

**BEFORE THE BOARD OF SUPERVISORS OF  
NORTH ANNVILLE TOWNSHIP**

IN RE: )  
)  
Conditional Use Application of )  
Lebanon Solar I, LLC )

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

AND NOW, comes Applicant, Lebanon Solar I, LLC (“Lebanon Solar”), by its counsel, Babst, Calland, Clements & Zomnir, P.C., and submits the following Proposed Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

**I. Preliminary Matters**

1. Lebanon Solar submitted a conditional use application to North Annville Township (“Township”) on May 3, 2021, for development and operation of an eight hundred and fifty eight (858) acre Solar Farm (the “Project”). The Project is proposed to be located on property comprised of twelve individual tax parcels owned by 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 Two (collectively referred to as “Participating Landowners,”) and otherwise identified 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 and by the Lebanon County Assessment Office (collectively referred to as the “Property”). The Property is located in the Township’s A-1 Agricultural Zone (“A-1 District”).

2. The Township Board of Supervisors (“Board”) advertised and conducted public hearings on January 25, 2022<sup>1</sup>, January 26, 2022<sup>2</sup>, and February 24, 2022<sup>3</sup>, 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. Appearing for Lebanon Solar were Steven M. Lucas, Esquire, and Elizabeth A. Dupuis, Esquire.

4. Members of the Board who heard the evidence presented were:

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<sup>1</sup> The transcript for the January 25, 2022, hearing is referred throughout as “Tr. 1/25/22.”  
<sup>2</sup> The transcript for the January 26, 2022, hearing is referred throughout as “Tr. 1/26/22.”  
<sup>3</sup> The transcript for the February 24, 2022, hearing is referred throughout as “Tr. 2/24/22.”

- i. Randy Leisure, Chairman; and
- ii. Clyde Meyer; and
- iii. Adam Wolfe

5. Paul Bametzreider, Esquire, is the Board's Solicitor.

6. At the commencement of the public hearing on January 25, 2022, several Township residents, jointly sought party status. Lebanon Solar did not object to the standing of any of the objecting residents. The following Township residents were jointly granted party status by the Board as objectors ("Objectors"):

- i. Grady Summers;
- ii. Larry Buffenmeyer;
- iii. Brenda Buffenmeyer;
- iv. Suzanne Forney;
- v. Aaron Miller, III;
- vi. John Shaver; and
- vii. Brenda Shaver.

7. At the commencement of the public hearing on January 25, 2022, an additional Township resident, Brian Tshudy, ("Mr. Tshudy") entered his appearance. Hereinafter all objecting parties may collectively be referred to as "Objectors."

8. The following witnesses testified on behalf of Lebanon Solar on January 25, 2022:

- i. For Lebanon Solar, Eric Holton, direct and cross-examination; and
- ii. For Lebanon Solar, Jonathan Dimitriou, direct and cross-examination.

9. The following witnesses testified on behalf of the Objectors on January 26, 2022:

- viii. Grady Summers, objector, direct and cross-examination;
- ix. Lawrence Lahr, expert witness, direct and cross-examination;
- x. Larry Buffenmeyer, objector, direct examination;
- xi. Brenda Buffenmeyer, objector, direct examination;
- xii. Suzanne Forney, objector, direct examination;
- xiii. Aaron Miller, III, objector, direct examination;
- xiv. John Shaver, direct examination;
- xv. Brenda Shaver, direct examination; and
- xvi. Brian Tshudy, individual objector, direct testimony and cross-examination.

10. The following witnesses testified on February 24, 2022:

- i. For Lebanon Solar, Eric Holton, direct and cross-examination;
- ii. For Lebanon Solar, Richard Kirkland, direct and cross-examination;
- iii. For Lebanon Solar, Timothy Staub, direct and cross-examination and redirect; and

iv. For Lebanon Solar, Jonathan Dimitriou, direct and cross-examination.

11. On January 25 and January 26, 2022, members of the public made comments which were included in the transcript and record before the Board.

12. During the course of the hearings, the Township, Lebanon Solar, the Objector, and members of the public introduced, or attempted to introduce, into the record various exhibits. A list of these exhibits is attached as Appendix “A”. The Board may cite to these exhibits as relevant in its findings of fact and conclusions of law.

## **II. Township Zoning Ordinance**

13. The Township is a Second Class Township, organized and existing under the Second Class Township Code, Act 69 of 1933, P.L. 103; 53 P.S. §65101 *et seq.*

14. On October 14, 2019, in accordance with the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 *et seq.* (the “MPC”), the Township Board of Supervisors adopted Ordinance No. 2-2019, amending the Township Zoning Ordinance of 1973, as amended (the “Zoning Ordinance.”)

15. 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 approval by the Township Supervisors following a public hearing held by the Township Supervisors.

16. The Zoning Ordinance does not set forth any additional general “health and safety” criteria applicable to all conditional uses, and therefore the only criteria applicable to the Application are those contained in Section 522.

## **III. Lebanon Solar Application**

Lebanon Solar submitted its application for the solar farm on May 3, 2021, as thereafter amended and supplemented as permitted by the Township ordinances and by law.

17. The Township Planning Commission reviewed the Application on June 7, 2021 and recommended denial of the Application.

## **V. Case of Lebanon Solar**

*Witness—Eric Holton*

18. Mr. Holton is the project manager for Enel Green Power, representing Lebanon Solar on its proposed location in the Township. Tr. 1/25/22, at 12, 48.

19. Lebanon Solar has submitted a conditional use application to establish one solar farm in the Agricultural zoning district, pursuant to Sections 401.10 and 552 of the Township’s zoning ordinance. Tr. 1/25/22, at 15.

20. The project has a proposed generating capacity size of 70 to 100 megawatts alternative current (“AC”) and is designed to interconnect with the existing on-site transmission line that runs across the southern part of the project parcel. Tr. 1/25/22, at 14; Lebanon Solar Exhibits A-1 and A-2.

21. The existing transmission line and infrastructure was one of the primary reasons for selecting the Township and the particular parcels of land for the solar project. There are no plans to build a new transmission line. Tr. 1/25/22, at 14.

22. Currently, the project is in the preliminary design and permitting phase, which includes any required zoning and use approvals. Once all additional design and permitting steps, such as land development and stormwater management approval from Lebanon County (“County”), are completed, construction of the project could be begin as soon as the end of 2022. Tr. 1/25/22, at 14.

23. Further coordination, studies, investigations, and surveys will take place as the project continues forward after completion of the preliminary design and permitting phases. Tr. 1/25/22, at 14.

24. Mr. Holton reviewed each of the eight criteria for solar farms that are set forth in the Township zoning ordinance to demonstrate how Lebanon Solar complies with each of the criteria. Tr. 1/25/22, at 12-13, 15.

25. Criterion one, contained in Section 552(1) of the Zoning Ordinance, does not permit solar farms to be constructed upon any farmland or agriculturally-zoned land which has a current agricultural conservation easement filed against it. Mr. Holton indicated that Lebanon Solar has title commitments available that demonstrate that none of the participating properties have agricultural conservation easements filed against them. Tr. 1/25/22, at 15-16; Lebanon Solar Exhibit A-3.

26. Criterion two, contained in Section 522(2) of the Zoning Ordinance, requires a 50-acre minimum lot size for the construction of a solar farm. The proposed solar farm will be constructed on approximately 858 acres and will be situated on a total of twelve participating parcels. Tr. 1/25/22, at 17-18; Lebanon Solar Exhibit A-4.

27. Criterion three, contained in Section 522(3) of the Zoning Ordinance, requires solar panels and other implements to be set back a minimum of 50 feet from any adjacent lot line. Mr. Holton stated not only will the solar panels and implements be set back at least 50 feet from any adjacent lot line, Lebanon Solar voluntarily ensures that no solar panels or other implements will be located within 150 feet of any occupied residential dwelling. Tr. 1/25/22, at 18-19; Lebanon Solar Exhibits A-5 and A-6.

28. Criterion four, contained in Section 522(4) of the Zoning Ordinance, requires a permanent evergreen vegetative buffer or fencing that will accomplish the same purpose of buffering. Perimeter fencing will be installed around the solar panels and other implements and will serve as the required protective buffer. In addition, Lebanon Solar will voluntarily install

vegetative screening in various areas to provide additional screening to residential viewsheds. Tr. 1/25/22, at 20-21; Lebanon Solar Exhibit A-1.

29. Criterion five, contained in Section 522(5) of the Zoning Ordinance, indicates that the maximum lot coverage, as it relates to impervious surface or impervious area, cannot exceed 50 percent of the total lot size. The proposed project consists of less than three percent impervious lot coverage, as the Pennsylvania Department of Environmental Protection (“DEP”) considers solar panels as pervious surface since solar panels are elevated above the ground, with separation between the rows to allow water to flow underneath and in between. The total acreage of the impervious surfaces associated with the proposed project is 25.2 acres, or approximately 2.9 percent, of the approximate 858 acres that comprise the project site. Tr. 1/25/22, at 21-23. Even if solar panels were considered impervious surfaces necessitating inclusion in the maximum lot coverage calculation, the total lot coverage would total 20.4%. Tr. 2/24/22, at 378, Lebanon Solar Exhibit A-17.

30. Criterion six, contained in Section 522(6) of the Zoning Ordinance, requires applicants to provide documentation that it has adequate liability insurance in minimum amounts of one million dollars per incident and two million dollars per aggregate, in place. Since final insurance policy issuance is contingent upon land development plan approval, Lebanon Solar will provide the Township with insurance certificates in the required minimum amounts following approval of its land development plan. Tr. 1/25/22, at 23-24, 26. In the interim, Lebanon Solar has submitted insurance certificates according to the required coverage amounts with the understanding that the certificates are subject to change once the land development approval process is completed. Tr. 1/25/22, at 24, 26; Lebanon Solar Exhibit A-7.

31. Criterion seven, contained in Section 522(7) of the Zoning Ordinance, requires applicants to provide adequate bonding, which will remain in place to be used by the Township if an applicant ceases operation and fails to remove any solar panels and other implements related to the use within 100 days of the cessation of the operation. Lebanon Solar will provide a decommissioning plan and an adequate amount of financial security upon approval of its land development plan. Tr. 1/25/22, at 24-26.

32. Criterion eight, contained in Section 522(8) of the Zoning Ordinance, requires an approved stormwater management plan as required by the Lebanon County Stormwater Management Ordinance. Following the land development permitting phase, Lebanon Solar will provide the Township with its approved stormwater management plan. Tr. 1/25/22, at 25-27.

33. Prior to any construction, Lebanon Solar will submit a land development plan that demonstrates compliance with the applicable zoning ordinance provisions. Tr. 1/25/22, at 27.

34. The Zoning Ordinance contains no additional criteria, whether general or specific, which apply to this use.

*Witness—Jonathan Dimitriou*

35. Mr. Dimitriou is employed by Enel Green Power of America and is the project engineer for the Lebanon Solar project. Tr. 1/25/22, at 86.

36. Mr. Dimitriou provided information regarding what an inverter looks like and its function on a project site. An inverter essentially contains electrical equipment that takes the direct current (“DC”) from solar panels to an AC side so it can be moved onto the electric grid. Tr. 1/25/22, at 86.

37. A decommissioning plan essentially provides an economic analysis that takes into account the cost to deconstruct the project on aboveground facilities and also takes into account the salvage value of the project. Tr. 1/25/22, at 87.

38. If an individual was 200 feet away, the substation noise would be roughly the equivalent to the sound of a private small office. The noise dissipates the farther away an individual is from the substation. Tr. 1/25/22, at 87, 89.

39. Noise associated with the switchyard, since there is not a transformer in the switchyard, would be the typical high voltage transmission hum that would be heard if walking down the road. Tr. 1/25/22, at 87-88.

**VI. Cases of the Individual Objectors**

*Witness—Grady Summers*

40. Mr. Summers is a party objector who resides at 585 Palmyra-Bellegrove Road, Annville, PA. Mr. Summers testified that from his property, Nolt’s lot, identified by the applicant as Lot 12, would be in his direct line of sight. Tr. 1/26/22, at 122. Mr. Summers testified regarding his general opinions and concerns related to the Lebanon Solar project. Tr. 1/26/22, at 122-148.

41. Mr. Summers testified regarding his concerns related to how the project would impact his views and ability to entertain family and friends. He also expressed his concerns regarding how the project’s fencing or vegetative buffer would impact the ability of the deer to access or cross the project’s properties. Tr. 1/16/22, at 125-127.

42. Mr. Summers has concerns with regards to the installation of any chain link fences on the project properties and its impact on scenic roadways in the Township. Tr. 1/26/22, at 129-132; Objector’s Exhibit 3.

43. Mr. Summers also has concerns related to the use of farmland for the project, the existence of three cemeteries on two of the properties, the use of natural areas identified in the Regional Comprehensive Plan, and the scope of the proposed project. Tr. 1/26/22, at 133-153; Objector’s Exhibits 6 and 7.

44. Mr. Summers acknowledged his concerns pertained to the proposed project design and that those concerns also pertain to the conceptual site plan. Tr. 1/26/22, at 154.

*Witness—Lawrence Lahr*

45. Mr. Lahr is a land planning and design consultant who testified as an expert in land use planning and zoning.. Tr. 1/26/22, at 155, 158.

46. Mr. Lahr testified that he had reviewed the Township’s zoning ordinance, the 2019 zoning amendment that added regulations for solar farms and stated that he is familiar with the Regional Comprehensive Plan. Tr. 1/26/22, at 158-160.

47. Mr. Lahr agreed that planning pertains to policy and that comprehensive plans do not have the force of law and that zoning ordinances do contain regulations that do have the force of law. Tr. 1/26/22, at 182-183.

48. Mr. Lahr confirmed that he is not a land-use attorney and testified that he was provided with interpretations to land use law with respect to the solar regulations relative to the Lebanon Solar application. Tr. 1/26/22, at 183-184.

49. Mr. Lahr acknowledged that the land development plan process with respect to project design is dependent upon an applicant knowing whether or not the particular use is approved or allowed before spending money on engineering and design. Tr. 1/26/22, at 184.

50. Mr. Lahr testified that through his experiences working on projects for his clients that they typically do not go through the design phase before receiving any required conditional use or special exception approvals. Tr. 1/26/22, at 184-185.

*Witness—Larry Buffenmeyer*

51. Mr. Buffenmeyer is an objector who resides at 1540 North State Route 934, Bellegrove, PA. Mr. Buffenmeyer stated that his property is approximately 150 feet from the Lots identified as 5 and 8 and stated that he can also see the hilltop of Lot 6 from his property. Tr. 1/26/22, at 186-187. Mr. Buffenmeyer testified regarding his general opinions and concerns related to the Lebanon Solar project but did not present any new additional factual evidence. Tr. 1/26/22, at 189-195.

52. Mr. Buffenmyer testified regarding his concerns related to property values, the negative impact to farmland, pollution, negative aesthetic value to his property, liability insurance, possible future problems for farmers, and the potential damage to public roads and private water wells. Tr. 1/26/22, at 189-194.

*Witness—Brenda Buffenmeyer*

53. Mrs. Buffenmeyer is an objector who resides at 1540 North State Route 934, Bellegrove, PA. Ms. Buffenmeyer testified regarding her general opinions and concerns related to the Lebanon Solar project but did not present any new additional factual evidence. Tr. 1/26/22, at 196-198.

54. Mrs. Buffenmyer testified regarding her concerns related to taxes, the recycling of damaged solar panels, the potential removal of farmlands for hunting, and the use and enjoyment of her property specifically with respect to the aesthetic values of the community. Tr. 1/26/22, at 196-198.

*Witness—Suzanne Forney*

55. Ms. Forney is an objector who resides at 595 Steelstown Road, Annville, PA. Ms. Forney testified regarding her general opinions and concerns related to the Lebanon Solar project but did not present any new additional factual evidence. Tr. 1/26/22, at 199-205.

56. Ms. Forney testified regarding her concerns related to noise, electromagnetic radiation, aesthetics associated with solar project sites, the pervious and impervious classification of solar panels, recycling, and the various acreages of the project parcels. Tr. 1/26/22, at 199-204.

*Witness—Aaron Miller, III*

57. Mr. Miller is an objector who resides at 721 Palmyra-Bellegrove Road. Mr. Miller stated that the Lot identified as 12 is visible from his property. Mr. Miller testified regarding his general opinions and concerns related to the Lebanon Solar project but did not present any new additional factual evidence. Tr. 1/26/22, at 206-214.

58. Mr. Miller testified regarding his concerns related to how the project will physically divide the neighborhood, aesthetic values, property values, lighting at the project site, batteries on the site and the impact on the environment in the future, and the possibility of onsite fuel storage. Tr. 1/26/22, at 207-213.

*Witness—John Shaver*

59. Mr. Shaver is an objector who resides at 1740 Blacks Bridge Road. Mr. Shaver stated that the Lots identified as 5 and 8 are visible from his property. Mr. Shaver testified regarding his general opinions and concerns related to the Lebanon Solar project but did not present any new additional factual evidence. Tr. 1/26/22, at 214-217.

60. Mr. Shaver testified regarding his concerns related to the views from his property, the impact of the project fencing on the traveling and hunting patterns of the wildlife, the appearance of the project fencing and the potential for trash to be caught up against it, potential battery fires, electromagnetic radiation and fields, and the lot sizes of Lots 5 and 8. Tr. 1/26/22, at 214-216.

*Witness—Brenda Shaver*

61. Mrs. Shaver is an objector who resides at 1740 Blacks Bridge Road. Mrs. Shaver stated that the Lots identified as 5 and 8 are visible from her property. Mrs. Shaver testified regarding her general opinions and concerns related to the Lebanon Solar project but did not present any new additional factual evidence. Tr. 1/26/22, at 218-224.



62. Mrs. Shaver testified regarding her concerns related to the impact on the views from her property, perceived health hazards and cancer, safety related to the batteries, and the safety of the panels during high-wind events. Tr. 1/26/22, at 218-224.

## **VII. Case of Brian Tshudy**

*Witness—Brian Tshudy*

63. Mr. Tshudy is an objector who resides at 1740 Blacks Bridge Road. Mr. Tshudy entered his appearance for the proceedings at the commencement of the January 24, 2022, public hearing. Mr. Tshudy testified regarding his general opinions and concerns related to the Lebanon Solar project but did not present any new additional factual evidence. Tr. 1/26/22, at 226-228.

64. Mr. Tshudy testified regarding his concerns related to the safety of wildlife crossing the road and being hit by vehicles, the potential for farmland and livestock damage caused by wildlife being fenced in, battery leakage, and drainage from the project site. Tr. 1/26/22, at 226-228.

## **VIII. Lebanon Solar Rebuttal Case**

*Additional Exhibits*

65. During the course of its rebuttal case, Lebanon Solar introduced the following additional exhibits, which were admitted without objection.

- a. Various option agreements with land owners. Lebanon Solar Exhibit A-13.
- b. Resume of Richard Kirkland, Jr. Lebanon Solar Exhibit A-14.
- c. Resume of Timothy J. Staub. Lebanon Solar Exhibit A-15.
- d. Resume of Jonathan Dimitriou. Lebanon Solar Exhibit A-16.
- e. Criterion number 5, estimated lot coverage. Lebanon Solar Exhibit A-17; and
- f. Battery energy storage systems informational sheet. Lebanon Solar Exhibit A-18.

*Witness—Eric Holton*

66. Mr. Holton is the Regional Director of Development for Lebanon Solar. Tr. 2/24/22, at 290.

67. Mr. Holton confirmed that the set of option agreements for the participating landowners were not the recorded memoranda but the actual private agreements with commercial, proprietary, and confidential information redacted. Lebanon Solar was providing these private agreements because the Board may find that the recorded memoranda do not provide sufficient evidence to establish Lebanon Solar's interest rights to the properties. The redactions do not impact the pertinent sections and provisions that establish Lebanon Solar's interest rights to the properties. Tr. 2/24/22, at 290-291; Lebanon Solar Exhibit A-13.

68. Mr. Kirkland is an appraiser and the owner of Kirkland Appraisals, LLC., a company based in Raleigh, North Carolina, and testified as an expert in general appraisal and has obtained the designation as a Member of the Appraisal Institute (MAI). Mr. Kirkland has been an appraiser for 26 years and is certified as a general appraiser in several states, including Pennsylvania. Mr. Kirkland is also an MAI, which is a national designation by the Appraisal Institute to recognize additional peer-review study, additional course work, and demonstration of higher learning. Tr. 2/24/22, at 299-300; Lebanon Solar Exhibit A-14.

69. Mr. Kirkland testified that he performed an appraisal for a Dover Solar project in Pennsylvania and concluded a finding of no impact on property values for that particular project. Tr. 2/24/22, at 302.

70. Mr. Kirkland testified that he has performed appraisals on approximately 900 solar farms over the past 13 years in 20 different states, including Pennsylvania. He stated that he has never testified that a solar farm has adversely impacted property values. Tr. 2/24/22, at 303-304, 306.

71. Mr. Kirkland discussed the research that his company has been undertaking the past 13 years in order to understand the impact of solar farms on property values. Various factors, such as what the solar farms look like, quantifying size based upon acreage and megawatts, reviewing adjacent land uses, and the proximity of any adjacent homes in order to have an accurate snapshot of what solar farms are and where they are being located, homes are part of the research. Tr. 2/24/22, at 306.

72. Mr. Kirkland performs what is called a “matched pair analysis” or “paired sales analysis” that looks at the sales of homes next to solar farms as well as agricultural land next to solar farms. This includes evaluating the sales of homes sold next to solar farms and comparing that sale to a similar home sold nearby in the same time frame but not next to a solar farm in measure any impact on property value. Tr. 2/24/22, at 307.

73. Mr. Kirkland’s firm has also interviewed the lead researchers from university studies on the subject of the impact solar farms have on property values to better understand the findings. Additionally, his firm has interviewed brokers involved in home sales next to solar farms to obtain additional information to focus on the match pair analysis that his firm has been doing on its own. Tr. 2/24/22, at 307.

74. In his research, Mr. Kirkland has found that the most common adjoining use to a solar farm, if looking at based on acreage, is agricultural. In looking at the most common adjoining use to a solar farm, if looking based on the number of parcels, the use would be residential. He further added that commercial and industrial uses typically make up less than ten percent of the adjoining uses next to a solar farm. Tr. 2/24/22, at 307-308.

75. Mr. Kirkland has found that when looking at solar projects, the match pairs methodology shows a broad range of impact on property values, with some sales showing a slight negative impact and some showing a positive impact. Overall, taking into account outliers on

either the negative or positive extreme, his research concluded most of the sales fall very close to the zero percent impact. Tr. 2/24/22, at 308.

76. When compiling an aggregate of all findings, roughly one percent suggests a mild impact on home sales next to solar farms. However, 80 percent of the data points reflected no impact on property values. Tr. 2/24/22, at 308-309, 320.

77. Mr. Kirkland's firm also prepares impact analyses on various uses aside from solar farms, including wastewater treatment plants, rock quarries, schools, soccer fields, and outdoor amphitheaters. The analysis looks at a hierarchy of impacts and the things that cause large impacts to property values. Hazardous materials constitute the number one impact on property values, then odor, noise, traffic, adult establishments, and things of nature. Solar farms do not have any of these characteristics and thus do not trigger any of these impacts. Tr. 2/24/22, at 309-310.

78. The impact of appearance, which is typically the smallest impact to measure, is one factor that solar farms do trigger. Mr. Kirkland stated that he believes the reason the matched pair analysis shows little to no impact on property values is that solar farms are often subject to significant setback and landscaping buffer requirements that aid in screening the use. Tr. 2/24/22, at 310.

79. Relative to distance to properties, Mr. Kirkland confirmed that he has specifically looked at the proposed Lebanon Solar project in the Township. Tr. 2/24/22, at 310. He indicated that the closest homes are approximately 150 feet away, which he stated is not atypical, and that he has matched pair analyses that show homes as close as 105 feet, as measured from the closest panel to the closest point on a house, where no impacts on value occurred. Tr. 2/24/22, at 311.

80. His findings are that there were no impacts on property values at that distance for new home construction on homes being built next to an existing solar farm. Tr. 2/24/22, at 311. His findings included a similar development in New Jersey with 1.2 to 1.6 million dollar homes being built 200 feet from the home to the nearest solar panel with no impact on property values. Tr. 2/24/22, at 311.

81. Mr. Kirkland stated that the data concludes that requirements such as setbacks and buffers are sufficient to maintain aesthetic and property values. Tr. 2/24/22, at 311-12.

82. Mr. Kirkland testified that he has performed several analyses of substation impact on property values, and has not seen a negative impact on home sales next to a substation. Tr. 2/24/22, at 322-323.

83. It is Mr. Kirkland's professional opinion that the location of Lebanon Solar's solar farm, as proposed, will be in harmony with the area and will not have a negative impact on adjoining property values. Tr. 2/24/22, at 313.

*Witness—Timothy Staub*

84. Mr. Staub is an assistant vice president with Herbert, Rowland, and Grubic ("HRG") and testified as an expert in land planning. Mr. Staub has over 25 years of community planning experience in Pennsylvania and has worked for HRG for five years. Prior to his joining

HRG, he was employed by Rettew Associates in Lancaster County for 18 years. Tr. 2/24/22, at 324-25; Lebanon Solar Exhibit A-15.

85. Mr. Staub presently serves as the chairman of the Springettsbury Township Planning Commission and is a member of the York County Land Bank Authority. He has published articles in the Township News and the Borough News and has given training on zoning and subdivision and land development ordinances to local government academies and the Pennsylvania State Association of Township Supervisors (“PSATS.”) He has published over 100 planning documents within the Commonwealth and authored the Lebanon County Comprehensive Plan in 2007. Tr. 2/24/22, at 325-26.

86. He also worked on the preparation of a number of municipal ordinances in Lebanon County, including the Union Township and Swatara Township zoning ordinances, parts of the North Cornwell Township and South Annville Township zoning ordinances, and parts of the Palmyra Township and North Cornwall Township comprehensive plans. He currently is writing zoning ordinances for Lower Paxton Township in Dauphin County, New Cumberland Borough in Cumberland County, and Cumberland Township in Union County. Tr. 2/24/22, at 326, 328.

87. Mr. Staub discussed the process when working on zoning amendments and also the preparation of comprehensive plans. Comprehensive plans are policy documents that should be updated every ten years, whereas zoning ordinances are regulatory documents. Zoning ordinances should be prepared after a municipality has its comprehensive plan in place. Tr. 2/24/22, at 328-31.

88. Mr. Staub discussed various uses found in a zoning ordinance, including conditional uses, and the general and conditional use standards that are found in zoning ordinances for identified uses. These standards should have specific objective criteria and quantitative, measurable requirements. Tr. 2/24/22, at 331-32.

89. Definitions should be associated with the identified objectives. In the absence of a defined term, the objective is left to interpretation by the Board. Tr. 2/24/22, at 332-33.

90. The Township’s zoning ordinance in Section 201.3 has a provision for “Terms, Phrases and Words Not Defined” that states “When terms, phrases or words are not defined they shall have their ordinarily accepted meanings or such as the context may imply.” Tr. 2/24/22, at 333.

91. Section 603.1 of the Pennsylvania Municipalities Planning Code (“MPC”) indicates that when interpreting the language of a zoning ordinance to determine the extent of the restriction upon the use of a property, the language is to be interpreted, where doubt exists as to the intended meaning of the language written and enacted by the governing body, in favor of the property owner and against any implied extension of those restrictions. Tr. 2/24/22, at 334.

92. The Township adopted a zoning ordinance amendment in 2019 to add criteria for solar farms. Mr. Staub discussed the applicability of each criterion to the Lebanon Solar project. Tr. 2/24/22, at 334-335.

93. Criterion one refers to agricultural easements, which are not completely defined with regard to what is specifically being requested by the applicant. Mr. Staub testified that it was

his interpretation that if a project is in an agriculturally-zoned district, the applicant needs to confirm if the property has an agricultural preservation or a conservation preservation easement associated therein. Tr. 2/24/22, at 335.

94. Parcel data and deeds from the County's land title records may provide evidence of any agricultural or conservation preservation easement designated for a particular property. Tr. 2/24/22, at 335. There is no requirement in the ordinance for the submission of any specific title information as part of the application. Tr. 2/24/22, at 363.

95. An agricultural security area is basically in place to protect property owners from nuisance laws against farming and not necessarily for the preservation of a farm, as the defined area is reviewed every seven years. Tr. 2/24/22, at 336. While an agricultural security area is property specific, it is not an easement. Tr. 2/24/22, at 336.

96. Criterion two refers to the minimum lot size of 50 acres for the establishment of a solar farm. In addition it does not include a term such as "individual" which could indicate whether or not the definition referred to a single tax parcel or zoning lot, or whether individual parcels could be combined under a "campus" concept. Tr. 2/24/22 pg. 337.

97. Criterion three refers to the setback of solar panels or other implements to adjacent lot area or lot line. Mr. Staub stated that the language in the ordinance is ambiguous relative to the words "adjacent lot line" as the term is not defined. It would be reasonable for an applicant to assume that "adjacent lot lines" are those that are adjacent to the solar farm as opposed to properties within the solar farm. Tr. 2/24/22, at 338.

98. Criterion four requires "A permanent evergreen vegetative buffer must be provided or fencing which accomplishes the same purpose of buffering.", with the term "buffer" not being defined. Tr. 2/24/22, at 338, 340. Mr. Staub stated that as written, this criterion provides an "either/or" option for an applicant with regard to the installation of a vegetative buffer or fencing. Tr. 2/24/22, at 338. Lebanon Solar's plans exceed these requirements as its plans include the installation of both fencing and the placement of vegetative screening around the residential properties. Tr. 2/24/22, at 339.

99. Criterion five establishes the maximum lot coverage for solar farms. The definition of "maximum lot coverage" indicates that it is the "percentage of lot area which may be covered by impervious material including roofs, drives, patios, walls, etcetera." Mr. Staub testified that he had looked at the Lebanon County Subdivision and Land Development Ordinance ("County SALDO") which defines an impervious area as a surface that prevents the infiltration of water into the ground. He indicated that this definition is typical of those normally found in other SALDOs. Tr. 2/24/22, at 340-341.

100. The County SALDO and Township's solar ordinance amendment does not state whether or not solar panels are considered impervious surface areas. However, the County Planning Office made a contrary statement that the panels would be considered impervious. Tr. 2/24/22, at 341; Board Exhibit 3. Mr. Staub testified that in his experience outside of the Township, solar panels have not been determined to be impervious. Tr. 2/24/22, at 341.

101. Mr. Staub testified that criteria five (relative to maximum lot coverage), six (relative to proof of liability insurance), seven (relative to bonding), and eight (relative to the submission of a stormwater management plan) would all be considered as part of the land development process that would commence only if conditional use approval is received. The Board would be permitted to impose conditions as part of any conditional use approval that an applicant meets criteria five, six, seven, and eight, or their conditional use approval is not fully approved. Tr. 2/24/22, at 342.

102. Mr. Staub testified that it is normally his experience that an applicant goes through the conditional use process before proceeding with any land development process. An applicant could not proceed in building a solar farm unless it obtains conditional use approval prior to land development plan approval. Tr. 2/24/22, at 342.

*Witness—Jonathan Dimitriou*

103. Mr. Dimitriou is a project engineer with Enel. He began his career with Black and Veatch in high voltage transmission line design, and then moved onto Tradewind Energy where he focused on utility-scale renewable energy development projects focused mainly on wind energy. Prior to working at Tradewind, Mr. Dimitriou worked at Savion, focusing on solar energy project engineering. Tr. 2/24/22, at 366; Lebanon Solar Exhibit A-16.

104. Mr. Dimitriou testified that he is familiar with the average size of the solar projects that Enel has in development or operation. He stated that Enel currently has seven operating solar projects, four currently under construction, and approximately 65 projects in development in Pennsylvania and across the United States. Tr. 2/24/22, at 367-368.

105. The average size of the operating projects is 200 megawatts, and the four projects currently under construction are on average approximately 365 megawatts. The estimated size of this Project is approximately 70 to 100 megawatts. Tr. 2/24/22, at 368.

106. Interconnection filings are utility-scale projects that have the ability to interconnect to the grid. An application must be made to the grid operator who manages and operates the grid. Based on his review of the interconnection filings, Mr. Dimitriou indicated that there are approximately 40 other projects in Pennsylvania that are approximately at least 70 megawatts in size, in addition to a number of utility-scale solar projects under development in Pennsylvania that are three to nine times larger in size than this Project. Tr. 2/24/22, at 368-369.

107. Enel has 20 active battery storage projects in North America. Mr. Dimitriou provided information on the Battery Energy Storage Systems (“BESS”) proposed to be used on this project. Tr. 2/24/22, at 370-71; Lebanon Solar Exhibit A-18.

108. The Lebanon Solar utility-scale battery storage project consists of a series of lithium-ion batteries that are connected in a series as scaled that is equivalent to a utility. The lithium-ion battery is the type of battery that individuals use on a daily basis, including cellphones which essentially use the same type of battery. Tr. 2/24/22, at 371.

109. The small lithium-ion batteries are put into a series of racks. The number of racks containing the batteries is determined by the project size, and racks can be added to accommodate various project sizes. Tr. 2/24/22, at 371.

110. The battery systems are contained within their own units. The systems come in cube-like structures and are designed to meet Underwriters Laboratory (“UL”) national standards. In a rare situation where leakage would occur, any leakage would be self-contained within the unit. Tr. 2/24/22, at 371-372.

111. Enel has received commitments since 2020 from all of its battery suppliers that all batteries will be recycled at the end of their life. Tr. 2/24/22, at 372.

112. There are multiple protection controls and mechanisms in place within the battery storage unit to detect and suppress any potential fire hazards. Enel works with local municipalities, fire departments, and volunteer fire departments to set up training or communication systems in the event any potential hazards or emergency situations arise. Tr. 2/24/22, at 373.

113. The National Fire Protection Association Standard 855 provides the fire safety standards for the battery storage unit. These standards provide the requirements to mitigate fire hazards. Tr. 2/24/22, at 373-74.

114. In addition to the notification systems that can be built, the systems themselves have various fire suppression systems that can be used in order to extinguish any fire that may occur. Tr. 2/24/22, at 374.

115. Systems monitoring, which includes all electrical characteristics, temperature regulation, and other system controls, takes place 24/7. The project site will have a manager on-site every day during operations. Tr. 2/24/22, at 374-75, 382.

116. The site will go through periodic inspections, including field and aerial drone inspections, which include a process for detecting and replacing any damaged solar panels. Tr. 2/24/22, at 375.

117. Any broken solar panels will be replaced by spare modules that are kept in storage. The broken module is recycled once it has been replaced. Tr. 2/24/22, at 375.

118. Mr. Dimitriou testified that solar panels do not shatter when they break, as they are designed similar to safety glass or automobile windshields. There is no explosive type breakage, and the majority of the time the break consists of microfractures within the top sheet of the glass. Tr. 2/24/22, at 375-76.

119. With regard to the pervious or impervious nature of solar panels, Mr. Dimitriou testified that when taking into consideration the pervious versus impervious nature of a solar panel, the whole project site is taken into account. Essentially when water or snow sheds off of the panel, there is vegetation underneath the panel that allows for the water to dissipate into the ground. This allows the solar panels to be determined to be pervious. Tr. 2/24/22, at 377.

120. At nighttime, the panels lay flat at zero degrees. As the day starts to rise, the panels will rotate approximately 52 degrees to match the sun as it goes from east to west. Tr. 2/24/22, at 377-78. Water would still be shed from the panels while it is at zero degrees during the night. Tr. 2/24/22, at 378.

121. Mr. Dimitriou testified that if the Board and/or County determines that the panels are to be counted as impervious surfaces, within the project area of 858 acres, the impervious area lot coverage would still only be 20.4 percent. Tr. 2/24/22, at 378; Lebanon Solar Exhibit A-17. The 20.4 percent calculation includes access roads, inverter pads, switching station gravel area, BESS gravel area, and the substation gravel area. Tr. 2/24/22, at 378.

## **CONCLUSIONS OF LAW**

### **A. Rules, Admissibility, and Sufficiency of Evidence.**

1. Under the MPC, the formal rules of evidence do not apply to zoning proceedings before the zoning hearing board or governing body of the municipality, but, irrelevant, immaterial, or unduly repetitious evidence may be excluded. 53 P.S. § 10808(5); *see Town & Country Management Corp. v. Zoning Hearing Bd. of Borough of Emmaus*, 671 A.2d 790 (Pa. Cmwlth. 1996). This relaxation of the rules of evidence is intended to allow for the free participation of residents in proceedings involving their neighborhoods. Robert S. Ryan, *Pennsylvania Zoning Law and Practice* § 9.4.14 (2003).

2. The Board acknowledges the Objectors' objections to, and motions to strike Lebanon Solar Exhibits A-9, A-10, and 9-11. Tr. 1/26/22, at 111. The objections and motion were properly rejected at the hearing as the formal Rules of Evidence do not apply, and the Objectors' allegation that any due process rights were infringed by Lebanon Solar's transmittal of the requested documentation at 10:04 a.m., rather than 10:00 a.m., are without merit. Tr. 1/26/22 pg. 111. Furthermore, the Objectors' motion to deny the Application "on the basis that none of [Lebanon Solar's] Exhibits have been moved into evidence," was properly rejected by the Board as the Formal Rules of Evidence did not apply. Tr. 1/26/22, at 114.

3. In addition to receiving evidence put forth by the Parties in the matter, the Board is required under the MPC to provide opportunity for public comment and relevant public comments made at a public hearing may constitute competent evidence. *See* 53 P.S. §10908; 53 P.S. §10103 (definition of "Public hearing," "a formal meeting held pursuant to public notice by the governing body or planning agency, intended to inform and obtain public comment, prior to taking action in accordance with this act."); *see e.g. Zangrilli v. Zoning Hearing Bd. of Borough of Dormont*, 692 A.2d 656 (Pa. Cmwlth. 1997) ("Landowners next argue that the ZHB erred in allowing public comment at the hearing, which Landowners allege prejudiced their rights; however, they present no citations to support this viewpoint. On the other hand, the ZHB contends that pursuant to Section 908 of the MPC, its meetings are open and advertised to permit public participation... Again, the ZHB did not err by allowing public comment.")

4. While evidentiary rules are relaxed in a zoning matter, decisions of the Board must still be supported by substantial, competent evidence, and a decision made absent the support of substantial competent evidence is reversible. *Berman v. Manchester Twp. Zoning Hearing Bd.*,



540 A.2d 8, 9 (Pa. Cmwlth. 1988), *pet den.* 129 M.D. 1988 (Pa. 1989). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support its conclusion. *Valley View Civic Ass'n v. Zoning Bd. of Adj.*, 462 A.2d 637, 639 (Pa. 1983). In addition, decisions in zoning matters may be reversed where the Board, deliberately ignores relevant, competent evidence. *Taliaferro v. Darby Twp. Zoning Hearing Bd.*, 873 A.2d 807, 814 (Pa. Cmwlth. 2005), *pet den.* No. 574 MAL 2005 (Pa. 2005).

5. Finally, in zoning proceedings, hearsay evidence “must be sufficiently corroborated by other evidence in order to be considered competent evidence.” *Lake Adventure Community Association, Inc. v. Dingman Township Zoning Hearing Bd.* 79 A.3d 708, 714 n. 4 (Pa. Cmwlth. 2013) *appeal denied*, 84 A.3d 1065 (Pa. 2014). Hearsay evidence is a “statement that (1) the declarant does not make while testifying at the current... hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.” Pa. R.E. 801(c). The Board therefore is precluded from considering hearsay evidence where it is offered without sufficient corroborating evidence. As the formal rules of evidence do not apply, an objection to hearsay evidence at the time of the hearing is not required.

6. In accordance with the requirements of the MPC, the Sunshine Act, 53 P.S. §701 *et seq.*, and any other law or interpretation thereof, the Board has carefully reviewed and considered all evidence put forth by Lebanon Solar and the Objectors, as well as the duly sworn public comment offered by residents of the Township, and has made certain determinations within its discretion related to credibility and sufficiency.

## **B. Recommendation of the Planning Commission.**

7. The Board appreciates the recommendation of the Township Planning Commission, and the time and effort its members took in reviewing the Application; however, it is not bound by its decision. The recommendation of an advisory body, such as the Planning Commission has no binding effect on the governing body. *See Atherton Dev. Co. v. Twp. of Ferguson*, 29 A.3d 1197, 1213 (Pa. Cmwlth. 2011) (“[a] planning commission is no more than an advisory body whose recommendations have no binding effect on the governing body...[township] Supervisors [are] not bound by planning commission recommendations.” 29 A.3d at 1213-14. The final decision in zoning matters rests in the legislative body and not in a planning commission. *See Cleaver v. Bd. of Adj. of Tredyffrin Twp.*, 200 A.2d 408, 413 (Pa. 1964). Therefore, while the Board did carefully review and consider the Commission’s recommendation, it was obligated to make its own determinations on the matter and is authorized to come to a different conclusion.

8. The Board noted the objection of Lebanon Solar to the introduction of a supplemental recommendation of the Township Planning Commission dated February 7, 2022. Tr. 2/24/22 pg. 288. This recommendation was entered into the record as Township Exhibit 3. Tr. 2/24/22 pg. 288. Upon further review the Board acknowledges that the consideration of the Application by the Commission, after the commencement of the hearings, and absent any notice to Lebanon Solar to participate in the meeting and therefore absent any opportunity for Lebanon Solar to object to the same was improper and violated the procedures set forth in the MPC, the Pennsylvania Sunshine Act, 65 P.S. § 701 *et seq.*, and Lebanon Solar’s due process rights under the United States and Pennsylvania constitutions. The recommendation of the Planning Commission required by the MPC was already adequately relayed to the Board in its original recommendation letter, as read into the record by Supervisor Wolfe, and the supplemental

document is therefore unduly repetitious. The Board therefore, following further review of the issues, in its sole discretion, excludes Township Exhibit 3 from the record.

### **C. The Board Must Construe Ambiguous Terms in Favor of the Applicant.**

9. Where a zoning ordinance term is open to differing interpretations in its application to particular facts, Pennsylvania Courts have consistently held that the ambiguous term is to be construed in favor of the landowner and the least restrictive use of the land. *Kleinman v. Lower Merion Township Zoning Hearing Board*, 916 A.2d 726 (Pa.Cmwlt.2006); *see SPC Company, Inc. v. Zoning Board of Adjustment of the City of Philadelphia*, 773 A.2d 209, 213 (Pa.Cmwlt. 2001); *see also Turchi v. Philadelphia Bd. of License & Inspection Rev.*, No. 658 C.D. 2014, 2015 WL 5437160, at \*7 (Pa. Commw. Ct. May 15, 2015) (“the phrase ‘in significant part’ is not defined by the Ordinance and is subject to multiple reasonable interpretations, making it ambiguous; therefore, it must be interpreted in favor of Landowners and the least restrictive use of the land.”) *see also Alleman v. N. Newton Twp. Bd. of Supervisors*, No. 1511 C.D. 2018, 2019 WL 5208606, at \*3 (Pa. Commw. Ct. Oct. 16, 2019) (“Because the language of the Ordinance supports these two reasonable but conflicting interpretations, the language is ambiguous. Section 603.1 of the MPC requires us to resolve that ambiguity in favor of Weaver as the landowner.”)

10. Section 603.1 of the MPC provides:

In interpreting the language of zoning ordinances to determine the extent of the restriction upon the use of the property, the language shall be interpreted, where doubt exists as to the intended meaning of the language written and enacted by the governing body, in favor of the property owner and against any implied extension of the restriction.

11. It is an abuse of discretion for a zoning hearing board or governing body, to narrow the terms of its ordinance and further restrict the use of a property. *Reihner v. City of Scranton Zoning Hearing Bd.*, 176 A.3d 396 *citing Latimore supra* and *Riverfront Development Group, LLC v. City of Harrisburg Zoning Hearing Bd.*, 109 A.3d 358, 366 (Pa. Cmwlt. 2015). Consequently, requirements not expressly contained within the zoning ordinance may not be added by the Board when it is exercising its quasi-judicial function during a conditional use hearing. *See MarkWest, supra.*; *see also Atlantic Wind, LLC v. Zoning Hearing Bd. of Penn Forest Twp.*, 2022 WL 108437 (Pa. Cmwlt. Jan 12, 2022) (zoning hearing board erred by requiring noise levels of wind turbines be measured using an Lmax metric where the zoning ordinance was silent on what metric was to be used)

### **D. The Board May Only Regulate Where the Use Occurs Not How it Occurs.**

12. While “Section 601 of the MPC, 53 P.S. §10601, expressly authorizes municipalities to enact zoning ordinances designating what land uses are permitted in what districts for the purpose of planned community development (i.e., the where), the MPC does not authorize those municipalities to dictate specific business operations (i.e. the how) under the guise of zoning regulation.” *MarkWest Liberty Midstream and Resources, LLC v. Cecil Township Zoning Hearing Bd.*, 184 3d 1048, 1060-61 (Pa. Cmwlt. 2018).

13. As detailed by the Court in *MarkWest Liberty Midstream and Resources, LLC v. Cecil Township Zoning Hearing Bd.*, a long line of Pennsylvania appellate cases have made it clear, that zoning ordinances, and the bodies that enforce them, may only regulate where a use occurs and never how it occurs. *See id.*; *In re Thompson*, 896 A.2d at 670 (“Special exception ... proceedings involve only the proposed use of the land, and do not involve the particular details of the design of the proposed development.”); *see also Van Sciver v. Zoning Bd. of Adjustment of Phila.*, 396 Pa. 646, 152 A.2d 717, 724 (1959) (Variance conditions, inter alia, limiting a self-serve laundromat’s unmanned nature and operating hours in the interest of crime prevention nevertheless constituted unreasonable “intermeddling with the applicant’s ownership of his property.”); *Appeal of Sawdey*, 369 Pa. 19, 85 A.2d 28, 32 (1951) (An ordinance (or condition) that “permitted a butcher shop ... in an area but prohibited its sale of pork, or a drugstore but prohibited its sale of candy, or a grocery store but prohibited its sale of bread, would surely be regarded a[s] unreasonable legislation on details of a business ...”); *Gorsline v. Bd. of Supervisors of Fairfield Twp.*, 123 A.3d 1142, 1149 (Pa.Cmwlt. 2015) (“A [special exception] involves the use of the land, as opposed to the particular design details of the development.”); *Land Acquisition, Servs., Inc. v. Clarion Cty. Bd. of Comm’rs*, 146 Pa.Cmwlt. 293, 605 A.2d 465 (1992) (Where an ordinance’s primary objective is to regulate and control the operational aspects of a business, the ordinance is not a zoning ordinance.); *Schatz v. New Britain Twp. Zoning Hearing Bd. of Adjustment*, 141 Pa.Cmwlt. 525, 596 A.2d 294, 298 (1991) (“Zoning only regulates the use of land and not the particulars of development and construction.”); *Kulak v. Zoning Hearing Bd. of Bristol Twp.*, 128 Pa.Cmwlt. 457, 563 A.2d 978, 980 (1989) (“[A] board may not attach a condition to a special exception which essentially serves a non-zoning purpose[.]”)

14. Although Lebanon Solar was not required to do so at the conditional use phase, it put forth the testimony relating to the design and operation of the Project. For example, it put forth the testimony of Mr. Jonathan Dimitriou, the project engineer or engineering manager for the Project, employed by Enel Green Power of America. Tr. 1/25/22 at 86. Mr. Dimitriou testified as to what certain equipment or facilities utilized in a solar farm looked like and how they operated. For example he provided testimony as to what an inverter looks like, Tr. 1/25/22, at 86, decommissioning, Tr. 1/25/22, at 87, and noise associated with the facilities, Tr. 1/25/22, at 87-98. In addition, Mr. Dimitriou testified as to various design requirements on cross examination, such as the configuration and location of the switching station, the height thereof, and compliance with safety codes. Tr. 1/25/22 pg. 90-94. The Board found this testimony credible and relevant in addressing resident concerns about the Project.

15. Consequently, based on the voluminous body of case law discussed above, the Board recognizes that any action taken in this matter which attempts to regulate *how* Lebanon Solar operates the proposed solar farm, compared to *where* within the Township it is permitted to do so would be beyond its authority. The Board has carefully considered the testimony of the Objectors and the public comment received, and is sympathetic to the concerns raised; however it acknowledges the limitations of its authority at this stage in the approval process and understands that many concerns raised will be otherwise adequately addressed by other agencies or political subdivisions such as Lebanon County, or will be addressed through further permitting by the Township.

**E. Supplemental Information to Demonstrate Compliance Does Not Constitute a New Application.**

16. After a municipality accepts a conditional use application, “technical requirements and interpretations may be addressed collaboratively as ordinance compliance is assessed.” *Nextel Partners, Inc. v. Clarks Summit Borough/Clarks Summit Borough Council*, 958 A.2d 594 (Pa. Cmwlth. 2008). (Nextel sought conditional use approval to install a 150 foot monopole, and after its application was accepted, it submitted supplemental information to expand the leased site and the court determined this supplemental information was clearly submitted *as part of the original conditional use application process*). See also *Evers v. Clarks Summit Borough*, No. 871 C.D. 2010, 2011 WL 5118305, at \*6–7 (Pa. Commw. Ct. Sept. 22, 2011) (“[A]ny supplementation [provided] thereafter [by the applicant] is not a new application requiring the clock to be reset but rather additional information in support of the original application which dates from the date of acceptance by the Borough.”)

17. Counsel for the Objectors raised certain questions related to revisions to the plans originally submitted with the Application as appear on Lebanon Solar Exhibit A-1. Tr. 1/25/22, at 37. Mr. Holton testified as to the changes in symbology, or how certain features were represented, as well as additional details added to the exhibit based on new features discovered since the application was submitted. Tr. 1/25/22, at 37. Mr. Holton testified that the same parcels were represented on each document and had not changed, and the Objector presented no evidence to indicate the type of use proposed had changed. Tr. 1/25/22, at 38-39. Counsel for the Objectors raised questions relating to the type of fencing proposed. Tr. 1/25/22, at 39-40. Upon consideration and review, the objection of counsel for Lebanon Solar as to the relevancy of this issue is sustained, and the Board finds the question as to type of fencing irrelevant to the conditional use proceeding as it relates to the particular details of design rather than the use of the Property. Tr. 1/25/22, at 39-40; see *In re Thompson*, 896 A.2d at 670; *Gorsline*, 123 A.3d at 1149 (special exception and conditional use proceedings involve only the proposed use of the land, and do not involve the particular details of the design of the proposed development); see also *Town & Country Management Corp.*, 671 A.2d 790 (the Board may exclude immaterial or irrelevant evidence).

**F. Lebanon Solar Has Demonstrated a Sufficient Proprietary Interest in the Property**

18. Counsel for the Objector raised certain questions and objections relating to the interest of Lebanon Solar in each parcel comprising the Property. Tr. 1/25/22, at 52-56. At the request of the Board, Lebanon Solar has provided sufficient evidence, in the form of memorandums of option agreements or easements for each of the twelve (12) parcels, Lebanon Solar Exhibit A-11, title commitments, Lebanon Solar Exhibit A-9, and an authorization affidavit executed by the project entity authorizing Lebanon Solar to apply for permits related to the property, Lebanon Solar Exhibit A-10. In addition, Lebanon Solar provided, as Lebanon Solar Exhibit A-13, individual private Option Agreements between Lebanon Solar and the participating landowners. Tr. 2/24/22, at 290-91. Upon review of the same, and consideration of the objections of counsel for the Objectors, the Board finds the testimony and evidence presented to be authentic, credible, and sufficient to show that Lebanon Solar meets the definition of “Applicant” contained in Section 107 of the MPC. See 53 P.S. §10107 (definition of applicant includes any other person having a proprietary interest in the land); *Tioga Preservation Group v. Tioga County Planning Com’n*, 970 A.2d 1200 (Pa. Cmwlth. 2009) *appeal denied* 982 A.2d 1229 (Pa. 2009) (finding that

where a lease option holder has been granted a proprietary interest in the subject properties, the holder has applicant standing under the MPC); *SBA Towers IX, LLC v. Unity Twp. Zoning Hearing Bd.*, 179 A.3d 652 (Pa. Cmwlth. 2018) (applicant status is conferred to holder of an option to lease property where the property owner has granted the power to “obtain any necessary governmental licenses or authorizations required for the construction and use of the property,” as that makes clear the holder was more than just a potential leaseholder and authorized the holder to exercise the rights of the property owner.)

#### **G. Conditional Use Standards.**

19. It is well-settled that special exceptions and conditional uses are not actual exceptions or variances from a zoning ordinance, but rather are uses permitted by right as long as the standards enumerated in the zoning ordinance are met. *Bray v. Zoning Bd. of Adjustment*, 410 A.2d 909, 911 (Pa. Cmwlth. 1980). The fact that a use is permitted as a conditional use evidences a legislative decision that the particular type of use is consistent with the health, safety and welfare of the community. “An applicant is entitled to a conditional use as a matter of right unless it is determined ‘that the use does not satisfy the specific, objective criteria in the zoning ordinance for that conditional use.’” *In re Drumore Crossings, L.P.*, 984 A.2d 589, 595 (Pa. Cmwlth. 2009).<sup>4</sup>

20. In considering whether a conditional use is to be granted, the Board had to address three inquiries: (1) whether the applicant’s use falls within the parameters of the conditional use being sought; (2) whether the “specific” requirements of the ordinance applicable to that conditional use have been met; and (3) whether the “general”, non-specific or non-objective requirements and purposes of the ordinance have been satisfied. *See Bray*, 419 A.2d at 912-13.

21. Under *Bray* and its progeny, it was Lebanon Solar’s burden, as the applicant, to prove that it satisfied the first two inquiries. Therefore Lebanon Solar was only required to present evidence as to (1) whether the proposed solar farm use falls within the parameters of the conditional use being sought; and (2) whether any “specific” requirements contained in the ordinance have been met. *See id.*

#### **H. Specific Ordinance Criteria**

22. It is not disputed that the proposed Project falls within the definition of “solar farm”, as that term is defined in Section 201.4 of the Zoning Ordinance. Accordingly, the Project is an authorized use in the A-1 District in which the Property is located.

23. However, the Objector claims that Lebanon Solar has failed to meet any of the eight (8) specific ordinance criteria contained in the Zoning Ordinance. After careful review of these contentions, the Board concludes that they are without merit, and that Lebanon Solar has proven, through the presentation of sufficient competent factual evidence, that it meets all applicable specific ordinance criteria as outlined in Section 522 of the Zoning Ordinance.

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<sup>4</sup> Because the law regarding conditional uses and special exceptions is virtually identical, the burden of proof standards are the same for both. *Sheetz, Inc. v. Phoenixville Borough Council*, 804 A.2d 113 (Pa. Cmwlth. 2002).

**The Project is not Established Upon any Land Under an Agricultural Conservation Easement.**

24. Section 522(1) of the Zoning Ordinance requires that no solar farm be established upon any farm land or agriculturally zoned land which has an Agricultural Conservation Easement filed against it which remains in effect. Lebanon Solar has presented sufficient competent evidence to show that this requirement is met and the Property is not subject to any such easement.

25. Specifically, Lebanon Solar provided title commitments demonstrating that none of the participating properties making up the Property have any Agricultural Conservation Easements filed against them which remain in effect. Lebanon Solar Exhibits A-8, A-9. The Board finds the title commitments credible and sufficient to demonstrate that no Agricultural Conservation Easements exist on the Property which remain in effect.

26. Lebanon Solar presented the testimony of Eric Holton, an employee of Enel North America, who testified as to the Project's compliance with Section 522(1), and provided and explained demonstrative evidence, entered into the record as Lebanon Solar Exhibit A-3, showing the location of nearby Agricultural Conservation Easements in comparison to the footprint of the property. Lebanon Solar Exhibit A-3, Tr. 1/25/22 pg. 12-17. The Board finds the testimony of Mr. Holton credible and sufficient to demonstrate that no Agricultural Conservation Easements exist on the Property which remain in effect.

27. In addition, Lebanon Solar presented the expert testimony of Mr. Staub who testified as to his interpretation of Section 522(1) in his experience as a certified land use planner with experience in drafting zoning ordinances. Tr. 2/24/22 pg. 335-36. Mr. Staub's interpretation of Section 522(1) supports that put forth by Mr. Holton.

28. The Objectors have presented no evidence to suggest that this requirement has not been met. The Board acknowledges that counsel for the Objectors objected to the submission of Lebanon Solar Exhibit A-3, *see* Tr. 1/25/22 p. 17, however as no reason was given to support the objection it is overruled. The Board finds no merit in the various contentions of the Objectors that the documentation provided by Lebanon Solar was insufficient to demonstrate that no Agricultural Conservation Easement exists on the Property.

29. The Board therefore finds that Lebanon Solar has met its burdens of presentation and persuasion and has established that the criteria outlined in Section 522(1) of the Zoning Ordinance is met and no part of the Project will be located on land subject to a current Agricultural Conservation Easement.

**The Project Meets the Minimum Lot Size of Fifty (50) Acres.**

30. Section 522(2) of the Zoning Ordinance requires that the minimum lot size for the establishment of any solar farm shall be fifty (50) acres. The Objectors allege that this requirement has not been met because the Property is comprised of multiple individual tax parcels some of which are less than fifty (50) acres when measured individually. Tr. 1/25/22, at 61. Upon review of the Zoning Ordinance, the arguments and evidence presented by the Objectors as well as that presented by Lebanon Solar, the Board concludes that the Zoning Ordinance does not require that

all individual tax parcels which make up the total Property to be utilized as a solar farm be greater than fifty (50) acres, but only that the total Property of the solar farm be a minimum fifty (50) acres.

31. The Zoning Ordinance does not specify whether or not individual tax parcels or zoning lots may be combined to meet the minimum lot size requirement contained in Section 522(2). The Board recognizes that the practice of combining individual tax parcels to meet minimum lot requirements is common-place and has been utilized by the Township for other types of uses. The Board acknowledges that this practice can be referred to as a “campus” concept. The Board acknowledges that because this practice is neither expressly permitted nor prohibited by the Zoning Ordinance, the Ordinance is ambiguous as to this issue, and that ambiguities are to be construed in favor of the applicant. In addition, the Board acknowledges that the Application was accepted by the Township for the purpose of establishing a **single** solar farm spanning multiple tax parcels, signaling its approval of a “campus” concept.

32. As mentioned above, under Section C of these Conclusions of Law, the MPC mandates that any ambiguities in a zoning ordinance are to be construed in the light most favorable to the applicant. 53 P.S. §10603.1 (“[i]n interpreting the language of zoning ordinances to determine the extent of the restriction upon the use of property, the language shall be interpreted, where doubt exists as to the intended meaning of the language written and enacted by the governing body, in favor of the property owner and against any implied extension of the restriction.”) Further, Pennsylvania courts frequently reiterate that “zoning ordinances must be construed expansively so as to afford the landowner the broadest possible use and enjoyment of his land.” *THW Group, LLC v. Zoning Bd. of Adjustment*, 86 A.3d 330, 336 (Pa. Cmwlth. 2014) (citing *Rabenold v. Zoning Hearing Bd. of Palmerton Twp.*, 777 A.2d 1257 (Pa. Cmwlth. 2001)).

33. It is an abuse of discretion for a zoning hearing board or governing body, to narrow the terms of its ordinance and further restrict the use of a property. *Reihner v. City of Scranton Zoning Hearing Bd.*, 176 A.3d 396 citing *Latimore supra* and *Riverfront Development Group, LLC v. City of Harrisburg Zoning Hearing Bd.*, 109 A.3d 358, 366 (Pa. Cmwlth. 2015). Consequently, requirements not expressly contained within the zoning ordinance may not be added by the Board when it is exercising its quasi-judicial function during a conditional use hearing. *See MarkWest, supra.*; *see also Atlantic Wind, LLC v. Zoning Hearing Bd. of Penn Forest Twp.*, 2022 WL 108437 (Pa. Cmwlth. Jan 12, 2022) (zoning hearing board erred by requiring noise levels of wind turbines be measured using an Lmax metric where the zoning ordinance was silent on what metric was to be used). Because the Board is bound to construe the ordinance in the light most favorable to Lebanon Solar, and is prohibited from narrowing the terms of the ordinance to further restrict the use of the Property, it finds that the Zoning Ordinance only requires that the total acreage of the Property upon which the solar farm is proposed to be situated be greater than fifty (50) acres.

34. Lebanon Solar presented evidence demonstrating that the Application is for the establishment of one (1) solar farm on approximately eight hundred and fifty eight (858) acres of land comprised of multiple parcels, at least one of which, the parcel identified as Lebanon County Map Number 25-2300498-383638-0000, is over fifty (50) acres in size. Lebanon Solar Exhibits A-4 and A-8. The Board finds these exhibits credible and sufficient to demonstrate compliance with Section 522(2) of the Zoning Ordinance.

35. In addition, Lebanon Solar presented the continued testimony of Mr. Holton, who testified as to the Project's compliance with Section 522(2), and provided and explained demonstrative evidence, entered into the record as Lebanon Solar Exhibit A-4, showing the conditional use permit area greatly exceeded fifty (50) acres in total. Lebanon Solar Exhibit A-4, Tr. 1/25/22, at 17-18. The Board finds the testimony of Mr. Holton credible and sufficient to demonstrate that the total lot size of the Property will be greater than fifty (50) acres and therefore in compliance with Section 522(2) of the Zoning ordinance.

36. The Objectors presented the testimony of an expert witness, Mr. Lawrence Lahr, who the Board deems qualified and credible and accepts as an expert witness in the area of land use planning and zoning. Mr. Lahr testified that he did not find the definitions of "lot," "lot area," or "maximum lot coverage" ambiguous. Tr. 1/26/22, at 164. Mr. Lahr expressed that he believed the criteria contained in Section 522(2) was not met. Tr. 1/26/22, at 166-67. However, Mr. Lahr did not provide any opinion on whether under the Zoning Ordinance individual tax parcels could be combined to meet the minimum lot size requirement. The Board is free to reject any testimony that it finds lacking credibility, including the testimony of a purported expert. *See Nettleton v. Zoning Bd. of Adj. of the City of Pittsburgh*, 828 A.2d 1033, 1041 (Pa. 2003); *Graham v. Zoning Hearing Bd. of Upper Allen Twp.*, 555 A.2d 79, 82 (Pa. 1989).

37. Lebanon Solar presented the expert testimony of Mr. Staub who testified as to his interpretation of Section 522(2) in his experience as a certified land use planner with experience in drafting zoning ordinances. Tr. 2/24/22, at 337-38. Mr. Staub opined that the language contained in Section 522(2) was ambiguous, noting that it did not include the term "individual" which would indicate that the minimum lot size designation prohibited a "campus" concept. Per Mr. Staub, the inclusion of "individual" or a similar term, would be an indication that a "campus concept was prohibited, but that no such indication was present here. Tr. 2/24/22, at 337. The Board finds that the testimony of Mr. Staub was credible and supports the interpretation set forth by Lebanon Solar.

38. The Board finds the interpretation of the Zoning Ordinance set forth by Lebanon to be reasonable and supported by competent and credible expert testimony. The Board notes that the Objectors did not present any testimony or evidence suggesting that this interpretation was unreasonable or inapplicable. Given that Pennsylvania case law and the MPC mandate that any ambiguities in a zoning ordinance are to be construed in the light most favorable to the applicant, and therefore, because Lebanon Solar has presented sufficient competent evidence to show that the total lot size of the Property upon which a solar farm is to be established is eight hundred and fifty eight (858) acres, the Board finds that Lebanon Solar has met its burdens of presentation and persuasion and has established that the criteria outlined in Section 522(2) of the Zoning Ordinance is met.

### **The Project Meets the Required Setbacks.**

39. Section 522(3) of the Zoning Ordinance requires that the solar panels and other implements used in the construction and structure of the solar farm, be set back a minimum of fifty (50) feet from any adjacent lot line. The Objector alleges this requirement is not met because the Project does not include setbacks from the tax-parcel lines separating the parcels which make up



the Property from each other, which are internal to the overall footprint of the Project. TR 1/25/22, at 66-67.

40. The Zoning Ordinance requires that this 50-foot setback be met only for “*adjacent* lot lines.” The Zoning Ordinance does not define the term “adjacent” or “adjacent lot line.” An undefined term in a zoning ordinance is given its plain meaning, and any doubt must be resolved in favor of the land owner and the least restrictive use of the land. *River’s Edge Funeral Chapel and Crematory, Inc. v. Zoning Hearing Bd. of Tullytown Borough*, 150 A.3d 132 (Pa. Cmwlth. 2016). Black’s Law Dictionary defines “adjacent” as “[l]ying near or close to, but not necessarily touching.” ADJACENT, Black’s Law Dictionary (11th ed. 2019). The plain meaning of this term does not comport with an interpretation that it applies to lot lines located within the Property. In addition, it is a well-settled principle of statutory (and ordinance) construction, that legislation should not be interpreted in a fashion leading to absurd results. *See* 1 Pa.C.S. § 1922(1),(2); *see also Com. v. Shiffler*, 879 A.2d 185, 189–90 (Pa. 2005) (“...in ascertaining legislative intent, courts may apply, inter alia, the following presumptions: that the legislature does not intend a result that is absurd, impossible of execution, or unreasonable...”) It would be absurd, and incongruous with the purposes of the Zoning Ordinance to require that the setback requirements be applied within the footprint of the Project where to do so would serve no purpose other than to separate solar panels from other solar panels owned and operated by the same entity. Moreover, assuming *arguendo* this minimum setback requirement is ambiguous because the Zoning Ordinance does not define the term “adjacent” or “adjacent lot line,” the law requires that these ambiguities be construed in the light most favorable to Lebanon Solar as the applicant.

41. Lebanon Solar presented evidence demonstrating that solar panels and other implements will be set back at least fifty (50) feet from any *adjacent* lot line and further voluntarily agreed to place no panels or other implements of the solar farm within one hundred and fifty (150) feet of an occupied residential dwelling. Lebanon Solar Exhibits A-5, A-6, and A-8.

42. In addition, Lebanon Solar presented the continued testimony of Mr. Holton, who testified as to the Project’s compliance with Section 522(3), and provided and explained demonstrative evidence, entered into the record as Lebanon Solar Exhibits A-5 and A-6, showing the location of the buildable area, where solar panels and other implements would be located, would be set back at least fifty (50) feet from any adjacent lot line. Lebanon Solar Exhibits A-5, A-6, Tr. 1/25/22, at 19-20. The Board finds the testimony of Mr. Holton credible and sufficient to demonstrate that no solar panels or other implements would be located within fifty (50) feet of an adjacent lot line.

43. Lebanon Solar also presented the expert testimony of Mr. Staub who testified as to his interpretation of Section 522(3) in his experience as a certified land use planner with experience in drafting zoning ordinances. Tr. 2/24/22, at 338. Mr. Staub opined that the language contained in Section 522(3) was ambiguous, noting that it did not define the term “adjacent lot line.” Tr. 2/24/22, at 338. Mr. Staub opined that it would be reasonable for an applicant to assume that “adjacent lot lines” are those that are adjacent uses to the solar farm as opposed to properties within the solar farm. Tr. 2/24/22, at 338. The Board finds that the testimony of Mr. Staub was credible and supports the interpretation set forth by Lebanon Solar.

44. Lebanon Solar has also demonstrated that it obtained waivers from the owners of all parcels comprising the Property, which waived any setback requirements applicable between

them. TR 1/25/22, at 66-67. At the request of the Board, Lebanon Solar presented copies of the relevant waiver agreements. Tr. 1/25/22 pg. 67-68. The Objectors offered the expert testimony of Mr. Lahr, who testified as to the authority to grant waivers, but did not testify as to whether or not the definition of “adjacent lot lines” under the Zoning Ordinance included lot lines internal to the Project area. Tr. 1/26/22, at 168-70. Based on its interpretation of the Zoning Ordinance, the Board concludes that the waivers produced were not required to comply with the enumerated specific criteria of Section 522, but were supplemental private agreements between Lebanon Solar and the landowners of the participating parcels. The Board also notes that the waivers indicate that it is not against the interests of the Participating Landowners to refrain from applying the requirements of Section 522(3) to the lot lines internal to the Property.

45. Lebanon Solar has presented sufficient competent evidence to show that all solar panels and other structures will be located at least fifty (50) feet from all lot lines of properties adjacent to the Property. The Objector has presented no evidence indicating that any solar panels or structures will be located less than fifty (50) feet from any lot line of a property *adjacent* to the Property rather than comprising of or internal to the Property. The Board therefore finds that Lebanon Solar has met its burdens of presentation and persuasion and has established that the criteria outlined in Section 522(3) of the Zoning Ordinance is met.

#### **The Project Includes the Required Buffering.**

46. Section 522(4) of the Zoning Ordinance requires that a permanent evergreen buffer or fencing which accomplishes the same purpose of buffering, be provided. Lebanon Solar has presented sufficient competent evidence to show that the Property will be screened and buffered from adjacent properties in accordance with this criterion. Consequently, the Board finds that Lebanon Solar has met its burdens of presentation and persuasion and has established that the criteria outlined in Section 522(3) of the Zoning Ordinance is met.

47. Specifically, Lebanon Solar presented evidence demonstrating that, to comply with the ordinance requirements it will install perimeter fencing around the buildable area (solar panels and implements) as identified in the Conceptual Site Plan, Lebanon Solar Exhibit A-1. Lebanon Solar Exhibits A-1 and A-8. Furthermore, Lebanon Solar demonstrated that additional vegetative screening would be installed in various areas to screen residential viewsheds. Lebanon Solar Exhibits A-1 and A-8.

48. Lebanon Solar presented the continued testimony of Mr. Holton, who testified as to the Project’s compliance with Section 522(4), and provided and explained demonstrative evidence, entered into the record as Lebanon Solar Exhibits A-8, showing the anticipated location of the perimeter fencing and proposed vegetative screening. Lebanon Solar Exhibits A-1, A-8, Tr. 1/25/22, at 20-21. The Board finds the testimony of Mr. Holton credible.

49. Lebanon Solar also presented the expert testimony of Mr. Staub who testified as to his interpretation of Section 522(4) in his experience as a certified land use planner with experience in drafting zoning ordinances. Tr. 2/24/22, at 338-39. Mr. Staub opined that the language contained in Section 522(4) would be reasonably interpreted as an “either/or” and that Lebanon Solar appeared to be exceeding these requirements as it intended to provide both vegetative

screening and fencing. Tr. 2/24/22, at 339. The Board finds that the testimony of Mr. Staub was credible and supports the interpretation set forth by Lebanon Solar.

50. The Objector presented the expert testimony of Mr. Lahr, who opined that fencing would not comply with Section 522(4). Tr. 1/26/22, at 172-73. However, this testimony disregards the plain language of the Zoning Ordinance which expressly permits fencing which accomplishes the same purpose of buffering. Furthermore, Mr. Lahr again testified as to the validity of waivers, which is irrelevant in this matter based on a reasonable interpretation of the Zoning Ordinance. Tr. 1/26/22 pg. 173. The Board therefore finds that Lebanon Solar has demonstrated through the provision of sufficient competent evidence, that the Project is in compliance with Section 522(4) of the Zoning ordinance.

#### **Lot Coverage Will Not Exceed 50% of the Total Lot Size.**

51. Section 522(5) of the Zoning Ordinance requires the maximum lot coverage of the Project may not exceed fifty (50) percent of the total lot size. Maximum lot coverage is a defined term in the Zoning Ordinance under Section 202, as “[a] percentage of lot area which may be covered by *impervious materials* including roofs, drives, patios, walls etc.” (emphasis added). Impervious surfaces or impervious area is not defined by the Zoning Ordinance, but is defined by the County SALDO as “a surface that prevents the infiltration of water into the ground.” Based on a review of these definitions and the evidence provided by Lebanon Solar, the Board concludes that based on a reasonable interpretation of Section 522(5) of the Zoning Ordinance impervious surfaces may not exceed fifty (50) percent of the total lot size, while pervious surfaces are not to be included in this calculation.

52. Lebanon Solar presented the continued testimony of Mr. Holton, who testified as to how lot coverage and impervious surfaces were interpreted by the Zoning Ordinance, the County SALDO, and the Pennsylvania Department of Environmental Protection (“DEP”). Tr. 1/25/22, at 21-22. Mr. Holton testified that the DEP interprets solar panels as pervious, rather than impervious surfaces due in part to the fact that they are elevated above the ground and have separation between the rows to allow water to flow underneath and between. Tr. 1/25/22 at 22. The Board recognizes that counsel for the Objector raised a question as to the legal impact of the document relied upon by Mr. Holton regarding the DEP’s interpretation of whether solar panels are pervious or impervious. Tr. 1/25/22 at 32-34. The Board has taken into considerations the allegations of perjury levied against Mr. Holton by counsel for the Objector and finds them to be without merit. TR. 1/25/22 at 36. The Board finds the testimony of Mr. Holton credible, and based on the evidence provided concludes that a reasonable interpretation of the Zoning Ordinance is that solar panels may be considered pervious as compared to impervious surfaces.

53. Mr. Holton further testified that there are impervious surfaces associated with the project, including tracker piles or pylons holding up the panels, as well as some equipment pads, roads, and any other surfaces installed on the ground that impedes the flow of water. Tr. 1/25/22 at 22. Mr. Holton testified that the project consists of less than three percent (3%) impervious lot coverage for a total of twenty-five and two-tenths (25.2) acres against the total lot size of eight hundred and fifty eight (858) acres. Mr. Holton also provided demonstrative evidence, contained in Lebanon Solar Exhibit A-8, indicating the quantity and area of coverage anticipated for each impervious item. Lebanon Solar Exhibit A-8. On cross-examination Mr. Holton testified as to the conservative estimates utilized in determining the total amount of impervious lot coverage. Tr.

1/25/22 at 42-46. He further testified as to the inclusion of access roads in the total impervious surface calculation. Tr. 1/25/22 at 74-57. The Objector also presented the lay testimony of Ms. Suzanne Forney who alleged that a statement had been made by Mr. Holton at a prior meeting before the Township Planning Commission in June of 2021, in which he stated solar panels would be considered impervious. Tr. 1/26/22 pg. 203. The purported statement was made outside the hearing offered for the truth of the matter asserted and is therefore uncorroborated and inadmissible hearsay upon which the Board may not base its decision. The Board finds Mr. Holton's testimony credible.

54. The Objector presented expert testimony from Mr. Lahr, who opined that maximum lot coverage was required to be shown for each individual parcel comprising the total Property, and that solar panels were not pervious surfaces. Tr. 1/26/22, at 175-76. Mr. Lahr was not accepted as an engineer or an expert in solar panel construction or use. His testimony as to whether or not Section 522(5) was met was expressly based solely on his attendance of the previous nights hearing. He did not provide any support for his interpretation of "pervious" or "impervious" surfaces. The Board therefore finds his testimony as to Section 522(5) of the Zoning Ordinance lacking in credibility.

55. Lebanon Solar presented the expert testimony of Mr. Staub who testified as to his interpretation of Section 522(5) in his experience as a certified land use planner with experience in drafting zoning ordinances. Tr. 2/24/22, at 339-40. Mr. Staub opined as to the language of the Zoning Ordinance and County SALDO related to maximum lot coverage and impervious surfaces. Tr. 2/24/22, at 339-41. The Board finds that the testimony of Mr. Staub was credible and supports the interpretation set forth by Lebanon Solar.

56. Lebanon Solar also presented the testimony of Mr. Dimitriou who testified, from a laypersons perspective, in his experience as the project engineer, as to why solar panels would be considered pervious in this context. Tr. 2/24/22, at 376-77. The Board recognizes the objection of the Objectors, but finds that Mr. Dimitriou's testimony was within his experience as a project engineer and did not arise to a level of technical expertise necessitating qualification as an expert witness. It therefore finds Mr. Dimitriou's testimony on question of an impervious versus pervious surface characterization of solar panels to be credible.

57. Mr. Dimitriou also testified as to Lebanon Solar Exhibit A-17, a calculation of the current conceptual design for the Project with the solar panels included in the total *impervious* surface calculation. Tr. 2/24/22, at 378. Lebanon Solar Exhibit A-17, as supported by the explanation of Mr. Dimitriou demonstrated that even if solar panels were considered *impervious*, the lot coverage of the project would be twenty point four percent (20.4%) of the total lot area.

58. Because Lebanon Solar has demonstrated, by uncontradicted evidence, that the Project meets the maximum lot coverage requirement contained in Section 522(5) *regardless* of whether the solar panels are considered pervious or impervious, it will refrain from making a conclusion as to the same. The Board finds that the evidence presented by Lebanon Solar was sufficient to demonstrate that the maximum lot coverage as defined by the Zoning Ordinance, would be a maximum of 20.4%, and therefore in compliance with Section 522(5).

## **Proof of Insurance is More Properly Included as a Condition of Approval.**

59. Section 522(6) of the Zoning Ordinance requires Lebanon Solar to 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) aggregate. Lebanon Solar has demonstrated that can and will obtain such coverage at the proper time.

60. Lebanon Solar presented continued testimony from Mr. Holton which demonstrated that a final insurance policy issuance was contingent upon approval of the Land Development Plan (“LDP”), but that Lebanon Solar will provide the Township with insurance certificates in the required minimum amounts following approval of the LDP. Tr. 1/25/22, at 23-24. Lebanon Solar entered into the record as its Exhibit A-7 insurance certificates which the Board understands are subject to change once the LDP has been approved. Lebanon Solar Exhibit A-7, Tr. 1/25/22, at 24. The Board finds the testimony of Mr. Holton credible, and the certificates provided as Exhibit A-7 as sufficient evidence to demonstrate Lebanon Solar has adequate liability insurance in minimum amounts of one million (\$1,000,000.00) per incident and two million (\$2,000,000.00) aggregate.

61. The Objectors presented continued expert testimony from Mr. Lahr, who opined that Lebanon Solar was “required to do something that rises to a level that satisfies Item No. 6 to the Board of Supervisors.” Tr. 1/26/22, at 177. He did not address whether or not Exhibit A-7 was sufficient in that regard. When asked if it was “possible to demonstrate that there’s adequate liability insurance without a promise of future compliance,” Mr. Lahr stated “[i]n all good faith, I don’t know,” Tr. 1/26/22, at 177, and continued “[b]ecause I’m just not savvy enough to speak to that.” Tr. 1/26/22, at 177. Based on Mr. Lahr’s own admission that he did not possess the knowledge or experience necessary to render a valid opinion on whether or not Section 522(6) of the Zoning Ordinance was possible to be complied with at that time, the Board finds his testimony lacking in credibility as to insurance requirements.

62. Lebanon Solar presented the expert testimony of Mr. Staub who testified as to his interpretation of Section 522(6) in his experience as a certified land use planner with experience in drafting zoning ordinances. Tr. 2/24/22, at 342. Mr. Staub opined as to the general operations of events in obtaining conditional use and land development approvals. Tr. 2/24/22, at 342. He stated that an applicant cannot determine what insurance levels it needs at the conditional use level because the project has not been defined completely. Tr. 2/24/22, at 355. The Board finds that the testimony of Mr. Staub was credible and supports the interpretation set forth by Lebanon Solar.

63. The Board recognizes that certain requirements, even if included within the Zoning Ordinance should be imposed as conditions of approval, rather than grounds for denial. For example, the courts have repeatedly held, that “[w]here an outside agency’s approval is required, the municipality should condition final approval upon obtaining a permit, rather than denying” the application. *Delchester Developers, L.P. v. London Grove Twp. Bd. of Sup’rs*, 161 A.3d 1106, 1113-14 n. 11 (Pa. Cmwlth, 2017); *Morris v. South Coventry Twp. Bd. of Sup’rs*, 836 A.2d 1015, 1026 (Pa. Cmwlth. 2003) (“Further, courts have long held that, where an outside agency’s approval is required, the municipality should condition final approval upon obtaining a permit, rather than denying preliminary approval”); *Bloomsburg Industrial Ventures, LLC v. Town of Bloomsburg Zoning Hearing Bd.*, 247 A.3d 1197 (Table), 2021 WL 269923 (Pa. Cmwlth. Jan. 27, 2021) (“As

this Court has acknowledged, where zoning approval requires a permit or license from an outside agency, conditional zoning approval based on the issuance of such permit or license is appropriate.”) citing *Kohr v. L. Windsor Twp. Bd. of Supervisors*, 910 A.2d 152, 159 (Pa. Cmwlth. 2006). The Board acknowledges that obtaining insurance coverage requires approval by an insurer which in turn will require a project to insure. No evidence put forth by the Objectors indicated that this was impermissible or that there was any other manner in which Lebanon Solar could have complied with Section 522(6) as thoroughly as possible at this point in time. The Board therefore acknowledges that proof of final insurance coverage is more properly included as a condition of approval and that a failure to show adequate coverage of a project that has yet to be approved is not grounds for denial of the application.

### **Provision of Adequate Bonding is More Properly Included as a Condition of Approval.**

64. Section 522(7) of the Zoning Ordinance requires Lebanon Solar to 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 within one hundred (180) days of the cessation of operation. Lebanon Solar has demonstrated that it can and will meet such bonding requirements at the proper time.

65. Lebanon Solar presented the continued testimony of Mr. Holton, who demonstrated that an adequate amount of financial security could not be determined at the time of the hearing or during the conditional use phase, but could only be determined once design of the proposed development has been finalized which could occur following approval of the LDP. Tr. 1/25/22, at 24-25. Lebanon Solar also presented demonstrative evidence and legal authority in support of its contentions in its Exhibit A-8. Lebanon Solar Exhibit A-8, *citing Schatz*, 596 A.2d 294.

66. Once again, the Objector presented the expert testimony of Mr. Lahr who, as with his purported expert testimony as to insurance requirements, was unable to offer any opinion as to whether or not adequate bonding could be provided at this stage in the permitting process. Tr. 1/26/22, at 179. Mr. Lahr was not offered as an expert in financing or bonding, nor is he credentialed as an engineer, the type of professional the Objector argued was required to offer an opinion as to questions of bonding. Consequently, the Board finds Mr. Lahr’s testimony as to the requirements of Section 522(7) lacking in credibility.

67. Lebanon Solar presented the expert testimony of Mr. Staub who testified as to his interpretation of Section 522(7) in his experience as a certified land use planner with experience in drafting zoning ordinances. Tr. 2/24/22, at 342. Mr. Staub opined that an applicant cannot determine adequate bonding at the conditional use level because the project has not been designed completely. Tr. 2/24/22, at 356. The Board finds that the testimony of Mr. Staub was credible as to the order of operations during the permitting period and supports the interpretation set forth by Lebanon Solar.

68. In addition, although it was not required to do so at the conditional use phase, Lebanon Solar provided the testimony of Mr. Dimitriou, the project engineer, who testified as to decommissioning and bonding in response to questions from the Objector as to how bonding would be calculated. Tr. 1/25/22 pg. 87-89.

69. As discussed above, the Board recognizes that certain requirements, even if included within the Zoning Ordinance should be imposed as conditions of approval, rather than grounds for denial. *See Delchester Developers, L.P.*, 161 A.3d at 1113-14 n. 11; *Morris*, 836 A.2d at 1026. As with the insurance requirements contained in Section 522(6), the Board acknowledges that obtaining financial security or requires approval by a financial institution which in turn will require a project to bond. It further recognizes that it would not be possible to determine what constitutes an adequate amount of financial security until after the LDP has been approved. The Board therefore acknowledges that bonding is more properly included as a condition of approval and that a failure to show bonding for a project that has yet to be approved is not grounds for denial of the Application.

### **Stormwater Management Approval is More Properly Included as a Condition of Approval.**

70. Section 522(8) of the Zoning Ordinance requires Lebanon Solar to have an approved Stormwater Management Plan as required by the Lebanon County Stormwater Management Ordinance. Lebanon Solar has demonstrated that it can and will obtain relevant third-party permitting, including approval of a Stormwater Management Plan by Lebanon County at the proper time.

71. The Township does not have a stormwater management ordinance and does not review stormwater management plans for land development activities within the Township. Instead, the Stormwater Management Ordinance or Stormwater Ordinance adopted by Lebanon County applies. Lebanon County then uses the Stormwater Ordinance in conjunction with the County SALDO during the land development phase. Lebanon Solar presented the testimony of Mr. Holton on this regulation structure which the Board finds credible.

72. The Objector presented the continued expert testimony of Mr. Lahr who opined as to the importance of stormwater requirements within the Chesapeake Bay area, and stated that he periodically sees a requirement to “perform the stormwater management design requirements as part of the submission.” Tr. 1/26/22, at 180-81. Mr. Lahr offered no opinion as to how an applicant could provide approved stormwater management plans at the conditional use phase when Lebanon County, the third party agency required to approve said plans, would not review them prior to conditional use approval.

73. Lebanon Solar presented the expert testimony of Mr. Staub who testified as to his interpretation of Section 522(8) in his experience as a certified land use planner with experience in drafting zoning ordinances. Tr. 2/24/22, at 342. Mr. Staub opined that a stormwater management plan could not be developed at this time because the site has not been fully designed. Tr. 2/24/22, at 356. The Board finds that the testimony of Mr. Staub was credible and supports the interpretation set forth by Lebanon Solar.

74. As discussed above, the Board recognizes that certain requirements, even if included within the Zoning Ordinance should be imposed as conditions of approval, rather than grounds for denial. *See Delchester Developers, L.P.*, 161 A.3d at 1113-14 n. 11; *Morris*, 836 A.2d at 1026. “[C]onditional use proceedings involve only the proposed use of the land, and do not involve the particular details of the design of the proposed development.” *In re Thompson*, 896 A.2d at 670. The Board is not permitted to impose requirements upon an applicant at this stage, where such issues are to be addressed further along in the permitting and approval process. *See*

*Schatz*, 596 A.2d 294. It would be an error to require Lebanon Solar to show it meets County stormwater management requirements at this time because “storm water management ... requirements ... are to be addressed further along in the permitting and approval process [and] [z]oning only regulates the use of the land and not the particulars of development and construction.” *Id.* at 298. (emphasis added). Furthermore, as discussed above, “courts have long held that, where an outside agency’s approval is required, the municipality should condition final approval upon obtaining a permit, rather than denying preliminary approval.” *Morris*, 836 A.2d at 1026. Because the requested Stormwater Management Plan requires approval by Lebanon County, it is more properly included as a condition of approval, and a failure to show approval of a stormwater plan for a project that has yet to be approved is not proper grounds for denial of the application.

## I. General Concerns of Public Health, Safety and Welfare

75. The Objectors had the presentation burden with regard to all general policy concerns and general detrimental effects. It is well-settled that once the applicant satisfies the first two inquiries outlined above, objectors seeking to defeat the special exception must show that the impact of the proposed use “will be greater than would normally be expected [for that use] and would pose a substantial threat to the health, safety and welfare of the community. They must provide ‘evidence that there is more than a mere speculation of harm.’” *Szewczyk v. Zoning Bd. of Adjustment*, 654 A.2d 218, 224 (Pa. Cmwlth. 1995), citing *Abbey v. Zoning Hearing Bd.*, 559 A.2d 107, 110 (Pa. Cmwlth. 1989) (emphasis in original). Otherwise stated, when a municipality authorizes a use by conditional use, it is presumed that the governing body has already considered that the use is consistent with the public health, safety or welfare, and burden shifts to objectors to prove to the contrary. *In re Brickstone Realty Corp.*, 789 A.2d 333 (Pa. Cmwlth. 2001).

76. The requirement that objectors bear the burden of evidence presentation as to general ordinance criteria is true regardless of any contrary terms contained in a zoning ordinance. Even where a zoning ordinance places the overall persuasion burden on the applicants with regard to general criteria, the initial evidence presentation burden remains with the objectors. *Greaton Prop., Inc. v. Lower Merion Twp.*, 796 A.2d 1038, 1045-46 (Pa. Cmwlth. 2002); *Bray*, 410 A.2d at 913. Simply stated, a conditional use applicant never has the initial presentation burden with regard to the general, subjective criteria. *Williams Holding Grp., LLC v. Bd. of Supervisors of W. Hanover Twp.*, 101 A.3d 1202, 1212-13 (Pa. Cmwlth. 2014). In *Williams*, the Court stated:

Thus, if a requirement is interpreted as one upon which the burden is placed on an applicant, but the requirement is nonobjective or too vague to afford the applicant knowledge of the means by which to comply, the requirement is either one that is not enforceable . . . , or, if it relates to public detriment, the burden shifts to an objector, who must demonstrate that the applicant’s proposed use would constitute such a detriment.

*Id.* at 1213. The Court went on to state:

Thus, a key element in evaluating [special exception] decisions . . . is whether requirements contained in the zoning ordinance are



specific and objective or vague and subjective. In the case of the latter, a requirement may be either one that may not be enforced or one for which an applicant bears no initial evidentiary burden.

*Id.* (emphasis added). Therefore, under *Williams, Bray*, and the myriad other cases on the subject, Lebanon Solar only had to present evidence with regard to the public health, safety, or welfare considerations of the Zoning Ordinance, if, and only if, the Objector presented substantial evidence with regard to the same.

77. The Board has, pursuant to its legislative authority, designated solar farms as a permitted conditional use in the A-1 District. It is well-established Pennsylvania law that a zoning ordinance's designation of a use as a conditional use creates a legislative presumption that the particular use is appropriate in the zoning district in question and consistent with the public health, safety and welfare. As emphasized by the Commonwealth Court in *MarkWest Liberty Midstream and Resources, LLC v. Cecil Township Zoning Hearing Bd.*:

[a] special exception is neither special nor an exception, but **a use expressly contemplated that evidences a legislative decision that the particular type of use is consistent with the zoning plan and presumptively consistent with the health, safety and welfare of the community.** [I]t is not the role of the [zoning hearing board] in adjudicating a [special exception] application, let alone for the courts, to second guess the legislative decision underlying the ordinance. Thus, if the ordinance's objective special exception criteria are met, it is presumed that the use is consistent with the health, safety and general welfare of the community.

184 3d 1048, 1059 (Pa. Cmwlth. 2018) (emphasis in original, citations omitted).

78. Because the Board has by ordinance authorized solar farms as a conditional use in the A-1 District, the Township has already decided that solar farms at the location proposed is consistent with the general public health, welfare, and safety. Furthermore, because Lebanon Solar has satisfied its burdens of presentation and proof with respect to the specific objective criteria of the Zoning Ordinance as outlined in Section 522(1) through 522(8) the presumption that the use is consistent with the health, safety, and welfare of the community applies. *See Markwest*, 184 A.3d at 1059; *Allegheny Tower Assoc. v. City of Scranton Zoning Hearing Bd.*, 152 A.3d 1118, 1123-24 (Pa. Cmwlth. 2017); *Greaton Properties v. Lower Merion Twp.*, 796 A.2d 1038, 1045-46 (Pa. Cmwlth. 2002). Consequently, Lebanon Solar was not required to present evidence with respect to the same unless the Objectors presented *substantial* evidence that the proposed use would be detrimental to the general health, safety, and welfare.

79. Lebanon Solar, as the applicant, has made out a prima facie case for a conditional use, and the burden then shifted to the Objector to present sufficient evidence that the proposed use has a detrimental effect on the public health, safety, and welfare. *See In re Brickstone Realty Corp.*, 789 A.2d at 340.

80. "To overcome the presumption [that the use is consistent with the health, safety, and general welfare of the community], objectors' evidence must 'show, to a **high probability**,

that the proposed use would generate adverse impacts **not normally generated by this type of use (i.e., natural gas compressor stations)**...and that those impacts would pose a substantial threat to the health and safety of the community.” *MarkWest*, 184 A.3d at 1059 (citing *Allegheny Tower Associates, LLC*, 152 A.3d at 1125) (emphasis in *MarkWest*). Bald assertions, personal opinions, and speculation do not satisfy this burden. *See Com. Of Pa., Bureau of Corr. v. City of Pittsburgh, Pittsburgh City Council*, 532 A.2d 12, 14 (Pa. 1987).

81. Critically, objectors to a proposed conditional use do not meet their initial presentation burden with respect to the public health, safety, or welfare criteria of a zoning ordinance through mere speculation and expression of fears, “issues,” and “concerns.” *Szewczyk, supra*. Instead, they must come forward with specific factual evidence establishing with a high degree of probability that the use in question will have an impact on the community beyond that normally associated with that use. “Moreover, the degree of harm required to justify denial of the conditional use must be greater than that which normally flows from the proposed use.” *In re Cutler Grp., Inc.*, 880 A.2d 39, 43 (Pa. Cmwlth. 2005) (citing Robert S. Ryan, 1 Pennsylvania Zoning Law and Practice §5.2.6 (2003)).

82. The *Archbishop O’Hara* case established the benchmark for reviewing objections based upon speculative future concerns:

Any traffic increase with its attendant noise, dirt, danger and hazards is unpleasant, yet, such increase is one of the “inevitable accompaniments of suburban progress and of our constantly expanding population” which, standing alone, does not constitute a sufficient reason to refuse a property owner the legitimate use of his land: *Rolling Green Golf Club Case . . . .* It is not any anticipated increase in traffic which will justify the refusal of a “special exception” in a zoning case. The anticipated increase in traffic must be of such character that it bears a substantial relation to the health and safety of the community. A prevision of the effect of such an increase in traffic must indicate that not only is there a likelihood but a high degree of probability that it will affect the safety and health of the community, and such prevision must be based on evidence sufficient for the purpose. Until such strong degree of probability is evidence by legally sufficient testimony no court should act in such a way as to deprive a landowner of the otherwise legitimate use of his land.

*Appeal of O’Hara, C.S.C. Archbishop of Phila.*, 131 A.2d 587, 596 (Pa. 1957) (internal citations removed for clarity). *See also, Sunnyside Up Corp. v. City of Lancaster Zoning Hearing Bd.*, 739 A.2d 644 (Pa. Cmwlth. 1999) (speculation as to decrease in property value, even if does occur, insufficient basis for denial of special exception for juvenile detention facility, since it would be no different than that usually associated with such a facility); *Accelerated Enterprises, Inc. v. The Hazle Twp. Zoning Hearing Bd.*, 773 A.2d 824, 827 (Pa. Cmwlth. 2001) (“increase in traffic is generally not grounds for denial of a special exception unless there is a high probability that the proposed use will generate traffic not normally generated by that type of use and that the abnormal traffic threatens safety.”); *Bailey v. Upper Southampton Twp.*, 690 A.2d 1324 (Pa. Cmwlth. 1997).

83. These bedrock principles of Pennsylvania land use law were reiterated by the Pennsylvania Commonwealth Court in *Kretschmann Farm, LLC v. Township of New Sewickley*, 131 A.3d 1044 (Pa. Cmwlth. 2016), *petition for allowance of appeal denied*, 145 A.3d 168 (Pa. 2016), holding that objectors did not meet their burden of presenting substantial evidence in opposition to a conditional use application for a natural gas compressor station. There, an oil and gas operator filed a conditional use application to construct a natural gas compressor station in a township's A-1 Agricultural District on a parcel that was about 46 acres in size. *Kretschmann*, 131 A.3d at 1047. The operator provided testimony and evidence showing that it met the specific objective requirements of the township zoning ordinance. *See id.* at 1047-48. Objectors, the owners of a nearby organic farm, asserted that such facilities did not belong in agricultural areas and that DEP had reported more than 200 cases of water contamination caused by oil and gas development since 2007. *See id.* at 1050. A witness who was a chemical engineer cited a study by EPA that compressor stations can generate a chemical that can cause lung cancer and also stated concerns about how emissions would impact the adjacent organic farm. *See id.* at 1054. Other objectors noted that diesel fumes from trucks in the oil and gas industry are harmful, that Beaver County's air quality was rated "F" by the EPA and that the compressor station would make it worse, and that chemical emissions from the station would contaminate organic produce. *See id.* at 1049. The organic farm owners submitted over 200 form emails from their customers objecting to the proposed compressor station. *See id.* at 1050. The Commonwealth Court found that the objectors had not presented substantial evidence, stating that, "expressions of concern do not constitute probative evidence of harm . . . [I]and owners presented no expert reports or testimony to support their challenge to [the operator's] conditional use application . . . . Accordingly, they did not meet their burden of showing that [the operator's] compressor station would adversely affect the public health, safety, and welfare in a way not expected for a usual compressor station." *Id.* at 1055. (emphasis added).

### **Aesthetic Concerns**

84. The Objectors presented the testimony of Mr. Grady Summers, who asserted that if the Project was approved he would be able to see the Property and allegedly the proposed battery storage systems, substation and switching station from his front porch and each window of his house. Tr. 1/26/22, at 122, 125-26. While Mr. Summers may be displeased with the change in his view, he provided no testimony that indicated that this Project would be highly probable to generate a harm abnormal to solar farms. In fact, his alleged harm is one which is not only normal for solar farms, but perhaps is the only quality inherently normal for every use: it is visible from the properties surrounding it. In addition, the testimony of Mr. Holton confirmed that the exact size and locations of the facilities have not been finalized, and any direct impact on Mr. Summers' viewshed are therefore based only on proposed designs. Consequently, his stated concerns are speculative or not highly probable, and do not relate to a harm abnormal to solar farms.

85. Other objectors raised similar concerns related to an impact on the views from their property, or generally the "aesthetic value" of the area. The Objectors also put forth the testimony of Mr. Larry Buffenmeyer, who testified that he would be able to view participating parcel Lots five (5), eight (8) and six (6) from various points on his property. Mr. Buffenmeyer testified that these lots are viewable from the front and sides of his home, but that he does not utilize his front porch due to the existing traffic in the area. Tr. 1/26/22, at 187. He testified that he is retired and he utilizes the back deck of his property to sit outside. Tr. 1/26/ 22, at 187. Mr. Buffenmeyer testified that the solar farm will not block or interfere with his view from the back deck that he

utilizes, but that from the front porch, which he already does not use due to existing traffic unrelated to the Project, and sides of the house he will see solar panels in those three lots. Tr. 1/26/22, at 187-88. Mr. Buffenmeyer expressly stated that he wished to testify to the “concerns that [he] would have if this all goes through.” Tr. 1/26/22, at 188-89.

86. Mr. Buffenmeyer further testified as to what he referred to as “sight view pollution,” stating that it is “negative to the eye to see solar panels everywhere.” Tr. 1/26/22, at 190. While the Board is sympathetic to Mr. Buffenmeyer’s desire to maintain an aesthetic view from his property, he has already stated that his viewshed from the front of his home is inaccessible to him due to existing traffic unrelated to the Project, and that the Project will not be viewable from the back deck which he utilizes. Tr. 1/26/22, at 187-88. Mrs. Brenda Buffenmeyer also raised a general concern related to aesthetics. Tr. 1/26/22, at 196. Neither Mr. nor Mrs. Buffenmeyer presented factual evidence to indicate that the Project would in any way disrupt their current daily use of his property in any manner abnormal to a solar farm use.

87. The Objectors also put forth testimony of Mrs. Suzanne Forney, who testified that the Project would be within view of her property. Tr. 1/26/22, at 199-200. She made statements regarding her concerns over aesthetics but presented no specific factual evidence that the proposed Project would be highly likely to produce a harm abnormal to a solar farm use. Mr. John Shaver and Mrs. Brenda Shaver also testified regarding their aesthetic concerns regarding disruption to the current view from their property. Tr. 1/26/22, at 214-16 and 218-22. Mr. Miller also raised general concerns related to “dividing” the neighborhood, as well as aesthetic concerns and concerns over property values, and light pollution. Tr. 1/26/22, at 208-09. Ms. Dalinda Bohr raised concerns regarding light pollution and aesthetics as well. Tr. 1/26/22, at 232-39. None of this testimony arose to anything more than statements of concern or vague allegations of harm and no factual evidence related to aesthetic harms were submitted which would be sufficient to meet the high burden imposed by law. Furthermore, the alleged aesthetic harm caused by placing solar panels within the view of neighboring property owners is common to and in no way abnormal for a typical solar farm, and Lebanon Solar credibly testified that it would work to provide sufficient fencing or vegetation to protect the views of neighboring property owners. The Board therefore concludes that these statements were insufficient to show any high probability of a harm abnormal to the use.

88. The Board also received public comment in favor of the Project which rebutted certain aesthetic concerns. Mrs. Julia Kaylor, and Mr. Brent Kaylor, participating landowners in the Project, testified as to how they made the decision to enter into the agreement, why they agree with the project, and why they support the project. Tr. 1/26/22, at 240, 263-265. Mrs. Kaylor refuted many of the concerns raised by other residents, including the concerns relating to viewshed interruption or aesthetics. Tr. 1/26/22, at 240-45. In particular, Mrs. Kaylor noted many permitted uses also block views such as storage sheds, barns, chicken houses, hog barns, berms for biosolid storage, berms surrounding a gun range, or even just residential homes, and in comparison solar panels she states will be no taller than a mature stalk of corn will in fact preserve the openness and green space. Tr. 1/26/22, at 245. The Board found this comment compelling.

### **Wildlife and Traffic Concerns**

89. Mr. Summers further testified that he was concerned about deer, fox, and coyote being unable to access the Property and therefore entering his property or traversing the roads therefore creating an increased risk of traffic accidents. Tr. 1/26/22, at 127-28. Ms. Dalinda Bohr

raised concerns regarding traffic, wildlife, and roads, as well. Tr. 1/26/22, at 232-39. Mr. Tshudy raised concerns related to traffic and deer, as well as general damage from or to animals, crops and livestock. However, none of these objectors presented any evidence that any such negative impacts were even reasonably likely to occur, let alone highly probable. The Objectors presented no factual evidence that traffic accidents would increase, or that such an increase would occur in a manner not expected for a usual solar farm. The Objectors presented no evidence or testimony from any traffic expert or wildlife expert to corroborate these concerns. Therefore this testimony was not sufficient to meet the objectors' high burden of overcoming the presumption that the Project is consistent with the public health, safety, and welfare.

90. Mr. Summers testified as to his opinion that the Project would change the aesthetic nature of certain roads which had been designated scenic roads by the Township Comprehensive Plan. As noted above, the Comprehensive Plan is not a binding document and does not have the legal effect of a zoning ordinance, which actually regulates land use as may be recommended by the comprehensive plan, and a municipality does not err in approving a plans allegedly incongruent with the same. *See Saenger v. Planning Commission of Berks County*, 308 A.2d 175, 176-77 (Pa. Cmwlth, 1973) ([i]t is inherent in the recommendatory nature of the comprehensive planning concept that it neither can no[r] does have any specific or litigable impact such as to provide any practical or realistic occasion for judicial intervention. The formulation and adoption of a comprehensive plan are but intermediate and inconclusive steps in the planning process, and in themselves are legally ineffective.") *quoting Supervisors of Warrington Twp.*, 53 Pa. D.&C.2d 329, 332 (Pa. Com. Pls. 1971). 'As admitted by Mr. Summers' own expert witness, Mr. Lahr, comprehensive plans have no force of law. Tr. 1/26/22, at 182.

### **Concerns Over Damage to Farmland**

91. Mr. Summers made statements and interpretations as to the definitions of prime farmland under Section 107 of the MPC, as well as how it is applied by various government agencies. Tr. 1/26/22, at 133-34. Mr. Summers was not offered as an expert witness, and to the Board's knowledge is not an attorney. The Board finds that this testimony was outside the scope of a lay witness and therefore lacks credibility. Mr. Summers further attempted to introduce and interpret the report of an agricultural engineer he identified as John Williamson. The purported report of Mr. Williamson was not authenticated, and Mr. Williamson was not offered as an expert witness, consequently his report constituted a statement made outside of the hearing which was offered for the truth of the matter contained therein and was inadmissible hearsay. Although the formal rules of evidence do not apply to zoning matters hearsay evidence "must be sufficiently corroborated by other evidence in order to be considered competent evidence." *Lake Adventure Community Association, Inc.*, 79 A.3d at 714 n. 4.

92. Mr. Buffenmeyer also stated that "[a]nother concern [he has] is... desecration and pollution of good farmland is another concern I have." Tr. 1/26/22, at 189. Mr. Buffenmeyer alleged that if the board were to "check with any soil scientist" that "whatever else you do to put a solar system in, its definitely going to take away from the value of good farmland." Tr. 1/26/22 at 188-90. Mr. Buffenmeyer was not offered as an expert witness and offered no factual evidence to support these statements. Furthermore, as Mr. Buffenmyer admitted, his concerns for the farmland, willingly leased by the participating property owners, were "none of [his] business," he doesn't own the farms in question or even a farm at all. Tr. 1/26/ 22, at 190. While the Board

appreciates Mr. Buffenmeyer's concerns, it finds these expressions of vague concerns unrelated to himself or his own property to be speculative, and unsupported by any factual evidence.

93. Mr. Buffenmeyer raised additional concerns about whether "all these farmers," apparently the Participating Landowners, "are aware of what they signed up for." Tr. 1/26/22, at 192. This concern is entirely irrelevant to the issue of land use, and it is not for Mr. Buffenmeyer or the Board to step in and prevent a landowner's desired use of land based upon some desire to protect a property owner from themselves. The Board appreciates Mr. Buffenmeyer's concern for his neighbors, but cannot base its decision upon such concerns.

94. Mrs. Kaylor provided public comment as to her, and other farmers, rights to use their properties as they see fit so long as it conforms to the Zoning Ordinance and Conditional Use requirements. Tr. 1/26/22, at 247. The Board found Mrs. Kaylor's presentation compelling. Mr. Kaylor also reiterated his wife's comments and further rebutted Mr. Summers comments relating to the soil quality on the land in question. Tr. 1/26/22, at 266-71. While the Board acknowledges that Mr. Kaylor lacks no more accreditation on the matter than did Mr. Summers and gives his comments no more weight than it did that of Mr. Summers, it does note that the comments made regarding soil quality and damage thereto were rebutted by sworn statements of the same or similar weight. The Board also acknowledges that Mr. Kaylor has a presumed heightened understanding of the soil quality and impact on his own property given that he is currently farming his own land. The Board further notes that Mr. Kaylor provided detailed and compelling statements regarding property rights, aesthetics, and the validity of the project. Tr. 1/26/22, at 271-78.

95. Mrs. Jill Baer, and Mr. Andrew Baer, provided sworn public comment as to how the use of their farm property as an agricultural farm has many of the same alleged ill effects on the soil as had been raised as concerns by other members of the public. Tr. 1/26/22 Pg. 248, Pg. 261-63. The Board found these sworn comments compelling.

### **Property Value Concerns**

96. Mr. Buffenmeyer stated that "[o]ne of the concerns [he has] is property values." Tr. 1/26/22, at 189. Mr. Buffenmeyer alleged that he had spoken to a real estate agent who said "[a solar project] can affect your property values negatively," but that he did not "have anything in writing and whatever." Tr. 1/26/22, at 189. This statement is uncorroborated and therefore inadmissible hearsay and cannot be relied upon by the Board. Mr. Mark Bachman provided public comment on his opinions of Lebanon Solar as an entity as well as property value. Tr. 1/26/22, at 258-262. Mrs. Buffenmeyer also raised concerns regarding property values. Tr. 1/26/22 pg. 200-05. These statements once again did not consist of anything more than statements of concern or speculative harm.

97. Lebanon Solar, on rebuttal, presented the expert testimony of Mr. Richard Kirkland, Jr., a certified general appraiser in multiple states including Pennsylvania, who the Board admitted as an expert in general appraisal and MAI. Tr. 2/24/22, at 304. Mr. Kirkland testified as to his review of over 900 solar farms in multiple states, and explained his processes. Tr. 2/24/22, at 306-07. Mr. Kirkland credibly testified that in general his studies have found a close to zero percent impact on property values surrounding solar farms, with the aggregate showing a mild positive impact. Tr. 2/24/22, at 308-09. Mr. Kirkland also testified that many of the characteristics that tend to negatively impact property values have been shown to not to be present in solar farm uses.

Tr. 2/24/22, at 309-10. For example he noted that solar farms do not have issues with hazardous materials, odor, noise, or stigma. Tr. 2/24/22, at 309-10. He stated that one factor that is triggered, is appearance, but that that is “typically the smallest impact [appraisers] can measure, and that in addition significant setbacks and landscaping buffers help mitigate that issue. Tr. 2/24/22, at 310. He opined that the setbacks proposed for the Project were sufficient to protect property value so long as the landscape buffering is in place. Tr. 2/24/22, at 311. He testified that the demographics for the area are consistent with other areas with solar farms, both in terms of population density, median income and home value. Tr. 2/24/22, at 312. He further testified that his studies indicated that there was no increased impact on property values corresponding to an increased size of the solar farm. The Board finds Mr. Kirkland’s expert testimony to be credible on the matter of impact on property values.

98. The Objectors presented no expert of their own on the issue of property values and consequently the testimony of Mr. Kirkland was unrefuted.

### **Size Concerns**

99. Mr. Summers noted the size of the Project and made statements regarding the size of other solar projects in Pennsylvania and across the country. Tr. 1/26/22, at 150-154. Mr. Summers however failed to provide any evidence as to why the size of the Project would result in a harm to the public health, safety, or welfare, but merely states that the size of the project and the existence of homes in proximity to the same will generate such a harm. There was no evidence presented of correlation let alone causation of size of a solar farm to harm to the community. Furthermore, the Board has already made the legislative determination that a solar farm is a legitimate use in the Agricultural zone. *In re Brickstone Realty Corp.*, 789 A.2d 333. The Ordinance could have placed a maximum lot size limit on solar farms, but it does not. Similarly, the Ordinance could have imposed a larger setback requirement, but it instead imposes only fifty feet. Therefore the arguments related to size and density are irrelevant as to public health, safety, and welfare as the Project’s compliance with the terms of the ordinance on those issues resulted in a presumption that a project which complies with the same is consistent therewith. Furthermore, on a practical level, the Objector failed to provide any specific evidence as to why the size of the Project would be highly probably to result in any harm to the public health, safety or welfare.

100. Lebanon Solar presented the testimony of Mr. John Dimitriou, the project engineer for the Project. Tr. 2/24/22 pg. 365. Mr. Dimitriou testified that there are roughly 40 other projects in Pennsylvania of approximately the same size or larger, some that are larger by a magnitude of 3 to 9 times the size of this Project currently in development. Tr. 2/24/22, at 369. The Board considers the testimony of Mr. Dimitriou to be credible and sufficient to demonstrate that the size of the Project is not abnormal.

### **Battery, Safety, and Runoff, and Other Miscellaneous Concerns**

101. Mr. Miller purported to give testimony regarding recycling and batteries based on his alleged “LEED” accreditation. Tr. 1/26/22, at 211. Mr. Miller, however, was not offered or accepted as an expert witness, and was unable to demonstrate what the accreditation he had received stood for, when he had received it, or what area it qualified him to testify to. Tr. 1/26/22, at 211. The Board finds that Mr. Miller’s testimony related to batteries, fuel storage, or other technical aspects of solar development or decommissioning to be beyond the scope of lay

testimony and lacking in credibility. Mr. and Mrs. Shaver also raised concerns regarding batteries, none of which were corroborated with factual evidence or rose to a level greater than a statement of “concern.” Tr. 1/26/22, at 217 and 223.

102. Mr. Buffenmeyer raised additional concerns, and questions related to runoff, Township expenses and other items. Mrs. Buffenmeyer also raised concerns regarding recycling policies, tax policies, water testing, and property values. Tr. 1/26/22, at 200-05. Mr. Shaver raised concerns regarding electromagnetic radiation, but did not present any factual evidence to indicate any such alleged harms were highly likely to occur. Tr. 1/26/22, at 217. Again, while the Board acknowledges these residents’ concerns, they do not arise to the level of specific evidence that there is a high probability that a harm abnormal to a solar farm use will occur.

103. Mr. Buffenmeyer also stated that “another concern [he] has” is the liability insurance for “if something goes wrong.” Tr. 1/26/22, at 191-92. He provided no testimony to suggest that the insurance provided by Lebanon Solar at the proper time would be insufficient, or that Lebanon Solar was incapable of obtaining sufficient coverage. He provided no testimony to suggest that there was an increased risk of “something going wrong” with this Project. The Board therefore concludes that these statements were insufficient to show any high probability of a harm abnormal to the use.

104. Mr. Tshudy, also provided additional testimony, however the majority of the statements provided did not rise beyond questions or statements of vague concerns. *See e.g.* TR 1/25/22, at 84. In addition, the Board found the responsive testimony provided by Lebanon Solar to the questions and concerns raised by residents and objectors to be credible. For example, Mr. Tshudy raised the following question:

Mr. Tshudy: What I’m concerned about is what’s their maintenance plan for this thing, I mean?”

[continuing]

... is there going to be regular inspection? Is there going to be – I mean, this could be part of the problem with like the health and welfare of the community if those things leak. They are not inspected regularly. There’s some sort of emergency system that’s going to let the company know if something is failing?

...

Mr. Holton: The answer is yes. The project is monitored 24/7 remotely.

Tr. 1/25/22 pg 84-85.

The Board appreciates the participation of Mr. Tshudy but finds that he presented no evidence to indicate that the Application did not meet the Zoning Ordinance criteria or that there was a high probability of an abnormal harm to the general health, safety, and welfare of the community.



105. Mr. Dimitriou also testified as to Lebanon Solar's commitment to recycle batteries at the end of their life, as well as the national standards to which all batteries must be held. Tr. 2/24/22, at 371-72. He further testified as to protection controls, and fire prevention systems and policies. Tr. 2/24/22, at 373-74. Mr. Dimitriou testified as to the procedures used to detect and replace damaged solar panels, including periodic inspections, and drone inspections. Tr. 2/24/22, at 375. He testified as to what happens when a panel "breaks," and how they are replaced. Tr. 2/24/22, at 375-76. The Board finds Mr. Dimitriou's testimony credible, and demonstrative of the general safety of the Project.

106. Mr. Summers also read into the record a letter purported to be written by a Mr. Craig Meyer who was not present at the hearing. Tr. 1/26/22, at 138. While the Board appreciates Mr. Meyer's dedication to public comment, and to local history, and appreciates his concerns, this letter was not appropriately provided to the Board as written public comment, but was entered as testimony by a witness other than Mr. Meyer himself. Tr. 1/26/22, at 140-44. Consequently, the letter constitutes inadmissible hearsay which was not otherwise corroborated and as stated above, cannot be considered by this Board in rendering its decision. Furthermore, as noted by Mr. Summers, neither the letter nor Mr. Summers presented any evidence to indicate that the cemeteries referenced in the letter would be impacted by the Project. Tr. 1/26/22, at 144. Mr. Summers again provided testimony as to the requirements of Pennsylvania law on private cemeteries, which the Board again notes constitutes a legal opinion outside the scope of lay testimony and therefore lacking in credibility.

107. Mrs. Jill Baer also rebutted the letter of Craig Meyer. Tr. 1/26/22 Pg. 249-50. Mrs. Baer stated that the contract she and her husband, as participating landowners in the Project, included a clause that mandated that Lebanon Solar would not touch the cemeteries located on her property. Tr. 1/26/22, at 249. The Board notes that counsel for the Objector attempted to prohibit the testimony of Mrs. Baer and alleged that her statements would be "irrelevant" to its decision. Tr. 1/26/22, at 250. As more thoroughly discussed above, the receipt and consideration of public comment is a statutory requirement for all conditional use proceedings under the MPC, the Board has and will thoroughly consider public comment offered by all residents of the Township who wished to provide it.

108. Other public comment from residents was reviewed and considered by the Board, but ultimately are irrelevant to the matter of whether or not the Lebanon Solar was entitled to a grant of its conditional use application. The Board received and considered the comments of Mr. Melvin Gehman who spoke to his general disfavor of solar power energy in areas not zoned industrial. Tr. 1/25/22, at 99-101. The Board received and considered Mr. Clyde Pershun who spoke to his general disfavor of the project. Tr. 1/26/22, at 230.

109. In summary, it was not enough for the Objectors here to express vague "concerns" about alleged impacts of Lebanon Solar's proposed development, nor was it enough for them to present evidence of alleged adverse impacts from solar farms generally. Instead, they were required to present specific evidence that Lebanon Solar's specific project would create adverse impacts beyond those normally associated with a solar farm. Although the Board is sympathetic to the understandable concerns residents have about what is to them and the Township a new use, the Objectors failed to meet this burdens the Board is required to hold them to by law. Virtually all of the general health and safety issues raised were aimed at alleged impacts of solar farms or renewable energy development generally, not specific to any unusual or abnormal impacts of this

project on this property, or involved broader environmental or operational impacts within the jurisdiction of Lebanon County and other regulatory agencies. This is not to say that these issues are not important, just that they are not within the jurisdiction of the Township and this Board at this juncture.

**J. Conditions**

110. Finally, although the Board has concluded that Lebanon Solar has satisfied its burden with respect to the specific ordinance criteria, and the Objector has failed to meet his with respect to general health and safety concerns, Lebanon Solar has offered to subject itself to a number of additional conditions and limitations, which are set forth in Appendix “B” to this decision.



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing pleading was served on the  
**24<sup>th</sup>** day of **March, 2022**, via electronic mail upon the following:

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## Appendix A Exhibits

### Lebanon Solar Exhibits

- A-1 Conceptual Site Plan
- A-2 Project Overview; Transmission Line
- A-3 Criterion #1 - Agricultural Easements
- A-4 Criterion #2 – CUP Area
- A-5 Criterion #3 – Setbacks from adjacent lot lines
- A-6 Criterion #3 – Close up of 50’ Setbacks
- A-7 Criterion #6 – Insurance Certificates
- A-8 Lebanon Solar Presentation Slides
- A-9 Title Commitments for 12 properties
- A-10 Authorization Letter by Lebanon Solar
- A-11 Memorandum/Easement Agreements for 12 properties
- A-12 Waivers by Hostetter (Dale), Hostetter (Alan), Brightbill (Hilda), Brightbill (Bruce/Hilda), Long (Leonard)
- A-13 Option Agreements
- A-14 Richard Kirkland, Jr.’s Professional Vita
- A-15 Timothy J. Staub Professional Vita
- A-16 Jonathan Dimitriou Professional Vita
- A-17 Maximum Lot Coverage
- A-18 BESS Handout

### **Objector Exhibits**

- O-1 Entry of Appearance
- O-2 Email from Julie Cheyney (Lebanon County Planner)
- O-3 Scenic Roads Map
- O-4 Folder of Materials Related to Soils (Pending Receipt from Objector's Counsel)
- O-5 Statement by Historian (Craig Meyer)
- O-6 Section 6 of Comprehensive Plan (not provided by Objector's Counsel)
- O-7 Pictures of Solar Facilities
- O-8 Vita of Lawrence J. Lahr

### **Township Exhibits**

- T-1 Newspaper Advertising Notice
- T-2 Affidavit of Adam Wolfe as to Posting (un-notarized)
- T-3 Township Letter

**Appendix B**  
**Proposed Conditions**

- a. Prior to construction, Lebanon Solar will provide the Township with liability insurance certificate in the minimum amounts of one million dollars per incident and two million dollars per aggregate, which shall be updated as necessary.
- b. Prior to construction, Lebanon Solar will provide the Township with adequate bonding, letter of credit, or other financial security, acceptable to the Township, to remain in place and to be used by the Township if the Applicant ceases operation and fails to remove panels and other implements related to the use within 180 days of the cessation of operation.
- c. Prior to construction, Lebanon Solar will provide the Township with the stormwater management plan which has been approved by Lebanon County.
- d. Prior to construction, Lebanon Solar will provide a Land Development Plan that demonstrates compliance with applicable provisions under the Township Zoning Ordinance.
- e. Lebanon Solar place no panels or other implements of the solar farm within one hundred and fifty (150) feet of an occupied residential dwelling.