

LAND USE BOARD MINUTES
December 17, 2014

The Tewksbury Township Land Use Board met in a regularly scheduled meeting on the above date in the Municipal Meeting Hall, 60 Water Street, Lebanon, New Jersey. The meeting was called to order at 7:30 p.m.

Present: Blake Johnstone, Mary Elizabeth Baird, Shaun Van Doren, Dana Desiderio, Bruce Mackie, Robert Becker arrived at 8:06 p.m., Shirley Czajkowski, Ed Kerwin, Ed D'Armiento, Alt. #1, Kurt Rahenkamp, Alt. #2, Glenn Stein, Alt. #3 and David Larsen, Alt. #4.

Also present: Daniel Bernstein, Land Use Board Attorney, William Burr, Land Use Board Engineer and Shana L. Goodchild, Land Use Administrator.

Absent: Michael Moriarty.

There were no audience members.

OPEN PUBLIC MEETING ACT STATEMENT

Mr. Johnstone opened the meeting by announcing that adequate notice of the meeting had been provided by posting a copy thereof on the Police/Administration Building bulletin board, faxing a copy to the Hunterdon Review and the Hunterdon County Democrat, and filing with the Municipal Clerk, all on January 9, 2014.

PLEDGE OF ALLEGIANCE

Those present stood and pledged allegiance to the American flag.

CLAIMS

Mr. Johnstone asked the Board if there were any questions or comments regarding the following claims to which Mr. Larsen questioned Maser invoice No. 256605 (item No. 5) and why there were multiple charges for the preparation of a letter. Mr. Burr explained that it was one letter that was started on one day and finished on another day. There being no additional questions, Mrs. Baird made a motion to approve the claims listed below and Mr. Mackie seconded the motion. The motion carried by the following roll call vote:

1. Bernstein & Hoffman – Attendance at 11-19-14 LUB meeting, invoice dated November 20, 2014 (\$400.00)
2. Bernstein & Hoffman – Land Use Board Escrow – Oldwick Fire Company (B44, L22.01), invoice dated November 12, 2014 (\$735.00)
3. Bernstein & Hoffman – Land Use Board Escrow – Reed (B45, L21), invoice dated November 11, 2014 (\$675.00)
4. Maser Consulting – Land Use Board Escrow – Cellco Partnership (B44, L26), invoice #256606 (\$32.50)

5. Maser Consulting – Land Use Board Escrow – Biedron (B31, L12), invoice #256605 (\$292.50)
6. Maser Consulting – Land Use Board Escrow – Green Power Energy/Becker (B31, L7.03), invoice #256607 (\$65.00)
7. Maser Consulting – Land Use Board Escrow – Hill and Dale Farm/NJCF (B38, L1.04), invoice #256608 (\$65.00)
8. Suburban Consulting – Land Use Board Inspection – Johnson (B23, L20), invoice #000000023310 (\$26.75)
9. Bernstein & Hoffman – Land Use Board Escrow – Green Power Energy/Becker (B31, L7.03), invoice dated December 15, 2014 (\$750.00)

Roll Call Vote:

Those in Favor: Mrs. Baird, Mr. Van Doren, Ms. Desiderio, Mr. Mackie, Mrs. Czajkowski, Mr. Kerwin, Mr. D’Armiento, Mr. Rahenkamp, Mr. Stein, Mr. Larsen and Mr. Johnstone

Those Opposed: None

CORRESPONDENCE

A motion was made by Mr. Van Doren and seconded by Mr. Larsen acknowledging receipt of the following items of correspondence. All were in favor.

1. Notice dated November 18, 2014 re: an application to the NJDEP for a Highlands Exemption for Block 6.04, Lot 8.
2. Notice dated November 12, 2014 from Bellemead Development Corporation re: application to the NJDEP for a Letter of Interpretation for Block 47, Lot 48.
3. The NJ Planner, September/October – Vol. 75, No. 5.

ORDINANCE REPORT

Mr. Mackie reported on two (2) ordinances from Califon which deleted an historic district and added a Historic Preservation Commission. Mr. Mackie also reviewed an ordinance from Readington Township for assisted living residences which was passed on to Ms. Goodchild for future consideration.

MINUTES

➤ July 2, 2014

The minutes of July 2, 2014 were approved as submitted by motion of Mr. Van Doren and seconded by Mrs. Baird. All were in favor. Ms. Desiderio and Mr. Stein abstained.

Mr. Johnstone welcomed Mr. Glenn Stein to the Board. Mr. Stein noted that he is a corporate attorney and has resided in Mountainville for approximately 7 years. He has served on the Environmental Commission for the past few years and prior to that lived in Glen Gardner where he served on the Planning Board.

PUBLIC PARTICIPATION

Mr. Johnstone asked the public if there were any questions or comments regarding anything not on the agenda. There being no comments or questions, Mr. Johnstone closed the public participation portion of the meeting.

RESOLUTION

- Resolution No. 14-20 Green Power Energy (Becker), Appl. No. 14-14, Block 31, Lot 21 *Eligible to vote: Mr. Mackie, Mr. Becker, Mr. Moriarty, Mr. D'Armiento, Mr. Rahenkamp and Mr. Larsen*

Mr. Bernstein noted that he received a call from the applicant's attorney (Walter Wilson) who had concern with the glare study mentioned in Condition No. 12 of the resolution. While Mr. Wilson did not respond to a call that placed to him, Mr. Bernstein opined that Mr. Wilson is concerned with the cost of the glare study. In an effort to cooperate, Mr. Bernstein suggested adding language that if the applicant doesn't provide a glare study the Land Use Board Engineer shall visit the site after the solar array is installed to determine its operation. If there is glint or glare on neighboring properties the Board shall require ameliorative steps. The Board had no questions or comments about the proposed amendment to Condition No. 12.

A motion was made by Mr. Mackie and seconded by Mr. Larsen to adopt the following resolution with the amendment suggested by Mr. Bernstein. The motion carried by the following roll call vote:

LAND USE BOARD
TOWNSHIP OF TEWKSBURY
APPLICATION # 14-14
RESOLUTION # 14-20

WHEREAS, GREEN POWER ENERGY (STEVEN BECKER) has applied to the Land Use Board of the Township of Tewksbury for permission to install two solar arrays on a residential lot which is located at 48 Philhower Road on property designated as Block 31, Lot 7.03 on the Tewksbury Township Tax Map, which premises is located in the Highlands (HL) Zone, and

WHEREAS, the application was presented by Attorney Walter Wilson, Esq.; Civil Engineer and Professional Planner Wayne Ingram, P.E., P.P. of the firm of Engineering & Land Planning Associates, Inc.; and Greg Hodgson, who designs solar

systems for Green Power Energy, at the November 19th, 2014 Land Use Board meeting, and

WHEREAS, the application was reviewed by Land Use Board Engineer William H. Burr, IV P.E. of the firm of Maser Consulting, P.A., and

WHEREAS, the Board, after considering the evidence presented by the applicant and Mr. Burr, has made the following factual findings:

A. The Subject Property.

1. The subject property is a seven sided irregular *arrowhead* shaped lot.

2. The site contains 3.95 acres with 262.94 feet of frontage on Philhower Road and a depth of 544.75 feet.

3. The site has an elevation of 200 feet at Philhower Road which rises to an elevation of 270 feet at the southwest section of the property and declines to 230 feet at the rear property line. The home is nestled at a knoll at elevations of between 250-265 feet and set back about 322 feet from Philhower Road.

4. A winding driveway divides about 280 feet from Philhower Road with one leg leading to a parking area with a stone walkway connected to the home, and the other leg leading to a garage.

5. In the back of the home there is an in-ground swimming pool and patio.

6. The perimeter of the site is wooded with primarily deciduous trees.

7. Two (2) approximately 60-70 feet long tiered timber retaining walls are located adjacent to the wooded areas along the rear of the property.

B. The Proposal.

8. The applicant proposes to install two solar arrays near the back of the property behind the tiered retaining walls. The solar array within 49.92 feet of the rear property line would be 9 feet 6 inches by 38 feet 6 inches. The second array of 15 feet 8 inches by 49 feet 6 inches would be behind (north) of the first. Both arrays would have a sideyard setback of 20 feet.

9. The arrays would have concrete footings of approximately 40 square feet.

10. The solar panels would each be 66 inches by 40 inches.

11. The inverters which would change the DC electric current to AC electric current would be 1 ½ feet wide by 3 feet tall and be mounted to the rear of the panels.

12. The solar arrays would reach a maximum height of 7 feet 8 inches to 8 feet.

13. It was estimated that the solar arrays will provide 95% of the electric needs of the site.

14. The panels will last about 25 years.

C. Required Variances.

15. As previously noted, the subject property contains 3.95 acres while the minimum lot size in the HL Zone is 12 acres. The site is *grandfathered* under Section 706(F)(3) of the Tewksbury Township Development Regulation Ordinance (DRO). Grandfathered lots have special zoning provisions.

16. Pursuant to S-921, the solar panels do not count toward lot coverage although the footings are counted as coverage.

17. The footings will occupy about 40 square feet which will increase existing lot coverage from 15.2% to 15.22%, while the DRO limits lot coverage on the subject property to 10%.

18. The Board regards the increase in lot coverage as *de minimis*.

19. Section 706(F)(3) of the DRO requires a minimum sideyard for accessory structures on the subject property of 40 feet. As previously noted, the sideyard setback for both arrays will be 20 feet.

20. Tewksbury Township amended the DRO by the inclusion of Section 726.d.1 concerning ground mounted solar or photovoltaic systems subsequent to the filing of the current application. While the amendment is not directly related to the current application pursuant to the *Time of Application Rule*, it serves as a guide to the current applications.

21. The appropriate sections include:

Section 726.d.5 – Maximum Height. The maximum height of solar panel arrays and system components from existing ground level shall not exceed six feet (6).

Section 726.d.6.iii.e – Perimeter fence. A safety fence or suitable barrier shall include a locked gate or other secure suitable means of access to the system.

Section 726.d.9 – Grading. The ground-mounted system and its components should be designed to follow the natural topography to the greatest extent possible to minimize the disturbance of soils. Grading and Surface Water management Plan ordinance approval may be required.

22. Solar designer Hodgson testified that the solar panels had to be at a height of between 7 feet 8 inches and 8 feet to operate efficiently. The solar panels were located to receive the maximum southern exposure while not being blocked by the significant tree cover.

23. The applicant's witnesses indicated that the solar arrays were located a significant distance from the adjoining homes and did not require security fencing, since the property already is surrounded by a fence.

D. Justification for Variances.

24. The requested sideyard variance is justified under N.J.S.A. 40:55D-70c(1)(a) on the basis of the unusual shape of the site. Had the site been more regularly shaped, the sideyard setback would likely be conforming.

25. The requested variances are justified under N.J.S.A. 40:55D-70c(2) by advancing a purpose of the Municipal Land Use Law under N.J.S.A. 40:55D-2n "To promote utilization of renewable energy resources;"

26. The benefits from the deviations substantially outweigh any detriments.

27. The requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Township of Tewksbury.

NOW, THEREFORE be it resolved by the Land Use Board of the Township of Tewksbury on this 17th day of December, 2014 that the application of Green Power Energy (Steven Becker) be approved in accordance with plans titled: "48 PHILHOWER ROAD BLOCK 31 LOT 7.03 SHEET 7 TEWKSBURY TOWNSHIP

HUNTERDON COUNTY VARIANCE PLAN” prepared by Engineering & Land Planning Associates, Inc. on August 27th, 2014 and last revised October 8th, 2014 designated as Sheet 1 and “48 PHILHOWER ROAD BLOCK 31 LOT 7.03 SHEET 7 TEWKSBURY TOWNSHIP HUNTERDON COUNTY BOUNDARY & TOPOGRAPHIC SURVEY” prepared by Engineering & Land Planning Associates, Inc. on August 18th, 2014 consisting of Sheet 1, subject, however, to the following conditions:

1. No significant trees are to be removed by the construction of the solar panels.
2. No exterior lights.
3. The applicant shall comply with all rules, regulations, ordinances and statutes of the Federal, State, County and local municipal governments that may apply to the premises. The applicant shall submit a letter to the Land Use Administrator certifying compliance with the aforementioned rules, regulations, ordinances and statutes.
4. This resolution and the issuance of permits are conditioned on the applicant paying all escrows and fees.
5. The variance shall be utilized within one year of the date of this memorialization resolution. If it is not utilized within one year the approval of the addition shall become void and have no further effect.
6. The facility shall cause no glint or glare on other properties or public streets.
7. The plans shall be revised to show the angle of the solar panels at 20 degrees.

8. Board Engineer Burr shall visit the site to determine if additional landscape screening is required. If additional screening is required, the applicant shall submit a landscape plan, which need not be drawn by a professional, for the approval of Mr. Burr. After the plan is approved, the trees shall be planted during the next planting season to the approval of Mr. Burr. The landscaping shall be permanently maintained. Dead, diseased and missing landscaping shall be replaced to the approval of the Land Use Board Engineer.

9. The solar panels shall create no noise at the property line.

10. The Construction Official is to visit the site to determine if the existing in-ground swimming pool is appropriately fenced in accordance with the applicable ordinances. If not, a fence needs to be installed.

11. Solar panel signage shall comply with with sign regulations.

12. Applicant shall provide a typical glare study to show no impacts to neighboring properties. Alternatively, if there is glint or glare on neighboring properties, the Land Use Board Engineer shall require ameliorative steps.

13. Compliance with Solar (DRO §726) Ordinance including:

- §726.d.10 – All ground areas under the panels will be planted with shade tolerant grasses for the purpose of soil stabilization.
- §726.e – Decommissioning, removal, restoration. All solar or photovoltaic energy systems shall be maintained in continuous operation.

1. Solar and photovoltaic energy facilities and structures (roof, parking lot roof canopy or ground) which have not been in active and continuous service for a period of twelve (12) months shall be decommissioned and removed from the property to a place of safe and legal disposal.
- §726.g.1 – Safety and Emergency Provisions.
 1. Solar or photovoltaic roof, parking lot roof canopy and ground mounted systems servicing residential dwellings shall comply with the following safety and emergency response provisions:
 - b. Residential solar or photovoltaic systems shall be fitted with a “safety mode” system capable of switching off live DC current from the system in the event that fire or rescue services are required. Safety mode switching shall be readily accessible to and clearly marked for emergency response personnel operation.
 - d. An exterior electrical disconnect/emergency shutoff which de-energizes the system shall be provided, which shall be plainly marked with a reflective placard identification.
 - e. Site labeling – Each site containing a solar or photovoltaic energy facility shall include a sign indicating that the energy facility exists on site, indicating whether the system is a roof or ground mounted system. Such sign shall be conspicuously mounted at the driveway entry to the site.
 - f. In accordance with the latest edition of the National Electric Code update, all conduit extending between solar or photovoltaic panel arrays and inverters and transformers shall be marked every 10 feet to indicate electrical danger to firefighters and EMT personnel in the event conduit is accidentally or must be intentionally cut as part of emergency response.
 - g. Safety Data Sheets (SDS) shall be submitted to emergency response providers for all component materials comprising of the solar modules, panels,

or arrays or other equipment which contain hazardous or flammable substances.

14. Netting shall be installed on the back of the panels to protect against tampering or other damage.

Roll Call Vote

Those in Favor: Mr. Mackie, Mr. D’Armiento, Mr. Rahenkamp and Mr. Larsen

Those Opposed: None

Board Discussion Item

- E-mail from Greg Meese dated Dec. 15, 2014 re: postponement of January 7, 2015 Cellco hearing, Appl. No. 13-03, Block 44, Lot 26

Mr. Johnstone noted that the applicant is not prepared to move forward with the January 7, 2015 hearing and has requested to postpone until February 18, 2015. Mr. Johnstone noted that the application started in November of 2013 and there have only been approximately 4 meetings of any relevance. He asked if the Board could require the applicant to start over since so much time has elapsed. Mr. Bernstein noted that he would recommend to Mr. Meese that they start over since most of the members that were present for the hearings may not remember the testimony and there are new members that would have to listen to the tapes or read the transcripts. He noted that all of the witnesses they presented have to return; the record is incomplete. When asked by Mr. Johnstone if we can insist that they start over, Mr. Bernstein responded in the negative. Mr. Johnstone suggested discussing this with Mr. Meese at the February 18, 2015 meeting. Mr. Bernstein noted that he and Ms. Goodchild checked with Rob Simon, the objector’s attorney, and he had no issue with the postponement. In conclusion, the Board had no issue with the postponement to February 18, 2015.

Mr. Van Doren noted that the Township Committee has asked the Township Attorney to conduct an open house at the end of January to offer a session to all volunteers regarding their role as members, ethics, the process, etc.

Mr. Van Doren noted that the Ridgeline Ordinance has been on the Land Use Board’s status report for quite awhile and requested the Board begin reviewing ordinances in 2015. He noted that another house recently went up along the ridge that’s very visible when traveling North out of Oldwick. Ms. Goodchild noted that the discussion was tabled a few years ago in order to see how the Highlands came into play. Mr. Van Doren suggested that the Board establish a sub-committee to review ordinances from other towns. Ms. Goodchild agreed to place the matter on the January re-organization meeting agenda .

ESCROW CLOSINGS

➤ Pentz - \$475.00

Mr. Van Doren made a motion to close the above referenced escrow account and return the balance to the applicant. Mrs. Baird seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote:

Those in Favor: Mrs. Baird, Mr. Van Doren, Ms. Desiderio, Mr. Mackie, Mrs. Czajkowski, Mr. Kerwin, Mr. D'Armiento, Mr. Rahenkamp, Mr. Stein, Mr. Larsen and Mr. Johnstone

Those Opposed: None

Executive Session

➤ Personnel

At 7:50 p.m. a motion was made by Mr. Van Doren and seconded by Mrs. Baird to go into executive session and adopt the following resolution:

BE IT RESOLVED, pursuant to N.J.S.A. 10:4-12 and N.J.S.A. 10:4-13 that the Tewksbury Township Land Use Board adjourn to Executive Session to discuss personnel.

No official action will be taken during said session; and

It is expected that the discussion undertaken in Executive Session can be made public when the personnel matter has been settled.

Roll Call Vote

Those in Favor: Blake Johnstone, Mary Elizabeth Baird, Shaun Van Doren, Dana Desiderio, Bruce Mackie, Shirley Czajkowski, Ed Kerwin, Ed D'Armiento, Alt. #1, Kurt Rahenkamp, Alt. #2, Glenn Stein, Alt. #3 and David Larsen, Alt. #4

Those Opposed: None

The meeting reconvened at 8:00 p.m. by motion of Mrs. Baird and seconded by Mr. Van Doren.

Ms. Goodchild noted that the following terms on the Land Use Board expire in 2014: Mrs. Czajkowski, Mr. Van Doren, Ms. Desiderio, Mrs. Baird, Mr. Moriarty, Mr. Mackie, Mr. D'Armiento and Mr. Larsen. Mr. Van Doren suggested that those members call Dr. Voyce who will be Mayor for 2015 if they wish to serve again.

Discussion ensued regarding ongoing maintenance of the drywells installed when impervious coverage variances are granted. Ms. Desiderio thought that the Board

discussed requiring homeowners to provide proof that they have maintained the detention system. Mr. Johnstone asked Ms. Goodchild to put the item on the January re-organization meeting agenda and ask Mr. Burr to be prepared to speak about maintenance, enforcement, etc. Ms. Goodchild noted that the concern during previous discussion was how the inspections are paid for since it is not something that Township staff can perform. Ms. Goodchild noted that if a deed restriction is in place the responsibility falls to the homeowner.

Mr. Johnstone thanked everyone for excellent year.

ADJOURNMENT

There being no further business, the meeting adjourned at 8:12 p.m. by motion of Mr. Johnstone and seconded by Mrs. Baird.

Respectfully submitted,

Shana L. Goodchild
Land Use Administrator