

BOARD OF ADJUSTMENT
OF
TOWNSHIP OF KINGWOOD



Address Reply To:

Secretary
P.O. Box 199
Baptistown, New Jersey 08803-0199

November 10, 2010
MINUTES

M.L.Haring, chairwoman, called the meeting to order, at 7:30 pm.

PRESENT:

D. Hewitt	D. Stryker
M. L. Haring	D. Pierce, atty
P. Stepanovsky	J. Laudenschach
C. McBride	B. Wilson, sec
T. Decker, eng	L. Frank
C. Newcomb, planner	

ABSENT

M. Przystup

In order to ensure full public participation at this meeting, all members of this Board, and members of the public are requested to speak only when recognized by the Chair so that there is no simultaneous discussion or over-talk, and further, all persons are requested to utilize the microphones which are provided for your use by the Township. Your cooperation is appreciated.

The 48 hour requirements of the Sunshine Law have been met. Notice of this hearing has been advertised in the Democrat. Copies of this notice were posted in the King wood Township Municipal Building and filed with the Municipal Clerk. The Board of Adjustment proceedings close at 10:30 pm.

M.L. Haring asked that we all observe a moment of silence for William Grossman, recently departed -October 15, 2010, who was a public servant and Board member since 1994.

M.L. Haring also thanked the Board members for all their support during the recent loss of her husband, Robert Haring-October 14, 2010.

RESOLUTIONS:

William & Barbara Pauch, BL 29, Lot 22

D. Hewitt made motion to approve, seconded by C. McBride. On roll call to vote.

Aye: C. McBride, J. Laudenbach, D. Hewitt,

P. Stepanovsky, D. Stryker, M.L. Haring

Absent: M. Przystup

Abstain: L. Frank

MINUTES:

C. McBride asked that the minutes be tabled until next month (December). All Board members present were in agreement.

NEW BUSINESS:

Continuation from 10/13/2010

Route 12 Properties, LLC(owner) BL12, Lots 16 & 16.01, Garden Solar,LLC (applicant), a variance from the Terms of Articles & Sections – VC-2 Zone District of the Zoning Ordinance of Kingwood Township so as to permit the principal use for a solar energy farm.

M.L. Haring and P. Stepanovsky both recused themselves.

Walter Wilson, attorney for the applicants, is ready to proceed where they left off last month.

Walter Wilson noted that there is a new Board member that was not present last month and also noted that the Board is missing one Board member that was present last month.

D. Pierce noted that Mr. Frank has listened to the tapes and has signed a certification and is eligible to participate.

D. Pierce, for the record, reminded everyone that Mr. Chmielak, Mr. Kishinebsy and Mr. Fratus are still under oath.

David Hewitt, acting chairman, asked that everyone use the microphones.

Walter Wilson informed the Board that they have shared with the Attorney and engineer revised plans.

James Chmielak, Jr. stated that since the meeting last month they have prepared a **Revised Site Plan for Block 12, Lot 16 & 16.01, dated 11-10-2010 and have marked this Exhibit A-4.** This is a re-iteration of the overall site plan - the color rendering that they had prepared and presented at the last meeting. The plan basically includes concerns regarding clarity relative to the landscape buffer provisions on the property and, in addition to that pursuant to the townships moving forward with the new proposed ordinance for solar facilities, they re-visited the plan and provided some updates, which includes additional landscaping in order to provide additional buffering. In terms of referring to **A-4**, the northerly portion of the property along Route 12, that's the basic frontage of the property to the north and the solar facility is located within the boundary of the fence area. This plan includes specification-they have prepared what they think is a really good landscaping plan along the perimeter of the property, along the frontage of Route 12, as well as wrapping (here) on the west side of the subject property, along the boundary, and the landscape buffer they're proposing here basically follows the overall intent of the new ordinance which focuses plantings of 3 major types- conifer plantings, evergreens throughout the seasons, 2 rows of evergreen plantings just outside the fence, 15 feet on center and staggered, as well as, deciduous plantings at 40 feet on center on the outside perimeter of the landscape buffer and they also provided understory shrub provisions which consist of native shrubs. The view scape from Route 12, keeping in mind two things - the travel speed along Route 12 is a higher speed along the roadway (40 to 50-55 miles an hour), in addition to that there is existing buffering that they will be maintaining, trees consisting of pin oak , deciduous trees, eastern red cedar along the frontage and they're adding additional landscape buffer. Basically, it's their opinion that there will be no visual impact from Route 12. They have prepared a second exhibit which is a rendering showing what the buffer will look like once it's established. Submitted **-Exhibit A-5-2 pages -Existing and Rendered** which shows a photo of the existing frontage along the property, which was taken in the vicinity of the NW corner with the view on to subject property from Route 12. They chose a

location where there is less existing vegetation noting that the remaining frontage has more vegetation. The photo on top is the existing condition and on page 2- the photo indicates what the view will be in 5 years once the vegetation has been established. They feel there will be no visual impact, from the solar array facility, with this planting buffer.

James Chmielak, Jr noted that secondly this particular project administratively consists of 2 Lots- Lot 16 (eastern portion of the property) and Lot 16.01 (western portion of the property). This property was previously sub-divided by the property owner and the project includes utilization of both properties for the solar array installation. The property will be leased and the property owner will maintain ownership of the 2 subject properties. Administratively given the fact that they were sub-divided there is an existing lot line and since the proposed panels will be located on both lots the application includes relief from the side yard set back -the panels cross the property line. They are requesting a C variance- a bulk variance which is administrative in nature and would be for the life of the project for the existence of during the period that the proposed improvements exist on the property that relief is being requested. In terms of detriments or negative impact from this relief that's being requested- there's really is no practical negative impact. The benefits would include achieving mega watt output for the subject property which is 3 mega watts and that is the main thrust for the request for the relief. They provided prior testimony relative to location of the panels, compliance with the front, side and rear yard set back, all of which comply, gone through the proposed ordinance and substantially comply with the intended requirements or conditional use provisions for that ordinance, and in terms of the variance relief for the inherently beneficial use, they reviewed the Township Ordinance and the Township Master Plan, made site visits to the property, reviewed the permitted uses in the VC-2 Zone (stated uses). They note that in terms of the inherently beneficial use criteria, for the variance, that the NJ courts have indicated that the applicant should address and the Board should consider negative criteria in a four (4) part balancing context. 1.) Identify the public interest that is at stake recognizing that some uses are more compelling than other uses. 2.) The project will create clean energy generation to support achieving clean renewable energy by 2026. 3.) Furthers the MLUL purpose which promotes development of renewable energy. 4.) Solar facilities are considered permitted uses in other industrial zones. Overall they feel the public interest would be furthered by this project. In terms of evaluating and identifying any detrimental effects caused by the variance-they reviewed the performance standards relative to light, heat, no electrical interference with cell phones, internet connections, other electronic equipment,

glare (no substantial glare impact), traffic (low intensity use of the property). The site visits will be conducted weekly, monthly, semi-annually and annually for various preventive maintenance procedures. They feel that approving this solar farm use will not result in a substantial detriment to the public good and is consistent with the environmental design standards of the ordinance and Master Plan and furthers the Master Plan intent for sustainability. They reviewed the Conservation Plan element of October 2008 and have identified two different things, this project would promote and enhance renewable energy sources and the goal of sustainability to improve the townships environmental, social and economic sustainability, by selecting appropriate sites for development, improving air quality and energy efficiency and encouraging the use of renewable resources and improving accessibility to green power. This use is a very low intensity and have provided the necessary landscape buffering, even around the perimeter of the property to provide a positive aesthetic view from the areas of concern. This project complies with the townships new solar ordinance. The conditional use standards would apply for this application (VC-2 Zone). One of the major design elements of this project was to minimize overall environmental disturbance, no substantial earth moving proposed, the Lot is greater than 20 acres, non evasive installation measures which include the installation of ground mounted panels on driven piers, have performed a Geo technical investigation on the site which does support the use of these less evasive measures and during the installation process and based upon actual conditions that are encountered in the field there maybe instances and localized areas on the property, in limited areas, where the use of concrete footings here or there maybe necessary. This could be a condition as approved by the Boards engineer. The installation does comply with all principle building set backs. They provided a very good landscape buffering plan from Route 12, as well as adjacent properties. The applicant is prepared to submit to the Board a maintenance plan (as condition of approval). They have included shade tolerant grasses. They have performed a Storm Water Management Analysis. The site will be secured with a security fence along the entire perimeter of the subject property and will be locked at all times. The remaining areas, as shown on the plan, would be established and over seeded with native vegetation and maintained as native meadows. No advertising signs are proposed. The maximum height is complied with relative to 12 feet – they are proposing 10 feet and would comply with the wind design criteria as well. The DE-commission plan would be submitted to the Board, as a condition of approval, in the event that the site may be DE-commissioned. No substantial impact to the public good. The C & D variance is consistent with whats cited in the Master Plan. No substantial detriment in the granting of this variance.

Walter Wilson, attorney, submitted **Exhibit A-6 -Lease term which highlights the security deposit and restoration.**

Last month there were questions relating to lighting during the night time hours.

Jan Kishenebsky informed that the solar field will be connected to the electric grid and that connection allows electricity to go both ways and when the solar is not producing it will come from the local provider. There is no dusk to dawn lighting. No permanent lights are needed.

Lee Frank, Board Member, voiced his concern regarding the Fire Department being able to get a truck on the site in case of an emergency.

James Chmielak, Jr. stated that he feels that there is sufficient access for an emergency vehicle to being able to access the property. They would have no problem with submitting plans to the Fire Department for their review and their concurrence that they would be comfortable with that access. They would be willing to make minor adjustments if necessary.

Jan Kishinebsky stated that there are 2 different ways of addressing fire hazard - passive and active measures. This project deploys very significant passive measures. Active measures are really not needed. They will use flame retardant materials all over to the maximum degree possible, however, there will be no asbestos used. All materials that they use will be natural or synthetic fibers with a long term resistance to sunlight, moisture, oil and chemicals. They will be rodent proof and resistant to abrasion, will have good flexibility and will neither support or propagate fire. PVC installation will not be used. All cables will be flame tested and all cables will be placed inside the conduit which helps to eliminate fire propagation altogether. All the transformers on site will be dry transformers. They'll be air cooled, no oil and no fire hazard related to oil present. That is why they believe this very comprehensive set of passive measures opt the need for any additional active measures. They believe that the firefighters don't need to do anything with the solar panels themselves because it's impossible to ignite them and it doesn't matter how much you try. They need to have access to the major areas of electrical equipment on site.

Lee Frank is not concerned about their equipment, he's concerned about a basic field fire because it is a hay field, basically that's what it's going to be and the Fire Dept being able to access there and get in and deal with the field fire or even the ambulance being able to get in and take somebody out. It's strictly the Fire Dept

and the Rescue Squad that would have to deal with anything that happens there.

Jan Kishinebsky stated that's correct but the site will be operated unmanned and they will have sufficient access for the fire engines to get to all the critical areas within the site.

Lee Frank he still would like if we could have a word with someone in the Fire Department to see if their up to snuff with this and have their opinion on it.

Tom Decker, engineer, noted that they need to soften up the 90degree bends and looking at the 2nd inverter pad he asked if that could be switched to the upper side of the access way.

James Chmielak, Jr. noted that minor adjustments can be made.

Tom Decker, engineer, noted that it might be tough for even their maintenance vehicles.

Charles McBride noted that the question here is for fire prevention or fire elimination in the field itself-isn't there a buffer between the fence and the array and also between the fence and the next layer of vegetation on the outside, where if a fire truck is going to run over it's going to go on field and be able to go around the array.

James Chmielak, Jr. said that yes they are providing an access area around the entire perimeter of the array field-20 foot wide access area which would be inside the fence and also on the south side and the west side would be access in a meadow grass area for additional access.

Charles McBride asked James Chmielak, Jr. to remind him again what the lay of the land is and was told that it's moderately sloped across the property so access is very well negotiated in the area.

D. Stryker asked how deep the underground conduit is and was told by James Chmielak, Jr that it would be a minimum of 18 inches or deeper to comply with the code requirement.

Walter Wilson made a comment with respect to the fire, on another site they received preliminary site plan approval from the Planning Board and they advised that they would be providing a local or regionally based brief training session for

the Fire Department.

David Pierce had a question that they indicated that allowing them to install the panels in the side yard setback would allow them to reach the 3 mega watt capacity-what capacity would they be able to generate if the side yard was enforced ?

James Chmielak, Jr., one and a half mega watts -maybe closer to two.

C. Newcomb, planner, they talked about the increase of landscaping would they convert that to actual numbers.

James Chmielak, Jr., stated he could provide that-he has the counts with him this evening.

Walter Wilson noted that one of the conditions that they would accept, as a condition of approval, is a post construction view scape walk through. with the engineer and planner.

C. Newcomb noted the mention earlier of a plaque and was told by James Chmielak, Jr. that it would have the owner, operator, person responsible for maintenance, and a contact number.

C. Newcomb stated that this should be submitted to Tom Decker for his review.

Walter Wilson will provide a two year maintenance guarantee for replacement of trees that die-the Planning Board asked that it be for 5 years.

D. Pierce noted that at the Planning Board meeting last night there was discussion related to the noise level at the property line.

James Chmielak, Jr. stated that the applicant has performed an analysis any noise element associated with the installation and if you were concerned about, this is a very passive low intensity use but if you were concerned about noise the place that you would look would be to the inverter locations, in the central portion of the property, and they have performed an analysis to confirm the fact that there will be no acoustical impact as a result of this project at all at any of the property lines which basically means that the sound that exists there today, will exist in the same condition when this project is built-no increase in ambient sound levels. The inverter location the predominant source of noise is the exhaust fan which moves

warm air out of the enclosure unit. If you were standing next to it you would hear a low hum.

Walter Wilson asked John Chmielak, Jr. what the noise would be like if a bearing started to go out on the fan and would he comment on that. John Chmielak, Jr. stated that it would never get to that condition because of preventative maintenance procedures and it's monitored 24/7. Any decrease in efficiency would be detected automatically in the sensing equipment within the system and would likely be addressed before it happens.

D. Stryker asked if the noise would be 24/7 or just during the day.

John Chmielak stated that the fan operation at the inverter would be just during the day when the system is on. The system will operate from dawn to dusk and the system would be non operational in evening and night hours.

D. Pierce, for the record, has marked the plant list **Exhibit A-7**.

Tom Decker asked that the applicant provide him a copy of the geotechnical study.

Walter Wilson also stated that they will provide a DE-commissioning plan to the Board. (required in the ordinance)

D. Pierce also noted, for the record, that it's a requirement in the lease terms.

Are there any property owners within 200 feet that have testimony? None

Any questions from the public about this project? None

The hearing is closed and the Board will deliberate.

C. McBride is impressed by the plans and feels they have done a good job on this and is on the opposite side and feels there should be less vegetation because he thinks we should be proud of it and let people see it.

J. Laudenbach also likes it and he likes that it is screened and feels the land could be used in a lot of different ways and feels this is a good choice rather than a strip mall and don't see any need for the setback between the 2 lots. He likes the whole overall project.

Lee Frank likes the project too and feels they're going over kill with the plantings and he's more concerned about safety, it's an unmanned site and going to be in charge of that place is Kingwood Fire Dept. and Kingwood Rescue, if something happens, nobody else and don't have a key to the front door and will be calling a cell phone number to get in there. Walter Wilson stated that they will provide a key to both the Fire Department and Rescue Squad and would meet with both.. Lee Frank likes the project.

D. Stryker feels that they did a very good job presenting this, a lot of detail was presented. She is more concerned with the visual impact and hopes it's going to be maintained. She has no problem with this project.

C. Newcomb commented that their only concern was the location of it.

D. Hewitt agrees with the program and echoes the sentiments of all the other members.

D. Pierce informed the Board that the 1st action they need to take is to grant a the waiver from any parking and loading requirements.

Lee Frank made a motion to grant a waiver from the parking and loading requirements, seconded by C. McBride. On roll call to vote.

**Aye: L. Frank, C. McBride J. Laudенbach
D. Hewitt, D. Stryker**

Absent: M. Przystup

Abstain: P. Stepanovsky, M.L. Haring

D. Pierce noted that next would be a motion for approval for the variances and preliminary site plan, use variance for the proposed use, as well as side yard set back variances for Lots 16 & 16.01, limited to a variance for this particular use only and subject to a number of conditions:

1. Submission of a maintenance plan.
2. Submission of a 5 yr. guarantee for replacement of landscaping.
3. Submission of plans revised to include notes on maintenance.
4. Notes to include Board engineer approval for the use of concrete.
5. Reference to the landscaping plan.
6. Notes on the plan that all utility lines are underground.
7. Pre-construction conference with the Board engineer.
8. Specification be submitted for ground cover to be addressed.

9. Ground area not be covered with stone.
10. Prohibiting use of battery, with the exception of battery powered computer such as laptop.
11. Submission of a sign detail for the plaque.
12. Submission of a revised landscape plan.
13. Submission of a De-commissioned plan.
14. 48 hr notice to Board engineer before construction.
15. HCSCD approval.
16. HCPB approval.
17. Letter from DEP.
18. No display of advertising.
19. Height limit to 12 feet.
20. Submission of plans to Fire Dept for approval of access.
21. Installation of plaque at entrance - with contact information.
22. Subject to a post construction inspection of the landscaping.
23. Subject to a post construction inspection of vegetative ground cover.
24. No night time maintenance except for emergency.
25. Submission of a Geo-technical sight review.
26. A site plan shall be submitted to the KTVFD for their review and approval and shall be modified as necessary to comply with the requirements of the KTVFD, and training will be provided to the Fire Dept before the facility becomes operational.
27. Use of concrete piers only if driven piers are not possible.
28. Receive access permit from NJDOT

C. McBride questioned the one condition referring to the prohibiting of battery usage and it was clarified by D. Pierce that that condition refers to the storage of power and not meant for computer and monitoring equipment.

C. McBride moved to approve the pre-liminary site plan, use variance and side yard set back with conditions David Pierce noted, seconded by J. Laudenbach. On roll call to vote.

**Aye: L. Frank, C. McBride, J. Laudenbach,
Hewitt, D. Stryker**

Absent: M. Przystup

Abstain: M.L. Haring, P. Stepanovsky

COMMUNICATIONS/REPORTS:

King wood Township minutes 9/7/2010

Rutgers Continuing Studies – Fall 2010
NJPO – 2010 Mandatory Training Program

Budget for 2011- after discussion it was agreed by all to ask for the same amount as last year-\$7,000. D. Hewitt made the motion, seconded by J. Laudenbach. On roll call to vote.

**Aye: L. Frank, C. McBride, J.Laudenbach,
D. Hewitt, P. Stepanovsky, D. Stryker,
M.L. Haring**
Absent: M. Przystup
Abstain: None

Hunterdon County Planning Board Breakfast to talk on Solar Farms being held on 12/2/2010, at the Route 12 County Complex in Flemington ,from 7:30 am – 9:00 am in the Assembly Room in Building 1.

Resolution needs to be signed to approve the hiring of Tom Decker (Van Cleef Engineering) as the Board of Adjustment engineer for the year 2010.

C. McBride moved to accept Tom Decker from Van Cleef Engineering Associates as the Boards engineer for the year 2010 and the chairperson be authorized to sign the contract, seconded by D. Hewitt. On roll call to vote.

**Aye: C. McBride, J. Laudenbach,
D. Hewitt, P. Stepanovsky, D. Stryker,
M.L.Haring**
Absent: M. Przystup
Abstain: L. Frank

OPEN TO PUBLIC:
No comments.

ADJOURNMENT:

D. Hewitt moved to adjourn, seconded by D. Stryker. The meeting adjourned at 8:45 pm. All in favor.

**Barbara Wilson
Secretary
Board of Adjustment
King wood Township**