In this case, they have a non-residential use that is for a utility use. She stated that the applicant will be able to prosper. The installation of this facility will make this business thrive.

**PUBLIC QUESTIONS** regarding Mrs. Doyle or Mr. Weisman: There were no questions from the public.

Mr. Angowski stated that the applicant is willing to accept all of the conditions suggested by their planner. He stated that they have met every requirement that the expert's requests.

**PUBLIC COMMENTS:** There were no comments from the public.

Mr. Moore wanted to know if the board goes through the *Sica* analysis and votes successfully, are there any other conditions that the professionals would recommend, i.e. bollards. Mr. Hansen stated that there are 9 items listed in his letter, and even though it was not testified too, he would ask that they be listed as conditions in the resolutions.

Mr. Sullivan stated that regarding the lighting glow, he suggested that there should be a review after the installation, rather than wait for a complaint. No tree removal, maintenance and decommissioning plan should be a condition of approval. Mr. Angowski answered that those conditions are acceptable. Mrs. Goodwin reminded everyone that the lights-off should be 12:00 a.m. Mr. Denning questioned if in the prior resolution were there any conditions regarding lighting. Mr. Angowski stated that there were no lights in the parking area. Chairman Denning also suggested that a condition regarding the lighting should be imposed.

**BOARD COMMENTS:** Mrs. Goodwin stated that she was in favor of the application along with the restrictions. She stated that she thinks it is a great idea for businesses to install solar.

Mr. Moore asked the board members if they feel on the whole that with the conditions already stated that the applicant should receive a favorable treatment

from the board and that there are no real substantial detriment to the zoning ordinance, the master plan or public good regarding the conditions that were added. Mrs. Goodwin wanted to make sure that the adjoining property owners are protected from the lighting. The benefits far outweigh the negative. Marygrace Flynn stated that the positive criteria outweigh the negative. There is no intensity of the use which is a positive criterion. Mrs. Flynn wanted to make sure that the maintenance plan for the structure is specific and detailed because in 20 years we don't want to see this facility falling down and there might be new technology. If it is not in use, it must be removed. The site should be restored to its original condition.

Mr. Simon made a motion to approve the application with the above listed conditions. Mr. Hendrickson seconded the motion.

Roll call:

Mrs. Flynn	aye
Mr. Simon	aye
Mr. Stettner	aye
Mr. Thompson	aye
Mr. Hendriksen	aye
Mrs. Goodwin	aye
Chairman Denning	aye

The board took a recess.

#### H. NEW BUSINESS:

1. 25 Ridge Road Realty, LLC  
Bifurcated application for Interpretation  
25 Ridge Road  
B. 38, L. 52

Roy E. Kurnos, Esq., from the law firm of Besole and Kurnos stated that he is the attorney for the applicant. The property is in ROM-2 zone. Since it is less than 10 acres according to the ordinance the property is non-conforming and therefore they have to apply the ROM-1 standard which requires direct access to Route 22. This is an appeal to the Readington Township Board of Adjustment 40:55D 70A that section grants the board appellate power. The decision that they are appealing is one made by the Zoning Officer, John Barczyk. Originally a zoning permit was issued for continued occupancy for warehouse and trucking on this property. The owner/applicant feels that was correct. After closing title, a notice was received from the township attorney indicating that there was a mistake and the zoning permit was to be withdrawn. Before purchasing the property the applicant performed his due diligence. The property was financed through a bank. They

wanted to make sure that whoever bought the property would be able to use the property. In that research it was discovered that the property was purchased by Mohawk Manufacturing. Mohawk Manufacturing appeared before the board and they received approval to build an addition. In 1990 Mohawk Manufacturing filed a major site plan application and received approval with variances because there was an FAR requirement and some parking variances. The applicant applied August 31, 2010 for a zoning permit and it was granted. On May 27, 2011 the applicant was notified by the township attorney that the zoning permit was improperly granted and they had to apply to the BOA for a variance. He stated that this is a pre-existing, non-conforming use on this property. Mr. Kurnos stated that he has two witnesses this evening. Mr. Moore swore in the witnesses. Richard Schommer, Jr. and Jed Becker, President.

Mr. Schommer stated that he is employed by Schommer Engineering, Inc. in Morristown, New Jersey. He was licensed in the State of New Jersey in 1987. The board accepted his credentials.

**Exhibit A-1 Plan of property, dated October 8, 1958 entitled, Mohawk Manufacturing Corporation, Whitehouse Station, New Jersey, Lot and Buildings layout.**

**Exhibit A-(a) certificate of occupancy for Mohawk Manufacturing Corporation on Ridge Road, dated, April 7, 1967 in addition another date at of, July 26, 1969 signed by William Dilly, Jr. Building Inspector**

**Exhibit A-(b) Deed between Mohawk Manufacturing Corporation to the Readington Township for the 50 foot right-of-way on Ridge Road**

**Exhibit A-(c) Right of way between Mohawk Manufacturing Corporation and New Jersey Power and Light Company for a utility easement to cross the property.**

**Exhibit A-2 Site Plan prepared by Schommer Engineering, Inc., dated October 25, 2011**

**Exhibit A-2 (a) Colorized site plan December 13, 2011 – the same as Exhibit A-2**

**Mr. Schommer testified that the building is consistent with the footprint shown on A-1.**

**Exhibit A-2 (b) Aerial dated December 13, 2011**

**Mr. Shommer testified that the property remains the same today as it did in 1988 except for the free standing crane and a rail system that ran through the building which were removed.**

**Exhibit A-3 Site plan entitled preliminary and final site plan, building expansion Mohawk Manufacturing, prepared by Ramtech Engineers, dated November 9, 1990, revised through November 26, 1990 and signed by the engineer November 15, 1990.**

**Mr. Shommer stated that the site plan indicates two additions. These additions were never built. The applicant received variance approval for a FAR variance.**

**Exhibit A-5 – Electrical permit issued to Mohawk Manufacturing dated February 25, 1992.**

**Exhibit A-6 Deed from Mohawk Manufacturing to JJ&M Realty, LLC for the transfer of this property.**

**Exhibit A-7 – Location survey prepared for JJ&M Realty, LLC prepared by Bohren and Bohren Engineering Associates, dated December 19, 2001.**

**Exhibit A-8 – Certificate of approval to Mohawk Manufacturing from the Township issued February 26, 2010, indicating that the work was completed in accordance with the building code.**

**Exhibit A-9 – Zoning permit issued August 31, 2010 issued to JJ&M Realty; applicant was JED Trucking, indicating uses permitted by ordinance.**

**Exhibit A-10 Closing statement for 25 Ridge Road Realty, LLC acquiring the property from JJ&M Realty, LLC**

**Subsequent to the applicant purchasing the property there was a requirement that the applicant apply to the Hunterdon County Soil Conservation District.**

**Mr. Shommer stated that property has been used in a manner as a manufacturing facility. There was a change in the ordinance dealing with the size of properties, changing it to less than 10 acres. This would have rendered this property as a pre-existing non-conforming use. It was not created after that ordinance was adopted.**

**The applicant has not enlarged the building since 1958. There is no way that the applicant can gain direct access to Route 22. The applicant is unable to purchase property from the adjacent property owners.**

**Mr. Kurnos wrote letters to the adjacent property owners requesting that they provide a price for less than 3 acres. This would make the property conforming. He received a response from the property to the south; he said he was not interested. The railroad did not respond. The property to the rear did not respond.**

**QUESTIONS FROM THE BOARD:**

**Mrs. Goodwin wanted to know what type of work JJ&M Realty owner performed on the property. Mr. Kurnos answered that they had steel fabrication and trucking. There were multiple uses on the property. When the applicant purchased the property, there were sub-tenants on the premises, but now they are removed. It was a steel fabrication business. There were 4 or 5 other subtenants. They are now removed. At that time the property was acquired, there were probably 9 to 10 different uses.**

**Mr. Simon stated that the main use was manufacturing metal. They constructed steel tanks. Mr. Kurnos answered that was correct. Mrs. Flynn reiterated that the main use was primarily manufacturing. Mr. Kurnos answered yes. Mr. Hendrickson stated that since 1958 the site was used for manufacturing and trucking. Mr. Kurnos informed everyone that the ordinance is vague. It states that you must have access to Route 22 in this zone. The applicant does have access to Route 22. Mr. Barczyk's interpretation is that the ordinance means frontage on Route 22.**

**Attorney Moore informed the board that the thrust of their appeal is to show that this is a continuation of a preexisting nonconforming use.**

**Mrs. Flynn stated that she defines trucking as a separate use from manufacturing. She suggested that the board conduct a site visit in order to gain some clarity as to what type of use is occurring on the property.**

**Jed Becker testified that currently there are two businesses operating on this property which are his business and JJ&M his tenant. This was a condition of approval to have them remain as a tenant for 5 years. Mr. Becker currently has 13 employees. He testified that this is not a truck terminal. Trailers are stored at the property. The mechanics repair trucks. Mr. Becker testified that there are approximately 3 to 6 truckloads originating out of the facility per day. Most of the trucking occurs from the other location. Wayfair Food Company/Shop Rite Supermarkets is his biggest client. The only reason a truck would go to this site would be for repair, or storage. Freight does not go in and out of this facility. Most of the drivers never go to this site. He has 6 trucks that originate out of this facility. That number will change every week. Currently there are 3 active drivers out of this site. Mr. Denning wanted to know what his long term plans were for this site. Mr. Becker said to improve the building on the inside and to continue with his business to operate his mechanics out of the site, and to have additional storage. Mr. Becker said it is 8 acres, and he would like to sell it one day. Three trucks lay dormant every day. Mrs. Goodwin wanted to the number of trucks belonging to JJ&M. Mr. Becker answered he was not sure. Mrs. Goodwin replied that when she drove by the site there were a lot of trucks. Mr. Becker testified that he has 50-60 trailers. Mrs. Goodwin answered that even late at night there are trucks on site after 9:00 p.m. Mr. Becker answered that it is a 24 hour operation. It is rare that a truck would come in at night. He stated that there are 4 more years left on his tenant's lease. Mrs. Flynn wanted to know what is stored at the site. Mr. Becker**

answered that there are trucks and trailers stored at the site that are not used. Mr. Becker testified that he has 82 drivers, and 82 trucks and 6 are at the facility. He stated that he has a total of less than 100 trailers. At that facility he has 40 trailers. Mr. Becker stated that they pull other trailers on his tractors. There are no other trailers owned by others at the site except for the Phoenix truck. Mr. Simon asked the applicant how much of the building is used by the tenant. Mr. Becker testified that there are 40,000 square feet allocated for 7 dispatchers. Mr. Simon asked if the truck repair shop takes up 40,000 square feet. Mr. Becker answered yes and there is empty space. In his estimate there is 20,000 square feet of empty space designed as a repair facility. When asked if he was approached by Shop Rite to be a dispatch area, he said no. Mr. Moore stated that 3 trucks are inactive. Mr. Becker answered yes, but weeks from now it could change. Mr. Becker divided the use between trucks being repaired and trucks being dispatched. Mr. Simon asked how many "skeleton" trucks the applicant has on the property. Becker answered 15. Mrs. Goodwin wanted to know how many total trucks are on the property. He has 6 trucks and JJ&M has one and they get deliveries of steel. He has trailers stored on the property. Mrs. Goodwin asked for a typical day how many trucks are coming and going on that piece of property. Mr. Becker stated that 3 or 6 come and go during the day. But Mr. Becker is not sure about his tenant. It varies every day. Mr. Simon asked that since they have 82 trucks, do you have any other repair facility. Mr. Becker answered that this repair facility is for the 6 trucks. The other trucks are leased and he has a maintenance agreement on those. He repairs brakes, changes oil, body work, engine and transmission work. There are 4 mechanics on staff for 6 trucks.

Mr. Sullivan informed the board that he toured the site in the fall of last year. He stated that he saw boats stored on the property. Mr. Becker answered that when he first purchased the building there were 8 or 10 boats stored. There are one or two boats at the facility right now for the storage. Mr. Sullivan saw a dumpster filled with sheet metal; a dumpster was located towards the railroad that was filled with scrape and large pieces of steel in full view, some lying outside of the dumpster. Mr. Becker answered that there was a scrap metal tenant at the site when he first purchased the property. That tenant is gone. Mr. Sullivan also saw freshly built railings made of galvanized steel products located on pallets. Mr. Becker answered that was his tenant's product. Mr. Sullivan stated that there was a sign on the door and also on the mailbox entitled "Supports system, metal fabrication". It looks like their office is housed in a modular trailer. Mr. Becker answered that was correct. Mr. Sullivan asked if there was site plan approval for that office. Mr. Sullivan was told that there was no warehousing at this site. Mr. Becker answered that was correct but it gives him the flexibility to offer this at the site.

John Barczyk was sworn. Mr. Barczyk testified that he is the Zoning Official for Readington Township. Mr. Barczyk stated that when he reviewed the application as a warehousing facility, he approved it. After an accident occurred on Ridge Road and he was asked to review this matter again to see if the additional truck traffic had to do with this facility. He researched it again. He found the ROM-2

changed because of the Route 22 access. At that time he revoked the permit and advised the owner to bring an application to the board for an interpretation. The discussion about the pre-existing non-conforming use is important. The status of principal uses is more than one use on the property that needs to be addressed. There are prohibited uses which is the trucking. On September 19, 2011 he revoked the permit. In addition, there were millings located in the parking lot. The Hunterdon County Soil Conservation District got involved. It was clear that they were about to expand the parking lot. Mr. Barczyk stated that the key issue is the use and whether or not the pre-existing non-conforming status is valid or not. The original application was for warehousing and office space. Mr. Kurnos answered trucking, warehousing and office space. Mr. Barczyk stated that in section 148-24 light warehouse associated offices is the classification. Mr. Moore informed everyone that the function of the board is to determine whether or not this is a valid continuation of a prior non-conforming use. Mr. Kurnos testified that in cases they all say that it doesn't have to be the exact use. Mr. Moore stated that there is a big distinction between light manufacturing and what is going on today. Mr. Kurnos stated that nothing is being manufactured today. If there is a violation of the tenant, they would have to move.

Mr. Simon wanted to know if it was a trucking, or a warehouse, or manufacturing business. He stated that the applicant is doing a lot of spinning of facts. He understands from everything on the record, this was a manufacturing facility. Now there is no manufacturing connected with what the applicant is doing. It is truck repair operation. Mr. Kurnos stated that the prior use, Mohawk, was a more intensive trucking operation. Mr. Simon stated that there is no evidence of that. There has been no study shown that when Mohawk operated the facility they put out X number and now you're putting out X minus. There is no fact basis. Mr. Simon stated that this is a truck company with truck repair business. Mr. Sullivan stated he would like to see the cases where you can modify a lawful pre-existing non-conforming use so that he can review them from a planning perspective.

Mr. Moore informed the board that this is a rare situation. Every piece of evidence will be reviewed in order to help them make a decision. Everyone will be a judge. The board determined that they will have a site visit on March 3, 2012, beginning at 10:00 a.m. The site visit will be advertised. Everyone agreed to meet at the site.

The Chairman announced that this matter is carried to the next meeting without further notice.

#### **ADJOURNMENT:**

Mrs. Flynn made a motion to adjourn the meeting. Mr. Simon seconded the motion. Motion was carried with a vote of Ayes all, Nays none recorded.

Respectfully submitted,  
Linda Jacukowicz