

REGULAR MEETING

**Lebanon Township Board of Adjustment
Municipal Bldg 530 West Hill Road Glen Gardner, N.J.**

December 8, 2010

The Regular Meeting of the Lebanon Township Board of Adjustment was called to order at 7:30 p.m. by Chairman Bruce Terzuolo. Present were: Mr. Kozlowski, Mr. MacQueen, Mr. Perry, Mr. Eberle, Attorney Gallina, Planner Bolan and Engineer Risse. **Excused:** Mr. Machauer, Mr. Abuchowski, Mr. Maurizio & Mr. Nagie,

This meeting was noticed in the "Annual Meeting Notice Schedule" adopted by this board on January 27, 2010, mailed to the Hunterdon Review, Hunterdon County Democrat, Express Times, Courier News, Star Ledger and posted on the bulletin board in the Municipal Building on December 1, 2010.

PRESENTATION OF MINUTES: October 27, 2010 Regular Meeting

Motion by Mr. Kozlowski and seconded by Mr. Eberle to approve the minutes with a minor correction. Unanimously approved.

November 17, 2010 Special Meeting

Motion by Mr. Kozlowski and seconded by Mr. Perry to approve the minutes as presented. Unanimously approved.

UNFINISHED BUSINESS:

Garden Solar, LLC Block #3 Lot #5
4 Eagle Drive Buffalo Hollow Road B2
Ringoos, N.J. 08551

CONTINUATION OF A PUBLIC HEARING Use Variance/Site Plan

Attorney Wilson said they are ready proceed with the hearing with Engineer Chmielak giving additional testimony. Engineer Chmielak went over the relevant planning issues in support of this use variance. The applicant has to demonstrate that the negative criteria can be satisfied which is that no variance can be granted unless the variance can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. There is a four part balancing test per the Sica case that the court should consider. Engineer Chmielak stated this particular project does support a municipal purpose of zoning which is the use of renewable energy sources. Second, this use is inherently beneficial use and has been designated as such by the State Legislature. Third, the project will decrease dependency on foreign sources of fossil fuels. In identifying any detrimental effect that the use once approved will have no net effect on the zoning ordinance or Master Plan. Lastly, that reasonable conditions may be imposed to diminish any detrimental affects that may ensure from the grant of the variance.

Engineer Chmielak said their testimony has demonstrated there is no substantial impact to the surrounding properties or neighborhood. Regarding conditions, they will submit a decommissioning plan or an outline of steps necessary to remove all the facilities from the site, if the site ceases operations on the property, also a landscape maintenance plan which will recommend certain inspections, frequencies in order to identify if there are any areas evident of erosion that need to be repaired and inspected on a regular basis. The maintenance period is for the life of the facility. In weighing the positive and negative aspects of the use to determine whether the variance would cause a substantial detriment to the public good, they believe that the proposed solar farm will not cause a substantial detriment to the public good. This two megawatt clean generation solar farm will be of low intensity and a passive use that will further the goals of New Jersey. Engineer Chmielak stated that the granting of this variance and the benefits outweigh any detriment to the public good.

At the conclusion of Engineer Chmielak testimony, Chairman Terzuolo asked if the board had any questions of the witness. Mr. Kozlowski asked if the property at present is under farmland assessment. Attorney Wilson said yes. Mr. Kozlowski asked will it come out of farmland assessment once this use is put into place. Attorney Wilson answered yes. Mr. Kozlowski asked about Rollback taxes. Attorney Wilson said that it is the current year and the last two years for roll back. Mr. MacQueen asked about the decommissioning plan and when they will submit it. Engineer Chmielak said they have copies of the plan that they can submit tonight. Attorney Wilson asked to have the plan marked. The following was marked into evidence: **A12-**

Lebanon Township Board of Adjustment
December 8, 2010
Page 2

Decommissioning Plan, 2 pages dated December 6, 2010. Attorney Wilson asked to have the maintenance landscaping plan marked. **A13-Landscape & Maintenance Plan**. Mr. Eberle asked how long does it take for the decommissioning once the panels are no longer being used. Engineer Chmielak said it would take several months to decommission and remove the equipment about 2-4 months. Chairman Terzuolo asked if they were willing to stipulate to a condition that this would be done within 6 months and returned to agricultural. Attorney Wilson answered yes. Mr. MacQueen said one of the concerns is this is on a slope and you will need to do something to slow the water down and let it have a chance to run back into the ground and not run-off. In the winter when there is frozen ice it is all downhill and it will run. It's not a huge problem but over time it will be a problem. Engineer Chmielak said the soil stabilization and the soil erosion is definitely a concern and the applicant wants to make sure that we take the necessary preventative measures to make sure that it isn't an issue.

Engineer Chmielak said they feel they have a good plan for the following reasons: 1. They feel the quality of grasses is one design element to reach their goal. We also invested some energy to get stabilization accomplished before the end of the year during the growing season to get a jump on the stabilization measures. 2. They anticipate that after the construction on the property there would be an assessment and an over seeding program as necessary in areas where the soil may be disturbed and need some additional over seeding to make sure that they don't have any bare areas. 3. Per discussion with Engineer Risse, they will have as part of the maintenance plan a semi-annual vegetation inspections to address bare areas. If there are any bare areas they would be re-topsoiled, stabilized and reseeded and last, if they find that they have a repetitive areas that continue to have erosion they will implement other soil stabilization measures like a coconut mat fiber in those areas. Engineer Risse said he had discussed with the applicant to potentially putting in a level swale and level berm along the contours of the 5' up the hill to provide a spot where it would interrupt the sheeting off the site. Engineer Risse said the coconut matting sounds like a good idea, looking at the potential of putting that at the drip line of every other series of panels going down the hill. The maintenance plan if it's enforced should keep up with any type of erosion. Chairman Terzuolo said it should be checked every six months.

Attorney Wilson said the maintenance and performance is just not for that time period required in the MLUL but they are agreeable under the plan to continue this for the entire life of the facility and believed there would be an escrow payment required. Mr. Perry asked if someone could explain the coconut matting. Engineer Risse said it's like a Curlex-type of natural fiber matting that provides some structure stability to the soil and the grass can grow through, it provides a kind of net to keep the soil in place. Mr. MacQueen asked if it were biodegradable. Engineer Risse said eventually it disintegrates. At this time, the discussion was on the landscaping and what trees would be planted. Planner Bolan said he believe from the prior meeting it was decided to use Colorado fir and spruce. Engineer Chmielak said they agree with those species. Chairman Terzuolo said he would like to see 10' to 12' high trees. Planner Bolan felt that was a reasonable condition. At this time Chairman Terzuolo opened the hearing to the public for questions of Engineer Chmielak. Mr. Timothy Barrows of Buffalo Hollow Road had several questions for Engineer Chmielak. At the conclusion of the public questions, Attorney Gallina asked Attorney Wilson if he would like the Highlands letter marked into evidence. Attorney Wilson said yes. The following was marked: **A14-Highlands Approval Permit** dated December 8, 2010. Chairman Terzuolo asked Attorney Wilson if he had any other witnesses to give testimony. The answer was no. At this time, Chairman Terzuolo opened the hearing to the public for statements and comments. The following people made comments: Mr. Tim Barrow and Mr. Jim McMann.

Chairman Terzuolo asked Attorney Wilson if he wanted to proceed to a vote this evening since there were only 5 members present and 5 affirmative votes would be needed for this type of application. Attorney Wilson said he wanted to proceed.

Chairman Terzuolo announced that the evidence taking portion is now closed with a motion by Mr. MacQueen and Mr. Kozlowski. Unanimously approved. Attorney Wilson gave his summation. At the conclusion of the summation, Chairman Terzuolo announced the board will take a 5 minute recess. When the board reconvened the board deliberated. During the deliberations, Mr. MacQueen noted the Planning Board has been working on an Alternative Energy Ordinance. Mr. Kozlowski said he has been up to the site and felt it was a great place for solar farm. Attorney Gallina said the applicant will need to file the appropriate fees with the Hunterdon County Soil Conservation District. The board discussed conditions to be placed in

Lebanon Township Board of Adjustment
December 8, 2010
Page 3

the Resolution. At the conclusion of the board's deliberations, motion by Mr. MacQueen and seconded by Mr. Eberle to approve the Site Plan & Use Variance with the following conditions:

- a. The Applicant will obtain all other necessary approvals from all outside agencies having jurisdiction in this matter.
- b. The landscaping will consist of trees of a height of 10' to 12'. The trees will be either Norway Spruce or Colorado Spruce, to prevent deer damage.
- c. The landscape maintenance plan submitted by the Applicant will be followed and will be referred to Hunterdon County Soil Conservation District or such other agency for annual inspections. The Applicant will also follow the recommendations for stabilization and erosion prevention from such agency. Confirmation of the annual inspections and recommended actions by such Agency will be furnished to the Board Secretary.
- d. The Applicant will follow its decommissioning plan in the event the operation is discontinued or abandoned.
- e. The Applicant will submit its most recently revised plans dated October 18, 2010 to the DEP for Highlands approval or an acknowledgement of no change. The Applicant will submit proof of such Highlands approval or an acknowledgement of no change to the Township Engineer for review.
- f. The easement to tie into the JCP&L line will be recorded and a copy submitted to the Board Attorney.
- g. All necessary permits will be obtained within 18 months from the date of this Resolution.

ROLL CALL

Yes: Mr. Kozlowski Mr. Perry
 Mr. MacQueen Mr. Eberle
 Mr. Terzuolo

Absent: Mr. Machauer
 Mr. Maurizio
 Mr. Nagie
 Mr. Abuchowski

Attorney Gallina will prepare the Resolution to be placed on the January 2011 Agenda.

PRESENTATION OF BILLS:

- a. John Gallina, Esq. \$230.00 – Attend Board Meeting 11/17/2010
 - b. Court Stenographer \$200.00 – Attend Board Meeting 12/8/2010
- Total: \$430.00**

In adding the bills from the Agenda Addendum of **\$1,092.50** the grand total comes to **\$1,522.50**. Motion by Mr. Kozlowski and seconded by Mr. MacQueen to approve the bills as amended. Unanimously approved.

Chairman Terzuolo announced as a reminder that the next meeting will be held on Thursday December 16, 2010 at 7:30 p.m. to hear the continuation of the Transtar application. Mr. Eberle informed the board he will be away on business and unable to attend.

Being no further business to come before the board, nor comments from the public, motion by Mr. Kozlowski and seconded by Mr. Eberle to adjourn the meeting at 8:58 p.m. Unanimously approved.

CHAIRMAN BRUCE TERZUOLO

Kimberly Jacobus, Acting Board Secretary

Minutes prepared by Gail W. Glashoff, Board Secretary