

**TO: PLAINTIFF**

**YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ENCLOSED NEW MATTER WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU**

/s/ Anthony R. Sherr, Esquire

SHERR LAW GROUP, LLP  
BY: Anthony Sherr, Esquire  
Identification No. 44603  
101 W. Airy Street, Ste. 100  
Norristown, PA 19401  
484-591-3000  
484-210-0099 (fax)

Attorneys for Defendant  
North Annville Township

2021 NOV 12 10:19 AM  
ENTERED & FILED  
PROthonARY OFFICE  
LEBANON, PA

LEBANON SOLAR I, LLC

Plaintiffs

LEBANON COUNTY  
COURT OF COMMON PLEAS  
NO. 2021-01236

vs

NORTH ANNVILLE TOWNSHIP

Defendants

JURY TRIAL DEMANDED

DEFENDANT NORTH ANNVILLE TOWNSHIP'S AMENDED ANSWER AND NEW MATTER TO PLAINTIFF LEBANON SOLAR I, LLC COMPLAINT IN MANDAMUS

NOW COMES Defendant North Annville Township (Hereinafter: "Township") by and through its authorized counsel of record, Sherr Law Group, LLP and in response to the Complaint in Mandamus filed by Plaintiff, Lebanon Solar I, LLC (Hereinafter: "Lebanon") denies that Lebanon is entitled to any relief, and further states:

1. Denied. After reasonable investigation Township is without sufficient information upon which to form a belief as to the allegations in this paragraph, therefore they are denied.
2. Admitted in part, Denied in part. It is admitted that Township has its office at the address alleged. The remaining allegations in this paragraph constitute conclusions of law to which no response is required and on that basis, the allegations are denied.

3. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required, to the extent that the allegations are deemed to be other than conclusions of law they are denied in that after reasonable investigation Township is without sufficient information to form a belief as to the allegations.

4. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required. By way of further response, Lebanon is not entitled to a "Deemed Approved" of its application for a special exception as it granted an extension to hold the hearing, in writing.

5. Admitted.

6. Denied. The allegations in this paragraph constitute incorrect conclusions of law and are therefore denied.

7. Admitted that venue is proper in this County. The remaining allegations are denied.

8. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required.

9. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required. By way of further response, North Annville Township has adopted a Zoning Ordinance.

10. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required. By way of further response, as the amendment to the Zoning Ordinance is a writing, Lebanon's conclusions, and characterization of the writing is denied.

11. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required. By way of further response, as the amendment to the Zoning Ordinance is a writing, Lebanon's conclusions, and characterization of the writing is denied.

12. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required. By way of further response, and to the extent that the allegations are deemed to be other than conclusions of law the quoted language appears to be that which is contained in the statute referred to by Lebanon in this paragraph.

13. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required. By way of further response, and to the extent that the allegations are deemed to be other than conclusions of law the quoted language appears to be that which is contained in the statute referred to by Lebanon in this paragraph.

14. Admitted in part, denied in part. It is admitted only that Lebanon filed an application on the date stated. The remaining allegations are denied as the Application is a writing and therefore Lebanon's conclusions and characterizations of the writing are denied.

15. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required. By way of further response and to the extent the allegations are deemed to be other than conclusions of law, it is admitted only that a hearing was scheduled initially for June 24, 2021.

16. Admitted in part and Denied in part. It is admitted that Lebanon requested that the hearing be continued. As to the reason for the request, after reasonable investigation, Township is without sufficient information upon which to form a belief as to the allegations. By way of further response, it is believed that Lebanon in the second sentence is referring to an email that was written by counsel for Lebanon, Dave A. Jones dated June 21, 2021 to Paul Bametzreider Solicitor for Township, a true and correct copy of which is attached hereto and designated as Exhibit 1, and therefore Lebanon's characterizations and conclusions about this writing are denied.

17. Denied. It is believed that Lebanon is referring in this paragraph to an email from Paul Bametzreider to David A. Jones dated June 23, 2021, a true and correct copy of which is attached

hereto and designated as Exhibit 2, and therefore Lebanon's characterizations and conclusions about this writing are denied.

18. Admitted and part and Denied in part. It is admitted only that the hearing on Lebanon's application was rescheduled for September 9, 2021. The remaining allegations in this paragraph constitute conclusions of law to which no response is required.

19. Denied. After reasonable investigation Township is without sufficient information from which to form a belief as to the allegations and on that basis they are denied.

20. Denied. After reasonable investigation Township is without sufficient information from which to form a belief as to the allegations and on that basis they are denied.

21. Denied. It is believed that Lebanon is referring to an email dated September 8, 2021 from Dave A. Jones to Paul Bametzreider and Bill Cluck dated September 8, 2021, a true and correct copy of which is attached hereto and designated as Exhibit 3, and therefore Lebanon's characterization and conclusions of the writing are denied.

22. Denied. It is believed that Lebanon is referring to an email dated September 9, 2021 from Dave A. Jones to Paul Bametzreider dated September 9, 2021, a true and correct copy of which is attached hereto and designated as Exhibit 4, and therefore Lebanon's characterization and conclusions of the writing are denied. By way of further response, Township is unaware of any "misunderstanding" of Exhibit 3. To the contrary, Exhibit 3 gave a clear unequivocal written extension to hold the hearing.

23. Denied. After reasonable investigation, answering defendant is without sufficient information upon which to form a belief as to the truth of the allegations and therefore they are denied. By way of further response, the cancelation of the meeting after receipt of Exhibit 3 was done on September 8, and appeared on Township's web site as being canceled. Moreover, Exhibit 3 constituted the statutorily required "agreement in writing ... to an extension of time".

24. Denied. It is believed that the allegations in this paragraph refer to an email dated September 10, 2021 from Paul Bametzreider to Dave A. Jones, a copy of which is attached hereto and designated as Exhibit 5. As this email is in writing, Lebanon's characterizations and conclusions regarding this email are denied.

25. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required. By way of further response and to the extent the allegations are deemed to be other than conclusions of law, they are denied on the basis that Lebanon granted an extension to conduct a hearing to "the day after the hearing date that we set."

26. Admitted that a public hearing was not held on Lebanon's application prior to September 13, 2021.

27. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required. By way of further response and to the extent that the allegations are deemed to be other than conclusions of law, they are denied on the basis that Lebanon, in writing, granted an extension to conduct the hearing "until the day after the hearing date we set."

#### COUNT 1

28. Township incorporates herein by reference its Answers to paragraphs 1 – 27 of Lebanon's Complaint, as if more fully set forth herein.

29. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required. By way of further response and to the extent that the allegations are deemed to be other than conclusions of law, they are denied on the basis that Lebanon, in writing, granted an extension to conduct the hearing "until the day after the hearing date we set."

30. Denied. The allegations in this paragraph constitute incorrect conclusions of law and are denied.

31. Denied. The allegations in this paragraph refer to a writing and therefore Lebanon's characterization and conclusions concerning this writing are denied.

32. Denied. The hearing for September 9, 2021 was canceled by mutual consent.

33. Admitted only that no hearing was held prior to September 13, 2021 on Lebanon's application.

34. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required.

35. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required.

36. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required.

WHEREFORE, North Annville Township respectfully demands judgment in its favor and against Lebanon Solar I, LLC, plus interest and costs of this action including, but not limited to reasonable attorney's fees incurred in defending this action, plus such other relief as this Court deems just and proper.

**NEW MATTER OF NORTH ANNVILLE TOWNSHIP**

37. Township incorporates herein by reference its Answers to paragraphs 1 – 36 of Lebanon's complaint as if more fully set forth herein.

38. Lebanon granted in writing an extension to hold the hearing to a "day after the hearing date that we set".

39. Lebanon, through their counsel, Dave A. Jones, participated in discussions concerning scheduling a hearing after September 13, 2021.

40. Township Solicitor, Paul Bametzreider wrote in an email on September 8, 2021 to Dave A. Jones and Bill Cluck that “The township has indicated to me that October 7 works for them.” See September 8, 2021 email from Paul Bametzreider to Dave A. Jones and Bill Cluck, attached hereto and designated as Exhibit 6.

41. On September 23, 2021, Paul Bametzreider sent an email to Dave A. Jones which stated “Dave what’s going on with the new date. Let me know ASAP. I have not advertised any new dates.” See Email from Paul Bametzreider to Dave A. Jones dated September 23, 2021 attached hereto and designated as Exhibit 7.

42. On September 23, 2021, Dave A. Jones responded by saying that “Paul, I have been pushing them for dates. I will let you know as soon as I do.” See email from Dave A. Jones to Paul Bametzreider dated September 23, 2021 attached hereto and designated as Exhibit 7.

43. At no time prior to filing their complaint did Lebanon assert that the time period to hold a hearing had expired or that they were entitled to a “deemed approved” of their application.

44. Lebanon’s Complaint fails to state a claim upon which relief can be granted.

45. Lebanon has an adequate remedy at law.

46. Lebanon’s actions were inconsistent with their assertion that they did not grant an extension in writing to hold the hearing on their application.

47. Township is not required to grant Lebanon’s application, without a hearing, and proof by Lebanon of their entitlement of a Conditional Use.


48. Lebanon has not pled any damages or alleged any special damages, and therefore are not entitled to damages.

49. There is no clear legal right in the plaintiff for a “deemed approval”.

50. There is no duty on Township to issue a "deemed approved" under the facts and circumstances.

51. Lebanon has not exhausted its administrative remedies.

SHERR LAW GROUP LLP

By:  \_\_\_\_\_  
Anthony Sherr, Esquire  
Attorney for Defendant, North Annville Township



# EXHIBIT "1"

**Paul Bametzreider**

---

**From:** Dave A. Jones <djones@stockandleader.com>  
**Sent:** Monday, June 21, 2021 6:13 PM  
**To:** Paul Bametzreider  
**Subject:** Request for Continuance - Lebanon Solar I, LLC

Paul,

please accept this email as a formal request for a continuance of the public hearing scheduled for Thursday, June 24, 2021, on behalf of the applicant, Lebanon Solar I, LLC. The request is to continue the hearing for a period of at least 60 days to allow the applicant to conduct community outreach, make revisions to the proposed plans/exhibits in response to concerns raised by neighbors at both the planning commission meeting and the meeting of the Board of Supervisors over the past 2 weeks. My client is community-minded and wishes to address the concerns of the community to the extent it is possible to do so, understanding there will most likely continue to be opposition to moving forward.

To the end, Lebanon Solar I, LLC, hereby waives the requirement to hold the first public hearing within 60 days from the date of the application as required by the Pennsylvania Municipalities Planning Code. This waiver is for a period of 80 days from June 24, 2021, and which waiver will expire on Monday, September 13, 2021.

Further, to the extent that any additional public notifications are required for the re-scheduled hearing date, Lebanon Solar I, LLC hereby agrees to pay for any and all costs associated with re-notification of the re-scheduled hearing date. The Township's understanding and cooperation is greatly appreciated and we look forward to making a better project for all involved.

Finally, could you please provide a copy of the proposed amendment to the solar farm ordinance, if there is one, and the date when the revised ordinance was first provided to the planning commission or board?

If you need any further information or have any questions, please do not hesitate to contact me. Please advise of your receipt of this email at your earliest convenience. Thank you

Dave Jones

David A. Jones, II, Esquire

**Stock and Leader, Attorneys At Law**

221 West Philadelphia Street, Suite 600

York, PA 17401-2994

Phone: (717) 846-9800

Direct Dial: (717) 849-4128

Fax: (717) 505-6539

**StockandLeader.com**

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# EXHIBIT "2"

**Paul Bametzreider**

---

**From:** Dave A. Jones <djones@stockandleader.com>  
**Sent:** Wednesday, June 23, 2021 4:58 PM  
**To:** Paul Bametzreider  
**Subject:** RE: Request for Continuance - Lebanon Solar I, LLC

Thank you Paul.

Dave

David A. Jones, II, Esquire  
**Stock and Leader, Attorneys At Law**  
221 West Philadelphia Street, Suite 600  
York, PA 17401-2994  
Phone: (717) 846-9800  
Direct Dial: (717) 849-4128  
Fax: (717) 505-6539

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**From:** Paul Bametzreider [mailto:PaulB@reillywolfson.com]  
**Sent:** Wednesday, June 23, 2021 4:56 PM  
**To:** Dave A. Jones <djones@stockandleader.com>  
**Subject:** RE: Request for Continuance - Lebanon Solar I, LLC

David,

The supervisors are in agreement with your continuance request as outlined in the below email.

**Paul C. Bametzreider**  
1601 Cornwall Rd  
Lebanon, PA 17042  
PH: (717) 273-3733  
FX: (717) 273-1535  
Please note new email address of:  
[paulb@reillywolfson.com](mailto:paulb@reillywolfson.com)

*Thank you.*

# EXHIBIT "3"

**Paul Bametzreider**

---

**From:** Dave A. Jones <djones@stockandleader.com>  
**Sent:** Wednesday, September 8, 2021 10:41 AM  
**To:** Paul Bametzreider; Bill Cluck  
**Subject:** Request to reschedule hearing for solar farm - North Annville Township

Paul and Bill,

After speaking with my client, they are amenable to a rescheduling of the conditional use hearing as requested by Bill and his client. My client had several consultants lined up to fly in to attend the hearing and will need to coordinate with them on a good date. At this point, they do know that September 30 will not work. In talking to Paul, Tuesdays and Thursdays are generally better for him, so we can look at those days. I am not available on Tuesday, October 5 as I have another meeting that evening in York. We will target October 7, but I will probably not have an answer before Monday afternoon.

Further, my client hereby waives the applicable time periods set forth in the MPC for the Township to conduct the first hearing on its application until the day after the hearing date that we set.

Please let me know how the Board wishes to handle the continuance, i.e. will they simply put the word out and post the door or will there be a need to open the hearing and have someone present to announce the continuance. Thank you.

Dave

David A. Jones, II, Esquire  
**Stock and Leader, Attorneys At Law**  
221 West Philadelphia Street, Suite 600  
York, PA 17401-2994  
Phone: (717) 846-9800  
Direct Dial: (717) 849-4128  
Fax: (717) 505-6539

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# EXHIBIT "4"

**Paul Bametzreider**

---

**From:** Dave A. Jones <djones@stockandleader.com>  
**Sent:** Thursday, September 9, 2021 5:35 PM  
**To:** Paul Bametzreider  
**Subject:** Paul, Farm - Conditional Use hearing

Paul,

With respect to your letter dated September 8<sup>th</sup> regarding the petition of Lebanon Solar LLC; it states "it is our understanding that the Attorney for Lebanon Solar has waived all deadlines on behalf of his client regarding time limits for holding hearings regarding the Petition." To clarify, Lebanon Solar has not waived all deadlines regarding time limits for holding hearings regarding the Petition under the MPC. We want to make sure the hearing is not delayed indefinitely.

Your letter indicates the hearing scheduled for tonight regarding Lebanon Solar's conditional use petition is being continued. Lebanon Solar wants to clarify that it will indeed consent to the opposition's request for a continuance at tonight's hearing. We look forward to future collaboration with the Township. Thank you.

Dave

Sent from my Verizon, Samsung Galaxy smartphone

**NOTICES:** If you have a transaction with our firm and you receive an email containing wire transfer instructions, please call our office immediately to verify the information prior to sending funds (717) 846-9800

# EXHIBIT “5”

**Paul Bametzreider**

---

**From:** Paul Bametzreider  
**Sent:** Friday, September 10, 2021 8:51 AM  
**To:** Dave A. Jones  
**Subject:** RE: Paul, Farm - Conditional Use hearing

Thanks for the clarification Dave.

Paul C. Bametzreider  
1601 Cornwall Rd  
Lebanon, PA 17042  
PH: (717) 273-3733  
FX: (717) 273-1535  
Please note new email address of:  
[paulb@reillywolfson.com](mailto:paulb@reillywolfson.com)

*Thank you.*



In rare cases, our spam scanners may eliminate legitimate email from clients unnoticed. Please immediately advise us if you receive an error notification from our server.

This E-mail, along with any attachments, is considered confidential and may well be legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. Thank you for your cooperation.

**From:** Dave A. Jones [mailto:djones@stockandleader.com]  
**Sent:** Thursday, September 9, 2021 5:35 PM  
**To:** Paul Bametzreider <PaulB@reillywolfson.com>  
**Subject:** Paul, Farm - Conditional Use hearing

Paul,

With respect to your letter dated September 8<sup>th</sup> regarding the petition of Lebanon Solar LLC; it states "it is our understanding that the Attorney for Lebanon Solar has waived all deadlines on behalf of his client regarding time limits for holding hearings regarding the Petition." To clarify, Lebanon Solar has not waived all deadlines regarding time limits for holding hearings regarding the Petition under the MPC. We want to make sure the hearing is not delayed indefinitely.

Your letter indicates the hearing scheduled for tonight regarding Lebanon Solar's conditional use petition is being continued. Lebanon Solar wants to clarify that it will indeed consent to the opposition's request for a continuance at tonight's hearing. We look forward to future collaboration with the Township. Thank you.

# EXHIBIT "6"

**Paul Bametzreider**

---

**From:** Dave A. Jones <djones@stockandleader.com>  
**Sent:** Wednesday, September 8, 2021 2:46 PM  
**To:** Paul Bametzreider; Bill Cluck  
**Subject:** RE: Request to reschedule hearing for solar farm - North Annville Township

Paul,

Can you please confirm that the continuance that is being requested by Grady Summers and his counsel is being granted so we can notify any of our team members who have not yet traveled to the area yet? If you could, please let us know how the Board intends to announce the rescheduling?

Dave

David A. Jones, II, Esquire  
**Stock and Leader, Attorneys At Law**  
221 West Philadelphia Street, Suite 600  
York, PA 17401-2994  
Phone: (717) 846-9800  
Direct Dial: (717) 849-4128  
Fax: (717) 505-6539

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**From:** Paul Bametzreider [mailto:PaulB@reillywolfson.com]  
**Sent:** Wednesday, September 8, 2021 12:55 PM  
**To:** Dave A. Jones <djones@stockandleader.com>; Bill Cluck <billcluck@billcluck.com>  
**Subject:** RE: Request to reschedule hearing for solar farm - North Annville Township

The township has indicated to me that Oct. 7 works for them.

**Paul C. Bametzreider**  
1601 Cornwall Rd  
Lebanon, PA 17042  
PH: (717) 273-3733  
FX: (717) 273-1535  
Please note new email address of:  
[paulb@reillywolfson.com](mailto:paulb@reillywolfson.com)

*Thank you.*

# EXHIBIT "7"

**Paul Bametzreider**

---

**From:** Dave A. Jones <djones@stockandleader.com>  
**Sent:** Thursday, September 23, 2021 3:13 PM  
**To:** Paul Bametzreider  
**Subject:** RE: Lebanon Solar

Paul, I have been pushing them for dates. I will let you know as soon as I do.

Dave

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

**From:** Paul Bametzreider <PaulB@reillywolfson.com>  
**Date:** 9/23/21 2:50 PM (GMT-05:00)  
**To:** "Dave A. Jones" <djones@stockandleader.com>  
**Subject:** Lebanon Solar

Dave what's going on with the new date. Let me know ASAP. I have not advertised any new dates.

**Paul C. Bametzreider**

**1601 Cornwall Rd**

**Lebanon, PA 17042**

**PH: (717) 273-3733**

**FX: (717) 273-1535**

**Please note new email address of:**

**[paulb@reillywolfson.com](mailto:paulb@reillywolfson.com)**



**VERIFICATION**

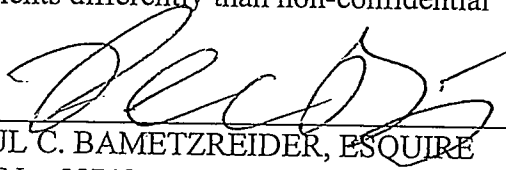
I, \_\_\_\_\_, hereby state that I am a representative for \_\_\_\_\_ in this action and verify that the statements made in the foregoing Answer and New Matter are true and correct to the best of my knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C.S. §4094 relating to unsworn falsification to authorities.

BY: \_\_\_\_\_

A handwritten signature in black ink, appearing to be "R. C. O. B.", written over a horizontal line. The signature is stylized and cursive.

CERTIFICATION

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.



\_\_\_\_\_  
PAUL C. BAMETZREIDER, ESQUIRE  
I.D. No. 55748

Date: 11-10-2021