

**WEST AMWELL TOWNSHIP
ZONING BOARD OF ADJUSTMENT
SPECIAL MEETING**

March 7, 2011

The West Amwell Township Zoning Board of Adjustment Special 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 noticed in the March 3, 2011 edition of the Hunterdon County Democrat and transmitted to the Trenton Times. 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

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 (7:31PM)

Chairman Fulper opened cross-examination of the witness by the applicant's attorney Anthony Valenti:

David Anderson - Real Estate Appraiser – Witness presented by Mr. Goldberg. In response to questioning, Mr. Anderson stated that he last performed an appraisal approx. one week ago in the Kingwood area of Delaware Twp. In response, stating in his opinion he believes this project will have a negative impact on the property values in the proposed area of the facility. Relating that he has been to the site, attended all of the hearings, viewed the sketches and presentations, and has been to a few of the homes at different elevations.

Mr. Anderson responded that when doing an appraisal, it is based on comparatives. Mr. Valenti questioned whether comparative property prices for homes in the area of solar farms were done, Mr. Anderson stated that was difficult because he hasn't been able to find any solar farms in residential areas. Mr. Anderson agreed he hasn't been able to make any empirical data from solar farms and their impact on residential properties. Mr. Anderson testified that he has not been able to locate any specific studies relating to the impact on property values, and he has not performed any studies himself, stating that his opinion is based on other negative impact influences such as cell towers, power lines, and water towers.

Mr. Valenti questioned whether wind generated energy would be a more annoying use than solar panel farms, Mr. Anderson responded that he really couldn't say, agreeing they are larger, and are noisier. Mr. Valenti referred to a study by the US Dept. of Energy that found no appreciable evidence on impact of wind power projects and residential property values, prepared for and at the request of Office of Energy Efficiency and Renewable Energy; Mr. Anderson stated he was unaware of the study.

In response to questioning Mr. Anderson stated he didn't know anything about runoff, and couldn't see any noise coming from it, stating he thinks it is visual.

Mr. Anderson testified his opinion is based on the existence and allowance of it in a semi-rural residential area. Mr. Valenti questioned in terms of real estate appraisals, what area of negative impact would this fall under other than negative visual amenities. Mr. Anderson opined

certain towns have better marketability than others, for reasons of zoning and rural atmosphere, and now you are putting this solar panel farm in this semi-rural area, in general it would have an effect, not only to the visual but also to future buyers. Mr. Anderson stated it was based on a visual amenity as well as being a rural area, and agreed that the only impact if any could be on those residents that actually have a view of the solar field, stating perhaps 7-10 houses, adding that he had not counted them or conducted a study. Mr. Anderson stated the extent of the impact on residents would be hard to judge without doing a study.

In response to questioning, Mr. Anderson stated that he would not be able to put a number on the effect an existing resident's expectation of a view in a rural area has in determining the property value.

Mr. Valenti questioned whether there is any specific standard that Mr. Anderson is relying upon that governs the profession as a real estate appraiser, Mr. Anderson offered compared sales in proximity to power lines in Pennsylvania, and Solebury Twp., Houses near power lines and houses that are not. Mr. Valenti objected due to the numerous studies related to power lines and the serious potential health risks, stating that is why power lines have a substantial impact on property values. Mr. Valenti questioned whether solar panels could be compared to the impact of high power electricity lines, Mr. Anderson responded it was a visual seeing the wires.

Mr. Valenti questioned whether there was any empirical evidence to suggest that a buyer is going to negotiate a price based upon the presence of a solar farm, any specific evidence, Mr. Anderson stated that the market is soft, buyers are accentuating negative factors in a house to negotiate a price.

Mr. Valenti questioned whether the uses along Route 179 were evaluated, asking if the uses along Route 179 are rural in nature, stating that a commercial office complex exists at the entrance to the development. Mr. Anderson agreed that they weren't rural in nature; the office complex was existing when the development was constructed. Agreeing that when the residents bought they had a view of farmland, and then an entire sub division went in right next to them.

Mr. Anderson agreed that a potential buyer would have no guarantee the view of this property would remain the same. Agreeing the property is zoned RR-4 and could be

constructed with homes, or farmed with noisy farm equipment, use of pesticides, construction of barns, or a pig farm, agreeing that he has to consider all of the situations when appraising a property.

Mr. Goldberg - Mr. Anderson responded to questioning, stating these types of uses are not found in residential areas, therefore there are no comparable studies.

Chairman Fulper opened questions to the public of this witness:

Ron Spagnoli - 28 Ferris Wheel Dr. – Questioned the acreage required for a cell tower or water tower vs. a ten acre solar field, Mr. Anderson responded, perhaps a half acre.

Vince Ranieri – 26 Ferris Wheel Dr. -

Mr. Valenti stated objection to the resident's questions when represented by counsel, Chairman Fulper allowed the resident questions to continue, requesting that they keep their questions concise.

Mr. Ranieri questioned, referring to Exhibit G-1 *Rendering*, as an appraiser if you had a choice of buying a home with a view of a farm or a view of high power lines, which would you prefer, Mr. Anderson stated the farm.

Hearing no other questions, the floor was closed to the public of this witness: (7:59 PM).

Mr. Goldberg expressed his opinion with holding a special hearing when an ordinance that directly impacts the application is on the verge of being adopted. Chairman Fulper related that it is not atypical for this Board to have special meetings, stating the ordinance has no bearing on this Board's decision.

Russel Smith – Engineer and Planner - 1600 Reid Rd Pennington, NJ – Witness presented by Mr. Goldberg, was sworn in by Attorney Palilonis. Mr. Smith offered his credentials and testimony experience, and was accepted as an expert witness.

Mr. Smith offered the following exhibits and testimony regarding site and buffering. "Overall Site Plan" dated Nov 23, 2010 was entered into the record and marked as Exhibit O-1, and Exhibit O-2 titled *Site Distance Cross Sections*, Mr. Smith stated this shows cross sections utilizing the applicant's site plan.

Cross section #1 shows a view from Ferris Wheel Dr., cross section #2 is from a home. Cross section #1 shows two lines of site, the first is the view from Ferris Wheel Dr. looking across the valley to the solar panel field, it shows that the panels are visible from Ferris Wheel Dr. To buffer from the view of the 2nd floor of a home on Ferris Wheel Dr., a buffer 34ft. tall would be required, to buffer from the street would have to be 18ft.tall. To buffer along the hedgerow, for the 2nd floor of a home on Ferris Wheel Dr., a 19ft.tall buffer would be required and for the street view, a 15ft.tall buffer. At the fence, buffering for the 2nd floor would require 13ft.tall and 10ft.tall for street buffering. Cross section #2 looks to the lower part of the field where the field slopes; the field is about the same elevation as the development. The buffering requirements as shown in cross section #2 are; at the property line, from the 2nd floor would be 31ft.tall and 16ft.tall

from the street. At the hedgerow, from the 2nd floor would be 20ft.tall and the street 16ft.tall. At the fence from the 2nd floor would be 17ft.tall and 14ft.tall for the street.

Mr. Smith testified that as a matter of observation there is glare produced from the frames of a solar panel farm that he drives by located at the Hopewell Township Public Works facility.

Mr. Smith discussed DEP regulations governing potential improvements to the access driveway proposed within 300ft. riparian zone.

Mr. Goldberg offered "*Photos*" as Exhibit O-3 A,B,C,D, and was entered into the record.

Dan Goodman - 31 Ferris Wheel Dr., was sworn in by Attorney Palilonis. Mr. Goodman identified Exhibit O-3 A,B,C, testifying O-3,A- photos taken from the deck of Vince Ranieri, 26 Ferris Wheel Dr., O-3,B- from the 2nd floor of Ron Spagnoli, 28 Ferris Wheel Dr., O-3,C- from the 2nd floor of Mark Evanko 25 Ferris Wheel Dr. Testifying that Exhibit O-3,A, B,C was taken by Dan Goodman with a Canon EOS digital camera with standard view, no telephoto lens used, auto setting was used.

Carol Barletti-Villa 30 Ferris Wheel Dr. was sworn in by Attorney Palilonis. Mrs. Villa provided testimony regarding Exhibit O-3,D-photos taken from the 2nd floor at 30 Ferris Wheel Dr., with a Nikon L90 digital camera, no telephoto lens used.

Dan Goodman and Carol Barletti-Villa testified that the photographs were not enhanced.

Mr. Smith testified the photos were brought to show that the hedgerows are transparent and don't provide screening this time of year.

Mr. Smith discussed issues relating to items #3, #5A, #5C-3, and #6 in Exhibit G-8 proposed Renewable Energy ordinance, which the applicant testified to as complying with.

In response to questioning, Mr. Smith offered his professional opinion stating he does not believe this application is a conditional use under the current ordinance. Adding, it does not meet the public utility definition as defined in NJSA 48:3-51.3 definitions, part of the Electric Discount Energy Competition Act, and provides definitions for electric power generator and electric public utility. Mr. Smith stated the applicant had referred to a public utility definition, not electric public utility as defined in RS48:2-13, that transmits and distributes electricity to end users within the state. Stating the applicant does not propose to distribute the electricity to the end user, they propose to sell to the grid. Mr. Smith stated it is not a public utility and would not be considered one under the ordinance.

Mr. Smith referenced Section 109:67 of the ordinance, customary public utilities and public uses, may be located anywhere in the township where reasonable and necessary, providing facilities are placed within rights-of-way of existing roads and street or utility easements, Mr. Smith opined it is talking about utility poles and phone boxes and structures, it isn't talking about a solar installation.

Mr. Smith opined, based on the applicant's interpretation of the ordinance that it is a public utility, stating if that was correct, this type of use would be allowed on every piece of property in the township.

In response to questioning, Mr. Smith agreed the application doesn't satisfy all of the conditions of a conditional use. Presuming this application is for a use variance vs. a conditional use, Mr. Smith identified the four criteria of a use variance, citing Sica. Mr. Smith opined the applicant doesn't meet the various conditions and requirements of the ordinance and they don't meet the conditions of the zoning plan. Mr. Smith offered his expert professional opinion that the variances should not be granted. Mr. Smith offered his expert professional opinion that this site does not satisfy the criteria for a use variance.

Cross-examination of the witness was open to the applicant's attorney: Mr. Valenti questioned whether Exhibit O-1 views are from just a single point; Mr. Smith stated it shows from two appropriate locations, agreeing it does not reflect the same views as anywhere else along Ferris Wheel Dr. Mr. Valenti questioned what the exact percentage is that is actually visible. Cross section #1 is 60% and cross section #2 is 50%. Mr. Valenti questioned from overall project, what is the percentage; Mr. Smith approximated five acres will be visible, agreeing the depiction on Exhibit O-1 and Exhibit O-2 does not take into consideration any proposed plantings. Mr. Smith agreed on cross section #1, at the fence, the required tree height would be 13ft and 10ft., Cross section #2, 17ft. and 14ft. Mr. Valenti stated that the applicant is willing to plant whatever the professionals feel necessary.

In response to questioning, Mr. Smith stated that in his observation, he was unaware of what material the Hopewell solar facility framing was made out of, not aware if it was made of brushed aluminum as is being proposed in this application, stating that the Hopewell facility has been there for a few years. Mr. Smith agreed that he wouldn't be aware of technological changes that have been made in solar panel design because it is out of his area of expertise.

Mr. Smith agreed the four locations in which the photographs were taken reflect views solely for those four homes, those are views of the field that currently exist without any proposed plantings; with proposed plantings, those views could substantially change.

(Chairman Fulper related that there would be a brief recess at this time – Meeting recessed 9:05 PM – 9:14PM)

Chairman Fulper opened questioning to Board professionals/members:

Engineer Decker asked for clarification on the scale for Exhibit O-2; in response, Mr. Smith stated the horizontal scale 1inch =30ft. and vertical scale 1inch =10ft.

In response to Board questioning, Mr. Smith estimated the difference in elevation from top of the first panel to the top of the furthest panel for cross section #2 to be 5ft.8in., and cross section #1 to be flat.

Mr. Smith responded to Board questioning, stating cross section O-1 starts at Ferris Wheel Dr. with approx. 1000ft to the panels. Stating the panels will probably look like a dark color, not being able to pick out each panel.

In response, Mr. Smith stated, buffering by his definition would be to block the visibility of those panels from residential homes.

In response to Board questioning, Mr. Smith testified the elevation difference between bottom of front panel and top of back panel is approx. 7ft. at 1000ft.

Chairman Fulper opened questions to the public of this witness:

Hearing no questions, the floor was closed to the public of this witness: (9:29 PM).

Mr. Valenti related that he had one additional witness to present at this time.

Robert Heffernan, Real Estate Appraiser - PO Box 611 Oldwick NJ - was sworn in by Attorney Palilonis. Mr. Heffernan offered his credentials and testimony experience, and was accepted as an expert witness. Full credentials document offered and entered as Exhibit G-10.

Mr. Valenti questioned whether Mr. Heffernan agreed with prior testimony by Mr. Anderson regarding solar panels installations having a negative impact on property values in the area, Mr. Heffernan stated that he could not agree with that opinion because in the industry there is no evidence to substantiate the opinion. Stating, typically in appraisal experience and what they teach in appraisal courses, you have to study a situation that is similar, which is called a paired data analysis, where you compare a property that is affected to a similar property that is not affected to determine whether or not there is a value difference.

Mr. Heffernan testified in terms of showing negative effects on property, an appraiser would do a paired data analysis, or, if he has enough instances of property value situations, it could be done on statistical basis. There have been studies done on statistical basis and published by academic people and appraisers. There are no published studies regarding solar panel farms. Mr. Heffernan stated in experience he has done studies about things that effect property values, usually these detrimental type factors are connected to properties such as high traffic, noise, pollution, high tension power lines because of the perception of health risk, cell tower studies indicate that they have an effect on property values. When looking at what solar panels are established to do, there is no noise, no traffic, no runoff created, they are typically very benign. It is hard to understand how one substantiates a loss in value without being able to produce a study that shows an effect on value.

Mr. Heffernan added that having a pleasant view from your property can be beneficial to the value but it is not something that is guaranteed, it is not something that comes inherently with the property when you buy it, views can change. This property can support over 600,000sq.ft.of coverage based on the ordinance, a significant amount of buildings and structures could be placed on that property legally, like greenhouses, farm building's, that would affect the view that the property owners now have. The question becomes, is what is being done substantially different from what could legally be done on the property in terms of coverage and structures, it seems to be less benign then some of the structures this property could support.

Eric Goldberg requested an expert opinion regarding, if you have two similarly situated homes, one overlooking the solar farm array, and one that doesn't overlook the solar

farm array, all factors are the same, the only distinction is the solar farm, would there be a difference in value of the two homes. Mr. Heffernan stated that he could not give an expert opinion because there is nothing to study to quantify it.

Chairman Fulper opened questions to the public of this witness:

Mark Evanko, 25 Ferris Wheel Dr. - do you agree the land values will go up, stay the same or go down, Mr. Heffernan opined there would be no effect.

Jill Myers, 11 Big Top – how is evidence built to do the studies, Mr. Heffernan responded, there has to be an existence of the facilities and there has to be a study done of the properties associated with those two potentials.

Howard Young, 33 Music Mountain Blvd. – in your experience do you think other facilities have had an effect on market value, Mr. Heffernan stated that he is unable to answer because there are no studies to base that information on. An appraiser cannot make an opinion of value without support of that opinion.

Mike Paciulli, 15 Ferris Wheel Dr. - do you have any familiarity with NJ State tax law, real estate tax law in connections with photovoltaic systems, Mr. Heffernan stated that he is not aware of any rulings.

Are you familiar with NJ State tax law associated with tax assessments for businesses that install photovoltaic systems, do you have a case study for every appraisal you do, are you saying there is no case study for two homes next to each other where one is maintained and one is not. Mr. Heffernan responded that he testified to the paired data analysis, which is what is done in order to determine differences in properties, an appraiser is required to do that . A case study isn't necessary.

Hearing no questions, the floor was closed to the public for this witness: (10:03 PM).

Chairman Fulper opened comments to the public:

Andy Zalescik, 24 Music Mountain Blvd. – was sworn in by Attorney Palilonis – Mr. Zalescik stated he received proper notice and is not represented by counsel. Mr. Zalescik commented on the decommission plan, proposing that a notice of termination of renewal be sent from the power company (JCP&L) notifying the municipality if the facility fails to renew. Mr. Zalescik questioned the use of the proposed solar panels, while suggesting a PV tube system be considered. Additionally, Mr. Zalescik expressed concern with the solar expert being a 1/3 equity owner in the application, stating the business model doesn't take into consideration aesthetics, he wants to provide the lowest cost, most effective choice of technology and stated that he doesn't understand why we haven't been more diligent in asking for comparing technologies.

Ron Tucker, 22 Ferris Wheel Dr.- was sworn in by Attorney Palilonis – Mr. Tucker expressed concern with the zoning for the area, if the zoning changes other businesses will come in. Attorney Palilonis related it will not change the zoning.

Dan Goodman, 31 Ferris Wheel Dr.- previously sworn – expressed concern with property values and referred to a recent property sale in the development that wasn't viewing the p.q., as being below market value, stating a home overlooking the solar

facility would not sell for the same as one not overlooking the facility. Mr. Goodman related that all residents in the neighborhood plan to file tax appeals, resulting in township revenue decline. Mr. Goodman stated he prefers the Board decline the application, however, if it is approved, he strongly urges to do so with the conditions in the pending ordinance.

Howard Young, 33 Music Mountain Blvd - was sworn in by Attorney Palilonis – stated as a Realtor they are requested to show properties with the beautiful view. Stating, recently in the development there has been some new houses, perhaps worth \$150,000 more than those properties that have been referred to during this hearing, these new constructions undoubtedly have an effect on this neighborhood.

Mark Evanko, 25 Ferris Wheel Dr.- was sworn in by Attorney Palilonis - referred to NJ Legislator amending MLUL NJSA 40:55D to permit renewable energy facilities in industrial zones on 20 acres or larger, stating, that is what NJ amended. Mr. Evanko commended the West Amwell Planning Board and Environmental Commission for determining the need to address and regulate the use and placement of renewable energy facilities and structures. Mr. Evanko requested the application be rejected.

Vince Ranieri, 26 Ferris Wheel Dr. - was sworn in by Attorney Palilonis – Mr. Ranieri read a letter composed by Vince and Joann Ranieri, requesting the application be denied.

Scott Buchanan, 13 Terrell Rd.- was sworn in by Attorney Palilonis – expressed concern with installing a wholesale electric generating facility in a residential neighborhood. Mr. Buchanan referenced MLUL NJSA 40:55D-70d, stating, installing an industrial power complex in an area zoned rural residential does substantially impair the intent of the zone plan and does provide substantial detriment to the public good, for these reasons I expect the Zoning Board to act in the interest of the public and deny the request.

Ron Spagnoli, 28 Ferris Wheel Dr. - was sworn in by Attorney Palilonis – expressed concern with view not only from their back yards but when walking around the neighborhood. In addition, expressing concern with the noise, stating it is windy and noise travels. Also concerned with the environment and what would happen to the animals on the proposed 10 acre site.

Michele Paventi, 23 Rose Run - was sworn in by Attorney Palilonis – stated she does not live in the development. Expressed that she had an appraisal done of her home in November, prior to the \$508,000 sale in the development, stating they used that sale for her appraisal and her house dropped \$165,000 in 4 years. Stating it affects everybody, not just that development.

Ian Wiggs, 32 Ferris Wheel Dr. - was sworn in by Attorney Palilonis – expressed concern with other solar applications coming forward if this one is approved, would they have to go through the same process. Chairman Fulper related that every application is heard on its own merits and our decision on this case will have no effect on other cases to come before this Board or other Boards in the township. Attorney Palilonis related that we have the ordinance in place.

Mike Paciulli, 15 Ferris Wheel Dr. - was sworn in by Attorney Palilonis – expressed concern with the negative criteria, questioning if this one installation provides any

general public good that offsets or negates any potential negative benefit to the general public.

Eric Swayhoover, 14 Ferris Wheel Dr. - was sworn in by Attorney Palilonis – related that the area is rural and hopes it remains that way.

Chairman Fulper related this would be the last time the public would be able to comment on this application. Hearing no additional comments, the floor was closed to the public: (10:45 PM).

Members of the public were advised that the public hearing would be continued to the March 22, 2011 meeting of the Board at 7:30 PM. No additional notice will be made (10:49 PM)

OPEN TO PUBLIC:

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

ADJOURNMENT:

Motion was made by Sanzalone with a second by Dale for adjournment at 10:49 PM. All members voted in favor of adjournment.

Respectfully submitted,

Ruth J. Hall