

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

Lebanon

County

For Prothonotary Use Only:

Docket No:

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- Complaint
 Writ of Summons
 Petition
 Transfer from Another Jurisdiction
 Declaration of Taking

Lead Plaintiff's Name:

Lebanon Solar I, LLC

Lead Defendant's Name:

North Annville Township

Are money damages requested? Yes No

Dollar Amount Requested: within arbitration limits
(check one) outside arbitration limits

Is this a *Class Action Suit*? Yes No

Is this an *MDJ Appeal*? Yes No

Name of Plaintiff/Appellant's Attorney: Sean R. Keegan, Esq.

Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- Intentional
 Malicious Prosecution
 Motor Vehicle
 Nuisance
 Premises Liability
 Product Liability (does not include mass tort)
 Slander/Libel/ Defamation
 Other: _____

CONTRACT (do not include Judgments)

- Buyer Plaintiff
 Debt Collection: Credit Card
 Debt Collection: Other

 Employment Dispute:
 Discrimination
 Employment Dispute: Other

 Other:

CIVIL APPEALS

- Administrative Agencies
 Board of Assessment
 Board of Elections
 Dept. of Transportation
 Statutory Appeal: Other

- Zoning Board
 Other:

MASS TORT

- Asbestos
 Tobacco
 Toxic Tort - DES
 Toxic Tort - Implant
 Toxic Waste
 Other:

REAL PROPERTY

- Ejectment
 Eminent Domain/Condemnation
 Ground Rent
 Landlord/Tenant Dispute
 Mortgage Foreclosure: Residential
 Mortgage Foreclosure: Commercial
 Partition
 Quiet Title
 Other:

MISCELLANEOUS

- Common Law/Statutory Arbitration
 Declaratory Judgment
 Mandamus
 Non-Domestic Relations
 Restraining Order
 Quo Warranto
 Replevin
 Other:

PROFESSIONAL LIABILITY

- Dental
 Legal
 Medical
 Other Professional:

**IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY
PENNSYLVANIA**

LEBANON SOLAR I, LLC,	)	Civil Division
)	
Plaintiff,	)	No.
)	
v.)	
	)	COMPLAINT IN MANDAMUS
NORTH ANNVILLE TOWNSHIP,)	
)	
Defendant.	)	Filed on behalf of Plaintiff,
	)	Lebanon Solar I, LLC
)	
	)	Counsel of Record for this Party:
)	
	)	Elizabeth A. Dupuis
	)	PA I.D. No. 80149
	)	bdupuis@babstcalland.com
	)	Sean R. Keegan, Esquire
	)	PA I.D. No. 316707
	)	skeegan@babstcalland.com
	)	Anna S. Jewart, Esquire
	)	PA I.D. No. 328008
	)	ajewart@babstcalland.com
)	
	)	BABST, CALLAND, CLEMENTS &
	)	ZOMNIR, P.C.
)	
	)	603 Stanwix Street
	)	Two Gateway Center, 6 th Floor
	)	Pittsburgh, PA 15222
	)	(412) 394-5400
)	
	)	Firm I.D. No. 812

**IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY
PENNSYLVANIA**

LEBANON SOLAR I, LLC,)	
)	
Plaintiff,	)	Civil Division
)	
v.	)	No.
)	
NORTH ANNVILLE TOWNSHIP,)	
)	
Defendant.)	
)	

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in this complaint or for any other claim or relief request by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Mid-Penn Legal Services
1150 Chestnut Street, Suite 1, Lebanon, PA 17042
Phone: (717) 274-2834

**IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY
PENNSYLVANIA**

LEBANON SOLAR I, LLC,)	
)	
Plaintiff,	)	Civil Division
)	
v.	)	No.
)	
NORTH ANNVILLE TOWNSHIP,)	
)	
Defendant.)	
)	

COMPLAINT IN MANDAMUS

AND NOW, comes Lebanon Solar I, LLC (“Lebanon Solar”), by and through its counsel, Babst, Calland, Clements & Zomnir, P.C., and files this Complaint in Mandamus under Pa.R.C.P. No. 1095 seeking a declaration of the deemed approval of its conditional use application which has been submitted to North Annville Township (the “Township”), and in support thereof avers as follows:

a. Parties and Nature of Action.

1. Plaintiff Lebanon Solar is a Delaware limited liability company with its principal place of business located at 100 Brickstone Square, Suite 300, Andover, Massachusetts, 01810.

2. Defendant Township is a Second-Class Township and political subdivision of the Commonwealth of Pennsylvania, situated in the County of Lebanon, with its municipal office located at 1020 N. State Route 934, Annville, Pennsylvania 17003, acting by and through the Board of Supervisors of the Township (“Supervisors”).

3. Lebanon Solar is developing a multimillion-dollar solar farm project, a use that is permitted conditionally in the Township, in a manner that benefits the entire community. The project will increase tax revenues, create jobs, and generate long-term payments to local

landowners. Nine (9) landowners of twelve (12) parcels in the Township have contracted to participate in the solar farm project.

4. Lebanon Solar brings this action to enforce its right under the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 *et seq.*, as amended, (the “MPC”), to a deemed approval of its conditional use application which was not considered in a timely manner by the Township.

b. Jurisdiction and Venue.

5. This action arises under the laws of the Commonwealth of Pennsylvania and is within the subject matter jurisdiction of this Court.

6. This Court has subject matter jurisdiction over this matter pursuant to 42 Pa. C.S. §931, and jurisdiction over Defendant Township pursuant to 42 Pa. C.S. §5301(1).

7. Venue is proper in this Court pursuant to Pennsylvania Rules of Civil Procedure Nos. 1006(a)(2) and 1092(c)(2), in that the suit is brought in the County in which the subject property and the Township are located, and equitable relief is sought with respect to this property.

c. Municipalities Planning Code.

8. The MPC is the planning enabling statute that governs land use powers of Pennsylvania municipalities including the Township.

9. Under the authority of the MPC, the Township enacted a zoning ordinance identified as the North Annville Township Zoning Ordinance of 1973, as amended (the “Zoning Ordinance”).

10. On October 14, 2019, the Township, by and through its Supervisors, did duly enact Ordinance No. 2-2019, amending the Zoning Ordinance, and expressly stating that the Township

believes it is in the best interest of the Township to provide a location within the Township zoning map for the establishment of solar farms along with regulations for the establishment of such uses.

11. The Zoning Ordinance, as amended, classifies solar farms as a conditional use in the A-1 zoning district, subject to the review and recommendation from the Township Planning Commission and subject to the approval by the Township Supervisors following a public hearing held by the Township Supervisors.

12. Section 908(1.2) of the MPC requires that an initial hearing before the Township Supervisors on a conditional use application shall be commenced within sixty (60) days from the date of receipt of the applicant's application, unless the applicant has agreed in writing to an extension of time. 53 P.S. §10908(1.2).

13. Section 908(9) of the MPC provides that where the Township Supervisors fail to commence the required hearing within sixty (60) days from the date of receipt of the applicant's application, "the decision shall be deemed to have been rendered in favor of the application unless the applicant has agreed in writing or on the record to an extension of time."

d. Factual Background.

14. On May 3, 2021, Lebanon Solar filed an Application for Conditional Use (the "Application") with the Township for the purpose of obtaining conditional use approval for a solar farm in the A-1 Agricultural Zone as authorized under the Zoning Ordinance. A true and correct copy of the Application is attached as **Exhibit "A."**

15. In compliance with the MPC, the Township scheduled an initial hearing on the Application for June 24, 2021.

16. The June 24, 2021 hearing was postponed at Lebanon Solar's request due to a medical emergency suffered by its local counsel. The Parties agreed in writing that Lebanon Solar

would waive its right under the MPC to have a first hearing within sixty (60) days, “for a period of [eighty] 80 days from June 24, 2021” which “will expire on Monday, September 13, 2021.”

17. The Township, by and through its Solicitor, expressly acknowledged in writing that a hearing on Lebanon Solar’s Application would have to occur before September 13, 2021.

18. In accordance with Lebanon Solar’s express written eighty (80) day waiver and the MPC, the Township rescheduled the initial hearing for September 9, 2021.

19. On September 7, 2021, counsel for certain objectors of the Application contacted Lebanon Solar and informed Lebanon Solar that he and his client could not attend the September 9, 2021, hearing for medical reasons.

20. Lebanon Solar waited to be contacted by the Township before responding.

21. On September 8, 2021, counsel for Lebanon Solar, counsel for the objectors, and the Township Solicitor exchanged communications discussing the possibility of rescheduling the initial hearing at the request of the objectors and waiver of certain deadlines under the MPC.

22. On September 9, 2021, after becoming aware of a misunderstanding as to the nature of its amenability to a subsequent waiver, Lebanon Solar, through counsel, clarified in writing that: (1) Lebanon Solar has not waived all deadlines regarding time limits for holding hearings regarding the Application under the MPC; and (2) Lebanon Solar would consent to the opposition’s request for a continuance **at the September 9, 2021 initial hearing.**

23. Under the impression that the initial hearing would occur as scheduled, on September 9, 2021, two representatives for Lebanon Solar arrived at the published meeting location in anticipation that the Township Supervisors would open the initial public hearing on the Application, and subsequently grant a motion for a continuance with Lebanon Solar’s consent on

the record. However, the Township did not hold a meeting on September 9, 2021, and thus did not commence the initial public hearing on the Application.

24. On September 10, 2021, the Township's Solicitor emailed Lebanon Solar's counsel to acknowledge and thank Lebanon Solar's counsel for the September 9, 2021 email clarifying that Lebanon Solar was not waiving its rights under the MPC.

25. The deadline under the MPC to commence the first hearing on the Application, when considering Lebanon Solar's initial waiver, expired on September 13, 2021.

26. The Township did not commence the initial public hearing on or before September 13, 2021.

27. Due to the Township's failure to timely convene the public hearings within sixty (60) days of receipt of the Application plus Lebanon Solar's eighty (80) day waiver, or by September 13, 2021, Lebanon Solar is entitled to a deemed approval of the Application by operation of law.

COUNT I –

Action in the Nature of Mandamus to Compel Approval of the Application

28. Lebanon Solar realleges and incorporates by reference the allegations of Paragraphs 1 through 27 of this Complaint and all exhibits attached hereto as if fully set forth herein.

29. The Township and the Township Supervisors had a legal duty under the MPC to commence a public hearing on the Application no later than September 13, 2021, the sixtieth (60th) day following the submission of the Application on May 3, 2021, plus Lebanon Solar's eighty (80) day waiver from June 24, 2021, of the same.

30. The Township and the Township Supervisors therefore failed to timely commence the public hearing on the Application.

31. Lebanon Solar did not agree in writing or on the record to extend or further waive the deadline for commencement of the public hearing on the Application. In fact, Lebanon Solar affirmatively stated by written email correspondence to the Township Solicitor dated September 9, 2021, that it was not waiving the deadlines regarding time limits for holding hearings on the Application under the MPC.

32. The Township failed to hold the initial public hearing as scheduled on September 9, 2021.

33. The Township failed to hold an initial public hearing prior to the expiration of the eighty-day (80) waiver which expired on September 13, 2021.

34. Because the Township and the Township's Supervisors failed to commence any public hearing on the Application by September 13, 2021, the Application is deemed approved by operation of law under the MPC.

35. Lebanon Solar is entitled to immediate approval of the Application as filed and without conditions, as a matter of law.

36. There is no other adequate remedy at law.

WHEREFORE, Lebanon Solar I, LLC respectfully requests this Honorable Court to:

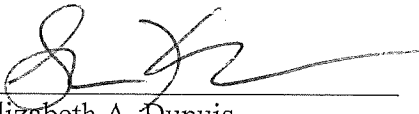
- 1) Direct North Annville Township to approve the Application (Exhibit A) without conditions;
- 2) Direct North Annville Township to issue any and all other approvals and permits and perform any other ministerial acts associated with the Application which are necessary;
- 3) Award damages to the Plaintiff as deemed appropriate by the Court; and
- 4) Grant such other relief as is just and proper under the circumstances.

Date: October 11, 2021

Respectfully submitted,

BABST, CALLAND, CLEMENTS & ZOMNIR, P.C.

By:



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603 Stanwix Street

Two Gateway Center, 6th Floor

Pittsburgh, PA 15222

(412) 394-5400

Attorneys for Plaintiff,

Lebanon Solar I, LLC

Exhibit A

PETITION FOR
CONDITIONAL USE
BEFORE THE BOARD OF SUPERVISORS
OF
NORTH ANNVILLE TOWNSHIP
LEBANON COUNTY, PENNSYLVANIA

CASE # _____

DATE: _____

APPELLANT/PETITIONER/APPLICANT(S): Lebanon Solar I, LLC

ADDRESS: 191 University Boulevard, Suite 667, Denver, CO 80206

PROPERTY LOCATION: See Attached

OWNER(S): See Attached

ADDRESS: See Attached

Reasons for Petition:

Applicant is submitting this Petition for Conditional Use for the purpose of obtaining approval for a Solar Farm, pursuant to the North Annville Township Zoning Ordinance, as amended. All of the properties included are located in the Agricultural Zone (with the exception of approximately 3 acres of land on the Baer Brothers Farms property).

Ordinance Requirements/response:

“1. No Solar Farm may be established upon any farm land or Agriculturally Zoned land which has an Agricultural Conservation Easement filed against it which remains in effect.”

None of the properties are subject to Agricultural Conservation Easements. Applications had been submitted to be enrolled in the Agricultural Conservation Easement program, but those applications have been or will be withdrawn from consideration by the property owners.

“2. The minimum lot size for the establishment of any Solar Farm shall be fifty (50) acres.”

The total project boundary area, including parcels over which there will only be linear transmission easements, is proposed to be approximately 1,234 acres. It is estimated that approximately **480 acres** of the total project will have solar panels installed. The balance of the acreage included in the project footprint will not have solar panels installed.

“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 fifty (50) feet from any adjacent lot line.”

The Applicant proposes to maintain a setback for solar panels of fifty (50) feet from any adjacent lot line of a non-participating landowner. However, the Applicant is in the process of securing a waiver from participating landowners to waive the setback requirement between their respective properties in order to permit a continuous field of solar panels across the property lines of adjacent participating properties, where applicable.

“4. A permanent evergreen vegetative buffer must be provided or fencing which accomplishes the same purpose of buffering.”

Applicant will provide the requisite buffering from non-participating property owners. However, the Applicant is in the process of securing a waiver from participating landowners to waive the buffering requirement between their respective properties in order to permit a continuous field of solar panels across the property lines of adjacent participating properties.

“5. The maximum lot coverage may not exceed fifty (50%) percent of the total lot size.”

The project will not exceed fifty (50%) of the total lot size of the project footprint. The solar panels to be installed will not cover the ground itself and the Applicant intends to follow the guidance provided by the Pennsylvania Department of Environmental Protection, including:

- a. The project will minimize earth disturbance and grading activities, and preserve or restore natural vegetative cover.
- b. The vegetative cover must have a minimum uniform 90% perennial vegetative cover, with density capable of resisting accelerated erosion and sedimentation. Meadow conditions are preferable, but if the vegetative cover must be mowed, it will not be cut less than 4 inches in height; further, the vegetative cover will not be subject to chemical fertilization or herbicide/pesticide application.
- c. The individual solar panels within an array will be arranged in a way that allows for growth of vegetation beneath the panel and between arrays, and that minimizes concentrated runoff by allowing passage of runoff between each module.
- d. Ground-mounted solar panels will be supported with structures/foundations that require little earth disturbance for installation and construction. The majority of the vertical supports for the arrays will be pile-driven into the ground so as not to require any excavation and earth disturbance.
- e. The lowest vertical clearance of the solar array will be 10 feet or less from the surface of the ground, but high enough to promote vegetative growth below the array.

“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.”

The Applicant will provide proof of such insurance, preferably at time the building permit application is submitted.

“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

other implements related to the use within one hundred and eighty (180) days of the cessation of operation.”

The Applicant has a bonding requirement in its lease agreements with the landowners and will add the Township as an additional beneficiary to the bond as a condition of the issuance of a building permit, if approved, so as to provide for the removal of the improvements within one hundred eighty (180) days of the cessation of the operation of the solar farm should the Applicant or its successor operator at the time fail or refuse to do so.

“8. The Applicant must have an approved Stormwater Management Plan as required by the Lebanon County Stormwater Management Ordinance.”

Upon receiving approval for this conditional use, conditioned on this requirement, Applicant will obtain the requisite Stormwater Management Plan approval and provide it to the Township as a part of the Land Development Plan approval process.

Fee of \$ _____ received on _____ Check #

I hereby certify the above to be correct and accurate. Furthermore, I waive my right to have a stenographic record of the hearing proceedings; in lieu thereof, I agree to the utilization of a sound recording tape to record the proceedings of the hearing. I further agree to payment of a fee of \$3.00 per page of hearing transcript, upon appeal of any decision in conjunction with this case and will pay the required minimum deposit fee.




Jennifer A. Dean
VP, Head of Environmental Studies & Permitting, Business Development
Enel Green Power North America, Inc.

VERIFICATION

I, Nicholas Coil, as Head of Development, East for Lebanon Solar I, LLC, do hereby verify that the statements made in the foregoing Complaint in Mandamus are true and correct to the best of my knowledge, information and belief. I understand that statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

LEBANON SOLAR I, LLC,


10/8/2021
Date

By: 

CERTIFICATE OF COMPLIANCE

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.

BABST, CALLAND, CLEMENTS & ZOMNIR,
P.C.

By: 

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