

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

LEBANON SOLAR I, LLC,	)	Civil Division
	)	
Appellant,	)	No. 2022-00553
	)	
v.	)	
	)	
NORTH ANNVILLE TOWNSHIP	)	
BOARD OF SUPERVISORS,	)	
	)	
Appellee.	)	
	)	

**ORDER**

AND NOW this \_\_\_\_ day of \_\_\_\_\_, 2022, it is hereby Ordered, Adjudged and Decreed that Appellant Lebanon Solar's Petition for Appeal *Nunc Pro Tunc* is hereby GRANTED.

BY THE COURT:

\_\_\_\_\_, J.

ENTERED & FILED  
PROTHONOTARY OFFICE  
LEBANON, PA

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PENNSYLVANIA

LEBANON SOLAR I, LLC, ) Civil Division  
)  
Appellant, ) No. 2022-00553  
)  
v. ) **PETITION TO APPEAL *NUNC***  
) ***PRO TUNC***  
)  
NORTH ANNVILLE TOWNSHIP )  
BOARD OF SUPERVISORS, ) Filed on behalf of Appellant,  
) Lebanon Solar I, LLC  
)  
Appellee. ) Counsel of Record for this Party:  
)  
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) (814) 867-8055  
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Appellant,	)	No. 2022-00553
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BOARD OF SUPERVISORS,	)	
	)	
Appellee.	)	
	)	

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PROTHONOTARY OFFICE  
LEBANON, PA  
2022 OCT 11 P 2:28

**PETITION TO APPEAL NUC PRO TUNC**

AND NOW, comes Lebanon Solar I, LLC (“Lebanon Solar”), by and through its counsel, Babst, Calland, Clements & Zomnir, P.C., and files this Petition to Appeal *Nunc Pro Tunc* in the above-captioned matter to be considered solely in the case that this Court determines that the Notice of Land Use Appeal filed by Lebanon Solar on May, 5, 2022, and thereafter amended on June 17, 2022, was untimely as alleged in the Motion to Quash filed by the North Annville Township Board of Supervisors (“Township”) on September 20, 2022.

1. Lebanon Solar hereby incorporates by reference the Answer in Opposition to Motion to Quash concurrently filed with this Petition this day, October 11, 2022.

2. Lebanon Solar hereby incorporates by reference the Brief in Opposition to Motion to Quash or in the Alternative, in Support of Petition to File Appeal *Nunc Pro Tunc*, concurrently filed with this Petition this day, October 11, 2022.

3. The actions and express statements of the Township lead Lebanon Solar to believe that the final appealable decision of the Township occurred on April 5, 2022.

4. The Township failed to provide Lebanon Solar with written notice of the decision as required by Sections 908(10) and 603(c)(2) of the Pennsylvania Municipalities Planning Code (“MPC”), *see* 53 P.S. §10908(10) 53 P.S. §10603(c)(2), which require that written *notice* of the decision (separate and distinct from any findings of fact and conclusions of law required by Section 913.2(b)(1), 53 P.S. §10913.2(b)(1)) be provided by personal service or mail to the Applicant no later than the day following the final decision.

5. This failure, compounded by the Township’s previously documented failure to comply with the statutory timelines established by the MPC resulted in an administrative breakdown at the local level.

6. The Township stated on the record that its “written decision,” believed to mean the written findings of fact and conclusions of law required by Section 913.2(b)(1) of the MPC, 53 P.S. §10913.2(b)(2) were to be provided 45 days from

“deliberation,” of the Board on April 5, 2022, which would have resulted in the same being provided on May 20, 2022.

7. Neither the MPC nor the Rules of Civil Procedure require that a pleading be amended within any specific time period.

8. Lebanon Solar filed its Amended Notice of Appeal on June 17, 2022, thirty-five days after the email transmittal of the Township’s Findings of Fact and Conclusions of Law, but within thirty days of the anticipated receipt date of 45 days from April 5, 2022 (May 20, 2022).

9. This Court accepted both the initial Notice of Appeal allegedly filed prematurely, as well as the Amended Notice of Appeal, allegedly filed late.

10. The Township participated in the Appeal by filing its certified record, although a copy of the same was not provided to Lebanon Solar, and Lebanon Solar consented to the Intervention of the Intervenor Grady Summers.

11. The Appeal alleges violations of due process and numerous breakdowns of process and procedure.

12. The Township filed a Motion to Quash the Appeal one hundred and thirty-eight days after the initial filing it claims to have been filed prematurely, depriving Lebanon Solar of the opportunity to cure the alleged defect.

13. This Petition has been filed concurrently with Lebanon Solar's Answer to the Motion to Quash which constitutes prompt action following Lebanon Solar's discovery that its Appeal was alleged to be both premature and late.

14. No prejudice would result in the granting of this Petition as the Appeal was filed prior to June 12, 2022, the date alleged by the Township to be the statutory deadline, and the Township, and Intervenor consequently had notice of the Appeal and the grounds stated therein in a timely manner.

WHEREFORE, Lebanon Solar I, LLC respectfully requests that should this Honorable Court find that the initial or Amended Notice of Land Use Appeal was untimely filed as alleged by the Township in the Motion to Quash, that it grant this Petition to Appeal *Nunc Pro Tunc* for the reasons set forth above and as more thoroughly described in the Brief in Support of Petition to File Appeal Nunc Pro Tunc attached hereto.

Date: October 11, 2022

Respectfully submitted,

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

By: 

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Attorneys for Plaintiff,  
Lebanon Solar I, LLC

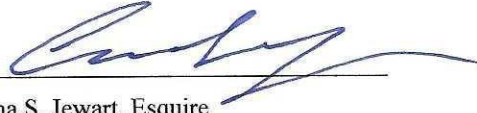
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Pittsburgh, PA 15222  
(412) 394-5400

Attorneys for Appellant,  
Lebanon Solar I, LLC

**ATTORNEY VERIFICATION**

I, Anna S. Jewart, Esquire, attorney for Appellant Lebanon Solar I, LLC., hereby verify that I am authorized to execute this Verification on its behalf, and that the averments of fact contained in the foregoing *Petition to Appeal Nunc Pro Tunc* are true and correct to the best of my knowledge, information and belief, as that knowledge and information has been related or made available to me by Lebanon Solar I, LLC., whose verification cannot be obtained within the time allowed for filing this pleading. This Verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: October 11, 2022



Anna S. Jewart, Esquire

*Counsel for Appellant  
Lebanon Solar I,*

*LLC..*

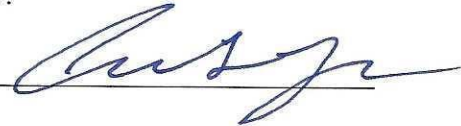


**CERTIFICATE OF COMPLIANCE**

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

Submitted by:

Signature: \_\_\_\_\_



Name: Anna S. Jewart, Esquire

Attorney No. (if applicable): Pa. I.D. 80149

**CERTIFICATE OF SERVICE**

I, Anna S. Jewart, do hereby certify that a true and correct copy of the foregoing Amended Notice of Land Use Appeal was served in the following manner this 11<sup>th</sup> Day of October, 2022, upon the following:

Paul C. Bametzreider, Esquire  
Reilly Wolfson  
1601 Cornwall Road  
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*Attorney for Appellee Township*

William Cluck Esq.  
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Harrisburg, PA 17104

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

By: \_\_\_\_\_

Anna S. Jewart, Esquire