

Elk Township Planning and Zoning Board Meeting

Regular Business Meeting

December 21, 2011

Minutes

Call to Order: The Board Chairman called the meeting to order at 7:34 pm.

Open Public Meeting Act: read by the Board Secretary

Roll Call:

Present: Bill Carter, Phil Barbaro, Wayne Swanson, Jeanne White, Nicholas Yovnello, Rich Tondo

Absent: David McCreery, Chuck Nicholson, Ed Pearson, Eugene Shoultz

Also present were the Board's professionals: Leah Furey Bruder, Planner, Carl Gaskill, Board Engineer and Joan Adams, Board Solicitor.

➤ **Announcements:**

- **Notice to Public and Applicants:** Board policy is no new business will commence after 10:30pm and all testimony will stop at 11:00 pm, except for individuals wishing to speak during the general public session.

- **Postponement:** Weona Pond, LLC postponed to February 15, 2012 at 7:30pm, no additional notice required. Board Attorney made a formal announcement to the public.

- **New member:** Mayor Barbaro swore in new member, Ed McKeever.

➤ **General Business:**

1. Approval of minutes:

- Minutes of September 21, 2011
- Minutes of October 19, 2011

Mr. Carter moved to approve the minutes of September 21, 2011. Seconded by Mayor Barbaro. With all members in favor, the motion was carried.

Mr. Swanson moved to approve the minutes of October 19, 2011. Seconded by Mr. Carter. With all members in favor, the motion was carried.

2. Resolution:

2011-22 - resolution to deem "incomplete" the application of The Estate of Bertha Fogg for preliminary major subdivision and site plan approval to construct a residential subdivision on property identified as block 10 lot 26 fronting Ellis Mill Road.

Mr. Carter moved to adopt resolution 2011-22, Seconded by Mr. Yovnello.

Roll Call:

In favor: Carter, Swanson, Yovnello, Tondo

Against: None Abstain: None 4-0-0`

3. Extension of time Request:

Board Attorney, Joan Adams explained Attorney Ron Uzdavinis has submitted a letter requesting a sixty day extension of time to file minor subdivision deeds for the Rubincam/Miltimore application.

Mr. and Mrs. Miltimore both have recently had health issues and Mrs. Miltimore is currently in the hospital. She added the MLUL (Municipal Land Use Law) does permit the Board to grant an extension based on good cause up to 1 year.

Chairman Yovnello moved to grant the 60 day extension. Seconded by Mrs. White

Roll Call:

In favor: Carter, Barbaro, Swanson, White, Yovnello, Tondo, McKeever.

Against: Abstain 7-0-0

Old Business: None

New Business:

- **United Solar Works, LLC, "Completeness" Hearing** for submission waivers requested Block 44, Lots 4 & 16, 730 Buck Road. Minor Subdivision, Preliminary & Final Major Site Plan for a Solar Energy facility

John Alice, Attorney for the applicant

Larry DiVietro, PP, PLS, Land Dimensions Engineering, 6 East High Street, Glassboro, NJ

Ahmad Tamous, PE, Land Dimensions Engineering, 6 East High Street, Glassboro, NJ

Clay Rager, Principal of United Solar Works, 420 Barnsboro Rd., Sewell, NJ

Larry DiVietro gave the following overview: the parcel, block 44, lots 4 & 16 combined is a total of approximately 118.5 acres. The proposal is to re-subdivide to create one 18 acre lot for the existing homestead and the remainder to be developed as a commercial solar energy facility. The natural tree areas around the perimeter and the wetlands will remain intact; there will be no disturbance of the environment other than the development of the solar field in the existing agricultural fields.

Currently the property encumbers an existing cross access easement know as Vivian Lane and that easement will remain as it exists today. If necessary, a secondary access will be provided for emergency and servicing access. For the solar field, a separate ingress/egress easement has been developed through the homestead.

The entire site will be fenced with a 6 foot vinyl black chain link fence.

Mrs. Adams requested an easement that is missing from the title binder and the applicant agreed to provide it. Additional discussion followed about the various easements.

Board Planner, Leah Bruder, made the Board aware that the solar commercial facility use, is a conditionally permitted use in this zoning district and in order to be a permitted use, they have to meet all of the conditions of the township's ordinance. It is her understanding that the applicant intends to comply with all the conditions however the plan that has been submitted does not comply with all conditions. Page 3 of Mrs. Bruder's letter of November 22, 2011 outlines, in table format, all the requirements for a commercial solar energy facility. Before moving forward with a public hearing Mrs. Bruder asked the applicant to commit to meeting all the requirements. Mr. DiVietro responded they have the ability to meet all the requirements but need clarification for the setback on lot 1 for table item 3(d) [1}. Mrs. Bruder clarified that the intent is for all structures to be set back 100 feet from residential. Panels are considered a structure. Item 3(c) is for agricultural buffer setback and that will also have to be corrected. The buffer is in addition to the required setback. Mr. Alice commented it is their intent to comply. Mrs. Bruder was satisfied for completeness purposes and stated for the record, it is the applicant's intent to comply and this will be confirmed upon submission of revised plans.

Mrs. Bruder referred to her review letter of November 22, 2011, page 5, completeness review.

The applicant has applied for Preliminary & Final Major Site Plan approval and Minor Subdivision approval.

The applicant requests the following waivers from the submission checklist:

Item #8 – copies of approvals/certifications from all outside agencies with jurisdiction.

Planner recommends a waiver for completeness purposes for preliminary review

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Mr. DiVietro explained it is their intention to apply for both preliminary & final approval subject to all outside agency approvals. They will need and have filed for County approval and soil erosion permits and want to maintain preliminary and final.

Construction office will need to be notified, that no building permits can be issued until all outside agency approvals have been supplied to that office. Mrs. Adams added that the submission includes a minor subdivision which only allows 190 days to perfect. Applicant agreed.

Planner had no objection to granting the waiver for preliminary and final with the condition that no building permits would be issued without proof from the applicant of all outside agency approvals.

Item #12 – requires certification and monumentation required by map filing law.

Deferred to Board engineer.

Engineer recommended a waiver for completeness purposes, but needs to be included on revised plans. Applicant agreed.

Item #13 – requires metes & bounds descriptions for all lots, rights-of way and centerlines

Deferred to Board engineer.

Engineer recommended a *Waiver for completeness purposes* in regard to Gloucester County Roadway Easement information. Further the applicant agrees to make the other corrections as outlined in Mr. Gaskill's letter and will revise and resubmit.

Item #19 – requires proposed street names and new lots numbers approved by tax assessor.

Planner had no objection to granting the waiver for the purposes of completeness.

Item #25 – requires plan be prepared at a maximum scale of 1"=50'. If the plan does not fit on one sheet, an overall plan is permitted on one sheet at a smaller scale and the plan may be broken up.

Planner had no objection to granting the waiver as the applicant has submitted a plan sheet at a minimum scale of 1"=60' in order to fit the site on one plan sheet. The Engineer had no objection and added that sheet 2 of existing conditions at 1' = 120 feet does need to be broken down further. Applicant agreed.

Item #29 – requires an Environmental Impact Statement (EIS) in accordance with section 96-44.

An abbreviated EIS has been submitted that was part of a former approval for the Twin Ponds Major Subdivision application in 2004 (49 SF homes and 4 storm water lots).

The applicant indicates this project will provide a lesser impact in most ways from that of a major housing development and that a site visit was performed to assess any changes since that time.

Planner had no objection to granting the waiver from providing a full EIS report, however, recommends they provide information about the potential construction impacts.

Applicant agrees to provide a written report with revised plans. Mr. DiVietro added there is no proposed grading as the site is an agricultural field. He further explained the installations of the panels are done on a rack system. The installations are either driven or a screw type anchor is used, no concrete pylons or footers. A concrete pad will be used for the inverters. Construction details will be provided. The applicant confirmed there will be no tree removal and a ground cover of slow growing meadow-mixture grass will be used that has to be mowed twice a year.

Item #30 – requires a Phase I Environmental Assessment report confirming to current ASTM standards in accordance with Chapter 62A

Phase I & Phase II have been submitted from former housing development

Planner recommends the waiver.

Item #31 – requires traffic impact study prepared and signed by a licensed professional engineer.
The facility will be unmanned and not create traffic.

Mrs. Bruder commented that from a planning standpoint, it makes sense to waive the requirement, but she deferred to the Board Engineer.

The Engineer recommends a waiver for completeness and can be handled by testimony.

Item # 37 – requires drafts of proposed protective covenants, deed restrictions, or easements.

Waiver is recommended for completeness purposes but the applicant will need to provide this information as a condition of any approval. Board Attorney had no objection with the caveat that the missing easement will be submitted by the applicant's attorney, Mr. Alice.

Item #41 – requires that the location of existing wells and septic systems and distances between them, and on adjacent properties.

The existing conditions plan does not identify any existing well or septic system on lot 4 and Mrs. Bruder recommends the revised plans include their locations.

Waiver is recommended from showing locations on adjacent properties as no new septic or wells are proposed. The revised plans must show the locations on lot 4 to make sure they are located within the new lot lines.

Item #54 – requires that abutting land that is currently farm assessed be identified.

Must be identified on the plans.

Applicant agrees.

Item #56 – requires that at least 2 permanent benchmarks for each 50 acres or portion thereof shall be established at opposite ends of the site with a description and elevation noted.

Deferred to engineer.

Engineer commented that the Datum was covered under item #28 and the applicant has agreed to comply.

Benchmarks - applicant agrees to comply. Revise and resubmit plans.

Item # 63 – requires cross sections and centerline profiles of all existing or proposed streets or water courses with dimensions at 50 foot intervals.

Deferred to engineer but added from a planning standpoint, a waiver is recommended.

Waiver is recommended by Engineer.

Item # 65 - requires preliminary plans and profiles of proposed utility layouts and connection to existing and proposed utility systems.

Applicant agrees to comply, will revise & submit.

Item # 70 - requires a lighting plan.

The applicant has not provided a lighting plan and stated there will not be any signage or lighting except for an emergency light that would be on a timer.

Mrs. Adams asked a notation be included on the revised plan. Applicant agreed.

Item # 73 – provide either a Letter of Interpretation (LOI) from the NJDEP verifying whether or not there are wetlands on or in close proximity to the site, or a statement or verification from a NJ licensed Surveyor or Engineer that he has reviewed wetlands inventory maps, personally visited the site, and conducted a survey to verify that there are no wetlands on or in close proximity to the site.

Applicant agrees to submit a copy of the LOI, therefore a waiver is not required.

Item #74 – requires the applicant to demonstrate consistency with Chapter 86 for stormwater management and control. *Applicant will revise and resubmit.*

Item # 75 – requires the submission of a utility plan.

Waiver is recommended for preliminary but will be required prior to final.

Deferred to engineer. *Board Engineer requests revised storm water calculations (showing reductions). Applicant agrees to revise and submit.*

Mr. Corey Gaskill, Board Engineer, reviewed the following outstanding items of his letter dated December 6, 2011 not already addressed in the planner's letter:

Item #9 - plat/plan shall be prepared under the supervision of and be signed and sealed by a licensed NJ land surveyor, professional planner, professional engineer or registered architect.

NJPLS signatures/seals are missing from sheets 3, 4, & 5 which contain the minor subdivision information

Waiver for completeness purposes, but required signatures & seals must be provided.

Item #11 – source and date of current or recertified property survey prepared and sealed by a registered NJ land surveyor.

The plan submitted does not meet the minimum conditions of NJAC 13-40:5.1, et seq.

Waiver for completeness purposes, but will need to be included on revised plans. Applicant agreed.

Item #16 – location map at a scale of 1" = 2000' or larger showing the entire tract, location of existing and proposed property/street lines, entire subdivisions/site plan and its relation to all features shown on the official map/master plan & located within ½ mile of the limits of the subject tract.

Waiver for completeness purposes. Applicant agrees to make the corrections as outlined in Mr. Gaskill's review letter, will revise and resubmit.

Item #17 – key map at an appropriate scale, with a north arrow showing the location of the site and its relationship to surrounding areas, existing street location, municipal and zone boundaries. Also show contiguous tracts in which the applicant has any direct interest.

Waiver for completeness purposes. Applicant agrees to make the corrections as outlined in Mr. Gaskill's review letter, will revise and resubmit.

Item #23 – Proposed phasing and construction schedule for entire project.

No waiver required as no phasing is proposed for this project

Item # 28 – Date reference meridian and graphic scale.

Plan does not comply with ordinance requirements

Applicant agrees to correct as required.

Item #39 – all proposed lot line, lot lines to be eliminated, area of proposed & existing lots in square feet and setback lines.

Applicant agrees to provide the missing information relating to lot 16.01.

Item #43 – existing use of building and structures and grade elevations.

Applicant testified they will not be disturbing any existing structures.

Item #51- deals with wetlands.

Point tables for wetland lines are required and must be provided on plan.

Item #60 – Location, size and direction of flow of all streams, brooks, ditches, lakes and ponds. Boundaries of the floodplains of all water courses shall also be submitted.

Front portions on property, engineer needs additional information. *Applicant agrees to submit.*

Item #64 Plans and design data for storm drainage facilities including calculations.
Applicant agrees to provide.

Item #81 – Traffic control, directional signage.
Waiver recommended.

Item #84 - letter containing a list of items not installed or completed and to be covered by a performance guarantee, with quantities and cost of each item and total cost of all items.
Waiver recommended for completeness

Mrs. Adams summarized that the Planner & Engineer support waivers for the following checklist items: 8, 13, 25, 29,30,31,37,41,63,75 & 81. All other items the applicant has affirmatively represented they will supply or revise the plans to reflect the information.

Chairman Yovnello moved to deem the application “incomplete” and further the Board has empowered the Board Engineer to declare the application “complete” upon his review and approval of revised plans and receipt of outstanding submission items. Seconded by Mrs. White.

Roll Call:

In favor: Carter, Barbaro, Swanson, White, Yovnello, Tondo, McKeever.

Against: Abstain 7-0-0

➤ General Public Portion

Mr. Carter moved to open to the public, Seconded by Swanson. With all members in favor, the motion was carried.

Tony Creta, 232 Unionville, Rd.

Mr Creta asked for clarification of a greenhouse. Mr. Creta had two greenhouses that have collapsed due to bad weather and would like to construct a heavy duty greenhouse of thicker plastic, glass ceiling along with a wood stove to operate year around. He recently met with the township zoning officer, and apparently there is only one description for a green house and that is for a hoop style top with plastic on it. According to this definition, he would need a variance to construct his greenhouse.

Mrs. Adams responded that normally an interpretation of township ordinance is handled by application, but in this instance, Mrs. Adams offered to explain that the zoning officer’s concern is not the structure of the greenhouse, but the fact that Mr. Creta already has an accessory building on the site and the addition of the greenhouse would be over the limit of permitted accessory buildings.

The only way a greenhouse would be appropriate without a variance, in this situation, would be if the property was an active commercial farm, which it is not, it is a residential property.

A greenhouse on a residential site is an accessory structure. A greenhouse is an agricultural use, if it is attached to an agricultural use.

A residential site is governed by the bulk standard requirements of the residential district.

Board member, Jeanne White, confirmed with the board attorney, that it doesn’t matter whether the structure is a doghouse, a greenhouse or a shed. By ordinance, a residential property is only allowed to have a certain number of accessory structures and a greenhouse is considered an accessory structure.

Mr. Creta disagreed that it was an accessory structure. A greenhouse is to grow plants. Mrs. Adams added the only time a green house would not be considered an accessory structure, would be if it fell under “the right to farm” rules and was being used as part of an active commercial farm. Mrs. White confirmed that if Mr. Creta wanted to install this green house, he would have to apply for a variance.

Mr. Creta explained if he puts up a 200 square foot greenhouse, there is no problem; however he would like a 20x20 (400 sq ft) building. Mr. Creta's complaint is for the cost involved to come before the board for a variance application. It would cost him \$2000 to appear before the board, where the greenhouse cost would be \$1000.

Chairman Yovnello explained the board has to follow the township ordinances currently in place. The planning board does not have the ability to change the ordinance.

Robert Gaines, 912 Franklinville Road, South Harrison Township

Mr. Gaines explained he created two residential lots approximately 10 years ago. Since that time, the zoning district has changed to a commercial zone and in order to build a house on the existing lot, he would need a use variance. He added, the zone changed during a Master Plan revision and he was not notified of the change.

Mrs. Adams explained that during a Master Plan Revision, a meeting notice is only required to be placed in the newspaper; notice does not go out to individual property owners. She added, absent a Master Plan review the board does not have the ability to change the zone of his property. The Board Planner added that the next master plan is not required until 2019.

Mrs. Adams briefly explained the variance procedure to Mr. Gaines

Louis Schomber, 457 Ewan Road

Mr. Schomber reported to the board that he continues to have a drainage problem with the development, Valley Del Sol. The last time he came before the board with this same issue, the board engineer reported that everything was built according to the approved design however he is still having water issues. He added the pipe under Ewan Road does not belong to Elk Township and if the Planning Board approves a project, the town should correct the problem.

Board Attorney, Joan Adams, responded that once a project is approved and under construction, issues regarding installations have to be addressed to the Township Committee, as it is the township engineer that completes the site inspections. In terms of the storm water design, she explained the board is bound by state statute and has to comply with the statute. The board cannot make an applicant do anything other than what is required. Mr. Schomber understood, but added it is the discharge of the water that is running on to his property. Mrs. Adams added, if the development has not installed their entire infrastructure or if the discharge is inconsistent with their design, those are items the township engineer would be sent out to inspect. The complaint should be directed to Township Committee to investigate. Mr. Schomber stated he has gone to committee 4 times already, nothing gets done and this has been going on for 3 years.

Mr. Schomber added that if the township doesn't resolve it, he will and that there is no easement on his property for a pipe. Mrs. Adams explained again, the Board has no legal ability to be involved.

Mr. Pearson moved to close to the public, seconded by Mrs. White. With all members in favor, the motion was carried.

Chairman Yovnello asked for 3 volunteers to form a subcommittee to review the qualifications submitted for 2012 Planning/Zoning Board Professionals and to prepare a report making recommendations to the board members. The subcommittee consisted of Mayor Barbaro, Wayne Swanson and Chairman Yovnello.

Mrs. Bruder made the Board aware that she will be out on maternity leave January, February and part of March.

Mr. Swanson mentioned that at a prior meeting, it was mentioned that Township committee should apply to the Department of Community Affairs for a waiver from RSIS standards for cul-de-sac size (larger than required cul de sac size). Mr. Swanson reported that has brought this issue to the attention of Township Committee at a recent work session meeting. In addition, Mr. Swanson has reviewed the State Statue and informed the Board that the State requires the Engineer to submit a letter or some type of investigation report supporting the request. Township Committee would like to review the engineer's recommendation before forwarding any request to the State.

Mrs. Adams added the State has approved such exemptions; however she is not aware of any in Gloucester County. She believes there is a list in back of the RSIS book of those municipalities that have received exemptions. She recommended Mr. Gaskill's office research the issue.

➤ *Correspondence:* none

➤ **Adjournment:**

Mrs. White moved to adjourn, Seconded by Mr. Pearson.
With all members in favor, *the motion was carried.*

Adjournment time: 9:20 pm

Respectfully submitted,

Anna Foley
Board Secretary