

Dover Township
Zoning Hearing Board
March 16, 2022

Chairman Jane Ginter called the meeting to order at 7:09 p.m. Members present: Steve Barkdoll, Phillip Brown, Richard Pope, and alternate Jonathan Reynolds. Absent with prior notice: Robert Wright. Also present: Zoning Officer John McLucas, Solicitors Mike Craley and Samantha Craley, Stenographer Emberlin Mair, Recording Secretary, and 50-75 citizens.

This meeting was reconvened from the February 16, 2022, meeting. The proceedings are in the testimony phase.

I. Reorganization

[This item was *tabled* again.]

II. Minutes

No action taken.

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

Attorney Craley reported that ZHB member Robert Wright is not present tonight; he will be provided with the paperwork and exhibits, as he intends to continue hearing this case.

Also, one of the board members, Steve Barkdoll, had a family member (his wife) who testified at the last meeting in opposition to this proposal. Mrs. Barkdoll is, by virtue of that testimony, now a party to the case. Attorney Craley suggested that perhaps Mr. Barkdoll might remove himself from the ZHB for the remainder of this case to prevent any conflict of interest or the appearance thereof. Does Attorney Jones have a problem with Mr. Barkdoll's remaining on the ZHB in light of this information? Attorney Jones inquired if Mr. Barkdoll feels that he can make a proper and unbiased decision, since his wife is a protestant to this case. Attorney Jones can't make a decision one way or another. Per Attorney Craley, if Mr. Barkdoll stays, depending on the decision, that fact might be grounds for an appeal, citing a conflict of interest by virtue of a party to the case being married to a ZHB member. Attorney Jones asked if they can look at the transcript of the last meeting before deciding. Mr. Barkdoll spoke, saying that he doesn't want to cause problems for the Board, but he was informed that Attorney Craley suggested that he should recuse himself from the case because his wife is opposed to this proposal. He feels that he is being forced to recuse himself from this Board. Attorney John Wilson feels that husband and wife opinions in this case isn't a conflict of interest. Attorney Craley noted that anyone who testified is considered a party to the case unless someone objects. In the case of Mrs. Barkdoll's testifying, no one objected, therefore, she became a party to the case. Attorney Jones agrees with Attorney Craley. Violations of the ethics act are taken very seriously. Better safe than sorry, and kudos to Mr. Barkdoll for stepping down. Attorney Wilson asked if Attorney Craley instructed Mr. Barkdoll that he had to recuse himself? Yes, but Attorney Craley didn't insist.

Chris Barkdoll, from the audience, asked why wasn't she instructed that she might be hurting her husband's position on the ZHB? Attorney Craley said that when she was giving her testimony, no one knew that she is Mr. Barkdoll's wife; they didn't figure that out until after the last hearing. By then, of course, it was too late for anyone to voice any objection. Attorney Wilson asked about how Mrs. Barkdoll became a party to the case. Answer: through her testimony against the proposal. The applicant did not object. How about the alternate, Jonathan Reynolds? Will he take Mr. Barkdoll's seat on the Board? Attorney Craley explained that Mr. Reynolds wasn't an alternate when the case began, so no, he will not assume the role of voting member. He will remain as an alternate. With four voting members (Ginter, Brown, Wright, Pope), in the case of a tie vote, the application is deemed to be denied.

Attorney Wilson began his presentation with thanks to the ZHB members for the position they find themselves in to decide this case. Ultimately, someone is going to be very unhappy after the decision is made. He said that the ZHB members' job isn't to make anyone happy but to interpret the law. He and his clients feel that granting the Special Exception is directly contrary to provisions in the Zoning Ordinance.

For this solar ordinance, Attorney Wilson said that it's obvious that the applicant can comply with all the requirements, because the applicant essentially drafted the ordinance. The Township Board of Supervisors voted to permit this use by Special Exception. As the ordinance is written, there is no maximum size restrictions on any solar facility. To obtain a Special Exception, several requirements must be met. Exhibit F of the packet, Subsection A, refers to the proposed use being in harmony with the district and surrounding areas. At the last hearing, Chris Moul testified that this use isn't in harmony with the ag district. The Board of Supervisors didn't permit solar farms in all ways, and this isn't in harmony. Subsection C requires that the Special Exception use results in no impairment. Each standard must be met for approval of the Special Exception application. If not all standards are met, the ZHB shouldn't approve the application. Also, at the last meeting, Attorney Jones said the applicant doesn't have the burden of proof. Attorney Wilson says it does, per the ordinance. He said that the ordinance requires that the applicant provide evidence etc., for approval. He referred to Exhibit G, a memorandum of law, that indicates that the applicant had burden of proof. It was noted that the ZHB is permitted to attach conditions to any approval. Even if the ZHB grants the Special Exception, Attorney Wilson implored the Board to use the testimony this evening to guide the imposition of any conditions.

Larry Lahr, municipal planning expert, will explain why this proposal is not in harmony with the surrounding area/district.

Scott Hartman, certified appraiser, will show that this proposal will negatively affect the adjoining property owners' property values.

Lawrence Lahr was properly sworn. He has lived in Chambersburg/south central Pennsylvania for 60 years; he's been a land planning advisor since 1968. He works largely in south central Pennsylvania. Gave his credentials and qualifications. Has he ever been confronted with the appropriateness of a solar farm? Yes. He's neither for nor against. He has assisted with the drafting of a solar ordinance and has testified before. In Mt. Joy Township, Adams County, a 1000-acre solar farm is proposed. His position on that proposal was that a portion of the development was proposed along a historic zone. Attorney Jones objected to the relevance of this information. Overruled. They continued. There was a split decision on that case; the project was denied. Does this application contain similar issues? Yes. The basis for the denial in Mt. Joy is similar to this application, particularly the size of the project. Mr. Lahr

testified that in preparation for his recommendation, he reviewed the ordinance, the application, Township website, comp plan of 2007 and 2020 update, minutes of meetings, other information. Question by Attorney Wilson: is there anything unique about Dover Township's comp plan and/or zoning ordinance? Mr. Lahr thought it's a bit casual or superficial with regard to solar farms. He also noted that the Zoning Ordinance refers to the comp plan as guidance and the Zoning ordinance incorporates some of the comp plan which makes the comp plan seem more than advisory. This application is inconsistent with materials he reviewed because: in a designated growth area that encompasses residential, industrial, and commercial zones/uses—need infrastructure to support that growth (and there's no sewer or water in that area). He figures that 45-50% of the designated growth area will be consumed by the solar farm. Feels that this will be detrimental to the growth of Dover Township. Attorney Wilson confirmed that the solar farm will monopolize the growth area and will block the development of the infrastructure of the Township. Mr. Lahr referred to York and the development of the Route 30 bypass, which forced businesses to locate along that road, not in the city, which was detrimental to the city. He feels that the same thing will happen in Dover--the solar farm will inhibit the future growth and vitality of the area. It's unlikely that the Township will want to extend the utilities (water, sewer) past the solar use to serve and develop the rest of the growth area.

Exhibit I, page 6, refers to the growth management plan, which is designating an area as a growth area, which Dover has indeed done. It's best to grow concentrically, not spots here and there. Protect ag and natural lands is the number one goal. Exhibit I, page 7, refers to affecting the tax burdens of the school district. Mr. Lahr feels that development is better for tax revenue. What type of development would be better to alleviate the tax burden? Attorney Jones objected here as to Mr. Lahr's qualifications as a tax expert in this area. From Attorney Craley, the ZHB is not bound by official rules of evidence. Suggested overruling. So be it.

Continuing – how does the proposed project affect the planned expansion? It cordons off the ability to expand those facilities in the Township. Ex. I, page 11, is a table of responses regarding the comp plan questions. Of paramount interest was protection of ag and conservation districts. This matches the previous mention of protection of ag lands. How about if someone says that the farmer is entitled to lease his/her land as he/she sees fit? Well, the interests of the community have to be considered, too. “Your right to swing your fist ends at my nose” as the saying goes.

Objective 4: what's needed to support growth in an area. Have to consider needs, density, public health, safety, and welfare. Objective 5: control and guide where the utilities go, control where the land use goes.

Exhibit J: two growth boundaries in the Township -- Designated Growth Area and Future Growth Area. This area is prime for development for the growth of the Township. Is all of the applicant's project located within the Designated or Future Growth Areas? Not all. Is development outside the future growth area appropriate? No, according to the Township Zoning Ordinance, and this proposed use would indeed be considered development. Outside the future growth area, only 33 acres have been developed in the last 15 years or so. How many acres here would be developed outside the future growth area? Answer: just over 200 acres. This is considerably more than the 33 developed in the last 15 years. So, then, more than 600 would be within the growth area. Yes. It would occupy 40-50 percent of available acreage inside the designated growth area. Monopolizing this area would be problematic for the growth of the Township.

Page 41, Exhibit I, 2007 Comp Plan information, there are land use classifications, descriptions of how the land is being used. This application falls under the Utility classification, loosely termed. Page 43, explanation of a Utility – solar farm was not mentioned in the Utility category, but Mr. Lahr feels it would fall into this category. Table 7 lists the descriptions of categories for land use. Currently in the Township, 0 percent or 1 acre in use for utilities. Table 8, future land uses in 2030 -- expected to use 12.1 acres for utilities. With this much acreage to be classed as utilities, that percentage would increase significantly.

Page 45, 2007 comp plan identifies areas of concern for zoning. Lack of key definitions consistent with the MPC and additional definitions to define common uses are needed for Special Exception qualifications. Would a PSES be exempt from the qualifications of the Special Exception? No. Is it common to not have a maximum size restriction? No. Since no size restriction is given, consideration for approving any use should be determined on the basis of its harmony with the region.

Exhibit L, excerpts from the 2020 Comp Plan. Page 6, vision for economic development: advance a Dover market area that creates employment opportunities in the region to permit the residents to live and work in the area. Does this PSES bring jobs to the community? No. Maintain the integrity of a designated growth area by focusing growth in it is a priority. This application flies in the face of these growth areas. Infrastructure vision statement: to develop a capital improvements plan.

Page 20, economic development portion... Dover is referred to a “bedroom community” wherein 97% of the residents are employed outside the community. This limits interaction and mimics urban sprawl by its fragmentation. One of the goals is to increase employment opportunities. This proposal does not bring in any employment opportunities.

Page 22, the proposal would not be in harmony with the “gateway community” characterization of Dover.

Page 23, Subsection 2, focus employment opportunities into the specific growth areas – this proposal will prevent any efforts to achieve this.

Page 24, community preservation – preserve ag heritage of the Township by maintaining the growth area. Would development of 200 outside the growth boundaries have anything to do with the health, safety, and welfare of the community? Mr. Lahr isn't sure.

Growth occurs when employment and housing are offered which increases the sense of community in the area. What makes Dover unique? Both the Borough and the Township grew from the same core; growth was enabled by the sewer and water systems.

Page 34, infrastructure –with Dover's aging infrastructure and the population expected to increase, problems will arise. Improvements should be done to the existing infrastructure, as well as in the growth boundaries. Mr. Lahr noted that the Township has done a good job of containing its growth boundaries. Granting this Special Exception would ignore the deterioration of the aging infrastructure.

Why does he feel that this proposal would be harmful to this community? This use in this location will not promote harmony or continuity and will have a deleterious effect on the long- and short-term growth of the Township.

At 9 p.m., the meeting *recessed* for a break. At 9:17 p.m., the meeting reconvened.

Scott Hartman was called to testify. He lives in Gettysburg, 27 years, certified appraiser since 1995. Primary work is in south central Pennsylvania, with 35 percent of his appraisals having been in York County. He gave his qualifications and background. Has he ever considered the appropriateness of a PSES in a particular location? No, but he appraised two

properties in a neighboring county that were near a proposed PSES, doing research on relevant topics. He is neutral on the issue of solar energy. Exhibit M is Mr. Hartman's curriculum vitae. Attorney Jones approved of Mr. Hartman as a qualified expert.

Exhibit O was the report of Mr. Hartman's findings/estimation of residential properties' values being diminished by this PSES. This impact report was reviewed. The properties examined are the same as those reviewed by the applicant's expert Mr. Kirkland. The information included the official definition of an appraisal.

Mr. Hartman outlined the findings of his report. His first comparison was a site in Hershey, which turned out not to be helpful, the same with two in or near Carlisle; one in Cumberland Valley School District was not useful. One on Wagoner's Gap Road had a solar field near a residential district with properties that were sold. This particular one was an ideal case study for Mr. Hartman. Compareables from December 2019 to current (February 2022). It was noted that all inspections and valuations were done outside the buildings/homes, with no access to the inside. A map of the neighborhood on Wagoner's Gap Road (Northfield) with purple sections was introduced as Exhibit QA, showing properties that sold in the last two years, including sales of lots adjacent to the solar installation, lots from which the solar installation is observable, and lots from which the solar installation is not observable. A map with blue sections was introduced as Exhibit Q. Table 1 showed four sales comparing to 1120 Redwood Drive. The 1120 Redwood value/sale price was -6.3%. Eight properties were examined and compared, with most values decreasing and two increasing. Exhibit Q was explained with reference to other properties, with all property values decreasing. Mr. Hartman explained how he arrived at all the numbers and values in the comparisons. Bottom line: a reduction of 5.56%. Can we use the Cumberland County data? Is it similar enough to Dover Township? Look at the demographics. Demographics for Carlisle Borough and Dover Township are very close, so Mr. Hartman feels that this is a good comparison to predict what will happen in Dover in the event that this project is approved.

Attorney Wilson confirmed that there are two parcels adjacent to or in view of the solar field which have sold in the last two years. Size of the solar farm in the Cumberland Valley study: 1.5 megawatt. The Dover PSES is larger than any other comparison. A larger PSES might have a larger impact on the surrounding property values, but Mr. Hartman wasn't prepared to say yes. It was noted that the screening/buffering between the PSES and the residential uses is deciduous trees, so the PSES will be visible for several months out of the year.

Mr. Hartman feels that Mr. Kirkland's report/study was not as well documented and there was no supporting data. He cannot verify Mr. Kirkland's data. Mr. Hartman also said that Mr. Kirkland called a 5% plus or minus is "static" in the market. Mr. Hartman does not agree with this term.

Mr. Kirkland said that 79% of the properties touching this PSES are residential uses. Exhibit N was presented, portions of Mr. Kirkland's testimony. He didn't identify any matched pairs in Pennsylvania. He did indicate that there is a possibility of a negative impact on the property values. Eleven out of 23 sales were lower.

Attorney Jones objected to the interpretation of Mr. Kirkland's data by Mr. Hartman at a couple of points. Attorney Jones feels that the questions/comments were taken out of context. Mr. Hartman explained how he arrived at his conclusions of Mr. Kirkland's testimony. Regarding the population numbers, Mr. Hartman feels that it depends on where one is looking.

USPAP standards were discussed, at Attorney Wilson's request. Mr. Kirkland's testimony was that because his was a consulting report/appraisal, USPAP standards didn't apply.

Mr. Hartman felt that perhaps Mr. Kirkland was unaware of the fact that the USPAP standards do indeed apply. Mr. Kirkland's report does not contain a certification. Attorney Wilson moved to strike Mr. Kirkland's report from the record because it doesn't comply with the proper standards. Attorney Craley said that the ZHB doesn't have that power.

Mr. Hartman concluded that, in his opinion, the PSES would have a negative impact of 5.56% on the surrounding properties' values.

IV. Other Business

Nothing at this time.

At 10:58 p.m., the meeting *recessed* until the next meeting, which will be on April 20 at 7 p.m.

Respectfully submitted,

Julie B. Maher,
Recording Secretary