

Dover Township
Zoning Hearing Board
May 18, 2022

Chairman Jane Ginter called the meeting to order at 7:01 p.m. Members present: Phillip Brown, Robert Wright, and alternate Jonathan Reynolds. Absent with prior notice: Richard Pope. Also present: Zoning Officer John McLucas, Solicitors Mike Craley and Samantha Craley, Stenographer Tammy Rinehart, Recording Secretary, and 35-50 citizens.

Since Mr. Pope is absent tonight, the Board will make sure he receives all testimony, documents, etc. This meeting was reconvened from the April 20, 2022, meeting. The proceedings are still in the testimony phase.

I. Reorganization

[This item was *tabled* again.]

II. Minutes

No action taken. Minutes from December 15, 2021, January 19, 2022, February 16, 2022, March 16, 2022, and April 20, 2022, still need to be approved.

III. Zoning Case

- A. ZHB 21-3, Special Exception request to permit a principal solar energy system (PSES) on various parcels in the Ag, Industrial, and R1 Zoning Districts; parcels include lands of D&D Bismark Partnership; Lamparter; Fissel; and Glen-Gery Corporation

Appraiser Richard Kirkland attended the meeting via Zoom. Attorney Wilson noted that last month Mr. Kirkland disputed Mr. Hartman's impact report, saying it was a "less than textbook" case. Did Mr. Kirkland visit that site? No. Did he visit the applicant's project site? Yes. He feels that it's not a textbook case because it didn't take into account the solar panels alone, as it's near a school. Could a school be viewed as an amenity? Sure. Attorney Wilson referred to page 34 of Mr. Kirkland's report – was any of those sites adjacent to a school? Can't recall. Any beside/near an interstate? Can't recall. Did he recall taking those adjustments into account? Yes. Adjustments are on page 51; a Maryland site. Adjoining sales adjusted – basis for slight variations in time, gross living area. He did all the adjustments for all comparison sales. What is in the 'other' column? Differences in the basements – some finished, some unfinished, some no basements. Attorney Wilson feels that he cannot verify those adjustments...Mr. Kirkland said, "you can look them up yourself." Did Mr. Kirkland adjust for the lot size? Some. Among very similar-sized lots, no adjustments were needed. How much difference in size has to happen before he adjusted? Mr. Kirkland explained that for instance, 5.2 acres and 5.6 acres are so similar that adjustments weren't needed. A comparison of 2 acres versus 5 acres, however, required an adjustment.

This project proposes a 75 megawatt facility. Attorney Wilson asked what's the relationship between size of the solar farm and the impact? Mr. Kirkland is not finding much of a difference. A 1.5 megawatt facility would have the same impact as a 75 megawatt solar farm.

Page 19, Chart B2, was examined. Mr. Kirkland explained the differences in this chart. Attorney Wilson asked about landscape screening, and Mr. Kirkland explained that some

experienced assessors may or may not have taken screening into account. The absence of the buffer wouldn't have a negative impact on the neighborhood? Too many variations – a mile away from a solar farm in Arizona would be different from a mile away from a solar farm in Pennsylvania. Attorney Wilson reads that negative impact increases with the size increase of the solar farm. Mr. Kirkland isn't finding that, especially with screening. If you can't see it, you can't see it. With two facilities being constant, does the size have a negative impact? Not from Mr. Kirkland's findings.

Regarding the Rhode Island study, Exhibit E, Attorney Wilson noted that Rhode Island and Massachusetts are the most densely populated states. Pennsylvania is much less densely populated. There was questioning regarding rural or urban settings next to the solar farms. In rural areas, the appraisers looked at Townships; in urban areas, they looked at boroughs. Mr. Kirkland did the same thing. Look at page 20 – population of Dover Township is 22,071, 42 square miles, which averages to 537 people per square mile.

Mr. Kirkland said you have to use the same calculation for the Dover project as the RI study, if you're going to compare the two. You can't use different calculations for Dover. Attorney Wilson feels that increased specificity gives better results. But Mr. Kirkland said not to do so. It was noted that Mr. Hartman used different numbers in his study. Whatever you look for, you'll find.

Also, the University of Texas, Austin, study supports Mr. Kirkland's conclusion that this facility will not have a negative impact. Attorney Wilson reads it differently. Table A1, page 8, Exhibit S, was reviewed. Mr. Kirkland noted that the study was performed from 2012 – 2016; published 2018. Table A1, how many homes were within 500' of the installation? 20. Mr. Kirkland noted that most of the 23 facilities were in the desert. Discussion was held on the proximity of the homes/solar farms. In Dover, 75 homes would be within 500' of the proposed solar facility. Mr. Kirkland noted that in Spotsylvania, there are at least 90 homes either existing or planned to be within 500' of that solar farm. This study includes the conclusion that surveyed property assessors find no or positive impact from the solar farm. In this survey, about half of the respondents had assessed a home near a solar farm, and about half had no experience with it.

Regarding the survey from page 23 of the U of T study, is the result of no or positive impact a generalization. Attorney Wilson feels that surely there could be cases of negative impacts.

Questioning concerning the experience of the assessors involved in assessing the impact of solar farms on nearby properties. Mr. Kirkland clarified that in this line of questioning, the assessors were answering questions on a survey, not qualifying to assess solar farms' impact.

Page 54, 23 paired sales; 11 indicated negative impacts. Attorney Wilson said that he looked at the value of Mr. Kirkland's home of around \$850K; five percent would be \$42,500; would that be a traumatic loss for Mr. Kirkland?

Attorney Jones asked what's next door to Mr. Kirkland's house? Neighboring solar panels; other neighbors want to get solar panels, too. Mr. Kirkland has solar panels in his yard.

Re: studies cited – they were not the entire basis of his opinion. Mr. Kirkland looked at over 900 solar farms over many years. Also looked at surveys of assessors and surveys of neighbors living next to solar farms. His opinion? Solar farms have no impact on neighboring properties .

Any audience questions for Mr. Kirkland? None at this time.

At this point, 8 p.m., Mr. Kirkland was excused from the meeting.

Attorney Wilson cross-examined Attorney Stacy MacNeal. She's familiar with Dover Township's zoning ordinance. Attorney Wilson read from the ordinance, noting express or implied plan objectives of the comp plan. Attorney Wilson noted that the Zoning Ordinance references the comp plan about 40 times. Attorney MacNeal responded that sure, that might be typical, and the Zoning Ordinance was developed with the comp plan.

In the *Valley Forge* case there is seemingly contradictory information. Attorney Wilson noted that the Zoning Ordinance permitted 11 different ag uses; the applicant also needed to comply with the comp plan. That comp plan classed the area parks, recreation, and open space. There was conflict between the Zoning Ordinance and the comp plan.

Attorney MacNeal asserted that the comp plan can never rise to the level of law; if there's a conflict, credence is given to the specific provision over the general provision. Dover Township's Zoning Ordinance permits PSES in specific district and must comply with comp plan. Attorney MacNeal doesn't see that in the requirements for a special exception. There are indeed probably provisions in the Zoning Ordinance that may indeed be in conflict with the Comp plan, because the comp plan is so general. The Dover Township Board of Supervisors evidently felt that the zoning amendment is in accordance with the comp plan.

Section 27-1004 requires specific use be in harmony with the area, etc. adequate water and sewer.

In another case, Attorney Wilson presented rulings to do with specific criteria. Health safety, welfare aspect was subjective and burden of proof was on objectors. Comparing to the Dover Township case, one must decide which criteria are subjective or specific. Attorney MacNeal said that all the attorneys will likely have differing opinions on this issue. She went through the requirements for the special exception and gave her opinion regarding the general or specific requirements. A, B, first of C general; last part of C specific to location, nature, and height of buildings, walls, and fences – that's specific; D, specific. But there could be differences of opinion on any of the requirements.

Re: transcript of Larry Lahr from March. Is the Township's comp plan important to granting a special exception? No. If the use is permitted by special exception, it's automatically assumed that it's in harmony with the neighborhood. What would be a useful guide for determining orderly and appropriate development of the district? She can't figure a denial for any request for special exception based on any of the information presented. Dover's 2020 comp plan states that 30 or so acres have been developed outside the growth area; and by 2030, only 50 acres should be developed outside the growth area. The applicants' proposed use develops far more land than that.

Attorney MacNeal would class this use as an Industrial use, not a utility. This project uses 45-50 of the available land within the future growth area. It's supposed to be used for commercial, industrial, and mixed uses.

Dover is classed as a "bedroom community." There are more people living here than working here. 97% of Dover residents commute for their work. Comp plan wants to create jobs so that Dover Township doesn't continue as a bedroom community. Designated and future growth area is to create jobs. This proposed use will only create one or two permanent jobs.

Last month, maps were presented with water and sewer service areas. Future growth areas were discussed. Attorney Wilson and Attorney MacNeal disagree with what future growth area means with regard to expansion of public infrastructure. She feels that the ordinance will override the comp plan.

27-402.4 of the Zoning Ordinance was reviewed. Half of this project is in the Agricultural area. Ordinance refers to agricultural soils, etc. Attorney Wilson read from the ordinance. For land to be considered unsuitable for ag purposes, each of those characteristics must be satisfied. Attorney MacNeal noted that a PSES is exempt from this requirement. She refereced the solar ordinance, 2.5, prohibited locations. She said that a PSES is to be permitted on prime soils. Attorney Wilson feels that all characteristics must be met, and Attorney MacNeal says it doesn't say "and" or "or." She doesn't know if the characteristics are cumulative. Discussion was held on the classification of prime ag soils and the requirements in the ordinance. If Attorney Wilson's interpretation is correct, the applicant would be barred from using the Ag district, correct? Yes, if the criteria were met.

Referring to the solar ordinance, solar related equipment should be located on soils unsuitable for ag use. Attorney Wilson noted that "solar related equipment" includes the "panels" – doesn't that preclude the panels? Attorney MacNeal doesn't have the technical knowledge to say so.

Attorney Jones asked Attorney MacNeal to define general v. specific requirements: specific is measurable as opposed to a more general or policy criteria. It's the objector's burden to show negative impact. The Board of Supervisors adopted protections against impacts.

Attorney Jones asked when the Board of Supervisors adopts something that appears to be in conflict with the comp plan – what would one use to guide one's proposal?

Attorney Jones also asked if it is possible that the Board of Supervisors found that the PSES is consistent with the comp plan's goals? Sure, comp plan is a guide and not specific. Is it possible that the Board of Supervisors felt that this use will preserve ag land for future generations to use? Sure.

From Attorney Jones – is there a general premise that if the ordinance isn't clear, who gets the win? The landowner. Any ambiguity must be resolved in favor of the landowner.

At 8:59, the meeting *recessed* for a short break. At 9:15, the meeting reconvened.

Any audience questions for Attorney MacNeal? Nothing at this time, nor from the Board members.

Attorney Wilson questioned Mr. Lahr about the service area maps and his opinion that they might interfere with the extension of public utilities. Attorney MacNeal said the services might be extended via the roads.

Mr. Lahr noted that the service extensions aren't designed around roads and/or easements that aren't even identified yet. He feels that using this acreage for the solar farm will have a negative impact in the Township. It might well be suitable to extend the services via the roadway, but it's not prudent to discuss this at this point. He noted that Dover Township doesn't have a map of future public services extensions. Attorney Jones noted that many projects do follow roads, yes, but not everything works that way.

Any questions for Mr. Lahr from the audience or Board? Not at this time.

Attorney Jones said that audience members have asked if they can speak. Sure.

Kristin Pike, 5355 Carlisle Road, landowner, was sworn in to give testimony as the Bismark property owners. They feel that this use will help keep their land open and preserved for future generations. This use will help assure that they can keep their lands, even in other

areas of the township. They plan to use sheep as grass/weed control. Additional tax revenue will benefit the Township. It's difficult to maintain a family farm these days.

Attorney Wilson asked about the financial arrangement; unknown.

George Hoover, 3590 Colonial Road, was sworn in to offer testimony. Was there an economic survey done? He asked for current property rates and proposed benefits. All this was already discussed; he can look it up in the record.

Matthew Forry, 2000 Temple School Road, asked Mrs. Pike if she considered her neighbors and community with this decision. Mrs. Pike answered yes, and noted that any change of use anywhere will be different and may be hard to support. She reiterated that this land was previously slated as a large housing development. Mr. Forry asked what about the local animals that might be affected?

Judy Forry, 981 East Canal Road, asked if the Board if they received the photos that were requested? Yes.

Sean Bennett, 5130 Nursery Road, asked if another township had a solar applicant act as part of the ordinance creation. Unknown.

Marsha Klindinst, 6091 Butter Road, addressed Mrs. Pike, saying that the Pike family is making a profit from this project. The other residents are the ones who have to look at the solar farm "eyesore."

Marie McInerney, 6331 Salem Run Road, was sworn in. She asked about the number of solar panels that will be used in this project. She was trying to estimate the numbers, using the proposed numbers, and the number of acres involved. She said that the numbers, using the proposed sizes, etc., doesn't add up to the number of acres that are involved in this project. Zoning Hearing Board, please consider this; seems that the applicant might not need to use all this acreage.

Judy Myers was sworn in to offer testimony. She remembers reading about the Strinestown (maybe) solar project. They estimated 250K solar panels for 550 acres. Using the numbers from that example, that would come out to 375K panels for an 800-acre project.

Curtis Hudson offered that the applicant will not be covering the entire acreage with solar panels. Currently, about 150K panels are proposed.

Attorney Jones noted that the Strinestown project is further along, which gives a better indication of the number of panels.

Kayla Peters, 5210 Davidsburg Road, asked about soil quality contamination. How can the applicant be sure that there will be no ground contamination? Attorney Jones reminded Ms. Peters that an expert testified that there would be no contamination, even if a solar panel breaks. But one can't be 100% sure. Guess not.

Chairman Ginter noted that the Zoning Hearing Board has received multiple letters and emails both in support of and against this proposal. All submissions will be considered in deliberation.

The Planning Commission unanimously recommended approval of this project.

This concludes the testimony in this case.

Attorney Craley said he would like to receive memoranda from all attorneys involved with regard to the agricultural soils issue.

June 1 will be an Executive Session meeting for deliberation. Make sure all memoranda are submitted before that date.

Attorney Wilson gave closing remarks. It's the Zoning Hearing Board's job to interpret the ordinance. He will be submitting Findings of Fact and Conclusions of Law. He discussed the five criteria for granting the Special Exception. The proposed use is inconsistent with the comp plan and would interfere with the logical extension of public services in the growth area. It would delete the future land use plan. 2, adequate water and sewage. The applicant has no intention of extending these public services into this site. 3, negative impact on adjacent buildings. The appraisers presented interesting information on this issue. 4, PA case law treats traffic impact to be a specific condition to be met. YCPC voiced concerns about the impact to local roads during the construction of the PSES. Applicant hasn't provided any specific information concerning the 9-month construction period and the impact on the roads. 5, the applicant does not comply with Section 27-402 of the ordinance. The solar ordinance is in conflict with the regular ordinance. If this application is denied, this applicant will merely reconfigure the project to comply. Please deny this application.

Attorney Jones gave his closing remarks. Thanks to the ZHB members for the attention to this matter. Governing bodies determine whether applications are appropriate. Neighbors indeed have the right to challenge the effect on the health, safety, and welfare of the community. The applicants' experts adequately covered all the concerns of the neighbors. He noted that Attorney Wilson admitted that this applicant has actually met all criteria required. The objectors did not present adequate evidence to support their position. The ZHB does have the option to impose conditions.

Chairman Ginter expressed thanks to the Dover School District for permitting Dover Township to use the facilities; and to Northern York County Regional Police for its presence.

Anyone else want to make concluding remarks? No.

IV. Other Business

Nothing at this time.

At 10:17 p.m., the meeting *recessed* until the next meeting, which will be on June 15, 2022, at 7 p.m., same location.

Respectfully submitted,
Julie B. Maher, Recording Secretary