

**WEST AMWELL TOWNSHIP**  
**ZONING BOARD OF ADJUSTMENT**  
**Regular Meeting**  
**November 23, 2010**

The West Amwell Township Zoning Board of Adjustment regular meeting was called to order at 7:33 PM by Chairman Cronce.

The following statement of compliance with the Open Public Meetings Law as listed on the meeting agenda was summarized by Chairman Cronce: 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 28, 2010. 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 Cronce led the Pledge of Allegiance to the American Flag.

**ATTENDANCE/ROLL CALL:**

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

*Chairman Cronce related that there would be a change in the agenda order of business, and that there would be a time limit on the meeting; the meeting would end at 10:30.*

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

**PRESENTATION OF MINUTES:**

Regular Meeting Minutes – October 26, 2010 – Motion was made by Fulper with a second by Fitting for approval of the minutes contingent upon minor typographical errors and confirmation of witness statements (listen to recording) as written. Roll call: Fulper-aye, Fitting-aye, Romano-aye, Sanzalone-aye, Dale-abstain, Hall-aye, Cronce - aye. Motion carried

Andy Zalescik- 24 Music Mountain Boulevard- questioned how minutes could be put into public record on a fault notice application. Attorney Palilonis related that the meeting happened and there has to be an official record of it. Attorney Palilonis instructed the Board to disregard all testimony that occurred during the

October 26, 2010 Green Power hearing, The Green Power application would start over at tonight's meeting.

Special Meeting Minutes – November 4, 2010 - Motion was made by Cronic with a second by Hall for approval of the minute's contingent upon correction to "special meeting". Motion carried all ayes.

**APPLICATION(S):**

**Public Hearing: East Coast Colorants, LLC d/b/a Breen Color Concentrates -Block 8 Lot 23.03 - Kari Dr.** - Use and Bulk Variance Application/Site Plan Application - Completeness Determination/Public Hearing (7:48)

Steven Gruenberg, attorney for the applicant, appeared on behalf of the applicant, Breen Color Concentrates, 11 Kari Drive; Block 8 Lot 23.03. An overview of the project was related as follows: Pre-existing non-conforming industrial manufacturing use, in 2003 the property was rezoned into highway commercial zone. The applicant seeks to expand the buildings on the site to include a 3000 square foot addition to building number two, the construction of a one story 9600 square foot building on number four, a one story 12,000 square foot building number five.

Applicant is seeking the following relief: d-2 use variance to permit the expansion of a pre-existing non-conforming use, d-4 variance for floor area ratio of 15.4 were 15% maximum is permitted, "c" variance for rear yard of 30 feet were 100 feet is required and preliminary and final site plan approval.

Engineer Tom Decker of Van Cleef Engineering was present on behalf of the Board. Completeness and Technical Review #1 letter dated October 21, 2010, was received and distributed. Attorney Gruenberg provided an overview of the outstanding checklist items that have been provided since the issuance of the report.

Item(s): D-has been provided, G-applicant needs a copy of prior resolutions, and H-already submitted. M and N requesting waivers.

The following checklist waiver requests were addressed:

Environmental Impact Statement/ Natural Resource Inventory – Applicant's engineer stated that all natural resources are to the east and not affected.

LOI/Wetlands –Eric Rupnarian P.E. of Goldenbaum Baill Associates, Lambertville NJ, appeared on behalf of the applicant. Applicant's engineer testified to the potential areas for wetlands in the east of the subject property. Existing site area of disturbances is to the rear of the site. To the west is completely encumbered by wetlands. Given those particular constraints, the only

option was to develop along the rear of the property. the only potential environmental encumbrance is a tree line along the common property line with the Breen-site and also lands that are presently owned by West Amwell Township. The buildings have been sited as to minimize any tree removal, have done an in-field study and found nothing of any environmental significance. Engineer Decker related; wetlands and stream are to the east, and appears that they are beyond any buffer. Any trees to the back will be identified and provided to the office.

Soil Removal- Applicant's attorney testified that due to the topography, it is not possible to construct the new buildings at the same elevation as the current buildings. Every effort will be made to disburse the excess fill on site, or, if taken off site, will attempt to relocate within the township.

Engineer Decker offered that approval of the waiver requests be considered.

Motion for completeness was made by Romano with a second by Dale for the waiver of Checklist items: M & N required documents, 16b, 23 B, 42, 17 E & F. Roll call: Fulper-aye, Fitting-aye, Romano-aye, Sanzalone-aye, Dale-aye, Hall-aye, Cronce-aye. Motion carried.

Members of the public were advised that the public hearing would be continued to the December 28, 2010 meeting of the Board at 7:30 PM. No additional notice will be made (8:07 PM)

*(Chairman Cronce related that there would be a change in the agenda order of business)*

**Public Hearing: Quick Chek Corporation - Block 23 Lot 1 - Route 31 & Harbourton Rd - Variance Request- Sign - Completeness Determination/Public Hearing (8:08PM)**

Mary Elizabeth Warner, Esq. was present on behalf of the applicant. An overview of the project was related as follows: Application is to rebrand signs and also seeking LED light at our already located Quick Chek. Many of the variances are to mounted already existing signs at the store.

Engineer Tom Decker of Van Cleef Engineering was present on behalf of the Board.

Completeness and Zoning Review #1 letter dated November 19, 2010, was received and distributed. Engineer Decker related that all outstanding items had been addressed since the issuance of the report.

Motion for completeness was made by Sanzalone with a second by Romano. Roll call: Fulper-aye, Fitting-aye, Romano-aye, Sanzalone-aye, Dale-aye, Hall-aye, Cronce - aye. Motion carried.

Notice was amended to include variances for mounted signs at site. Proof of service were reviewed by Attorney Palilonis, no determination was made at this time. Due to the unavailability of Applicant's Attorney for the December meeting, it was requested that they be carried to the public hearing on January 25, 2011 meeting of the Board at 7:30 PM due to time constraints of this evening's meeting. Members of the public were advised of the continuance of the meeting; no additional notice will be made if the notice is in order, if it's not in order, notice will be made accordingly. (8:13PM)

*Attorney Palilonis related the order of presentation for the meeting and that there are sign in sheets for attorneys that are representing interested parties. If you wish to come forward you will have to identify yourself, you will be under oath.*

*Chairman Cronce related that Board Member Romano is recusing himself from the Green Power of West Amwell hearing.*

**Continued Public Hearing: Green Power of West Amwell - Block 3 Lot 12/14  
– Route 179 - Use and Bulk Variance Application/Site Plan Application –  
Completeness  
Determination/Public Hearing (8:15)**

Anthony Valenti, attorney for the applicant, appeared on behalf of the applicant, Green Power of West Amwell, LLC (property owner Lynn B. Ziegenfuss). Application, checklist, and plan titled "Use Variance & Preliminary and Final Major Site Plan, Green Power of West Amwell, LLC" comprised of eight sheets and prepared by Challoner & Associates LLC dated October 7, 2010, revised November 11, 2010, were received and distributed.

Notices of service and publication were reviewed by Attorney Palilonis and found to be in order.

**Eric Goldberg**- attorney representing neighbors- questioned whether a jurisdictional issue regarding appropriateness of the notice exists. Mr. Goldberg related that the applicant will need a d-1 use variance, stating that the use is not permitted in this zoning district. The notice must clearly indicate that a d-1 use variance is needed; because the use is not permitted in this zone. The notice does not do that and is confusing to the average lay person. Mr. Goldberg reminded that this Board heard testimony on October 26 and none of that evidence can be counted for by this Board; because the notice was not appropriate the board lacked jurisdiction. If the same issue exists in tonight's notice, this Board is going to have to hear the same testimony again. Mr. Goldberg suggested that the Board re-schedule the hearing to another date. Attorneys Palilonis stated that he has reviewed the notice and is satisfied if the applicant is satisfied. Attorney Valenti stated that he believes the notice is accurate and sufficient.

The following witnesses present on behalf of the applicant were sworn in by

Attorney Palilonis:

Lynn Ziegenfuss, Property owner - 309 Treckler Rd., Albertus, PA  
Robert Kline, Solar Expert - 625 Spring St., Reading, PA  
Andrew Thompson, Planner - PO Box 363, Brielle NJ  
Andrew Westhoven, Engineer - 201 Main St., Toms River, NJ  
Stuart Challoner, Engineer and Planner - 201 Main St., Toms River, NJ

The applicant's professionals offered their credentials and testimony experience and were accepted as expert witnesses.

Attorney Valenti provided an overview of the project as follows: Applicant is seeking preliminary and final site plan approval for the installation of a solar panel farm and wholesale generation of solar energy, on the existing footprint of a lot formally consisting of farm area. The solar panels and all of its components are to be constructed on Lot 14; Lot 12 is part of the application solely due to it being a contiguous Lot with Lot 14. No installations are to occur on Lot 12. Access to the property is currently provided by a right of way through Lot 16, all are in Block 3.

Attorney Valenti provided the definition of a public utility and offered that the State of New Jersey establishes jurisdiction within the Board of Public Utilities Commission. Based on the definition and service to be provided (solar farm to be tied to the grid to provide power to the public at large), Attorney Valenti presented that they are within the definition of a public utility and therefore are a conditional permitted use within the district.

Alternatively they are seeking a use variance to permit the use. The second use variance being requested is the dual use on a single lot with existing farm house, which the owner intends to have her daughter live in.

Applicant is seeking the following relief: variance relief, specifically, "d" use variance, dual use, "c" variance – fence; existing non-conforming bulk variance (frontage).

Attorney Palilonis referred to Board Planner Mercantantes report dated November 22, 2010. Discussion ensued regarding the public utilities act and the township zoning ordinance. Mr. Mercantante related that the use was not a permitted use under the ordinance and this interpretation would essentially permit solar farms everywhere. Mr. Mercantante stated that the definition of a public utility as recited by Mr. Valenti is not the same as the definition that you would apply to the West Amwell ordinance.

Discussion ensued as to whether the application is a conditional use. Attorney Valenti stated that they will be seeking the d-3 variance as well as the use variance. Board professionals related that they did not considered this a conditional use.

Attorney Palilonis related that this board has received numerous communications, all by e-mail. Communications of this nature will not be distributed to the Board Members; it will be placed in the file. There was talk of a petition if we receive it, it will go in the file, it will not be part of the deliberations of this board.

Attorney Valenti stated that they have not applied to the BPU to date. They are proposing a two mega-watt system, and don't anticipate any problems.

**Witness #1** - Lynn Ziegenfuss - Property owner -gave a brief history of property as follows: owned property for approx. 25 years, currently farming the fields with soybean, farmhouse is rented, had a woodland management study done, have done some woodland management, farm is farmland assessed, not in Greenacres. Old stone home approx. 1000 square feet with three bedrooms, would like to keep the house for daughter to reside in.

**Eric Goldberg**- Attorney for several interested parties. Stated that his clients are not against solar power in general, it is just the appropriateness of this location. Attorney Goldberg questioned whether there is a lease with the corporation. Mrs. Ziegenfuss responded "no". Attorney Goldberg asked if Mrs. Ziegenfuss has an interest in the company. Mr. Valenti responded that the applicant on the application is Green Power of West Amwell, L.L.C. Mrs. .Ziegenfuss is a member of the applicant as well as the property owner who signed a consent authorizing the application. Attorney Goldberg continued by asking if any other properties were considered for this application, Mrs. Ziegenfuss replied "no".

*(Chairman Cronce related that there would be a brief recess at this time – Meeting recessed 9:02 PM – 9:10 PM)*

**Dan Madrid** – Fox Rothchild Law Firm - on behalf of John and Caroline Hurley - 24 Ferris Wheel Dr. – Mr. Madrid related that the Hurley's previously filed a formal objection to this matter. Since that time the applicant has shown revised plans, based upon the revisions, the Hurley's are withdrawing their objection to the matter.

**Mr. Valenti** related that Mrs. Ziegenfuss requested to state on the record that she feels there is a conflict of interest with Mr. Goldberg, one that she will deal with at a later time as it is nothing that the Board can handle. Mrs. Ziegenfuss wanted it on the record that she is not waiving her objection to the conflict by allowing him to speak to it.

**Witness #1** - Stuart Challoner, P.E. – An Aerial Photo surrounding the area and labeled as "Rendering" was entered into the record and marked as Exhibit G-1.

Mr. Challoner gave an overview of the property as follows: Route 179 abuts the Lambert property, Lot 16, Block 3, which has an 18 foot right of way to the

property and extends to Route 179. The property consists of two lots; Lot 14 Block 3 is approximately 18 acres, Lot 12 Block 3 in the rear northern portion approximately 23 acres. Property is currently farmed, on the western part is two soybean fields, eastern portion is mainly wooded. The C-1 tributary of Alexauken Creek runs through the property, which requires a 300ft riparian buffer.

The original plan submitted was a solar farm that consisted of about 14 acres of disturbances that consisted of both existing soybean fields, in the revised plans the solar panels were completely removed from the lower field and placed in the upper field, there is a hedgerow that separates. The 300ft. riparian buffer has been retained.

A gravel access road will run along the southeast side of the property, inside the fence line to provide access to the concrete pads that will house the inverters and transformers.

The panels are placed above the ground and elevated upwards. The spacing between the panels will provide for mowing, the fields will be planted with low maintenance meadow mixture under the panels.

Testimony was provided that the panels do not reflect; panels are constructed of glare resistant glass and are angled at a 39° upwards. The panels pose no risk of glare to the roadways. The placement of the panels is approx. a half-mile back from the only roadway that has any visibility; Route 179. Distance between the solar panels and the homes at Estates of West Amwell, are now approx. 1000 feet, with existing hedgerows to provide additional screening.

Mr. Challoner testified that the NJDEP has considered the panels to be pervious structures. The (impervious) coverage would be the C channels that hold the panels, the gravel roadway, and the concrete pads that house the inverters. Conversion from a soy bean farm to a solar farm and the placement of the meadow grass will reduce run off from the property, and increase infiltration on the site after the project is complete.

In response to questioning regarding the required service to the inverters, it was related that the system is remotely monitored and in the event of a problem, electronic notification will be received and there will be a service tech sent to the site. No lighting is being proposed for the site.

Positive criteria –Solar panels are deemed to be an inherently beneficial use. The State requires us to generate up to 30% of State's electric from renewable source by 2020. The inherently beneficial use satisfies the positive criteria. There is insufficient grid stabilization for the State of New Jersey. There is a need for the State of New Jersey to supply electricity into the grid to stabilize the grid. A two mega-watt site will help provide stability to the grid. The facility is being sold solely as wholesale back into the grid. Mr. Challoner stated that the MLUL was recently amended to include solar energy facilities under the definition of

inherently beneficial use. He related that this application generally serves the public good by stability of the grid.

Negative criteria –by moving the solar panels from the lower field and placing in the upper field, negative criteria is mitigated. The panels will be placed in an area that has very limited tree or shrub removal and the property will be re-vegetated with meadow grass.

In response to questioning by Attorney Valenti, Mr. Challoner offered it is his opinion that this variance permitting solar arrays could be granted without detriment to the public good and without substantially impairing the intended purpose of the zoning plan.

Challoner responded to questioning on the public interest at stake; it is adequately providing a use that is a tax ratable to the township, a use that stabilizes the grid, provides energy to the grid in this area, and the main portion of the property is to remain as a farm.

In response to questioning by Board member as to whether this would be a tax ratable for the township. Mr. Challoner offered that because this is a wholesale application, it generates money; therefore it is a tax ratable.

Pad design was entered into the record as Exhibit “G-2” to show detail after questioning on pad size, 30ft x 14ft.

In response to questioning by Attorney Valenti, Mr. Challoner responded that he has been involved in numerous applications that have recently received approvals and are now in resolution compliance. Attorney Valenti questioned whether he had seen any adverse impact on the communities based on the approvals, on property values resulting from the approvals. Mr. Challoner responded “no”.

Mr. Challoner responded to the Boards’ questions; the project will consist of 8456 panels to be installed in the revised location. Elevation on the plan is 280 feet, benchmark in the street identified as 273 feet, field slopes down to 260 feet. Height of the panels will be at a maximum of 8.8 feet, with a low height of 3 feet at a 39° angle.

Mr. Challoner responded to questioning regarding runoff from rainwater that hits the panels and the creation of erosion points. It was related that with this plan, there is a proposed detail that puts a mat under the drip line of each panel to assist in the growth of vegetation.

Mr. Challoner responded to Board questions regarding the two areas of proposed clearing; these are for shading purposes. “Robinson Report” was entered into the record as Exhibit “G-3”. West Amwell Forestry Committee Chairman Gary

Robinson submitted a report as the result of an on-site meeting between Mr. Challoner, Engineer Decker, and Mr. Robinson. The area does not have any specimen/significant trees and is mostly invasive species and shrubs.

Mr. Challoner related information pertaining to the equipment as follows: total of four inverters, each inverter measures approx. 89 ½ inches tall by 9 feet long; at two locations. Each concrete pad will house two inverters and one transformer, for a total of four inverters and two transformers.

Mr. Goldberg questioned whether the panels would be in view of the residents, Mr. Challoner responded; at 1500 feet away, some of the panels might be visible in the back field. There would be no reflection from the panels, causing no glare concern for residents or motorists.

Mr. Goldberg related concern regarding expansion of the project site, if approved. Mr. Goldberg questioned whether any studies have been done with regards to endangered species on the property. Mr. Challoner stated that an investigation had been done of New Jerseys I-Map; the proposed will have no impact or threat to endangered species on the property.

Mr. Challoner responded to questioning regarding areas of wetlands as follows: areas of concern are in the lower southeast portion of the property. There is a C-1 tributary that runs through the property. Because of the slope of the property the wetland would be confined to the location of the proximity of the stream. The maximum buffer that could be imposed would be 150 feet. The C-1 waterway also requires a 300ft. riparian buffer.

Chairman Cronce opened the floor to the public for comments/questions of the applicant's engineer:

Andy Zalescik - 24 Music Mountain Blvd – asked if the applicant is open to deed restricting or limiting to the 10%. It was highlighted as a positive during the testimony that this is only 10% of the acreage. Mr. Valenti responded by stating that any further construction would require the applicant to come back for further site plan, if the applicant wished to increase this solar field in any way by installing additional panels it would require a new application . Attorney Palilonis related that the applicant can only do what is or is not approved through the Board.

Herb Villa - 30 Ferris Wheel Drive- questioned whether Mr. Challoner was a real estate professional, based on his previous testimony how then could he make a statement with regards to the impact on property values. Mr. Villa questioned whether Mr. Challoner knew how much electricity New Jersey uses, Mr. Challoner does not. Mr. Villa related to his line of employment in energy, stating that there are three grids in the United States in east, west, Texas. What is the

benefit to having two mega- watts stabilize the grid, the response was; it has a benefit.

Regarding visibility of the panels, it was stated that the height would be approximately 9 feet. Has the lines of sight been looked at from all of the homes. It was stated that it would be mitigated, but not eliminated. Mr. Challoner responded that he walked the Ferris Wheel Drive area for the lines of sight, specifically at the Hurley home since he was the original objector. Mr. Villa questioned whether any of the homes will be able to see the solar fields. Response was on the far side of the solar field you might see a glimpse of panels but will not interfere with the view because of the existing hedgerows.

Mark Evanko - 25 Ferris Wheel Drive- how would the commercial solar farm installation be buffered from the view, Mr. Challoner responded that the existing trees will be supplemented with additional trees in some areas. Can you guarantee the adjacent residential community will not be impacted by noise, reflection, transmission line or rainwater runoff. Mr. Challoner responded that there would be testimony in response to noise, the property slopes from west to east, all the runoff from the soybean farm fields flows towards the Alexauken Creek and the creek goes away from the residential properties. The field has been changed from a row crop of soybeans to meadow grass, which will decrease the runoff. Mr. Valenti requested that the residents not recite facts, without many of the facts being accurate and then asking the witness to answer the question. Atty. Palilonis stated that the board members are sophisticated enough to know that only the question and response is what matters.

What is the approved commercial road access to the site for RR-4 zone, the property has an 18 foot wide right away through Block 3 Lot 16 they will use to access for construction and then the site is unmanned.

Applicant and members of the public were advised that the public hearing would be continued to the December 28, 2010 meeting of the Board at 7:30 PM. No additional notice will be made. (10:38)

### **CORRESPONDENCE:**

The following items were distributed as correspondence

- A. Replacement pages for the land use books
- B. Correspondence from Heritage Engineer regarding Mostofizadeh extension request. Engineer Decker related that an outside agency approval is required and may get the extension by default. The soil tests can only be done during the wet season; January through April. Attorney Palilonis recommended approving the six month extension. Escrow is in the positive. Motion by Sanzalone with a second by Dale to approve a six month extension. Motion carried with all ayes.

- C. Zoning denial from Zoning Officer Baldino for Block 23 Lot 1 Allied Signs for Quick Chek
- D. Ordinance 13, 2010 for "signs" 1st reading on November 3, 2010 with final adoption  
December 1, 2010 at the township committee meeting.
- E. Hunterdon County Municipal Officers Association, November 30, \$25 talk is on solar wind and biomass energy.
- F. Hunterdon County Planning and Zoning Association Holiday lunch, December first 12:00 PM Beaver Brook, Annandale \$25.00 discussion on Billboards
- G. Hunterdon County Planning Board breakfast talk Thursday, December 2, 7 30 AM to 9:00 AM discussion on solar farms and their impact on Hunterdon County citizens and municipalities. Reservation has been made for five.

### **PRESENTATION OF BILLS FOR PAYMENT:**

The following bills were received:

Stewart Palilonis – October/November (special) meeting- total: \$775.00

Motion made by Sanzalone with a second by Dale to approve bill list contingent upon certification of funds. Motion carried with all ayes

### **DISCUSSION:**

A) Application Review Correspondence - Environmental Commission –  
CARRIED TO  
NEXT MEETING

B) 2011 Professional Services Review – Fair and Public Solicitation Process –  
Chairman

Cronce related that there was confusion on behalf of the Township Clerk whereas the

Clerk solicited a contract on our behalf. Chairman Cronce requested that the contract

be sent back and advise the Clerk that we will continue to solicit our own professionals in the same manner in which we are accustomed.

C) 2011 Budget- discussion ensued regarding the 2011 budget, it was decided that we should request the budget be reinstated to the 2009 budget amount, based on the anticipated training expenses. It was suggested that the secretary's salary remain the same or be adjusted following other township employees.

D) Board members expressed concern regarding the conduct/order of the public at the meeting. Chairman Cronce related that he will announce at the beginning of each meeting that professional conduct/order is expected at all times throughout the hearing.

**OPEN TO PUBLIC:**

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

**ADJOURNMENT:**

Move for adjournment at 11:07 PM. Voice vote -All voted in favor of adjournment.

Respectfully submitted,

Ruth J. Hall