

BEFORE
THE
BOARD OF SUPERVISORS
OF
NORTH ANNVILLE TOWNSHIP
LEBANON COUNTY, PENNSYLVANIA

IN RE: CONDITIONAL USE APPLICATION OF LEBANON SOLAR I, LLC
FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

FINDINGS OF FACT

1. Lebanon Solar submitted a Conditional Use Application to North Annville Township (“Township”) on May 3, 2021, for development of a 1234-acre solar farm which was later amended to 858 acres (“The Project”). The Project is proposed to be located on property comprised of 12 individual real estate Lots owned by separate owners. The tax parcels and/or lots are owned by the following individuals:

Alan D. Hostetter and Robin D. Hostetter, Dale E. Hostetter and Thelma M. Hostetter, Parke W. Breckbill and Susan J. Breckbill, Brent A. Kaylor and Julia S. Kaylor, Eli E. Nolt and Darla Nolt, Leonard C. Long and Michael L. Long, Bruce Brightbill and Hilda Brightbill, the Baer Brothers Farms, and Elvin M. Hostetter and the Hostetter Family Limited Partnership II (“Landowners”) and otherwise identified respectively as parcel numbers 25-229478-379886-0000, 25-2302207-381436-0000, 25-2299571-378739-0000, 25-2297632-376780-0000, 25-2301670-388452-0000, 25-2299880-373803-0000, 25-2302100-379838-0000, 25-2302257-387871-0000, 25-2300405-381893-0000, 25-2300498-383638-0000, 25-2299851-378128-0000, and 25-2296964-375508-0000 (otherwise referred to as “The Lots”). The Lots are located in the Township’s A-1 Agricultural Zone (“A-1 District”).

2. The Township Board of Supervisors advertised and conducted public hearings on January 25, 2022, January 26, 2022, and February 24, 2022, during which the parties were afforded an opportunity to present witnesses and exhibits into evidence. The public hearing was closed on February 24, 2022.
3. Upon the conclusion of the public hearing on February 24, 2022, the parties agreed to the following schedule for the submission of Briefs, a hearing for deliberation and decision and presentation of written decision of the Board. All parties agreed on the record to following schedule:
 - a. Briefs, including findings of fact and conclusions of law, were to be submitted by March 24, 2022.

- b. April 5, 2022 – Hearing to deliberate and render a decision.
 - c. Written decision due 45 days after April 5, 2022.
(Tr. 2/24/22 at 385-394)
4. Parties’ status was granted at the first hearing before the Board to the following individuals:
 - i. Grady Summers;
 - ii. Larry Buffenmeyer;
 - iii. Brenda Buffenmeyer;
 - iv. Suzanne Forney;
 - v. Aaron Miller, III;
 - vi. John Shaver; and
 - vii. Brenda Shaver.
 5. At the first hearing of the Board on January 25, 2022, Township resident Brian Tshudy (“Tshudy”) entered his appearance.
 6. The foregoing individuals shall be collectively referred to as “The Objectors”.
 7. Township is a township of the second-class, organized and existing under the laws of the Commonwealth of Pennsylvania at 53 P.S. §65101 et. seq.
 8. On or about October 14, 2019, the Supervisors adopted Ordinance No. 2-2019 which amended the Township’s Zoning Ordinance in order to create a separate use permitted by conditional use otherwise known as a “Solar Farm” in the Township’s A-1 Zoning District.
 9. Applicant submitted its application for approval of a solar farm to the Supervisors on May 3, 2021 to be developed on the lots.
 10. The Township Planning Commission reviewed the application on June 7, 2021 and recommended denial of the application. On February 7, 2022, the Planning Commission again met to review the reduced Solar Farm of 858 acres and again recommended denying the application.
 11. §201.3 of the Zoning Ordinance provides: “when terms, phrases or words are not defined, they shall have their ordinarily accepted meanings or such as the context may imply.”
 12. Ordinance 2-2019 amended §201.4 of the Zoning Ordinance by adding the following definition:

Solar farm (“utility scale solar application”): a solar application and/or applications installed on land for the sale of solar energy for the purpose of commercial gain by the landowner or tenant of the subject parcel.

13. Ordinance 2-2019 created a new §522 in the Township Zoning Ordinance establishing solar farms as a conditional use.

14. §522 of the Zoning Ordinance provides as follows:

Solar farms (“utility scale solar applications”) shall be a conditional use subject to the following conditions:

1. No solar farm may be established upon any farmland or agriculturally zoned land which has an agricultural conservation easement filed against it which remains in effect.
2. The minimum lot size for the establishment of any solar farm shall be 50 acres.
3. The solar panels and/or other implements used in the construction and structure of the solar farm, including, but not limited to, any solar panels shall be set back a minimum of 50 feet from any adjacent lot line.
4. A permanent evergreen vegetative buffer must be provided or fencing which accomplishes the same purpose of buffering.
5. The maximum lot coverage may not exceed 50% of total lot size.
6. The applicant must demonstrate that it has adequate liability insurance in minimum amounts of one million (\$1,000,000.00) per incident and two million (\$2,000,000.00) per aggregate.
7. The applicant must demonstrate and provide adequate bonding to remain in place to be used by the Township if the applicant ceases operation and fails to remove the panels and/or other implements related to the use within 180 days of the cessation of operation.
8. The applicant must have an approved Stormwater Management Plan as required by the Lebanon County Stormwater Management Ordinance.

15. Applicant’s witness, Eric Holton, presented title commitments demonstrating that none of the Lots have agricultural conservation easements filed against them which remain in effect (1/25/2022, 15-16). Applicant’s exhibits A-3, A-8 and A-13.

16. Leonard and Michael Long’s lot located at 1749 Blacks Bridge Road consists of 30.48 acres. Property ID 10

17. The lot of Dale and Thelma Hostetter located at 1595 North State Route 934 is only 49.78 acres. Property ID 8. Exhibit A-1.

18. Eric Holton testified that solar panels and other implements would be set back a minimum of 50 feet from adjacent lot lines (1/25/2022, 18-20).

19. The application of applicant specifically states that applicant shall maintain a setback for solar panels of a minimum of 50 feet from any adjacent lot line of non-participating landowners.
20. Exhibit A-12 includes certain waivers executed by some of the landowners waiving the requirement of the 50-foot set back.
21. Applicant's application indicates that applicant will install requisite buffering from non-participating property owners. Additionally, application indicates that the Applicant is attempting to secure waivers from participating landowners to waive the buffering requirement between the respective properties in order to permit a continuous field of solar panels across the property lines of adjacent participating properties.
22. Exhibit A-12 includes waivers executed by participating landowners waiving the requirement of vegetative screening along lot lines of neighboring properties.
23. Eric Holton testified that the total acreage of impervious surfaces is 25.2 acres and the total lot size as outlined is 858 acres. On this basis, he determined that 2.9% would be the total impervious surface which is less than 50%. There was no exhibit showing where impervious structures would be located on individual lots.
24. Applicant failed to submit any kind of drawing or exhibit which would demonstrate exactly where impervious surfaces would be located.
25. Applicant submitted Exhibits A-7 and A-8 which constitutes certificates of insurance in amounts of at least \$1,000,000.00 and \$2,000,000.00 respectively.
26. Applicant testified that Township will be supplied with a decommissioning plan which will include an adequate amount of financial security at the time of the submission and approval of applicant's Land Development Plan (1/25/2022, 24-25). Applicant's Ex. A-8.
27. Applicant testified that applicant will supply Township with a Stormwater Management Plan at the time of land development approval and submission of the Stormwater Management Plan with applicant's Land Development Plan (1/25/2022, 25-26). Applicant's Ex. A-8.
28. Applicant did not supply Township with a Stormwater Management Plan.

CONCLUSIONS OF LAW

1. Any foregoing conclusions of law are incorporated herein by reference as if fully set forth at length.

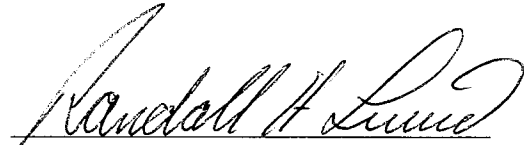
2. The burden of proof in proving compliance with the criteria stated in the Zoning Ordinance for a conditional use rests with the applicant. *Levin v. The Board of Supervisors of Benner Township*, 669 A.2d 1063 (Pa. Cmwlth 1995), *aff'd*, 547 Pa. 161, 689 A.2d 224 (1997).
3. Township's Zoning Ordinance defines the word "lot" as: "A legally defined tract, parcel, or plot of land, whether occupied or capable of being occupied by buildings".
4. An applicant for conditional use has the burden to demonstrate compliance with the specific criteria of the ordinance. 53 P.S. §10603(c)(2). See also *In re Thompson*, 896 A.2d 659 (Pa. Cmwlth. 2006).
5. Once the applicant seeking conditional use approval meets the requirements of the applicable ordinance, he has made out his prima facie case, and the application must be granted unless the Objectors present sufficient evidence that the proposed use has a detrimental effect on the public health, safety and welfare. 53 P.S. §10603 (c)(2). See also *In re Thomspson*, *Supra*.
6. The law is well settled where a word or phrase in a zoning ordinance is defined, a Court is bound by the definition. *Slice of Life, LLC v. Hamilton Township Zoning Hearing Board*, 207 A.2d 886, 899 (Pa. 2019).
7. Words must be construed in a zoning ordinance by their plain and ordinary meanings *Markwest Liberty Midstream and RES, LLC v. Cecil Township Zoning Hearing Board*, 102 A.2d A.3d 549 (Pa. Cmwlth 2014).
8. 53 P.S. 912.1 states that where the governing body in a zoning ordinance has stated special exceptions to be granted or denied by express standards and criteria, applications under those provisions must be decided in accordance with the established criteria. See also *Atlantic Wind, LLC v. Zoning Hearing Board of Penn Forest Township* (Pa. Cmwlth 2022).
9. Promises to comply with the criteria as stated in a zoning ordinance do not constitute evidence of compliance with the criteria of that ordinance. *Atlantic Wind, LLC Supra*.
10. Zoning ordinances should receive reasonable and fair construction in light of the subject matter dealt with and the *manifest intention of the local legislative body*. (Emphasis added.) *Northampton Area School Dist. v. ZHB of Tp. Of Lehigh*, 64 A3d 1152 (Pa. Cmwlth. 2013).

11. The Board finds that in accordance with the definition of the term “lot” under its ordinance, applicant’s application for conditional use relates to 12 separate defined lots, tracts, parcels or plots of land and not one lot.
12. The Board finds that in accordance with the plain meaning of the Word “lot”, Applicant’s application relates to 12 separate lots and not one lot and therefore all lots must individually comply with the criteria of the ordinance.
13. The Board finds that the Applicant has failed to meet its burden re the compliance of each of the 12 separate lots with the 8 criteria of the ordinance.
14. The Board finds that its intention was that each lot be considered individually under its zoning ordinance and not that a “Campus” of lots be considered as one lot as represented by the Applicant.
15. The Board finds that Applicant has complied with criteria number 1 under Ordinance No. 2-2019 by presenting evidence that there is currently no agricultural conservation easement against any of the lots proposed for the conditional use.
16. The lot of Leonard Long and Michael Long located at 1749 Blacks Bridge Road contains 30.48 acres; and therefore, fails to meet criterion number 2 of the Ordinance which requires a minimum lot size of 50 acres. Therefore, this lot may not be approved for conditional use under criterion number 2.
17. The property of Dale and Thelma Hostetter located at 1595 North State Route 934 contains 49.78 acres; and therefore, fails to meet criterion number 2 and cannot contain a solar farm as applied for by the applicant.
18. Applicant has failed to demonstrate that applicant can comply with criterion number 3 of the Ordinance which requires a 50-foot set back from adjacent lot lines. The Board would note that the 50-foot set back is not provided between 1749 Blacks Bridge Road and 445 Hostetter Lane. Moreover, the 50-foot set back is not complied with between 1595 North State Route 934 and 5501 Valley Glen Road. Failure to provide a 50-foot set back between these properties is a violation and failure to comply with criterion number 3. Applicant has failed to meet its burden regarding compliance with criterion number 3.
19. Moreover, applicant fails to demonstrate compliance with criterion number 3 and the 50-foot set back between the properties of 1754 Blacks Bridge Road and 1675 North State Route 934. Applicant also fails to demonstrate compliance with the 50-foot setback between the properties of 1749 Blacks Bridge Road and 1595 North S.R.934. Additionally, Applicant fails to demonstrate compliance with the 50-foot setback between the properties of 1595 N. S.R. 934 and 1754 Blacks Bridge Rd.

20. Applicant's proposal to comply with the setback requirement only with exterior adjacent lots fails to comply with criterion #3.
21. The Board finds that regarding criterion number 4 of the Ordinance, applicant has failed to meet its burden that it will provide a suitable vegetative buffer or a fence which accomplishes the same thing between all of the lots which are parts of the applicant's application for the same reasons as stated in 17-19. Additionally, the Applicant fails to provide a suitable vegetative buffer or a fence which accomplishes the same purpose of buffering around the entire exterior perimeter of the project area, except where Applicant proposes to voluntarily install vegetative screening in various areas to screen residential viewsheds.
22. Regarding criterion number 5, the Board finds that the Applicants have failed to comply with the lot coverage requirement because they have failed to present sufficient evidence upon which the Board can determine whether or not the applicant complies with the requirement of maximum lot coverage which shall not exceed 50% of the total lot size on each of the lots included within the applicant's application.
23. The Board specifically finds that solar panels must be included in the calculation of lot coverage and Applicant fails to include panels in his calculations and show how the panels shall be arrayed on the individual lots.
24. The Board finds that the applicant has complied with criterion number 6 by presenting Exhibit A-7 and certificates of insurance which comply with criterion number 6.
25. The Board finds that applicant has failed to comply with criterion number 7 of the Ordinance by failing to submit appropriate bonding as required by criterion number 7 in as much as applicant's promise of future compliance does not meet the criterion.
26. The Board finds that applicant has failed to comply with criterion number 8 of the Ordinance which requires the submission of evidence of an approved Stormwater Management Plan as required by the Lebanon County Stormwater Management Ordinance. A promise of future compliance does not constitute evidence of compliance with criterion number 8.

DECISION

The Board hereby, on this date, based upon the foregoing findings of fact and conclusions of law determines that the applicant has failed to demonstrate adequate compliance with 6 of the 8 criteria of Ordinance No. 2-2019; and therefore, applicant's application for conditional use is denied.



Chairman

Date: 5/12/22