

***GREENWICH TOWNSHIP BOARD OF ADJUSTMENT***

***PUBLIC MEETING MINUTES***

**December 9, 2010, 7:00 p.m.**

***CALL TO ORDER and PUBLIC NOTICE***

Chairman Ray Buckwalter called the meeting to order at 7:05 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 (late), 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., Carl Hintz, P.P.

***FLAG SALUTE***

***APPROVAL OF MINUTES***

Motion to approve the minutes of meeting of November 11, 2010 was made by Robert Vetrecin and seconded by Steve Babula.

Minutes were approved on voice vote.

***COMMUNICATIONS***

- a. Letter from Kimberly Viscomi, Clerk/Administrator, dated 11/12/10 re providing a copy of the ordinance.
- b. Letter from Michael Selvaggi, Esq., dated 11/23/10 responding to the Viscomi letter.
- c. Letter from Clark Caton Hintz dated 11/24/10 responding to Michael Selvaggi's letter.
- d. Letter from Michael Selvaggi dated December 3, 2010.
- e. Letter from Jonathan Drill dated December 5, 2010, responding to the Selvaggi

- letter.
- f. Fire safety study provided by Joseph Tauriello distributed via email.

***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, October 14, 2010 and November 11, 2010.

Dawn Marie Kondas is recused from hearing this application.

Mr. Selvaggi introduced himself on behalf of the applicant.

Applicant’s planner, John Madden, who remains under oath, was called. He referenced new Exhibit A-41, conceptual landscape buffering plan. Mr. Madden testified this is an aerial photo on which the buffering has been placed. He noted applicant has proposed substantial setbacks plus a filtered buffering plan. Mr. Madden described the proposed plantings to be planted in a staggered natural pattern. The goal is to buffer the view of the panels, which are approximately 5’ high. The plan is to supplement where there may be gaps. The most intense buffering proposed are evergreens. Plants will be deer resistant native plantings of various heights consistent with the character of the area. It will be a naturalist look for the area. Mr. Madden testified that this will be a filtered buffer with the goal of residences being screened from view of the panels.

How does the buffering advance the negative criteria? Mr. Madden noted that this proposal addresses the purported negative impact, namely, loss of agricultural land and visual impacts.

Mr. Buckwalter asked about the maintenance of the buffer. Mr. Selvaggi confirmed that there is a bonding requirement between the applicant, Warren Solar, and the owner. Mr. Selvaggi indicated Warren Solar would be willing to include the Township on the bond for landscape maintenance as well as restoration of the property at the termination of the lease. The proposed fencing is black vinyl 2” chain link. It was noted that this is a scenic corridor.

Mr. Hintz, landscape architect, questioned whether the plan could be revised at the time of site plan. Mr. Madden contended applicant wants a varied appearance with native plantings. Asked whether applicant could make the buffer 35’ wide, Mr. Madden responded buffer plantings could be 35’ wide to conform to the ordinance.

Mr. Black asked why there was no buffering on the north side. Mr. Madden observed the closest house is 900' away.

Mr. Selvaggi introduced Exhibit A-42, memo from Thomas Bailey of Maser, regarding SHPO data. Mr. Madden confirmed the report alleges some data is in error. Mr. Madden indicated he had had discussion with Mr. Bailey. Mr. Drill referenced case law indicating the author of the report must be available for questioning. Mr. Selvaggi asked whether Madden had testified as to historic districts. Mr. Madden said his work with historic districts related to preparing master plans.

Questions from the public were invited. Joseph Tauriello of Meadow Run referenced the chain link fence. Mr. Tauriello asked whether there would be any barbed wire, and Mr. Selvaggi noted there is none proposed. Mr. Tauriello pointed out that geology issues exist. Mr. Finelli has opined that there could be carbonate rock under the entire area. Mr. Tauriello asked whether it would be reasonable to undertake a soils study. Mr. Madden confirmed the preferred installation of the panels is via pile driving. Further, he indicated soils samples are not necessary at this stage. Mr. Tauriello marked Exhibits OT-2 and OT-3. He disclosed that on December 2 Richard Roseberry of the Maser firm offered a presentation to Hunterdon County Planning Board related to solar ordinance provisions. Mr. Tauriello asked whether soil sampling is recommended for solar panel installation. Asked about balancing the negative criteria, Mr. Tauriello contended that the Board required information to make a decision. Mr. Madden reiterated he did not believe the study is necessary at this stage. He also indicated there are ways to mitigate karst topography. Mr. Madden acknowledged that he did not have geological facts.

Mr. Selvaggi emphasized if there are areas that cannot be built because of karst topography, then those areas cannot be built.

Mr. Tauriello asked about the "no glare" testimony of Noah Tuthill. Mr. Tauriello asked whether Madden is characterizing the Tuthill testimony. Mr. Madden confirmed that he is relying on the Tuthill testimony as to glare.

Mr. Tauriello was duly sworn for previous and continued testimony.

Mr. Tauriello pointed out that Maser recommends that glint and glare studies should be provided. Mr. Tauriello asked whether Mr. Madden agreed. Mr. Madden said he did not have enough knowledge to have an opinion.

Marilyn Brant, Herleman Road, introduced herself and noted she had just received A-41. She asked what trees are proposed. Mr. Madden testified that behind the evergreens are located deciduous trees. How many years for a 5 foot tree to grow to 50 feet? Mr. Madden said he did not know. Asked about the duration of the landscaping plan, applicant indicated the plantings would be maintained for the duration of the lease.

Mr. Buckwalter referenced the lease, which had been provided. Mr. Buckwalter

referenced the \$1 million dollar bond. Mr. Drill referred to Mr. Selvaggi's letter of 12/1 regarding the lease. Warren Solar is obligated to restore the property within 18 months of termination of the lease. There is an assignment clause. Article 15 provides that parcels that are unused are released from the lease. As a condition of approval question was raised whether parcels not used are released from the lease. Reference was made to the Upper Pittsgrove case where a condition for the use of the property for solar panels or agriculture. Mr. Madden indicated he was unaware of landscape buffering plans on other applications.

As to environmental clean-up, Mr. Selvaggi referenced Article VIII and indicated property owner/landowner could seek farming of the property not being used for the solar farm.

Question was raised as to maintaining the grasses. Mr. Selvaggi noted this was referenced in Article VIII of the lease.

Robert Vetrecin asked whether another developer could build out the additional acreage with solar panels. Mr. Selvaggi noted applicant had verbally withdrawn approximately 200 acres from consideration. Mr. Drill referenced A-41 which shows all of the lots originally considered totaling 351 acres. Mr. Drill pointed out the exhibits had not been revised to note that the lots had been withdrawn. Board members assumed that the balance of the project would not be developed.

Mr. Selvaggi said he could not agree to a condition binding the property owner.

Mr. Buckwalter announced a ten minute recess.

When the meeting reconvened, Mr. Selvaggi said applicant would agree to accept a condition of approval to retain control of the land not utilized by solar panels.

Mr. Tauriello was invited to present his case. Charles Blau was called and sworn. Mr. Blau is a licensed NJ real estate appraiser. The Board accepted his credentials.

Mr. Tauriello said Mr. Blau was retained for a consulting project. Mr. Blau prepared a report, which was marked Exhibit OT-4. Mr. Blau said he visited the neighborhood and reviewed the master plan, minutes, articles, etc. Further, he reviewed appraisal literature related to detrimental conditions as related to residential neighborhood. He testified residential properties do best when there is similar property. He said he was unable to find a solar farm in a residential neighborhood. He did find projects in corporate and industrial areas. He referenced the Upper Pittsgrove project. In addition, he referenced other things that have a negative impact.

Mr. Blau demonstrated closed sales supporting homogeneous zoning. He gave examples of negative impact on homes from non-conforming uses. He did not have an example of solar. Mr. Blau testified a home must be nearby, not necessarily next door to impact a residence. For instance, if there is a good view and it is taken away, the property value

diminishes.

He opined that this project would have a negative effect on the surrounding properties.

Mr. Selvaggi asked how many meetings Mr. Blau had attended. Mr. Blau answered one other meeting. Mr. Selvaggi asked how many exhibits Mr. Blau had seen. Mr. Blau said "a lot". Mr. Selvaggi asked what changed from June to September. Mr. Blau said he started the report on 6/29/10. Report was issued 9/28/10. Mr. Selvaggi asked what exhibits were considered at that time. Mr. Tauriello noted he provided the entire application to Mr. Blau. Mr. Blau said he looked at all the documents although he did not read all pages. In addition he reviewed: Minutes of Upper Pittsgrove June 2010; Article dated 7/20/2010; information about Greenwich Township open space preservation from the Township website. Mr. Blau said he prepared a supplemental letter dated 11/10/10. He said the additional materials did not change his opinion. Mr. Selvaggi asked whether Mr. Blau had looked at the visual renderings submitted in September and October.

Mr. Selvaggi specifically asked about Exhibits A22 – A29. Mr. Blau did not recall when he had seen the exhibits. These exhibits had been entered into evidence in October. Mr. Blau confirmed he had seen no results related to a solar farm in a residential area. Mr. Selvaggi asked whether he was aware of a solar facility in Hackettstown. Mr. Blau said he had not seen it, and he did not investigate the impact on housing from this facility.

Asked what investigation had been conducted to find out about solar projects, Mr. Blau said he started with Google. He said he was first contacted by Mr. Tauriello in May. Mr. Blau said Mr. Tauriello asked about his qualifications and indicated he wished to find out whether there was an impact on neighborhoods. Mr. Blau said he accepted the assignment because it was interesting. Since the solar project is new, he said he did not have specific experience with solar.

Mr. Blau formulated the opinion of the negative impact when he looked at the MLS and noted how brokers marketed property. Would permitted uses on the land impact the properties? Having homogenous views would be a positive he said. How many panels would be seen from Pacesetter development. Would a cell tower view have a negative impact?

Mr. Blau opined if the project is buffered, it does affect value. What negative factors affect the community? He noted incompatible industrial use would have an impact on value.

Was there any research on a wind power project? Mr. Selvaggi showed an article commissioned by the Department of Energy on the impact of wind power projects. After a 10-year study there was no impact noted. He said there were lots of articles showing diminution of value because of wind power projects.

He testified no noise and no traffic concerns or odors nor run-off was related to this project.

Mr. Buckwalter asked about quantifying property values as a result of the project. Mr. Blau said he had no specific data to quantify the reduction in values. Mr. Blau said properties would definitely lose value. Mr. Buckwalter asked what would happen if the taxes were mitigated by a ratable. Mr. Blau said he had not considered it.

Mr. Drill asked what percentage deduction in value would constitute a substantial diminution. Mr. Blau said 5% is significant diminution and 10% diminution of value is substantial.

Mr. Blau testified he did not see a change in value for a cell tower as opposed to a solar project. Asked whether he was aware of any studies, Mr. Blau said he was unaware.

Mr. Finelli asked about the literature. Mr. Blau explained there are citations within the report: "Appraising the Single Family Residence", "Real Estate Damages." Mr. Blau said there were various books and articles used.

He asked about the association of the community with the solar project. Mr. Blau said this could be a negative.

Mr. Vetrecin asked whether Mr. Blau is aware of the suit in White Township regarding the change in zoning to permit solar farms. Mr. Blau said he was not aware.

Asked whether a solar farm would have a connotation similar to a prison or something notably negative, Mr. Blau opined that it is an industrial use and would have a negative impact.

Mr. Detore asked about collateral effect. Mr. Blau said there would be an effect.

Questions from the public were invited.

Dan Castro, 203 Robin Court, asked if the property were preserved as farmland what would be the effect. Mr. Blau said it would have a positive effect whereas the solar use would downgrade home values.

Dominick Pisano lives in Bryan Estates behind Pacesetter. He asked whether his property value would be reduced as well. Mr. Blau answered it would.

Ed Ryan, 316 Meadow Run, asked what would happen if more than one solar project were approved. Mr. Blau said if there were one after another, it could change the identity of the town. Mr. Blau said without the details, he could not answer.

Marilyn Brandt asked whether it would have an effect on existing farms. He said he did not do a study relating to farms.

Greg Cuzzolino, 213 Aldin Road, asked about the Cranford Swim Club Cell Tower. Mr.

Blau had not heard of it. If someone wants to purchase a home and views the solar farm, is there enough information to share. Mr. Blau said he did not know.

No more questions were posed from members of the public.

Questions were invited for Board professionals.

Mr. Finelli was not questioned.

Mr. Hintz was not questioned.

Mr. Finelli asked Mr. Selvaggi whether there was an intention to reply to his report. Mr. Selvaggi noted the house will remain unless the Board wishes the house removed.

Mr. Selvaggi called Robert Heffernan who was duly sworn. Mr. Heffernan is a NJ licensed appraiser and realtor. Mr. Heffernan's credentials were accepted by the Board.

Mr. Selvaggi asked whether Mr. Heffernan had reviewed the Blau report. Mr. Heffernan said he has visited the property and has seen the visual renderings as well as the proposed buffering plan.

Mr. Heffernan testified the concerns are typical for an externality, namely, whether or not there is an impact. He noted there should be an example of residences selling after there is a solar farm. This is called paired data analysis. Comparable sales sometimes require adjustments. Mr. Heffernan has done analyses for cell towers, railroads, etc. He agreed regarding the impact of negative externalities. He said, however, until you find the situation you cannot determine the impact.

Mr. Heffernan noted there is limited residential property near the property. Additionally, there are existing hedgerows providing buffering. The topographical changes on the site provide a natural berm. The fencing will help to buffer. The panels located 500' back + landscape buffering will mitigate the impact. He acknowledged residences sitting above the property will see the panels.

The question is whether the impact is negative. He noted it is an agricultural property. He observed there could be rows of greenhouses. The view does not belong to the neighbors.

Mr. Heffernan opined that there is nothing that shows this is a negative externality. Blau's report is an opinion. Mr. Vetrecin asked about solar projects in Hackettstown. Mr. Heffernan said he had not done a study. Mr. Heffernan had reviewed the articles and the green nature of the installations. There are no studies as to the impact on property values. Mr. Vetrecin asked about Blau's opinion, and Mr. Heffernan said there was nothing to compare.

Mr. Heffernan observed there would be an impact whatever was placed on the property.

With landscape buffering there would be no impact unless there was a major safety issue. Buffering is important. Blocking the view is a proper thing to do. Buffer areas should continue to be farmed. Further, there will be no activity and no traffic from the site.

Mr. Heffernan noted that the adjacent properties are not entitled to views from neighboring properties. What about the value of the scenic corridor? He said if more buffering is required, then that is the case. Again, there is no entitlement for a scenic corridor.

Mr. Tauriello asked whether Mr. Heffernan had reviewed the master plan. Mr. Heffernan said no. One of the objectives is to protect the scenic corridors. Is the installation of the solar project consistent? Mr. Heffernan said yes. Are you aware of the goals of the RCD zone? Is it appropriate to consider whether a use is consistent or inconsistent with the master plan? Mr. Heffernan said an appraiser references zoning ordinances.

He reiterated no one is entitled to the view shed of a neighboring property.

If the view is objectionable, then it would have a negative impact. Mr. Tauriello asked numerous questions as to negative impact and the state of the real estate market. Mr. Heffernan agreed extremely attractive country views add to property values. Mr. Heffernan confirmed that he had testified that communication towers have a negative effect on property values. Property values could be reduced from 5% -- 18% based on visual impact.

Dan Castro, 203 Robin Court, asked whether a negative reputation of a town impacts property sales or values. Mr. Heffernan responded it does.

This matter is continued to January 13, 2011.

***OLD BUSINESS***

***NEW BUSINESS***

***ADJOURNMENT***

The meeting was adjourned at 11:45 pm.

These minutes were approved January 13, 2011.

Alice Oldford  
Secretary to the Board