

Elk Township Planning and Zoning Board Meeting

Regular Business Meeting

March 21, 2012

Minutes

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

Roll Call:

Present: Mayor Phil Barbaro, Bill Carter, David McCreery, Chuck Nicholson, Ed Pearson
Eugene Shoultz, Wayne Swanson, Nick Yovnello, Mr. Tondo.

Also present were the Board's professionals: Stephen Bach, Planner-Bach Associates, Corey Gaskill, Engineer-Fralinger Engineering, and Joan Adams, Solicitor, Adams & Adams.

Absent: Jeanne White, Ed McKeever

Open Public Meeting Act: read by the Board Secretary

Announcements:

- Notice to Public and Applicants: Board policy is no new business will commence after 10:30 pm and all testimony will stop at 11:00 pm, except for individuals wishing to speak during the general public session.
- **Approval of minutes:**
 - February 15, 2012

Mr. Pearson moved to approve the minutes of February 15, 2012. Seconded by Mr. McCreery. Mayor Barbaro abstained from the vote. With all other members in favor, the motion was carried.

Resolutions:

2012-11: Resolution granting minor subdivision and preliminary and final major site plan approval to permit the subdivision of block 44 lot 16 and development of block 44 lot 16 with a commercial solar energy installation to applicant, United Solar Works, LLC.

Mr. Nicholson moved to adopt resolution 2012-11, Seconded by Mr. Shoultz.

Mrs. Adams commented, there may be a typo in the resolution concerning the setback against agricultural lands and if there is an error, she will correct to be in conformance with the township ordinance. The Board agreed.

Roll Call:

In favor: Carter, McCreery, Nicholson, Yovnello, Shoultz, Tondo

Against: None Abstain: None 6-0-0`

2012-12: Resolution approving preliminary and final major subdivision of block 44 lot 1 and bulk dimensional variances to create 6 lots to applicant, Weona Pond, LLC.

Mrs. Adams commented that the condition concerning the grading/improvement of both Vivian and Hughes Drives, says access "drive" and it should say "drives" and with the board's permission will correct. The Board agreed.

Mr. Carter moved to adopt resolution 2012-12, Seconded by Mr. Nicholson.

Roll Call:

In favor: Carter, McCreery, Nicholson, Shoultz, Yovnello, Tondo

Against: None Abstain: None 6-0-0`

➤ **Old Business:**

➤ **New Business:**

“Completeness” hearing - Catholic Community of the Holy Spirit

The applicant proposes to build a Roman Catholic Church on 27.95 acres located on State Highway 77 & County Route 538. The proposal includes an 18,100 square foot church, parking lot and detention basin. Approximately 10 acres of the site will remain in agricultural production. Access to the site is proposed off of Swedesboro-Franklinville Road (CR 538). The parcel is located in the LD (Low Density) Residential Zoning District. This zone permits agricultural uses, single-family detached dwellings, public parks, conservation areas and institutional uses as a conditional use. For a conditionally permitted use, the proposal must meet the conditions set forth in the ordinance in order to be considered a conforming use.

Board Attorney Joan Adams stepped down and was replaced with the board’s interim attorney, Gary Thompson. Mrs. Adams has a conflict with the application as she has family that lives within 200 feet.

Mr. Thompson explained this matter will be heard as a zoning board matter, the application is for a conditional use, D-3 variance and preliminary major site plan approval. Tonight’s hearing is only for the purpose of determining whether or not the application submitted is complete.

Mayor Barbaro and Committeeman Swanson stepped down as they are not permitted to vote on zoning board matters.

Dale Taylor, Attorney representing the Applicant, 95 North Main Street, Mullica Hill, NJ.
Andrew Hogg, Land Dimensions Engineering, 6 East High Street, Glassboro, NJ

Mr. Taylor began with the Planner’s letter of February 1, 2012, addressing the following items:

Item #8 – submit copies of all outside agency approvals
Applicant agrees to provide at preliminary hearing.

Item #22 – submit list of all variances or waivers.
Applicant agrees to provide at preliminary hearing.

Item #30 – requires a Phase I Environmental Assessment Report conforming to current ASTM standards in accordance with ordinance Chapter 62A.
Waiver is recommended by planner

Item #41 – requires the location of existing wells and septic systems and distances between them, and on adjacent properties.
Waiver is recommended by planner, the proposed well has been identified on the proposed plan

Item #50 – tree protection plan.
Waiver is recommended, as there are no trees, this is a farm field.

Item #51 – requires location, design, and dimensions of open space areas, conservation areas, buffer areas, walkways and any recreation areas.
Applicant will address at preliminary and will request a waiver at that time as there are no sidewalks in the area.

Item #53 – requires any structures of historic significance on or within 200 feet
Waiver is recommended, there are none on the site.

Item #62 – locations of street lights and fire hydrants be shown on plan.

Waiver is recommended, there are no fire hydrants proposed as there is no public water supply.

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

Applicant agrees to comply and will supply at the preliminary hearing.

Item #66 – requires written commitment from Elk Township Municipal Utility Authority of sufficient capacity to provide sewer and water service for the project.

Not Applicable, no public utilities available.

Item 71 – applicant to indicate the location, size, and materials of containers and enclosures for solid waste and recycling and a detail of same.

Will address at the preliminary hearing, however no dumpsters are proposed as the site will only generate household type trash. Applicant agrees to work with the planner.

Item 76 – recreation facilities plan and details where applicable

There is no recreation facility proposed.

Item #77 – requires the size, type, copy and location of all signs.

Waive for completeness purposes, will submit at time of preliminary.

Mr. Taylor added two variances are requested:

- 1) off street parking in side or rear yard, where front of building is proposed and
- 2) public street and 25 feet closed to property line shall be bermed and landscaped to screen the view where no berm or landscaping is proposed.

Mr. Bach commented that he is satisfied with the waivers as stipulated by his review letter and the representations made by the applicant.

Engineer's review letter of January 26, 2012- Mr. Taylor reviewed the following items not already addressed in the planner's letter:

Item # 20 – Names of all property owners within 200 feet, as disclosed by the most recent tax records.

Applicant agrees to comply and will supply at the preliminary hearing.

Item #25 – Plans shall be prepared at a minimum scale of one (1) inch equals fifty (50) feet. If the entire plan does not fit on one sheet, an overall plan with entire tract on one sheet shall be included at a smaller scale (1"=100' or 200').

Waiver is recommended by the Engineer. Sheets 2 and 4 of the plans have a scale of 1" =60'.

Item #59 – Location of soil borings to determine soil suitability and indication of whether topsoil will be transported to the site and/or removed and transported outside the municipal boundary.

Engineer recommends one additional test pit be conducted in the infiltration area.

Applicant will comply.

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

Applicant agrees to comply and will supply at the preliminary hearing.

Item #64 – Plans and design data for storm drainage facilities including calculations.

Applicant agrees to comply and will supply at the preliminary hearing.

Item #67 – onsite sewerage disposal is required, the results and location of all percolation tests and test borings.

Will comply. Jurisdiction of the Gloucester County Health Department.

Item #74 – stormwater management and drainage.

Waiver for completeness purposes and the applicant agrees with Board Engineer's recommendations and will submit inspection/maintenance/repair plan prior to the final site plan application.

Board Engineer had no additional comments.

The Chairman reviewed that waivers were granted for the following submission checklist items:

25, 30, 41, 50, 53, 62, 66, 67, 74, 76, 77.

Chairman Yovnello moved to deem the application "incomplete" and further the Board has empowered the Board Engineer & Planner to declare the application "complete" upon their review and approval of the outstanding submission items. Seconded by Mr. Carter.

Roll Call:

In favor: Carter, McCreery, Nicholson, Pearson, Shoultz, Yovnello, Tondo

Against: None Abstain: None 7-0-0`

Joan Adams, Mayor Barbaro and Wayne Swanson returned to the Board.

➤ ***General Public Portion***

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

Angela Monaghan, 132 Stockton Court, Monroeville

Regarding the approval of last months approval of United Solar Works, Mrs. Monaghan had the following questions/comments:

Was a Letter of interpretation (LOI) and a wetlands approval a condition of the approval granted?

Yes. Mrs. Adams responded, that both fall under the jurisdiction of the DEP. The board requires that a current letter of interpretation or delineation be submitted. In this case the applicant did submit an older LOI and a condition of the approval was that the applicant had to produce proof from the DEP that the older LOI version was still valid (may still be viable due to the permit extension act 2008) or they would have to re-file for a new one.

Mrs. Monaghan informed the board that she has researched the matter with the DEP and the permits for this parcel have expired and to date they have not applied for a new one. Also, since the use is now different, she was also told they would most likely have to provide a new Environmental Impact Statement. Mrs. Adams commented this was not uncommon and that the type of approval granted last month is valid for 3 years. The approval process by the DEP, as well as other agencies, often takes a long time.

Does the Board typically grant a lot of waivers to applicants?

Mrs. Adams responded, "Yes" that is usually the case. She explained, by law, in order for an applicant to be required to submit something for consideration, it has to be on a checklist the board adopts by ordinance. Because the board does not know what will be pertinent for every application, the board adopts a checklist (there are over 80 items on this board's checklist). Not all of the items on the checklist may be appropriate for every application and that's why there may be a lot of waivers granted.

Why was the Environmental Impact Statement sufficient for the Board when it did not reference the site investigation that took place in 2003-2004 regarding the environmental condition of the soils, specifically the dumping of 55 gallon drums and the underground storage tanks?

Mr. Bach responded he has not reviewed the entire file regarding the former residential approval of 2003/2004. Since the application was for a solar field his office was looking at the historical pesticides, in terms of NJDEP residential site standards for arsenic, heavy metals and such.

Mrs. Monaghan added she is concerned with whatever was inside the drums and any contamination to wells in the area.

Mrs. Monaghan asked about a conservation easement that was referenced in the engineer's review letter and email.

Mrs. Adams responded that in terms of a conservation easement, some solar applicants, when a use variance is required, will agree to deed restrict the land so that when the panels are removed it returns to farmland. In this application, however, a use variance was not required and this board has no legal ability to compel a use of the land. That would be considered a "taking."

A conservation easement relating to a wetlands permit is a completely different matter and is not what the board engineer was referring to in his letter.

Why did the applicant revise their plans dated, Feb. 3, 2012 showing additional panels up to the Country Woods development? Were those plans forwarded to other departments/committees for review, such as Police Dept, Fire Dept., and Environmental Commission?

Mr. Bach responded that we do not know the reason for the revision, but the applicant has the right to revise plans before it comes before the board. Mrs. Adams added, those other agencies are just consulting agencies, they have no jurisdiction over the application but the Board likes to get their input.

Chairman Yovnello added there was an indication by the applicant that they may scale back the amount of panels and would remove them from that area first.

The State Statue in regard to renewable energy facilities references them being placed in industrial zones. Does the Township have the ability to apply that statue to RE zones?

Elk Township ordinances permit solar uses in the RE zone as a conditional use. The ordinance probably encourages them in the industrial zone but that does not preclude it from being in the RE. The State Statue makes them inherently beneficial uses in all municipalities, whether they are contemplated in an ordinance or not which means they meet the positive criteria in all zones. Elk Township has been proactive by having a solar ordinance in place.

Did the Township consider the impact a 6 foot perimeter fence would have on the wildlife or surrounding residents when the plan was revised on Feb. 3, 2012? A fence will prevent the crossing of wildlife into the neighboring open space.

Mr. Bach responded it is a permitted accessory structure on the site. Additionally the GIS layers provided by the DEP are reviewed concerning any wildlife habitats that could be impacted and nothing came up in that review- no protected historic wildlife.

Did the environmental impact statement include any economic or any impact to adjoining land owners especially in light of the new plans dated February 3rd?

Mrs. Adams responded that would actually be a Fiscal Impact Statement and is not a requirement for a conditional use. For a use variance application, that would be something traditionally reviewed, but in this instance for a fully conforming conditional use, the fiscal impact was not an issue.

Did the EIS address maintenance or cleaning of the solar panels? Testimony was given at the hearing that only water would be used. What happens if water is determined not to be sufficient and solvents and chemical are used to clean the 57000 panels? Did the township consider any possible contaminants to surrounding well waters?

Mrs. Adams responded, the township is only permitted to consider the evidence produced. The applicant testified the cleaning mechanism would be water. If it is determined in the future that they are using anything other than water, that would be contrary to their approval and we would not know that unless an adjacent landowner reports it. They are approved based on the testimony given to the board.

Mr. Bach commented if anything but water is used; the County Health department should be contacted.

Mrs. Adams added that she has heard several solar applications and all of them have testified that they use water to clean the panels.

Who is actually purchasing the land for the solar field? Does the township have a bill of sale?

The township does not have a bill of sale.

How will the township enforce the decommissioning section of its ordinance without a bond in place?

Will tax payers have to pay for removal of the panels if the field is abandoned or the company goes bankrupt? Was a full cost assessment including disposal of the hazardous materials inside the panels considered?

Mrs. Adams responded that in her experience with these applications over the past three or four years, the requirement of decommissioning bonds has been a problem because these bonds have to stay in place for 25 years, the bonds are difficult to enforce and have been challenged by the developers. As a result, most towns have elected not to have the administrative and legal hassle of having the decommissioning bond. She added it is her understanding that installations using ground screws without concrete foundations are easy to dismantle and frankly the township would make more money dismantling them and selling the aluminum. Mr. Bach added he did not hear any evidence of any hazardous materials also any decommissioning cost incurred by the township could be recouped by placing a lien against the property.

Mrs. Monaghan stated it was in the application materials of what the panels were made of.

Mrs. Adams further explained the decision not to require a decommissioning bond was not based on a cost assessment; the decision was based on the legal ability to enforce it.

Regarding the meadow grass under the panels, if the project is abandoned, will the township maintain the maintenance of the property?

Mr. Bach responded that should the ground cover be different than what was approved; the zoning officer has the ability to issue a complaint against the property owner for its maintenance. Other comments from the board included, that if it were abandoned, the field would grow the same a fallow land, returning to woodlands.

What is the determined time frame for the solar farm to be in place?

Mrs. Adams stated the board does not know for sure, that would depend on when the applicant is able to meet the conditions of their approval which includes their outside agency approvals.

The application indicated the project has the ability to generate 13 megawatts, why are they putting in 10? Also is a transmittal plan a condition of their approval?

Mrs. Adams answered they can only install what the BPU (Board of Public Utility) approves and they are approved for 10 megawatts because that is what the grid can handle. A transmittal plan is not a condition of approval as that is in the jurisdiction of the BPU and Atlantic City Electric.

Mrs. Monahan asked who would be buying the electricity from the solar facility

The electric company, Atlantic Electric.

How much tax revenue does the township anticipate receiving?

Mrs. Adams responded we do not know how much, it could be none. Currently there is a lot of legislation in Trenton and one is to make them tax exempt. There is also legislation to tax them at \$7000 per kilowatt. Mr. Bach added, that on the projects he has worked on, right now these facilities are still considered farms and that is how they are being assessed.

Are construction permits a condition of approval?

Yes

Does the township possess any background information on this solar company? Are they receiving any state or federal subsidies for the project?

Mrs. Adams replied that this particular company does have a number of other facilities approved, but does not know if any have been constructed yet. The economic viability of a company does not have anything to do with a Land Use board's function. The board has no knowledge of any subsidies.

Why was a larger setback not considered for the Country Woods development? The Board Planner recommended a 1000 foot setback from Buck Road.

Mrs. Adams replied, the planner did not recommend a 1000 foot setback. The field is set back 1000 feet because Mr. Fazzio's house and acreage is in front of the field. The planner's letter is a recitation of what there is.

Mrs. Monaghan asked if Mr. Fazzio's remaining acreage, not the house, would be farm assessed.

Mrs. Adams replied, yes, if he continues to farm it.

Will the Township be reaching out to the DEP for an investigation of the site considering a previous investigation could be considered insufficient?

Mr. Bach replied no, it is not the purview of the board. But anyone that has a concern can contact them.

Mrs. Monaghan asked if anyone on the board knew or could elaborate on what zones in the surrounding area were considered PA 4 and PA 5 zoning (Environmentally Sensitive & Rural Environmentally Sensitive).

Mr. Bach explained those zones are part of the State Plan's assessment of what areas, in general, are considered environmentally sensitive and are used as a planning tool. These areas are viewed from a 1000 foot view. He does not have their definition, but that they are available on the State's website.

Mrs. Monaghan confirmed with the Board Attorney that the Township had received a petition she and Mr. Redmond submitted outlining all of their concerns.

The response was "yes."

Mrs. Monaghan read a correspondence regarding wetlands delineation from an engineer at Land Dimensions that was sent to Mr. DiVietro, also from Land Dimensions, dated October 19 indicating that the entire farm was not delineated. The plans submitted to the township on October 20th did not show the panels in the area closest to the Country Woods development.

Mrs. Adams stated she could read it, but that those individuals were not here to address it. Mr. Bach commented that regarding the wetlands, which are out of the board's jurisdiction, the applicant has to demonstrate that their permit is valid or apply for the appropriate application(s) and that will determine if a larger area needs to be delineated.

Shannon Gaudio, 108 Witherspoon Court

Mr. Gaudio commented that a solar farm is not a farm and is concerned that strong winds would turn the panels into possible projectiles. Also has a concern of runoff from whatever the panels are made of, whether it is polyvinyl or something Teflon based neither are good for the environment, drinking water or food supply. He does not feel this project is a good for the town.

Denise Redmond, 131 Stockton Court.

In reading excerpts from prior minutes of the Township Committee meetings and Agricultural Committee, she feels the board contradicts themselves.

She also asked why the solar project did not have separate preliminary and final hearings like the church earlier this evening is having. *Mrs. Adams responded that the church is a different type of application*

that requires a "use" variance which the solar farm did not. The church is beginning the variance portion first, and if they get the variance, then they design the site and come back for their preliminary approval.

Ms. Redmond did not feel the board considered the needs of the citizens, allowing them time to prepare with questions, by not having more than one hearing for the solar project.

Lynn Johnson, 130 Stockton Court

Is not in favor of the solar project she is concerned about the wildlife, the heat index from the panels and any health risks that may be caused in the future to her family. She also doesn't feel a 6 foot fence would keep children out and that this is not the best location for the site. She is also concerned about her property value.

Chairman Yovnello responded that a good portion of the township is under farmland preservation.

The Board is not calling this a "solar farm," this is a definition set up by state legislature and the board is complying with the state laws in place. Mr. Bach added that in terms of the land use board, (for planning and use of property) the board can prescribe the rules in terms of setbacks, buffers, etc. to a degree without becoming so restrictive that they are taking the rights from individual property owners. An individual property owner has the right to use their property to the highest and best use they can by law. The board has no ability to stop a property owner from doing what they are legally permitted to do.

Shannon Gaudio, 108 Witherspoon Court

Was concerned the project would decrease property values by 30 percent and also felt having 10 million watts right next door was the same as having a high tension line there. He felt the board should make it more difficult for these developments to be approved. He was also concerned about the dumping on that parcel and added that ground has not been farmed in quite some time. He also asked if the parcel is residential or commercial.

Mrs. Adams stated it is zoned Residential Environmental and one of the uses permitted within that zone is a solar farm. Mr. Bach added he may have misspoke earlier indicating these projects were assessed as farms and actually they would be assessed as a utility.

Kristen Schoenberg, 127 Stockton Court

Ms. Schoenberg felt the board could have denied the application for "incompleteness" and not have granted the waivers they requested.

Mrs. Adams stated it was already deemed complete and the waivers granted were appropriate.

Ms. Schoenberg added United Solar did not have a current Environmental Impact Statement (EIS), a valid Letter of Interpretation (LOI), nor did they have a proper survey as that was waived at the last hearing and we still do not know what the correct setbacks are. She added that in West Deptford, that Board deemed "incomplete" the application of PSEG for a solar farm for two reasons: 1) not having the proper setbacks and 2) not complying with a 20 foot turnaround for the fire department, so why couldn't this board have deemed United Solar incomplete? She did not feel the board should have given so many waivers.

Mrs. Adams stated because they were complete. Mr. Bach explained the setbacks are in accordance with the ordinance and the survey was in reference to an updated survey within a 12 month period. Both are a condition of approval but were not needed to deem the application complete.

Ms. Schoenberg felt the board should have given the residents more time to respond and not have approved the project at the expense of the residents and their ability to respond.

Scott Patterson, 112 Witherspoon Court

Feels there is something more the Board can do and that is by not waiving items and not approving applications until all the paperwork is in place. Any concerns about lawsuits should be handled by the solicitors.

The Board needs to concern themselves with the residents in this community. He is also concerned about property values.

Angela Monaghan, 132 Stockton Court

The Phase I Environmental Assessment is listed as item #30 on the checklist. Is this under the jurisdiction of the Township, is it a condition of approval or is the phase I currently submitted sufficient?

Mrs. Adams responded that the phase I submitted was sufficient.

Ms. Monaghan asked about the irrigation for the buffers.

Mrs. Adams responded it is included as a condition of the approval.

Ms. Monaghan asked Mayor Barbaro if he had attended a meeting(s) where the Mayor of Pittsgrove Township discussed how solar farms could be incorporated into the town and the reason for that meeting.

Mayor Barbaro responded that was an item listed on the Economic Development's agenda for that evening he did not know the specific reason that was on the agenda.

Ms. Monaghan asked if the board had any communication with United Solar Works prior to the ordinance being adopted in 2010.

The response was "no."

Mr. Shoultz moved to close the general public portion, seconded by Mr. Carter. With all members in favor, the motion was carried.

➤ **Closed Session**

For the record, Mrs. Adams announced the subject matter of the closed session was ongoing litigation which is attorney client privileged information.

Chairman Yovnello moved at 9:34 pm to adopt Resolution 2012-13 to go into a closed session for the purpose of discussing an ongoing litigation matter. Seconded by Mr. Nicholson. With all members in favor, the motion was carried.

Mr. Pearson moved at 9:55 to return to regular session, Seconded by Mr. Nicholson, with all members in favor, the motion was carried.

➤ **Adjournment:**

Mr. Nicholson moved to adjourn, Seconded by Mr. Pearson.

With all members in favor, *the motion was carried.*

Adjournment time: 9:56 pm

Respectfully submitted,



Anna Foley
Board Secretary