

Dover Township
Zoning Hearing Board
April 20, 2022

Chairman Jane Ginter called the meeting to order at 7:06 p.m. Members present: Phillip Brown, Richard Pope, Robert Wright, and alternate Jonathan Reynolds. Also present: Zoning Officer John McLucas, Solicitors Mike Craley and Samantha Craley, Stenographer Tammy Rinehart, Recording Secretary, and 50 to 75 citizens.

This meeting was reconvened from the March 16, 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, and March 16, 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

Attorney Craley reported that ZHB member Robert Wright was not present at last month's meeting; however, he has been brought up to speed, having read the minutes and transcripts and exhibits. Also, ZHB member Phillip Brown said that at the meeting on February 16, 2022, he had requested that the applicants provide photos of existing solar sites. For the applicant, Brittany Staszak said that she had indeed provided those photos to Zoning Officer John McLucas.

Attorney Wilson reported that last month, Mr. Scott Hartman presented an impact report, finding that a solar farm had a roughly 5-6% negative impact on surrounding properties. Mr. Hartman stated that there was an error in those calculations, and it's slightly less than a negative 4% impact on surrounding properties. This information is contained in Exhibit R. Mr. Hartman stated that, after last month's meeting, he noticed the error in the calculations and told Attorney Wilson of that error. On page 52 of his report, his conclusion is 3.5 to 4% negative impact.

Attorney Jones opted to ask questions of both of Attorney Wilson's witnesses. To Mr. Hartman, Attorney Jones reestablished the level of competence that an appraisal is required to have but confirmed that this is the first assignment that Mr. Hartman has done on this type of project. On questioning by Attorney Jones, Mr. Hartman would not reveal his confidential sources for some information, either individual persons or the companies with which they are associated. He said that he did spend about eight (8) hours total in discussion with solar builders and solar operators, in preparation for this assignment. He confirmed that he did not spend any time in facilities where they were operating (as those facilities were too far away, as in several states away). Did he speak to any appraisers who had experience with determining how solar farms impact property values? No. He did lots of reading on the subject. After his preparation,

he felt qualified to make the determination. He's only licensed in PA, yet he teaches classes in 35-40 states. A new appraiser can make a determination, only having done his preparation. In Carlisle, it was a textbook study, except for the math error. So he was trying to test a single factor's impact value? Yes. He visited adjacent properties. The principal uses of properties involved: two schools, solar array is on the opposite side of the road from the school; residential properties adjacent to the array. Solar panels on school property, generating 1.5 megawatts of power. He's not sure how much surface area the panels take up. So, he did the testing, and said that the solar farm was the single issue affecting property values, YET that property has multiple uses (school and solar). So Mr. Hartman didn't eliminate the school's effect on the surrounding properties. Also, some properties are adjacent to an interstate highway. Reconciliation page equals a positive impact for properties being close to the major highway. Were there sound barriers erected at the rear of one of the Sable Drive properties? Thinks so, but can't be certain. But, the property is lower than the road, so that fact would act as a sound barrier. The properties might be 100-150 feet from the interstate. Mr. Hartman was surprised by the outcome of the numbers/study, which indicated that residents would rather live close to a major highway with no sound walls or vegetative screening than a solar farm.

On Table H, all properties should come in at similar values except the proximity to the interstate. The variations are likely due to market imperfections. Attorney Jones questioned why Mr. Hartman didn't compare more properties. Simple: there were no more available. Some homes have sound barriers, some don't. Did he take that into consideration for this table/numbers? There were no leaves on the deciduous trees at that time. Did he use the same method for the interstate impact as the method for solar farm? Yes. The school, solar farm, and interstate will each have an impact – as for the school, young families will say that's positive, others might not agree; but he did no specific testing relative to the school. Seems like a wide range of data for the proximity of the interstate. Correct.

Tables 1 and 2 of Mr. Hartman's report show variations – lowest \$148,800; highest \$174,800. Attorney Jones thinks this shows a significant market imperfection despite it being a "textbook study." Mr. Hartman replied that that's typical. And the more properties one compares, the more likely it would be to get a wider range of numbers. He confirmed that he had no interior visits, but used some MLS photographs of the properties in the study. He also noted that no MLS photo will show anything detrimental in a property.

Would an evergreen screen have an impact on the surrounding properties, between the house and interstate? Per Mr. Hartman, yes. Same for the solar use. Attorney Jones reminded Mr. Hartman that the Dover solar ordinance requires full screening within 5 years. Mr. Hartman feels that the initial impact is the biggest one. So, if an initial impact would be -3%, and that should go down over time... realistically, looking at the Cash Equivalent Sale Price, -3.8% for a \$100K house would be \$3,800 reduction.

In the Rhode Island study, a distinction is made between rural and residential. Applicant's Exhibit H was distributed to all. Mr. Hartman isn't aware of how the study was conducted. If either appraiser had gathered the data differently from the Rhode Island study, and the numbers were higher than Rhode Island, maybe one of the other appraisers' numbers were more accurate. Mr. Hartman says it doesn't make sense to look at data from Rhode Island when Carlisle is fairly close. Can you really compare the 2-acre solar farm to the larger one? Mr. Hartman says the neighbors care about what's next door. Yes, the only solar farm available to compare is a smaller one. Attorney Jones: so a neighbor putting solar panels on his/her property would be the same as a solar farm? Mr. Hartman: yes.

Why would the applicant present the RI study, if one is going to use a different methodology? If one is going to rely on available studies of the effects of solar farm installations on the local property values, how do you know which one to examine? Are the methods different for each study?

Mr. Hartman noted that the demographics in the Carlisle area change very rapidly, and that needs to be taken into account. Closer to the colleges, there are lots of school staff living there, making a fair amount of money. Isn't he picking demographics to match up to his study? No, Mr. Hartman said.

If vacant land were developed for some other use, would that have an impact on housing values? Depends on the use, per Hartman. RE: Dover Zoning Ordinance, several uses are by right. CAFO or CAOs are included in those uses by right by Special Exception. If one of these uses were put on this land, would that have an effect on the surrounding properties? Inconclusive, per Hartman. Attorney Jones said that if any use (such as a CAFO) had a negative impact, it would not be permitted. It could have a negative impact, but Mr. Hartman's not sure. If it's inconclusive, then one can't say it would have a negative effect. Correct.

Mr. Hartman's report only considers effects on adjacent residential properties.

The proceedings took a break from 8:09 p.m. to 8:20 p.m. Questions for Mr. Larry Lahr by Attorney Jones: he was involved in drafting solar ordinances for the following municipalities (reviewed and/or redrafted): Mt. Joy, Adams Co; Guilford Township, Franklin Co.; North Annville, Lebanon; an area near Breezewood, PA. Were those permitted by Special Exception? They were a Use by Right. Use by right was permitted in the Ag zone, but must be beyond a transitional zone. Solar ordinances increased since 2016. Attorney Jones referred to the Pennsylvania legislation that states that solar-generated electricity must come from inside Pennsylvania. Mr. Lahr has not testified on behalf of any applicant. RE: the Dover Solar Ordinance, the staff and others worked on this ordinance for well over a year; is that "casual" as he stated last month? Yes, it's just not well-crafted. Mr. Lahr did agree that it seems to be an effort to move in the right direction from the ordinance/language previously in place. Does it matter that the Board of Supervisors and Planning Commission and staff knew about the size of the solar farm ahead of time? No. Section 10303c of the MPC (Applicant's Exhibit J) was read: "Notwithstanding any other provision of this act, no action by the governing body of a municipality shall be invalid nor shall the same be subject to challenge or appeal on the basis that such action is inconsistent with, or fails to comply with, the provision of a comprehensive plan." Doesn't Mr. Lahr want development to follow a comprehensive Plan? Not necessarily.

Attorney Jones relayed that Dover Township's Comprehensive Plan document was adopted in 2020. Wouldn't the Board of Supervisors have been aware of the requirements of the comprehensive plan when they were looking at the zoning /solar ordinance? Maybe they didn't remember to reconcile the two, per Mr. Lahr. But isn't it a fairly intense process to develop a comprehensive plan? No, per Mr. Lahr. Attorney Jones: isn't it possible that the Board of Supervisors thought that the solar ordinance would be fine for the comprehensive plan? Yes, Mr. Lahr said. Isn't it possible that because this farm will be dismantled after its useful life, and the land once again will be available for farming use, the Board felt it was fine? Mr. Lahr: yes. It was noted that the land in question for this application was not rezoned. Based on the law, when the Board of Supervisors adopts a new use, it's consistent with complying with the law and its own ordinances. Once the Board of Supervisors adopts the use/ordinance, does the Zoning

Hearing Board have the power to do its own thing? No, it has to rule in accordance with the ordinances, etc. Is Mr. Lahr familiar with the golf course case in King of Prussia that was zoned Agricultural and there was a validity challenge to it? No, he was not.

Applicant's Exhibit K, map of utilities (sewer and water), was examined. In the 2020 Comp Plan, there's no proposal for planned expansion of utilities in the area in question where this solar farm use is proposed. In a comp plan, the growth boundary is defined, and there's also an area identified as a future sewer and water growth. Mr. Lahr doesn't agree with Attorney Jones' assertions.

From the audience, there were no questions for either of the two witnesses. Nor were there any Board questions. Attorney Craley asked for a clarification of Mr. Hartman's study. On Table H, he factored in the two properties that did include the interstate? There was a 3.8% negative impact on the surroundings from the solar array. If starting from scratch to isolate an adjustment for the interstate, would he include the reduction in property values for the solar array? If he had to evaluate how an interstate highway would affect the values, and he saw that some properties were near a solar array, would he automatically reduce the value by the solar array numbers? If the solar impact is negative, he'd have to value properties not located adjacent to an existing solar array by a factor of +3.8% to determine the value as it relates to the interstate. Attorney Craley: is Mr. Hartman comfortable using 3.8% factor as affected by the solar array? Yes

Attorney Wilson asked questions of Mr. Lahr – is a comp plan recommendatory? Yes. It has suggestions. How about a Zoning Ordinance? Well, that IS the law. Dover's Zoning Ordinance is unique in its adoption and inclusion of the comp plan within that Zoning Ordinance.

Attorney Jones said that because the members of the Board of Supervisors were adopting the comp plan at about the same time it was working on the solar ordinance, they certainly knew about each document. It's up to the applicant to show harmony within the area when asking for a specific use.

Regarding the map that Attorney Jones presented (Applicant's Exhibit K), what's the meaning of the map? It essentially says, if one wants to develop in this Township, here's our growth boundary and its zones. Per Section 22-703 of the Dover Township SALDO, a developer is required to extend and connect properties within 1000' of the public water/sewer line. This is common practice in many municipalities. In Dover, this is called the "transition" area where development is encouraged. Mr. Lahr's objection isn't about the solar use, it's about a specific use that takes up lots of land in the growth area. This departs from the spirit of the anticipated growth in Dover Township.

Questions from Attorney Wilson for Mr. Hartman: about how many hours has he spent studying information for evaluating solar farms? 40-50 hours; 10 speaking with solar farm operators. Is this more or less than the average real estate appraiser in PA? Substantially more. Re: Carlisle study, it was confirmed that there's a dearth of information because there's a dearth of completed projects. RE: school and turnpike – positive impacts? Younger families living near the school will count the school proximity as a positive. Highway has more to do with 'where's the access point' to the highway? If it's nearby and people commute using that interstate, that will translate to a positive impact. RE: lack of sound barriers and how that would affect the study -- the properties that are below the roadway grade will not be exposed to as much noise, as the noise goes up and over the houses. Also, the existing buffer is deciduous

trees, so the buffer was a neutral factor. Re: demographics of Carlisle area and Dover Township. Mr. Hartman said that the majority of the properties that he studied were similar enough to the properties that will be affected by the solar farm in Dover. RE: the RI study, wasn't it better to use the local market data study (Carlisle study)? Yes, Mr. Hartman reiterated that it didn't make sense to him to use the RI market when Carlisle's nearby. Mr. Hartman said that 11 or 12% didn't even register with him, as it is typical. Re: Mr. Kirkland's report, information was missing from that report, per Mr. Hartman.

Also, the Carlisle solar facility is very small, as compared to the Dover facility. Hard to say if the impact would be greater or lesser.

The ordinance was examined.

Attorney Jones had questions for Mr. Hartman,. How many solar facilities of this size has he appraised? None. How many residential properties of 500 acres or more has he appraised? 25-30ish. Did he ever take any portion of a large property and reconcile the impact on the surroundings? Did he take each corner of the property and evaluate the use and impact? Yes, this must be considered. He has considered large properties as a whole, as well. At least half of the properties that might be affected by the Dover solar farm are similar to the homes in Carlisle that were studied.

Attorney Jones had two rebuttal witnesses tonight. Richard Kirkland was called. He has reviewed Mr. Hartman's study (Carlisle) and the testimony. He doesn't agree that Carlisle was a textbook example because there were too many variables. Were there enhancements in the area that might have increased the values? Yes. Mr. Kirkland said that Mr. Hartman didn't take those into account. He doesn't agree with Mr. Hartman's calculations for being near a highway. Exhibit L was a photo of two homes with a vehicle in front. These homes have the interstate running behind it. How does the Carlisle solar project screening compare to the Dover Township proposal? This applicant proposes an evergreen buffer. Mr. Hartman stated that the view from one's back door is important to a property owner. Yes, Mr. Kirkland agreed.

Mr. Kirkland gave details on the RI study and others that he examined. Why did he go to RI when Carlisle data was there? He doesn't look at anything under 5 megawatts. He's looked at 800+ projects over the last 10-14 years. He hopes that a neighbor's solar panels don't negatively impact Mr. Kirkland's house value, as Mr. Hartman insinuated earlier!

Mr. Kirkland discussed initial fears of a project; the negative impact decreases over the first three years, in general. People get used to the change.

RE: the RI study as it relates to rural classification—Mr. Kirkland discussed Exhibit H, Table A4, and interpreted the information to say that in large solar uses over 500 acres, there was no impact on the surrounding areas. He also confirmed that the RI study was only one page of his report. Other studies in his report confirmed his findings that large solar farms have no impact on surrounding properties.

How about the concept of "noise" meaning "market imperfections." The general range of market imperfection is about 5% as a standard measurement. Mr. Kirkland noted that rural properties are far less similar to each other as a general rule.

To the assertion that different areas of the property should be examined, Mr. Kirkland feels that doing so would skew the data for the findings.

Mr. Kirkland presented his report as a consulting assignment. Mr. Hartman disagreed with the format of Mr. Kirkland's report.

A letter dated April 6, 2022, addressed to Ms. Staszak (Applicant's Exhibit M) was discussed. This was a revision of Mr. Kirkland's report, merely to conform a little better, perhaps, to the requirements. He still asserts that this solar farm use will not have any negative impact on surrounding property values.

Attorney Wilson wants to cross-examine Mr. Kirkland after the opportunity to review testimony. Attorney Jones would like to avoid bringing Mr. Kirkland up from North Carolina if possible. Perhaps the cross examination might be done remotely. We can give that a try.

Attorney Stacey MacNeal was called by Attorney Jones after being sworn in. She has practiced law in York County since 1997. Her practice focuses on land use and development. For tonight, she reviewed the past and present comp plan versions, the Dover Township Zoning Ordinance with amendments, and the Planning Commission minutes and public hearing minutes. She discussed the ins and outs of a comprehensive plan and what it focuses on. She gave the procedures for adoption of a comp plan. She said that the legal requirements are fairly straightforward but the review process can be lengthy. The comp plan does provide guidelines for municipalities to use for a number of aspects in the municipality. The elected officials adopt the comp plan. Does the Zoning Ordinance have to be consistent with the comp plan? It can be, but it doesn't invalidate it if it isn't. In the Dover Zoning Ordinance, the references to the comp plan don't make the comp plan a legislative act. The previous case concerning the King of Prussia golf course was discussed. In that case, the ordinance stated that compliance with the comprehensive plan was required. The court disagreed. The ordinance takes precedence over the comprehensive plan. Is the Zoning Hearing Board constrained with the zoning ordinance regarding the application in front of it now? Yes. The Zoning Hearing Board is not permitted to modify the ordinance according to what it thinks is the intent. Attorney MacNeal noted that Dover didn't put into the ordinance references to a maximum size, separation distances, that it must be within the growth boundary, and those options were within the purview of the Board of Supervisors when they were determining that this ordinance was appropriate for the Township.

Re: the map, Applicant's Exhibit K, it doesn't show future expansion of the public water/sewer to the areas of the project. At least as of right now, the Township isn't anticipating expansion of those utilities to that area. Is it possible that the Board of Supervisors saw this solar ordinance as a way to preserve the farmland in this area? Yes. There's a removal provision for this use so that in the future, this use can be discontinued, the equipment removed, and the area returned to agricultural use, without losing that land to residential development.

The zoning ordinance represents the Board of Supervisors' vision with the comprehensive plan. Attorney MacNeal reminded the Board that the ordinance would have been reviewed by the YCPC, who likely recommended that the ordinance be viewed in terms of the comprehensive plan.

In the ordinance that existed prior to the development of this current ordinance, there was no maximum size, no setbacks in general, no buffering requirements. The current ordinance, however, has two pages of conditions that need to be met. As to Mr. Lahr's comment that this ordinance is "casual," Attorney MacNeal feels that this Township has never been casual about anything such as this ordinance. She relayed the process whereby this ordinance was adopted.

When a municipality approves a use by special exception is permitted, there's a presumption that the legislative body has determined that that use is okay with the health, safety, and welfare of the zoning district in question. As to detrimental effects, the opponents bear the burden of proving that the use would have an adverse effect on the area different/greater from the usual. Proving those burdens cannot be based on speculation.

When the Board of Supervisors enacted this ordinance, they knew that the applicant had a large parcel of land for possible solar farm use, and they still didn't impose a maximum size requirement.

Attorney MacNeal stated that the burden of proof comments made by Attorney Wilson are inaccurate and that the applicant has met the standards for approval.

The applicant's exhibits were entered into evidence.

Attorney Wilson would like to question Attorney MacNeal and Mr. Kirkland further. Hopefully all testimony will be concluded at May's meeting.

The Board will entertain arguments after the testimony is presented. Likely a decision at the June meeting.

IV. Other Business

Nothing at this time.

At 10:48 p.m., the meeting *recessed* until the next meeting, which will be on May 18, 2022, at 7 p.m., same location.

Respectfully submitted,

Julie B. Maher,
Recording Secretary