

**WEST AMWELL TOWNSHIP
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
February 22, 2011**

The West Amwell Township Zoning Board of Adjustment regular meeting was called to order at 7:30 PM by Chairman Fulper.

The following statement of compliance with the Open Public Meetings Law as listed on the meeting agenda was summarized by Chairman Fulper: This meeting is called pursuant to the provisions of the Open Public meetings Law. This meeting was included in a list of meetings transmitted to the Hunterdon County Democrat and Trenton Times on January 10, 2011. Notice has been posted accordingly and a copy of this notice is available to the public and is on file in the Zoning Board of Adjustment Office.

The meeting was recorded via digital recording system and copy of CD is on file in the Zoning Board of Adjustment Office.

Chairman Fulper led the Pledge of Allegiance to the American Flag.

ATTENDANCE/ROLL CALL:

Roll call on attendance: John Cronce-present, Brian Fitting-present, Ruth Hall-present, Dave Sanzalone-present, John Dale-present, John Ashton (ALT. #1)-present, John Hoff (ALT. #2)-present, Robert Fulper-present.

Absent: Romano

Professionals Present: Stewart Palilonis, Board Attorney; Tom Decker, Board Engineer

PRESENTATION OF MINUTES:

Special/Reorganization Meeting Minutes – January 6, 2011 – Motion was made by Hoff with a second by Dale for approval of the minutes with minor corrections/additions as discussed. Roll call, Cronce- abstain, Fitting- abstain, Hall-aye, Sanzalone-aye, Dale-aye, Ashton (ALT. #1)-aye, Hoff (ALT. #2)- aye, Fulper-aye. Motion carried

Regular Meeting Minutes – January 25, 2011 – Motion was made by Ashton with a second by Fitting for approval of the minutes with corrections to minor typographical errors, deletion, and confirmation of witness statements (listen to recording) as written. Roll call, Cronce-aye, Fitting-aye, Hall-aye, Sanzalone-aye, Dale-abstain, Ashton (ALT. #1)-aye, Hoff (ALT. #2)- aye, Fulper-aye. Motion carried

RESOLUTION(S) OF APPROVAL:

Resolution 2011-08 – Quick Chek Corporation– Block 23 Lot 1 – Route 31 & Harbourton Rd.- Sign Variance - Resolution as prepared by Attorney Palilonis was distributed. Motion was made by Hall with a second by Cronce for approval of the resolution contingent upon corrections as discussed. Roll call: Cronce-aye, Fitting-aye, Hall-aye, Sanzalone-aye, Ashton (Alt.1)-aye, Hoff (Alt.#2)-aye, Fulper-aye. Motion carried.

APPLICATION(S):

Continued Public Hearing: Green Power of West Amwell - Block 3 Lot 12/14 – Route 179 -Use and Bulk Variance Application/Site Plan Application (7:59PM)

Attorney Valenti on behalf of the applicant stated they left off with Board concluding questioning of the engineer.

Witness #1 - Stuart Challoner P.E

Chairman Fulper opened questions to the public:

Eric Goldberg – attorney representing a group of residents - questioned whether the use would be allowed on any property in the township based on Mr. Challoner's interpretation of it being a public utility and a public utility is allowed on any property in the township, Mr. Challoner responded that it would as the ordinance is written. Mr. Goldberg stated, at a prior hearing Mr. Challoner testified the intent of the ordinance wasn't to allow this on every property but believes that is what the ordinance does. Mr. Challoner responded the ordinance doesn't eliminate solar farms as defined, they did envision substations, and other types of unmanned public utilities; stating this is an unmanned public utility, and agreed it would be allowed based on the ordinance.

Attorney Palilonis questioned whether Mr. Challoner was providing his professional opinion as a Planner or Engineer, Mr. Challoner stated as an Engineer. Attorney Palilonis stated that his opinion as an Engineer is irrelevant. Mr. Valenti responded Mr. Challoner was previously qualified as an expert Engineer and an expert Planner, stating Mr. Challoner provided testimony throughout the hearing as both an Engineer and Planner.

Mr. Goldberg questioned whether the intent of this ordinance was to allow every solar farm on every property in the township by conditional use, referring to the ordinance as it stands today, Mr. Challoner responded that it doesn't outline uses for solar but it doesn't preclude uses for solar. It permits public utilities; whether or not this meets the definition of public utilities, it is creating the energy for public use.

Mr. Challoner responded, the solar farm proposed is a very benign use, stating the government recognizes it is a beneficial use, farming activities can continue, also keeping in character with the rural character of the township. In response, Mr. Challoner stated the proposed Renewable Energy ordinance, Exhibit G-8, allows solar farms in various zoning districts as permitted uses and conditional uses in others.

In response, Mr. Challoner stated that he was unaware of the distinction between a public utility and a generator of power. Mr. Challoner stated his definition of a public utility is any utility used for the public's good, not just electric.

Mr. Goldberg questioned whether an electric company like PSE&G or Connective was a public utility, Mr. Challoner responded yes, adding in this case the applicant doesn't receive a bill; it supplies power to the grid.

Mr. Goldberg referenced NJSA 48:3-51, providing a definition of electric power generator. Mr. Challoner responded, the applicant does qualify under the definition. In response to questioning, Mr. Challoner offered his opinion that something can be a

generator of power and would be defined a public utility, stating that he was unaware of any entities that have been classified as both a power generator and a public utility.

Mr. Goldberg referenced section 109-97(D) of the ordinance, questioning if this facility has to be located at this particular property, Mr. Challoner stated the government has created this use as a beneficial use, and encourages this use on this type of property. It is necessary that the grid supplies power from facilities such as this; the property is available, the grid needs this type of development, and this property is available; making it uniquely suited. In response to questioning Mr. Challoner responded, based on his interpretation, every property in the township would satisfy this requirement, providing they met other necessary requirements.

At the request of Mr. Goldberg, Mr. Challoner reviewed the requested waivers as submitted.

Discussion ensued regarding Exhibit G-8 draft Ordinance 2, 2011. Board consensus was to allow questioning of the witness regarding draft Ordinance 2, 2011.

Mr. Goldberg cited exhibit G-8 section 3:3, questioning if the applicant complies with that requirement; Mr. Challoner responded the applicant received a waiver of the submission requirement under the current application.

Mr. Goldberg referred to section 3:5.c of exhibit G-8, questioning whether the facility as it exists fully screens the neighboring properties. Mr. Challoner responded, the ordinance states it must be adequately screened, adding that testimony was to add additional screening as determined by the Board.

Mr. Goldberg questioned whether the residents would be able to view the panels, Mr. Challoner responded, if they can view over 1000ft. through the existing farmstead, over the 35ft high barn, house, crops and hedgerow, yes they will see a portion of the panels, they will be small in scale. Adding, the immediate view scape will be the farmstead, barns, and hedgerow. Replying, yes, it can be seen from some properties in the township and no, it cannot be seen from any roadway in the township.

Mr. Challoner testified the applicant agreed to a maintenance plan pursuant to exhibit G-8 and exhibit G-9. Also stating, a decommissioning requirement would be complied with.

Mr. Goldberg questioned whether it was the intention of the applicant to comply with all of the requirements as listed in exhibit G-8 and G-9. Mr. Challoner testified that it was the intent of the applicant to comply.

Mr. Goldberg questioned, whether the new ordinance is adopted or not, does the applicant agree to comply with every requirement contained in it. Mr. Challoner stated the applicant already asked for relief for some of the requirements and would again be seeking the same relief.

Mr. Valenti questioned if, assuming this was not a public utility, was it his opinion that they should be granted a use variance. Mr. Challoner opined that this was a beneficial use for the property and therefore should be granted. Mr. Challoner added, the property is somewhat close to the sub-station for purposes of tie-in.

Mark Evanko - 25 Ferris Wheel Drive – resident represented by counsel.

Mr. Valenti related, it was previously decided not to allow those residents represented by counsel to cross-examine a witness. Chairman Fulper allowed questioning, stating to keep questions to those not addressed by the attorney.

Mr. Evanko questioned the elevation differential, stating the residents are looking down into the p.q. Mr. Challoner stated the street elevation of Ferris Wheel Dr. is almost 273ft., the property slopes from 285ft. to 255ft. From the street line of 272ft., the property goes from 285ft., which is higher than the street, to lower than the street in the back northern portion of the property. Mr. Challoner stated a sound study has not been performed. Mr. Challoner offered his professional opinion that there is no negative impact to the residential community. In response to questioning, Mr. Challoner agreed the applicant is proving more positive elements to the solar installation than negative impacts.

Herb Villa – 30 Ferris Wheel Dr. – resident represented by counsel- in response, Mr. Challoner stated there are no lights, no outbuildings, it is an unmanned facility. The property will require maintenance for grass cutting; no snow removal is required. Facilities such as this assist to stabilize the grid locally. Mr. Villa questioned whether a public utility was a place that he would receive a bill from, similar to sewer, water, propane. Mr. Challoner stated that not all public utilities generate bills to the public. Mr. Villa questioned where the sub-station was located as referred to earlier in testimony; Mr. Challoner stated it is on Rocktown-Lambertville Rd.

Mike Paciulli – 15 Ferris Wheel Dr.- not represented by counsel – In response Mr. Challoner referred to a list of trees as provided in exhibit G-3 Robinson Report. Mr. Paciulli questioned if the field can be seen, in response, Mr. Challoner stated the applicant has agreed to plant additional screening if the professionals deem necessary. Mr. Challoner responded to questioning relating to what qualifies as a negative impact to the public good, stating bright lights, noise that exceeded residential standard, pollution, excessive runoff, detriment to the stream corridor, odor. Mr. Challoner stated the site line was of original concern, the applicant decided to relocate the facility to the backfield to provide adequate screening to the residents. Barn, home, heavier group of trees along eastern portion of access road, located access road into solar field behind barn to provide screen. Stating, from 15 Ferris Wheel, you have 5 homes to look through, the barn might be 20% or 40% of the view, the panels will be quite small from the distance of 15 Ferris Wheel Dr.

Herb Villa requested to speak again, Mr. Fulper related that he is represented by counsel and has already been given the opportunity to speak.

Mr. Goldberg questioned whether the variety of trees discussed for potential buffering would be seasonal, or would they provide screening year round, Mr. Challoner related that two deciduous trees; Red Oaks and White Oaks were spring, summer and fall, and evergreens; White Pines, Norway Spruce, and Douglas Fir were for year round screening. Mr. Challoner stated the applicant is willing to work with the Board if it decides that additional screening is necessary.

Herb Villa – 30 Ferris Wheel Drive - resident represented by counsel – questioned what the definition of barely visible is; Mr. Challoner stated he was unable to define “barely visible.”

Hearing no other questions, the floor was closed to the public (9:33 PM)

(Chairman Fulper related that there would be a brief recess at this time – Meeting recessed 9:33 PM – 9:43PM)

Attorney Palilonis stated, the applicant agreed to a 45-day extension; date of expiration April 7, 2011. Mr. Valenti, attorney for the applicant confirmed agreement to the extension and expressed interest in scheduling a special meeting.

Witness #2 -Andrew Thomas, P.P – Mr. Valenti questioned whether he was able to identify specific public interest at stake with respect to our use variance. In response Mr. Thomas stated, NJ has defined the public interest and has developed standards through the NJ Energy Master Plan. Interest is to reduce energy consumption in NJ with specific goals in 2010 thru 2025 and specifically for solar, to implement the goals the State has adopted legislation with one pending currently.

Responding to questioning, Mr. Thomas stated, the applicant moving the solar panels from the lower field to the upper field mitigated any detrimental effects. Mr. Valenti questioned, from the standpoint of a planner, are there any negative impacts that this type of installation would have on property values, Mr. Thomas responded, from a planning perspective there is nothing to suggest there would be a substantial detriment to the adjacent residences. Stating that his opinion is based on, no noise from the inverters that the adjacent residents can hear, no glare, doesn't generate traffic, adequate buffers, maintaining existing farm, distance from panels to nearest residence is 1,180ft,. From a planning perspective, the location of the solar panels is in an appropriate location. Mr. Thomas offered his professional opinion that there is no detrimental effect to adjacent residences.

Mr. Thomas agreed solar is considered a benign use; no smoke, air pollution, fumes or dusts, and doesn't create storm water runoff.

Mr. Thomas opined the use variance could be granted without any substantial impairment to master plan or zoning ordinance, and without detriment to the public good.

Mr. Thomas referred to the Township Master Plan and Zoning Ordinance: Land Use and Farm Land: Sustainability. Stating, this application provides for alternative energy, location is not in an environmentally sensitive area, maintaining current farm operations, protects environmentally sensitive areas on site, Mr. Thomas offered his opinion the solar use could be granted and would not affect the adjacent uses or impair the intent of the Master Plan.

Positive criteria - Mr. Thomas stated the solar farm is an inherently beneficial use, the farmhouse, farm field, and barn are permitted uses in the RR4 zone. Citing positive criteria for two principal uses, by maintaining the residence on site promotes public safety, providing adequate light, air and open space, application provides for the protection of farmland by maintaining farm buildings, residence, and the lower farm field. Mr. Thomas offered his opinion that it meets several purposes of zoning as defined in the MLUL and the goals of the Township.

Negative criteria - Mr. Thomas related the negative criteria, stating the solar panels will be located to the rear of the property, approx. 1200ft. away from the subdivision, traffic from two uses will be minimal, and two uses will not create any noise or glare that will affect adjacent residential uses. Mr. Thomas offered his opinion that the variance for two uses could be granted without substantial detriment.

Mr. Thomas opined the request for two uses would not be inconsistent with the Master Plan and Zoning Ordinance, stating the farm has existed on the property for 25+ years, solar is particularly suitable because of relatively flat open farm fields, near power lines, the site is suitable by providing 1000ft.+ buffer.

Chairman Fulper opened questions to the public:

Eric Goldberg – Attorney for residents – in response Mr. Thomas stated that he is familiar with the State Plan (State Map of NJ), and is aware this is located in the 4b environmentally sensitive area. Mr. Thomas stated he is not an expert in determining real estate values and would not be able to provide expert testimony on values as it related to solar use next to residential uses. From a planning perspective, there is nothing to suggest it would be substantially detrimental to the adjacent residential uses. Mr. Thomas stated his opinion is based on the effect there will be no traffic, panels located 1180ft from the back of nearest home, providing buffer between residents, and the location would be appropriate for solar.

Mr. Valenti, questioned whether the solar facility would have more or less impact on the environment than farming would, Mr. Thomas opined it would be more environmentally friendly than farming; without the use of farm equipment, pesticides, and the use of water.

Mark Evanko – 25 Ferris Wheel Drive – Mr. Thomas agreed the solar panels were moved to the backfield to eliminate negative impact to the residents. Mr. Thomas stated it is difficult to see the panels from 25 Ferris Wheel Dr., referring to exhibit G-1 Rendering.

Hearing no other questions, the floor was closed to the public (10:09 PM)

Chairman Fulper stated this is the time for the public to make comments; the applicant is finished with their testimony. Attorney Palilonis stated the applicant is resting. Discussion ensued by Mr. Goldberg regarding members of the public that were unable to attend and wished to speak. Attorney Palilonis stated that witnesses for the residents would begin tonight, continuing the hearing to next month, stating anybody that wanted to be heard should be here next month.

David Anderson - Real Estate Appraiser - 3726 River Rd. Lumberville, Pa – was sworn in by Attorney Palilonis. Mr. Anderson offered his credentials and testimony experience, and was accepted as an expert witness.

Mr. Anderson discussed marketability of a house, area, and town, while relating the effect a solar farm could potentially have. Stating, location is important when looking at a house, negative factors are intensified in today's market, the solar farm will have a negative impact whether or not it is visible.

Mr. Anderson responded to questioning stating there are other locations suitable for this application.

Due to the late hour, cross-examination of this witness will begin at the next meeting of the Board.

Mr. Valenti requested a special meeting date. Mr. Goldberg expressed concern with a special meeting, stating, inappropriate when an ordinance directly affecting an application is scheduled for adoption. Chairman Fulper stated this board is not considering a special meeting in reference to whether an ordinance is being passed or not, special meeting is to help move our agenda along.

Mr. Valenti stated that they have requested a special meeting every time they have been here.

Members of the public were advised that the public hearing would be continued to a special meeting on March 7, 2011 meeting of the Board at 7:30 PM. No additional notice will be made (10:39 PM)

CORRESPONDENCE:

The following items were distributed as correspondence:

Application for Zoning Permit Denial dated 1/25/11 for **Block 8 Lot 52.03 – Route 179 – Sassman Enterprise** –Solar arrays with accessory structures -was received from Zoning Official Baldino.

Application for Zoning Permit Denial dated 1/28/11 for **Block 14.02 Lot 8 – Old York Rd – Santolini** – Accessory Structure, pole barn garage - was received from Zoning Official Baldino.

Approval of Bill List 2-22-11:

A motion by Cronce, seconded by Sanzalone to approve the vouchers for payment as listed on the 2/22/11 bill list, contingent upon availability of funds, was approved by roll call vote - all ayes

DISCUSSION:

Secretary Hall shared the sample Special Meeting Ordinances she received from NJPO. The board agreed to recommend to Clerk Olsen that we adopt “B” of the samples.

Resolution 2011-09 – 2010 ZBA Annual Report – Resolution/Annual Report of 2010 containing cases heard by the Board for 2010 was presented by Secretary Hall. The ZBA is required to file the report annually with the Township Committee and Planning Board. Motion was made by Hall with a second by Cronce to approve the resolution as presented. Motion carried on roll call vote - all ayes.

Secretary Hall distributed a copy of section 109-50 of the Code of West Amwell; *Applications and Appeals*, stating that Zoning Officer Baldino informed her it is not necessary for an applicant to submit and receive a denial from the Zoning Officer before proceeding to apply to the Zoning Board of Adjustment. It has been past practices to receive a denial from the Zoning Officer in advance of the applicant submitting an application. Attorney Palilonis stated, the applicant would receive a denial unless requesting interpretation only, Palilonis will follow up with Zoning Officer Baldino.

OPEN TO PUBLIC:

The floor was opened to the public. Hearing no comments/questions, the floor was closed.

ADJOURNMENT:

Motion was made by Cronce with a second by Hoff for adjournment at 11:03 PM. All members voted in favor of adjournment.

Respectfully submitted,

Ruth J. Hall