

QUINTON TOWNSHIP PLANNING BOARD

JULY 13TH, 2010

MINUTES

The regular meeting of the Planning Board was called to order at 7:00 p.m. at the Quinton Township Municipal Building by the Chairwoman: Margaret Maxwell-Mood.

Flag salute was held and it was determined that the meeting was posted in a public place and advertised in the two official newspapers.

ROLL CALL: Amy Bradway, James Kates, Margaret Maxwell-Mood, Zach Patterson, Carl Schrier, Marjorie Sperry, Doug Tzaden

Andrew Hogg, Engineer and Laurence M. Divietro, Planner, Adam I. Telsey, Solicitor, Bonita Bell

Joanne Nacucchio arrived just after roll call.

ABSENT: Donna Bradway (on 6 months leave of absence) - Christopher Donelson and Jane Turner

APPROVAL OF MAY 11TH, 2010 MINUTES - Amy Bradway made a motion to accept the May 11th, 2010 minutes. Zach Patterson seconded the motion. All in favor. Motion carried.

APPROVAL OF JUNE 8TH, 2010 MINUTES – Amy Bradway made a motion to accept the June 8th, 2010 minutes, Jim Kates seconded. All in favor. Motion carried.

MARGARET MAXWELL-MOOD MADE THE PRESENTATION OF THE PLAQUE HONORING ROSS LEVITSKY AND HIS SERVICE TO THE QUINTON TOWNSHIP PLANNING BOARD

MARGARET MAXWELL-MOOD WILL DELIVER THE PLAQUE TO JANE BELL AT HER RESIDENCE HONORING HER SERVICE TO THE QUINTON TOWNSHIP PLANNING BOARD

APPLICATION OF T-MOBILE NORTHEAST, LLC # 10-8

PROPERTY: 704 ROUTE 49

BLOCK 3, LOT 36

SPECIAL USE PERMIT – TOWER

Melissa Murray Rigney, Esq., of Lemanowicz, LLP, 1012 N. Bethlehem Pike, Ste. 200 B-3, Lower Gwynedd, PA 19002, 267.419.8498, appeared for the Applicant, T-Mobile Northeast, LLC. The engineer listed is Velocitel, Inc. of Colonial Park Drive, Suite 307, Roswell, GA 30075, 770.645.5900.

This applicant did not notice the 200' list – conversations were held with the Attorney and our Solicitor wherein Ms. Rigney did present her argument at the July 13th, 2010 meeting.

Larry DiVietro went over the application of T-Mobile Northeast to put a wireless antenna on an existing a wireless pole within the Township. The new application is for the addition of an array of antennae on the tower. The existing tower is 124 feet and this one would be below that. During the review it was determined that this application is a Special Use Permit under the Township Ordinances. It also requires an application to the Planning Board for a Site Plan Waiver. The property is in the PR Residential Zoning District. Mr. DiVietro's determination is that it is a non-conforming, a pre-existing non-conforming use and that a Use Variance would be appropriate and consequently you would have to do notices. The Municipal Land Use Law is very specific that conditional uses are permitted and handled as a Planning Board matter if you are in compliance with all of the conditions though the factor and conditions required were limited to 55 feet, this would be higher. It is then a conditional use, it does not meet the criteria, consequently it would not be a permitted use by right. It requires a Use Variance, not that it is a complicated application on an existing tower, but due process would be to apply for a Use Variance in my opinion, have the notices go out. Consequently it was put on the Agenda and then pulled from the Agenda due to the requirements for noticing.

Melissa Murray Rigney, Esq. argued that in Chapter 85 it is specifically spelled out that applicants are to come to this Board and ask for a Special Use Permit, the conditions of which are spelled out in the Ordinance through Chapter 85 that the Planning Board is look at this and make sure that Applicant adheres to those conditions and then instructs that the permit is properly issued. Planning Board also must review the site plan to make sure that it doesn't offend any existing footprint that a tower and/or fence compound might provide. Applicant would further argue that that has been the process in this Township, at least for more than the last year and I appreciate that this is a new Board, but in fact the Ordinance hasn't changed and the Applicant is

owed this same review process as previous carriers that have been through in like district with like applications.

Discussion was held regarding past practice procedures or to go with the new practice procedures. It was decided to stay with the past practice and have the Township move forward to clear up the differences in the Ordinance.

The Application was deemed incomplete.

Larry DiVietro explained the Engineers are comfortable that the Application is complete for the Board to hear the Waiver of Site Plan in addition under the special use which is a referral to the governing body. A Use Variance for an expansion consistent with the criteria of the Special Use Permit is encouraged, it is not a major expansion, but is a separate applicant, separate license for a separate array of antennae which exceeds the permitted height.

Thus, the Planning Board would not act on the Special Use Permit.

The Planning Board is asking for a Use Variance and an action of the Waiver of Site Plan.

Solicitor Telsey explained that the issue is Applicant applied for two things: Special Use Permit and a Site Plan Waiver. Solicitor Telsey and Engineer DiVietro feel that that is not the proper application. They feel as though the Applicant should apply for Site Plan Waiver but also the additional application should be for a Use Variance because it is an expansion of a non-conforming use. Do we go with past precedence or do we go with our current interpretation of the Ordinance? In a past application the Planning Board did not require a Use Variance all they required was a Site Plan Waiver application and they issued the Special Use Permit, which the Solicitor and Engineer do not believe they have the power to issue, they believe the that is a Township Committee issue. This is where they problem is coming in and Solicitor Telsey agrees that there is past precedent that supports the application that was submitted by T-Mobile.

Melissa Murray Rigney, Esq. stated if the issue is notice then Applicant is willing to notice adjoining property owners, will be willing to include in the advertisement in the necessary newspapers that Applicant may be required other relief aside from a Special Use Permit and Site Plan Approval, but submits to this Board that

this Applicant is not willing to face a discrimination among functionally equivalent applicants, functionally equivalent services.

Solicitor Telsey asked if we should proceed forward with past practice and handle as with past practice or does the Board want to follow with what Engineer DiVietro feels the way the Application is more appropriately handled.

Discussion was held with each Board member and it was determined that it would be handled as with past practice and that the Planning Board would make recommendation to the Township to clear this matter up so future applicants will not run into this interpretation issue. Clear the Ordinance up so it is a lot clearer.

Solicitor Telsey explained that there could be an appeal because of the discrepancy in the Ordinance.

The Board deemed the Application complete upon noticing the 200' list and advertising no later than 10 days prior to the next meeting on August 10th, 2010 and Melissa Murray Rigney, Esq. agreed.

Joanne Nacucchio made a motion to deem the application complete and Marjorie Sperry seconded. All in favor. Motion carried.

APPLICATION OF LAUREL LAKE SOLAR, LLC – APPLICATION # 10-7

PROPERTY: WATERWORKS ROAD & BURDEN HILL ROAD

BLOCK 33, LOT 9

USE VARIANCE & SITE PLAN APPROVAL – SOLAR ENERGY FARM

At this time James Kates and Carl Schrier left the meeting.

This leaves us with 6 members on the Board.

At approximately 7:38 p.m. Solicitor Telsey swore in the experts for this Application:

Appearing for the Applicants;

Ross Levitsky, Esq., attorney for the Applicants, gave summary regarding solar energy.

James A. Clancy, PE, Land Engineering, L.L.C.

Tim Heinle, VP of Project Development of Community Energy, Inc., expert with 15 years' experience in the development and financing of independent projects, specific to renewable energy. Community Energy Solar, LLC is the development affiliate or sister company to Community Energy, Inc. Community Energy Solar, LLC is where we do our solar project development. Laurel Lake Solar, LLC is wholly owned by Community Energy Solar, LLC. Laurel Lake Solar, LLC is the developer for this particular project. They will hold all of the assets of this project.

The project is a form of agriculture preservation. The land is leased, the owners continue to own the land, operate what they are not using and at the end of the lease they can remove the equipment. This project will be a 24 year lease with two 10 year extensions. They are an energy company, not a real estate company. They are there for the long haul.

This site was chosen because of its proximity to a substation (even though there are properties closer), the setbacks this property offers, it's a balancing act – limiting the impact on the community.

The salvage value of the equipment far exceeds the cost of removal of the equipment. There are requirements in place under the lease to post security and that is with a commercially acceptable entity.

Using a meadow mix – no mow grass that does not require a lot of maintenance which also stays below the level of the solar panels. In the beginning there is a little bit of maintenance until this grass takes over.

In the history of this organization that they have in place – they have never had a fire.

Dan Orzech, Project Manager, Community Energy Solar, LLC gave testimony on the project of the way the whole project works and that this is a way to keep the farm in the family for years to come. They have a long term lease with the landowner; they do not purchase the property. The equipment is taken down at the end of the lease and the farm is put back the way it was prior to the beginning of the project, only better. There is nothing to harm the environment. Securities are posted. No contaminates. A description was given regarding the time the project starts all the way through to the end of the lease. It was noted by the officials that some type of security needed to be in place so that the Township would be able to remove the equipment in the case that the landowner and project officials did not remove the equipment at the end of the lease. It was decided that the Township would have some type of legal means to make sure that the securities posted would be used to remove the equipment at the end of the lease prior to it being returned to the project officials.

James A. Clancy, P.E. for Applicant – explained that the fence would be chain length fence, not barbed wire. The fence would be 1,000 feet from the ditch area. There is a wooded area buffering off of Burden Hill Road. There would be no increase of storm water runoff. The access road is the only disturbance to the land. The grass would be a type called “no mow” which is a low lying grass that only grows to 6” high and bends over at that point. It will take a couple of times to cut it before it is fully established and then you do not have to cut it.

Steve Hazel, Director of Solar Technical Services, Community Energy. Mr. Hazel is a specialist in electrical engineering and solar energy. This solar equipment was designed by Mr. Hazel. Mr. Hazel explained that there will be 5 inverters on the entire property with 1,800 panels and tilted back to shed snow. There is no impact to the wildlife. The entire project is surrounded by a fence. Mr. Hazel also explained that there will be an emergency shutdown system and he personally monitors the system via his laptop. The panels are cleaned by the rain and also there are visits to the site to take physical inventory. There is a slight hum which cannot be heard past the border, only the inverters make noise and there is no noise at night as the energy is not being made at night. There will be infrared cameras, if there is any significant amount of body heat the signal goes to his laptop. The fence will be 7’ in height as our Ordinance requires, not 8’. The topic of insurance came up. There is an incredible amount of insurance coverage. The Township has no liability if someone breaks in and gets hurt. The property owner will be insured. There are no tile drains in the area. The access roads will adhere to the Fire Department’s requirements. They are requesting a waiver for the landscape architect. The project officials will comply with the requirements of the Environmental Commission and Fire Company. There may be some warning signs, identification signs.

Andrew Hogg, PE explained the Completeness Review letter dated July 13th, 2010 provided by Land Dimensions Engineering.

PUBLIC SECTION:

The meeting was opened to the public at 9:19 p.m. - Several members of the public asked questions.

Bill Ayars (73 Cool Run Road) asked about access to the property, will the Fire Company has access? Mr. Hazel responded that the utility companies will have access to the site and the Fire Company will have a key as well.

Edward Saunderlin – will there be a franchise or excise tax? Chairwoman Maxwell-Mood stated that she does not believe the State of New Jersey has imposed those on solar farms yet, but in all probability they will

be doing so. Questioned on taxes and how they would be assessed and the rate. Chairwoman Maxwell-Mood stated that the Zoning Office and Tax Assessor would be getting together to look at those sections of the ground and do an assessment on that. That is not a power of our Board.

Warren Reed, 36 Cobbs Mill – When you say when you switch it on and off, where does the power go? How does it shut down? All at once? Mr. Hazel explained within the system, within this inverter, each string of modules which is going to be about 10 modules plugged together can be turned off individually. Very little amount of power turned off in a bunch of locations. If there is a shutdown of the utility companies, the grids will shut down automatically and a few seconds apart, but in plenty of time so as not to cause harm to utility workers. Once the utility company has restored the electric – the grids automatically start back up.

Joe Elwell – wanted to know how do they keep track of electricity that we generate. It is monitored; we have a meter, same as you.

At 9:25 p.m. the open public section of the meeting was closed.

Solicitor Telsey explained that this is a Preliminary Site Plan approval which means they are getting preliminary approval and coming back in a future date to get Site Plan approval. Members are looking to the Site Plan to see if it meets with your Ordinance, meets with your Master Plan and meets any concerns that you may have. The Use Variance you are looking to the positive and negative criteria, in this instance you are looking more specifically to the negative criteria. The positive criteria are simple in the sense that it's the Applicant's belief that the Legislature is deemed to be a beneficial use which would automatically satisfy the positive criteria. You are looking to see if this project would be a detriment to the property and community.

At this point Ross Levitsky, Esq. read the Use Variance language (40:55D-70). Ross explained that this project of alternative energy is extremely important. Climate control is a piece of the puzzle to go in the right direction. There is no detriment, not putting up anything that cannot be taken down – it is a win-win proposition. This is one type of alternative energy that the President has stood behind. The idea being if everybody gets on board we have projects such as this and we have all these other projects dealing with alternative energy then we will make a dent in our use of fossil fuels and petroleum products. Mr. Levitsky thinks that it is extremely important project. Even though this is a 5 megawatt project in Quinton Township, Salem County, New Jersey this is part of the puzzle that we need to get in place so that we can move in the right direction. No substantial detriment to the public, just the opposite. The other question you are supposed

to look at is if you approve the project will there be a substantial detriment to the intent and purpose of the Zone Plan and Zoning Ordinance. Once again Mr. Levitsky did not think there will be any detriment because as testified to this property is currently agricultural; everything around it will stay agricultural. There is a good possibility because of the revenue generated to the landowner as a result of this is that they will be able to maintain their property as a farm for years to come. Nothing is going on the property that cannot be taken down. So at the end of the term whenever that term is they will be able to remove the equipment and go back to farm ground, which you had in the beginning. Project should be approved; Quinton Township should be applauded for it.

Margaret Sperry questioned the lighting at night. Mr. Hazel explained that there is no light pollution. They do not glow, they stay dark. There is only a battery and LED light.

Chairwoman Margaret Maxwell-Mood offered that she liked the project, the applicants are willing to work with us, provide security, fence will be 7', the fire officials will have access, there will be underground wiring and it is good for the Township. Chairwoman Maxwell-Mood agrees with Ross Levitsky and thinks that it would be good for the Township and set some different standards for other municipalities to follow.

Solicitor Telsey explained that it would be a motion to grant Use Variance approval and Preliminary Site Plan approval, conditioned upon having this application reviewed by the Fire Official, they would cooperate with any suggestions of the Fire Official. Conditioned also upon providing some kind of security regarding the removal of the improvements to the satisfaction of the Township Solicitor. There will be a change to a 7' fence height with a green vinyl coating. The Board will grant a waiver for the requirement of a landscape architect, a waiver of the requirement of a driveway width, provide conditions as outlined in the Completeness letter. Performance Maintenance Bonds and everything will be outlined in the Resolution.

Chairwoman Maxwell-Mood requested a Motion from the Board to approve this as a combined Use Variance approval and Preliminary Site Plan approval with the Applicant meeting the conditions that were discussed during this meeting and appropriate waivers being granted.

Motion to grant Use Variance and Preliminary Site Plan Approval
Motion made by Zach Patterson, seconded by Doug Tzaden.

Roll call vote:

Amy Bradway	-	yes
Margaret Maxwell-Mood	-	yes
Joanne Nacucchio	-	yes
Zach Patterson	-	yes
Marjorie Sperry	-	yes
Doug Tzaden	-	yes

Not at the meeting to vote:

Donna Bradway	-	On Leave of Absence
Christopher Donelson	-	Not present at the meeting
James Kates	-	Left meeting at 7:38 p.m.
Carl Schrier	-	Left meeting at 7:38 p.m.
Jane Turner	-	On Vacation, not present at meeting

Motion made and carried unanimously.

Laurel Lake Solar, LLC application presentation ended at 9:40 p.m.

OLD BUSINESS:

None

NEW BUSINESS:

Margaret Maxwell-Mood explained that the Planning Board office will be relocating to the old Office of Emergency Management – across from Smick Lumber. There is a need for the office space at the Municipal Building for personnel. There is also a need for a laptop with a fast processor and memory to be purchased for the secretary. Members had no objection.

Adam Telsey, Esq. to write a letter to the Township Committee regarding changing the language in the Ordinance as discussed during the T-Mobile Northeast, LLC application.

The minutes and agendas will be posted on the Web page along with the complete Application.

PUBLIC PORTION OPENED AGAIN:

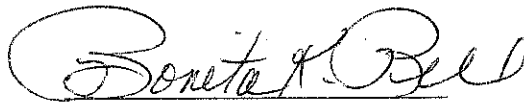
Edward Saunderlin wanted to let everyone know that he felt that they were doing a very good job and he wanted them to know that.

Joe Elwell asked if the meetings would be at the new office or at the Township Municipal Building. Margaret Maxwell-Mood responded that the meetings would still be in the Township Municipal Building.

Public session closed.

A motion was made to adjourn by Amy Bradway and seconded by Joanne Nacucchio. All were in favor and the meeting was concluded at 9:45 p.m.

Submitted by:

A handwritten signature in cursive script, reading "Bonita K. Bell", written in black ink.

Bonita K. Bell

Approved on August 10th, 2010