

GREENWICH TOWNSHIP BOARD OF ADJUSTMENT

PUBLIC MEETING MINUTES

October 14, 2010, 7:00 p.m.

CALL TO ORDER and PUBLIC NOTICE

Chairman Ray Buckwalter called the meeting to order at 7:00 p.m. Ms. Oldford said this is a regular meeting of the Board of Adjustment of the Township of Greenwich.

Adequate notice of this meeting has been given in accordance with the Open Public Meetings Act in that a Notice was published in *The Express Times and the Star Ledger*. Notice was posted on the municipal bulletin board in the Township Municipal Building in Greenwich Township, New Jersey, and notice was filed with the Township Clerk.

FLAG SALUTE

ROLL CALL

Present: Ray Buckwalter, Michael Black, Robert Vetrecin, Angelo Faillace, Dan Detore, Tom Strozeski, Jeanne Zander, Steve Babula

Absent: Dawn Marie Kondas (recused and excused)

Professionals: Jonathan Drill, Esq.; Michael Finelli, P.E., Lisa Specca, P.P.

APPROVAL OF MINUTES

Motion to approve the minutes of meeting of September 23, 2010 was made by Robert Vetrecin and seconded by Tom Strozeski

Minutes were approved on voice vote.

PUBLIC HEARING

Warren Solar, Application #2009-03

Block 15, Lot 1; Block 17, Lots 1 & 2; Block 13, Lot 3; Block 19, Lot 1; Block 16, Lot 6; Block 14, Lot 10

Applicant seeks approval for a bifurcated “d(1)” use variance approval for a solar power generating facility and, if the Board grants the variance, will subsequently apply for site plan approval.

This hearing commenced on June 10, 2010 and continued July 8, 2010, August 12, 2010, September 23, 2010.

Dawn Marie Kondas is recused from hearing this application.

Mr. Selvaggi introduced himself on behalf of the applicant. Applicant grants an extension of time for the Board to act until November 11, 2010. Mr. Selvaggi requested consideration for special meetings, expressing concern that the composition of the Board could change for 2011.

Mr. Selvaggi re-called Mr. Roseberry. Photos of the solar array and specifications of the grass mix at the Crayola site were marked A-27, A-28 and A-29.

Mr. Roseberry described the photographs explaining A-27 depicts the vegetation/grass mix beneath the panels. He introduced A-29 explaining the effectiveness of the seed mix. Finally, Mr. Roseberry noted the spacing between panels is depicted on A-28. Mr. Finelli asked about the gap between panels, which Mr. Roseberry explained was .6 inch.

Mr. Selvaggi asked Mr. Roseberry about off-site drainage. Mr. Roseberry confirmed a storm water management report would be provided and issues mitigated at the time of site plan.

Mr. Finelli referenced A-27. He asked whether the panels were fixed, to which Mr. Roseberry confirmed they are fixed panels, and in fact, there is growth beneath the panels. Mr. Roseberry observed there is no erosion at the Crayola site. He explained with this seed mix there is no concern as to erosion.

Marilyn Brant, Hereleman Road, noted a lot of foxtail within the growth. She asked what measures would be used for containment. Mr. Roseberry explained there is a maintenance plan that provides for cutting and applying Round up, which should control invasives. If there is going to be a lag, concern was expressed that the foxtail will seed and be disbursed. Mr. Roseberry recommends weeds be cut prior to going to seed.

Mr. Selvaggi called Raymond Walker, PhD in ecology, and employed by Maser Consulting. Mr. Walker explained his experience. He said he was responsible for preparation of the EIS. Mr. Walker's credentials as an environmental expert were accepted by the Board.

Mr. Selvaggi referenced Board professional reports. The Maser firm has responded to Ms. Specca's report in writing.

Mr. Selvaggi noted Mr. Walker would focus on the Board professional reports. The EIS was prepared in accordance with the Township standards. Mr. Walker testified applicant will agree to install no more than 200,000 panels and no more than 32 inverters no closer than shown on revised plans. Mr. Walker referenced A-30 showing the location of photo simulations, in response to Ms. Specca's report. Revised Highlands maps showing sub-zones was provided as a result of Ms. Specca's review. The exact location of solar arrays will be provided at the time of site plan application. None will be any closer than

depicted on the plan. Mr. Walker testified no acoustical impact will be caused by the inverters. He reiterated the location will be provided at the time of site plan. Mr. Walker contended there will be a positive tax ratable. Land will be subject to roll back taxes. The Township assessor will determine the category. Property will not be exempt from taxation, and energy will feed into the power grid. Ms. Specca noted the taxability is irrelevant to the decision of whether or not to grant a use variance but had requested clarification as to taxation from the Division of Taxation. She noted Division of Taxation has not made a decision. Consequently, tax will be levied locally.

Mr. Finelli referenced 200' roadway and 500' residence setbacks. Mr. Walker said buffers are shown on Exhibit A-30. Clarification was made that the "buffers" referenced by Mr. Walker on the map are actually "setbacks" as nothing is currently shown in the setback areas to buffer the solar panels and fencing such as landscaping, which is what would be considered a "buffer." Mr. Walker agreed that revisions will be made to the map to correct the setbacks. Ms. Specca noted professionals received the sketch this afternoon and have not had the opportunity to review carefully.

Mr. Selvaggi explained the perimeter of the facility would be fenced. Question was raised as to when a landscape buffer plan would be prepared and submitted. Mr. Selvaggi responded that landscaping was a site plan issue and would be addressed at the time of site plan review.

Question was also raised as to why the EIS did not address soil conditions when the applicant had agreed early on that the EIS would address soil conditions. Mr. Selvaggi said there would be no use of concrete footings to anchor the panels so no need for the EIS to address soil conditions.

Mr. Walker addressed vegetative habitat. He said the plan avoids disturbing existing vegetation along Washington Street, Richline Road and between agricultural fields. Mr. Selvaggi explained Exhibit E of the EIS demonstrates the new lay-out of the site as shown on A-9.

Use of the additional land will be offered at the time of site plan. Ms. Specca asked which part of the land will be farmed and which part planted with meadow mix. Mr. Walker indicated minimizing impacts would occur in conjunction with discussion with the farmer.

Applicant has indicated that meadow grass may improve animal habitat. Applicant would submit any site plan analysis undertaken.

Three areas of historical significance are either on or near the property. Mr. Walker addressed the impact of the solar arrays on the historic areas. Additional research revealed none of the fields are located within the Stewartsville historic district. Central Railroad does not extend into the site. Final location of the arrays will avoid any impacts to the historic areas. The lay-out depicted on A-9 avoids any impacts according to Mr. Walker. Asked how he would mitigate visual impacts, Mr. Walker would not comment

explaining he was not comfortable. Mr. Walker reiterated there would be no impacts. He testified SHPO would be the agency to make the determination.

Ms. Specca's report addressed visual impacts. Mr. Walker said impacts were compared for permitted vs. not permitted uses, which he termed a faulty comparison. Warren County Ag Board would have jurisdiction over farm buildings. Ms. Specca referenced greenhouses and farm buildings, which would be subject to Ag Board approval. There was discussion as to agricultural uses/aesthetics vs. solar arrays.

Mr. Drill advised that, although N.J.S.A. 40:55D-76b provides that an applicant "may elect to submit" a bifurcated "d" variance application, seeming to indicate that the applicant has the choice whether or not to submit a site plan, the Appellate Division in the Scholastic Bus case¹ ruled that where negative criteria issues that can be demonstrated only through a site plan are "so intertwined" with the "d" variance, it is appropriate for the Board to require the submission of a site plan on those issues. In the application here, Mr. Drill advised that if the Board felt the appearance of the solar panels and related equipment to surrounding property owners and residents was relevant to the satisfaction of the negative criteria, the Board could require the applicant to submit a landscaping plan showing how the applicant would buffer the panels and fencing with landscaping to prove that the negative would be satisfied.

Mr. Selvaggi said that the landscape plan that would be submitted at the time of site plan approval would show landscaping buffering for portions of the project. Mr. Selvaggi said it would be unreasonable to impose buffering for the entire fenced area.

Mr. Selvaggi also said that the EIS was prepared to address the negative criteria. To assess negative impacts, Mr. Selvaggi said what would be allowed for a permitted use must be compared for a not permitted use.

Mr. Buckwalter announced a five minute recess.

The meeting reconvened and Mr. Walker addressed additional details on the up-dated substation noting details are not yet available. Mr. Drill asked whether applicant professionals could submit a conceptual plan to allow the Board to make a decision. Mr. Selvaggi noted they could be willing to prepare a concept plan as long as they are not held to it. Ms. Specca asked what the scale would look like. Mr. Selvaggi agreed that applicant would agree to screening of the substation. Mr. Selvaggi indicated applicant could obtain some photographs of a typical substation for the purpose of illustration.

Mr. Walker addressed the remaining area as to how much would be farmed. He deferred to site plan approval. The acreage impacted is 107 acres. This provides a temporary loss of agricultural land for 30 years according to Mr. Walker.

Mr. Walker referenced the landscape plan, habitat plan and operation phases, indicating

¹ Mr. Drill subsequently supplied the citation to the case and ruling: Scholastic Bus Co. v. Fair Lawn Zoning Board, 326 N.J. Super. 49, 58 (App. Div. 1999).

applicant would undertake these items at the time of site plan. Herbicides and pesticides would be used according to standards provided and regulated by NJDEP. No proposal is made to remove soils. Provisions must be made to return the land to agriculture use at the end of the lease term.

EIS details wetlands and waters. Ms. Specca references C-1 waters. Mr. Walker referred to A-30 and the location of the C-1 water. Mr. Walker noted 300' C-1 stream buffer would be observed.

Per Mr. Walker the EIS was prepared considering public comment and concern. Mitigation will be undertaken as needed. Applicant proposes mitigation via setbacks.

Mr. Walker referenced the Finelli report of 10/11/10. He said applicant took no issue through page 4 comments. On page 5 Mr. Walker noted storm water management plan would address these issues. He emphasized applicant prefers not to use herbicides and pesticides; however, if they must be used, they would be used in accordance with NJDEP standards.

As to air quality Mr. Walker corrected that idling of vehicles will not be permitted.

As to revised map of inverters, Mr. Walker reiterated they would be placed within the setbacks.

Mr. Walker noted that he did not believe a delineation of wetlands via an LOI needed to be provided for the use variance application. Mr. Walker said applicant would agree to an LOI as a condition of site plan. Mr. Finelli expressed concern for the area around the C-1 stream.

Mr. Finelli requested geological study as part of the use variance. Mr. Walker disagreed for the need at use variance. Applicant re-confirmed there would be no concrete footings for anchoring the solar panels.

Mr. Selvaggi stated that the applicant was making a guess that the soil would support driven "H" piles or helical screw piles and that if soil testing later revealed that the soils would not support these foundation methods, the applicant would have to re-apply to the Board to amend the use variance approval to seek to use concrete footings / foundations.

In response to a question from a Board member, Mr. Walker testified there will be minimal glare from the panels.

Mr. Selvaggi said applicant had submitted documents to the Fire Chief. A report will issue. Applicant does not anticipate a problem complying.

Mr. Walker confirmed he agreed with the balance of Mr. Finelli's report.

Joseph Tauriello, 307 Meadow Run, addressed page 11 regarding the 30-year life of the

solar facility. Mr. Walker confirmed the lease is for 30 years. Mr. Tauriello referenced page 6 regarding the 200 ft. buffer. Mr. Tauriello noted the numbers have been changing since the beginning of the application. The site envelope would be provided showing the setbacks according to Mr. Walker. Mr. Walker confirmed that the plan as shown on A-30 which will show setbacks from the road of 200' and 500' from residences and the EIS will be made consistent.

Mr. Tauriello asked Mr. Walker whether he was aware that there would be pile driving to install the panels. Mr. Walker said he did not know and also stated that it was not relevant to the EIS.

Ed Ryan, 316 Meadow Run, asked about the sinkholes developing. Mr. Walker indicated there would be geological investigation at the time of site plan. He testified if testing revealed limestone or karst formations, those areas would be avoided. Mr. Ryan asked whether this information shouldn't be developed now, at the time of the use variance. Mr. Walker indicated that the information was not needed until the time of site plan.

Mike Khattear, asked about bird species. As to location of the Highlands area, Mr. Walker confirmed Greenwich is in the Highlands.

Mr. Detore referenced the Finelli report re Health and Safety. He observed the EIS does not address the potential for glare. Mr. Finelli asked about reflection from the panels. Mr. Walker noted 95% absorption and minimal reflection. Additional question was raised as to the use of a matte finish to reduce reflection.

Mr. Strozski asked about responsibility for a reclamation plan. Mr. Walker testified Warren Solar would be responsible.

Angelo Faillace referenced the height of the panel and the inverters. It was noted this is not a question for Mr. Walker.

Mr. Black asked about bonding for restoration of the property. Applicant would not agree to bonding or an escrow agreement according to Mr. Selvaggi.

Ms. Specca asked about the site envelope. Mr. Walker responded the areas within the fence line represent the site envelope. Landscape buffering will not be limited to the site envelope; it would occur in certain of the setback areas.

Ms. Specca referenced clarification of the height of the panels. There was testimony that panels would be 5 to 5 ½' rather than 7-8'. Mr. Selvaggi agreed that the correct height is a maximum of 5 ½'. As to inverters, Mr. Selvaggi confirmed they would be a maximum of 8' 6" in height.

Mr. Drill announced the next meeting will be on November 11 at the Greenwich Elementary School at 7 p.m. Mr. Selvaggi intends to call the planner, John Madden. Photo simulations will be available as well as a conceptual sketch of the substation. In

addition a revised map will be provided to correct the setbacks shown on Exhibit A-30. The Maser October 14, 2010 letter will also be corrected.

Mr. Selvaggi said applicant would take the Board's request for an extension through the end of December, 2010 under advisement. The applicant was only agreeable to extend the hearing to November 11, 2010 at this point in time.

OLD BUSINESS

NEW BUSINESS

ADJOURNMENT

The meeting was adjourned at 10:25 pm.