

IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY, PA

---

LEBANON SOLAR I, LLC, :  
 :  
 Appellant : CIVIL DIVISION  
 : NO. 2022 - 00553  
 v. :  
 : **BRIEF OF INTERVENOR**  
 NORTH ANNVILLE TOWNSHIP BOARD :  
 OF SUPERVISORS, : Filed on Behalf of Grady Summers  
 :  
 Appellee : Counsel of Record for this Party  
 :  
 and :  
 :  
 GRADY SUMMERS, :  
 :  
 :  
 Intervenor :

LAW OFFICE OF WILLIAM J. CLUCK  
By: William J. Cluck, Esquire  
Attorney Id. No. 52892  
587 Showers Street  
Harrisburg PA 17104  
717-238-3027  
[billcluck@billcluck.com](mailto:billcluck@billcluck.com)

## **I. INTRODUCTION**

The Board of Supervisors of North Annville Township (“Board”) properly denied the application for conditional use submitted by Lebanon Solar I, LLC (“Lebanon Solar”) for zoning approval of a solar farm on 858 acres on 12 separate tax parcels (“Application”). The Board, in its May 12, 2022 written decision, made findings of fact based on substantial evidence and conclusions of law denying the Application. Lebanon Solar failed to meet six of the eight objective criteria set forth in Section 522 of the Township Zoning Ordinance. Lebanon Solar fails to demonstrate the Board abused its discretion, committed an error of law or capriciously disregarded so-called substantive evidence. Lebanon Solar’s baseless and meritless claim of bias has no basis in fact or law. Intervenor requests this Court affirm the decision of the Board and deny Lebanon Solar’s Amended Notice of Land Use Appeal.

## **II. COUNTER STATEMENT OF JURISDICTION**

Contrary to Lebanon Solar’s Statement of Jurisdiction, this Court’s jurisdiction is pursuant to the Pennsylvania Municipalities Planning Code (“MPC”). Section 1001-A<sup>1</sup> of the MPC provides: “The procedures set forth in this article shall constitute the exclusive mode for securing review of any decision rendered pursuant to Article IX or deemed to have been made under this act.” The May 12, 2022, written decision of the Board denying Lebanon Solar’s Application was issued pursuant to Article IX of the MPC.

Section 1002-A<sup>2</sup> of the MPC governs jurisdiction, venue and the time for appeal of decisions entered pursuant to Article IX of the MPC as follows:

All appeals from all land use decisions rendered pursuant to Article IX shall be taken to the court of common pleas of the judicial district wherein the land is

---

<sup>1</sup> 53 P.S. § 101001-A.

<sup>2</sup> 53 P.S. § 101002-A.

located and shall be filed within 30 days after entry of the decision as provided in 42 Pa.C.S. § 5572 (relating to time of entry of order) or, in the case of a deemed decision, within 30 days after the date upon which notice of said deemed decision is given as set forth in section 908(9) of this act. It is the express intent of the General Assembly that, except in cases in which an unconstitutional deprivation of due process would result from its application, the 30-day limitation in this section should be applied in all appeals from decisions.<sup>3</sup>

Lebanon Solar ignores the provisions of the MPC in its Statement of Jurisdiction.

Lebanon Solar contends this Court of Common Pleas has “subject matter jurisdiction” pursuant to 42 Pa. C.S. § 931, that venue is proper pursuant to Rules 1006(a)(2) and 1092(c)(2) of the Pennsylvania Rules of Civil Procedure and seeks equitable relief. Lebanon Solar fails to assert whether the purported subject matter jurisdiction is exclusive or concurrent.

Lebanon Solar also cites an erroneous basis for venue. Their cited venue rules apply respectively to actions against an individual and actions in mandamus. Neither rule is applicable to this land use appeal.<sup>4</sup> This not an action in mandamus or against an individual.

### **III. COUNTER STATEMENT OF SCOPE AND STANDARD OF REVIEW**

Lebanon Solar contends the scope of review is whether the Board committed an abuse of discretion or error of law and that the “capricious disregard” standard of review is applicable. “‘Scope of review’ refers to ‘the confines within which an appellate court must

---

<sup>3</sup> Intervenor asserts the Court lacks jurisdiction where the initial Notice of Land Use Appeal was filed before the May 12, 2022 written decision and the Amended Notice of Land Use Appeal was filed more than 30 days after receipt of the written decision.

<sup>4</sup> Lebanon Solar failed to comply with the Rules of Appellate Procedure. The 47-page brief exceeds the 30-page limit set forth in Rule 2135(d) of the Rules of Appellate Procedure. Also, a copy of the Board’s May 12, 2022 written decision was not attached to the brief, as required by Rule 2111(b) of the Rules of Appellate Procedure. Incredibly, Lebanon Solar complains in a lengthy footnote that the Township had an obligation to serve a copy of the record on all the parties. This is not accurate. The Township’s duty is to inform the parties that the record was filed with the court. Rules 1501 and 1502 of the Rules of Appellate Procedure govern petitions for review, not land use appeals to the Court of Common Pleas.

conduct its examination.’ (Citation omitted.) In other words, it refers to the matters (or ‘what’) the appellate court is allowed to examine. In contrast, ‘standard of review’ refers to the manner in which (or ‘how’) that examination is conducted.” *Morrison v. Commonwealth, Dept. of Public Welfare*, 646 A.2d 565, 570 (Pa. 1994).

For cases involving questions of law, such as those raised in this appeal, the scope of review is plenary. *See In re Realen Valley Forge Greenes Associates*, 838 A.2d 718, 727 (Pa. 2003).

Section 1005-A<sup>5</sup> of the MPC provides the standard of review: “If the record below includes findings of fact made by the governing body, board or agency whose decision or action is brought up for review and the court does not take additional evidence or appoint a referee to take additional evidence, the findings of the governing body, board or agency shall not be disturbed by the court if supported by substantial evidence.”

#### **IV. COUNTER STATEMENT OF CASE**

Lebanon Solar admits this matter is the appeal of the May 12, 2022 written decision of the Board.<sup>6</sup> Lebanon Solar attempts to incorporate by reference its mandamus complaint. Although Lebanon Solar had agreed to a continuance of the initial hearing on its Application and waived the 60-day requirement for holding the initial hearing, it nonetheless claimed there was a deemed approval and filed the mandamus complaint. The mandamus complaint was withdrawn after Intervenor provided the Court with a copy of the email from Lebanon Solar’s counsel who agreed to continuance of the initial hearing and waive the 60-day period for holding the initial hearing. The mandamus complaint did not inform the Court of its

---

<sup>5</sup> 53 P.S. § 101005-A.

<sup>6</sup> A copy of the Board’s Findings of Fact, Conclusions of Law and Decision is attached hereto as Exhibit A.

agreement to waive the 60-day deadline. Copies of the relevant email are attached hereto as Exhibit B. It is inappropriate to assert venue in this amended land use appeal based on mandamus.

The Application was submitted to the Township on May 3, 2021. The Application proposed construction and operation of a large scale solar-utility facility on 12 separate properties. On June 21, 2021, counsel for Lebanon Solar requested a continuance of the scheduled June 24, 2021 hearing before the Board. The reason for the continuance, stated in the email to the Board's solicitor, was to enable Lebanon Solar to conduct community outreach and make revisions to the proposed plans/exhibits to address concerns raised at the planning commission and Board meeting. Lebanon Solar waived the MPC requirement for the initial hearing to be held within 60 days of the filing of the Application. Lebanon Solar proposed extending the deadline for 80 days until September 13, 2021. By email dated June 23, 2021, the Board agreed to the requested continuance.<sup>7</sup>

The initial hearing was rescheduled for September 9, 2021. However, Intervenor tested positive for Covid-19 and his counsel was unable to travel due to recent major hip replacement surgery. Counsel for Lebanon Solar agreed to the requested continuance and expressly waived the time period for holding the initial hearing. *See* Exhibit B attached hereto.

Nonetheless, Lebanon Solar retained different counsel and filed a Complaint in Mandamus asserting there was a deemed approval of its application for conditional use. Counsel for Lebanon Solar failed to include in the Complaint in Mandamus recognition that

---

<sup>7</sup> See Exhibit C attached hereto.

its counsel had expressly waived the time period to hold the initial hearing. After Mr. Summers was granted Intervenor status in the Complaint in Mandamus matter, Lebanon Solar withdrew the Complaint.

Eventually, the hearings on the conditional use application commenced January 25, 2022 and were continued on January 26, 2022 and February 24, 2022. Lebanon Solar presented its plans and expert testimony in support of the Application. Their case was not limited in any way. Intervenor presented his case along with other objectors who were made parties to the matter. Lebanon Solar cross-examined the witnesses and provided rebuttal testimony. The parties were afforded the opportunity to present proposed findings of fact and conclusions of law to the Board.

On April 5, 2022, after deliberations, the Board voted to deny the application for conditional use. On May 12, 2022, the Board issued its written findings of fact and conclusions of law.

This Court lacks jurisdiction over the May 5, 2022 Notice of Land Use Appeal as it was prematurely filed before the May 12, 2022 written decision of the Board denying Lebanon Solar's Application and the June 17, 2022 Amended Notice of Land Use Appeal was filed more than 30 days after entry of the Board's May 12, 2022 written decision.

The timeliness of an appeal relates to the jurisdiction of a court and its competency to act. *In re Order of Nether Providence Zoning Hearing Board Dated April 28, 1975*, 25 Pa. Cmwlth. 41, 358 A.2d 874 (1976). The procedures in the MPC are the exclusive methods for securing review of a zoning decision. *See* 53 P.S. §11001-A. Section 1002-A of the MPC provides that all appeals to the trial court from a land use decision "shall be filed *within 30*

*days after entry of the decision...." See 53 P.S. § 11002-A (emphases added). See Snyder vs. Zoning Hrg Bd of Warminster Twp., 782 A.2d 1088, 1090 (Pa. Cmwlth 2001).*

## V. SUMMARY OF ARGUMENT

Lebanon Solar failed to meet its burden to demonstrate compliance with the objective criteria set forth in Section 522 of the Zoning Ordinance. The Board did not abuse its discretion or commit an error of law when it found and concluded Lebanon Solar failed to meet the requirements for six of the eight criteria applicable to the proposed solar farm on 12 separate lots comprising 858 acres. The Board did not capriciously disregard relevant evidence in its written decision. Finally, there is no substance to the baseless accusation of bias by the Board or its solicitor.

## VI. ARGUMENT

Lebanon Solar opens their brief's argument section with citation to a Pennsylvania Supreme Court case involving a validity challenge to a zoning ordinance.

*See In re Realen Valley Forge Greenes Associates, 838 A.2d 718, 727 (Pa. 2003).*

Lebanon Solar quotes the portion of that decision that cited the Magna Carta and Article I, Section 1 of the Pennsylvania Constitution regarding the inherent rights of mankind in "acquiring, possessing and protecting property." *Id.* However, Lebanon Solar leaves out an important caveat:

Property owners have a constitutionally protected right to enjoy their property. . . . That right, however, may be reasonably limited by zoning ordinances that are enacted by municipalities pursuant to their police power, *i.e.*, governmental action taken to protect or preserve the public health, safety, morality, and welfare. *Cleaver [v. Board of Adjustment]*, [\*\*728] 200 A.2d [408] at 411-12 [(Pa. 1964)] ("it is well settled that [the] Constitutionally ordained right of property is and must be subject and subordinated to the Supreme Power of Government--generally known as the Police Power--to regulate or prohibit an owner's use of his property"). Where there is a particular public health, safety, morality, or welfare interest in a community, the municipality may utilize zoning

measures that are substantially related to the protection and preservation of such an interest. National Land and Investment Co. v. Easttown Township Board of Adjustment, 419 Pa. 504, 215 A.2d 597, 607 (Pa. 1966); see also 53 P.S. § 10603(a) (zoning ordinance should reflect the needs of the citizens and the suitability and specific nature of particular parts of the municipality). C & M Developers, Inc. v. Bedminster Township Zoning Hearing Board, 573 Pa. 2, 820 A.2d 143, 150 (Pa. 2002).

*See In Re Realen Valley Forge Greenes Associates*, 838 A.2d at 727-728.

Lebanon Solar fails to provide any analysis and relevant authority to support its claims that “the Board engaged in mental gymnastics to interpret its Ordinance in an illogical manner in order to prohibit the Project, favoring politics over the Constitutional rights of its own residents to ‘use their property as they wish...’” *See* Appellant’s brief at pages 13-14. There is no factual or legal basis to support its contention that the Board favored politics over the Constitutional rights of its residents. Lebanon Solar does not recognize that it failed to meet its burden to meet the objective criteria applicable to conditional use for their proposed solar farms project.

#### **A. Lebanon Solar Had the Burden of Proof**

Failure to present evidence establishing that these Ordinance requirements have been met effectively ends the inquiry into whether approval for this conditional use should be granted. *See Manor Healthcare Corp. v. Lower Moreland Tp. Zoning Hearing Bd.*, 590 A.2d 65 (Pa. Cmwlth 1991) (“The applicant...has both the duty of presenting evidence and the burden of persuading the...Board that the proposed use satisfies the objective requirements of the ordinance...”).

#### **B. Evidentiary Issues**

In its Statement of Questions, Lebanon Solar frames one of its arguments as “Did the Township otherwise commit an abuse of discretion, error of law, or capriciously disregard competent evidence in denying Lebanon Solar’s conditional use application?”



Lebanon Solar contends the Board's findings regarding minimum lot size set forth in Section 522(2) of the Zoning Ordinance was "not founded on any competent evidence of record" and the Board's conclusion that the application failed to comply with the setback requirement in Section 522(3) of the Zoning Ordinance was "not based on any competent evidence of record." Lebanon Solar cites *Berman v Manchester Township Zoning Hearing Board*, 540 A.2d 8, 9 (Pa. Cmwlth 1988), pet den. 129 M.D. 1988 (Pa. 1989)<sup>8</sup> in support of the quoted phrases. Indeed, *Berman* supports the Board's findings and conclusions of law. "The Board, as factfinder, has the power to reject the testimony of an expert witness, and we will not disturb its findings on appeal except for abuse of discretion. Graham v. Zoning Hearing Board of Upper Allen Township, 99 Pa. Commonwealth Ct. 585, 514 A.2d 236 (1986)."

*See Berman v. Manchester Township Zoning Hearing Bd.*, 540 A.2d at 9-10.

A zoning board is free to reject even uncontradicted testimony it finds lacking in credibility, including testimony offered by an expert witness. Nettleton v. Zoning Bd. of Adjustment of the City of Pittsburgh, 574 Pa. 45, 828 A.2d 1033 (2003); Graham v. Zoning Hearing Bd. of U. Allen Township, 520 Pa. 526, 555 A.2d 79 (1989). It does not abuse its discretion by choosing to believe the opinion of one expert over that offered by another. Berman v. Manchester Township Zoning Hearing Bd., 115 Pa. Commw. 339, 540 A.2d 8 (Pa. Cmwlth. 1988).

*See Taliaferro v. Darby Twp. Zoning Hearing Bd.*, 873 A.2d 807, 811 (Pa. Cmwlth 2005).

---

<sup>8</sup> The actual citation is 540 A.2d 8 (Pa. Cmwlth 1988), appeal denied, 554 A.2d 511 (Pa. 1989).

When statutory language is not explicit, courts should give great weight and deference to the interpretation of a statutory or regulatory provision by the administrative or adjudicatory body that is charged with the duty to execute and apply the provision at issue. Section 1921(c)(8) of the Statutory Construction Act of 1972, 1 Pa. C.S. § 1921(c)(8); Johnston v. Upper Macungie Township, 162 Pa. Commw. 170, 638 A.2d 408 (Pa. Cmwlth. 1994). The basis for the judicial deference is the knowledge and expertise that a zoning hearing board possesses to interpret the ordinance that it is charged with administering. Willits Woods Associates v. Zoning Board of Adjustment of City of Philadelphia, 138 Pa. Commw. 62, 587 A.2d 827 (Pa. Cmwlth. 1991). *In re Thompson*, 896 A.2d 859, 869 (Pa. Cmwlth 2006). The basis for deference to the interpretation of the zoning hearing board in matters involving special exception is equally applicable to the board of supervisors in interpretation of conditional use requirements.

The Board's interpretation of its Zoning Ordinance involves questions of law. There was no abuse of discretion.

Lebanon Solar admits the Board's interpretation of its ordinance is normally entitled to deference, they contend their interpretation must be discarded because it acted arbitrarily and abused its discretion when it mandated compliance with requirements not expressly set forth in the Zoning Ordinance.<sup>9</sup> The Board's written decision did not mandate compliance with requirements not expressly set forth in the Zoning Ordinance.

---

<sup>9</sup> Lebanon Solar cites *Atlantic Wind*, 272 A.3d 994 (Table) and *MarkWest*, 102 A.3d at 563-64. *Atlantic Wind* is actually captioned *Atlantic Wind, LLC v. Zoning Hearing Bd of Penn Forest Twp* which is an unpublished decision. Lebanon Solar fails to discuss the basis for using the signal "see" before the citation giving the impression it is binding precedent. Also, the brief cites two *MarkWest* decisions. Compare pages 15 with pages 19, 20, 21, 28, 30, 33, 34, and 35. Throughout its brief, Lebanon Solar cites to "*MarkWest, supra*" without clarifying which decision it relies upon.

As demonstrated below, Lebanon Solar's reliance on the campus concept that asserts the 12 separate lots comprising the 858 acres should be treated as a single lot was rejected by the Board. As a result, Lebanon Solar was unable to comply with the criteria applicable to minimum lot size (Section 522(2)), setback requirements (Section 522(3)), buffering (Section 522(4)), and lot coverage (Section 522(5)).

### 1. Capricious Disregard Standard of Review

Lebanon Solar asserts the capricious disregard standard of review applies when a fact finder ignores relevant, competent evidence. Lebanon Solar relies upon *Leon E. Wintermyer v. Workers' Comp. Appeal Bd.*, 812 A.2d 487 (Pa. 2002)<sup>10</sup> and *Taliaferro v. Darby Twp. Zoning Hearing Bd.*, 873 A.2d 807 (Pa. Cmwlth 2005)<sup>11</sup> for its contention that the Board capriciously disregarded expert testimony in its findings and conclusions of law that Lebanon Solar failed to meet the requirements in Section 522(2) (minimum lot size), Section 522(3) (setback requirements), and Section 522(4) (buffering).

Herein, the Board's written decision contained findings based on substantial evidence and conclusions of law. The Board's interpretation of its Zoning Ordinance involves primarily questions of law. *Wintermyer* notes the following: "It bears repeating that, where there is substantial evidence to support an agency's factual findings, and those findings in turn support the conclusions, it should remain a rare instance in which an

---

<sup>10</sup> Lebanon Solar provides the wrong citation for the *Wintermyer* decision. The correct citation is 812 A.2d 478 (Pa. 2002), not 812 A.2d 487.

<sup>11</sup> Lebanon Solar provides the following citation for the *Taliaferro* decision: 873 A.2d 807 (Pa. Cmwlth 2005), *pet. denied*, No. 574 MAL 2005 (Pa. 2005). The correct citation is 873 A.2d 807 (Pa. Cmwlth 2005), *appeal denied*, 887 A.2d 1243 (Pa. 2005).

appellate court would disturb an adjudication based upon capricious disregard.”

*See Leon E. Wintermyer v. Workers' Comp. Appeal Bd.*, 812 A.2d at fn. 14.

*Taliaferro* is instructive as applied to this appeal. Although that case involved a variance approved by the Zoning Hearing Board, its rationale supports the Board’s denial of the conditional use application.

The [MPC] mandates that the Board issue an opinion, as distinguished from its order or decision disposing of the matter, setting forth the essential findings of fact, conclusions of law, and sufficient rationale to demonstrate that its action was reasoned and not arbitrary." Allied Servs. for the Handicapped, Inc. v. Zoning & Hearing Board of the City of Scranton, 73 Pa. Commw. 558, 459 A.2d 60, 61 (Pa. Cmwlth. 1983). See also Tranguch v. Zoning Hearing Bd. of Borough of Emmaus, 95 Pa. Commw. 369, 505 A.2d 410 (Pa. Cmwlth. 1986). A zoning board's opinion is sufficient if it provides an adequate explanation of its resolution of the factual questions involved, and sets forth its reasoning in such a way as to show its decision was reasoned and not arbitrary. Borough of Youngsville v. Zoning Hearing Bd. of Borough of Youngsville, 69 Pa. Commw. 282, 450 A.2d 1086 (Pa. Cmwlth. 1982).

Where a zoning board's decision is clear and substantially reflects application of the law governing variances the decision is sufficient to enable effective review. In re Avanzato, 44 Pa. Commw. 77, 403 A.2d 198 (Pa. Cmwlth. 1979). Contrary to Objectors' assertions, there is no requirement that a zoning board cite specific evidence in support of each of its findings.

*See Taliaferro v. Darby Twp. Zoning Hearing Bd.*, 873 A.2d at 816.

As in *Taliaferro*, Lebanon Solar contends the Board’s findings are arbitrary because the Board failed to cite specific evidence in support of each finding. There is no requirement the Board cite specific evidence in support of each finding.

## **2. The Board Properly Rejected the “Campus” Concept**

The application for conditional use proposed using 858 acres across 12 individual tax parcels for its solar farm. Lebanon Solar asserted the 12 individual tax parcels be

treated as a single lot, like a “campus” concept. The Board in its written decision rejected the campus concept and concluded the conditional use criteria applied to each individual lot. *See* May 12, 2022 written decision at Conclusions of Law Numbers 11-14.

Lebanon Solar, in its brief at page 9, asserts the “Township accepted and processed the Application as a single Solar Farm.” In support of this assertion, Lebanon Solar cites the transcript from January 25, 2022 hearing at pages 12 and 48. The notes of testimony provide no basis for the claim the Township accepted the Application as a single Solar Farm!<sup>12</sup> Lebanon Solar continued this misrepresentation of the record by asserting at page 19 of its brief, “the Board accepted a single Application from Lebanon which signaled that the respective twelve parcels would be considered together rather than separately as suggested by the Decision.” There was no such “suggestion” by the Board. Conclusion of law numbers 11 through 14 clearly state the Board’s determination. There is no evidence of a signal by the Board.

### **3. The Application Failed to Meet Minimum Lot Size**

Section 522(2) of the Zoning Ordinance states that “The Minimum lot size for the establishment of any Solar Farm shall be fifty (50) acres.” There is no dispute that two of the 12 properties did not meet the 50-acre minimum lot size requirement. *See* May 12, 2022 written decision at finding numbers 16 and 17. As discussed above, the Board rejected the so-called “campus” concept in Conclusion of Law Numbers 11-14.

Lebanon Solar argues the Board ignored its expert witness testimony regarding ordinance interpretation and the applicability of each requirement of Section 522 of the

---

<sup>12</sup> A copy of the cited transcript pages is attached as Exhibit D.

Zoning Ordinance.<sup>13</sup> Since the Board found that two of the properties did not meet the 50-acre minimum lot size, there was no need to discuss any expert testimony.

Lebanon Solar attempts to demonstrate the provision regarding minimum lot size is ambiguous because did not define the term “minimum” and it should have said “individual” minimum lot size. Mr. Staub’s cited testimony initially opined erroneously that the ordinance did not define the terms “lot” or “lot area.” *See* February 24, 2022 transcript at age 337. Lebanon Solar’s argument that the “Board’s findings related to Section 522(2) ... were impermissibly founded on restrictions not expressly contained in the Zoning Ordinance ... [and were not] founded on any competent evidence of record” misses the mark. The findings that two of the properties did not meet the minimum 50-acre lot size is based on substantial evidence and is undisputed.

Lebanon Solar also claims the Board’s deliberate disregard of Mr. Staub’s uncontested expert testimony constituted a capricious disregard. Mr. Staub’s expert testimony was certainly not uncontested. Intervenor’s expert witness, Mr. Lahr provided his expert opinion that Section 522(2) was not ambiguous and both the Application and the presentation in Lebanon Solar’s case in chief (which differed from the Application) failed to meet the criteria in Section 522(2). *See* Mr. Lahr’s testimony at January 26, 2022 transcript at pages 164-167.

#### **4. The Application Failed to Meet the Setback Requirement**

---

<sup>13</sup> Lebanon Solar cites the expert testimony of Mr. Staub at pages 331-335 of the February 24, 2022 transcript. *See* Page 27 of Lebanon Solar’s brief. Mr. Staub only discusses agricultural conservation easements in the cites pages and clearly not “each requirement of Section 522.”

Section 522(3) of the Zoning Ordinance states “The solar panels and/or other implements used in the construction and structure of the solar farm including, but not limited to, any solar panels shall be set back a minimum of fifty (50) feet from any adjacent lot line.” The Board concluded that the minimum 50-foot setback requirement was not met for certain properties, including 1749 Blacks Bridge Road and 445 Hostetter Lane, as well as 1595 State Route 934 and 5501 Valley Glen Road, and 1754 Blacks Bridge Road and 1675 North State Route 934, as well as 1749 Blacks Bridge Road and 1595 State Route 934, and 1595 State Route 934 and 1754 Blacks Bridge Road. *See* May 12, 2022 written decision at conclusion of law numbers 18-20.

Lebanon Solar asserts its campus concept instead of individual lots to claim compliance with the minimum 50-foot setback requirement. Lebanon Solar’s campus concept was rejected by the Board.

#### **5. The Application Failed to Meet the Buffering Requirement**

Section 522(4) of the Zoning Ordinance states “A permanent evergreen vegetative buffer must be provided or fencing which accomplishes the same purpose of buffering.” The Board found and concluded that Lebanon Solar failed to meet its burden to comply with the buffering requirement set forth in Section 522(4). *See* May 12, 2022 written decision at finding numbers 21 and 22 and conclusion number 21. The Board’s finding recognized that Lebanon Solar attempted to have participating landowners execute waivers from the buffering requirement. Intervenor’s expert witness, Mr. Lahr testified that any waivers from the requirements of the Zoning Ordinance must be approved by the Zoning Hearing Board. *See* January 26, 2022 transcript at page 169. Lebanon Solar failed to respond to Mr. Lahr’s opinion regarding waivers.

## **6. The Application Failed to Meet the Maximum Lot Coverage Requirement**

Section 522(5) of the Zoning Ordinance states “The maximum lot coverage may not exceed fifty (50%) of the total lot size.” The Board found and determined there was no exhibit showing where impervious structures would be located on individual lots and concluded that solar panels must be included in calculation of lot coverage. *See* May 12, 2022 written decision at findings 23 and 24 and conclusions 22 and 23. Once again Lebanon Solar argues the lot coverage requirement should apply to its campus concept and not to each individual lot. The Board rejected that argument.

### **C. Promises of Future Compliance Cannot Cure Noncompliant Application**

Lebanon Solar contends it is not required at this time to meet the requirements of Section 522(7) and Section 522(8) of the Zoning Ordinance regarding a decommissioning bond and a stormwater management plan. They believe those requirements should be imposed as conditions of approval rather than criteria to demonstrate compliance with the objective criteria necessary to obtain conditional use approval. Lebanon Solar also cites *In re Thompson* for the proposition that “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 In Re Thompson*, 896 A.2d at 670. *Thompson* also states in the next sentence: “What must be demonstrated in order to obtain conditional use approval must be determined on a case by case basis and will vary among municipalities based upon the use requested and the language in the ordinance.” *Id. Thompson* addresses promises of future compliance:

An applicant for special exception or conditional use must demonstrate that his proposed use meets the applicable requirements of the zoning ordinance **when** the application is submitted. Edgmont Township v.



Springton Lake Montessori School, Inc., 154 Pa. Commw. 76, 622 A.2d 418 (Pa. Cmwlth. 1993); Appeal of Baird, 113 Pa. Commw. 637, 537 A.2d 976 (Pa. Cmwlth. 1988), *petition for allowance of appeal denied*, 521 Pa. 613, 557 A.2d 344 (1989). A promise to comply or conditions compelling future compliance cannot cure an otherwise noncompliant application. *Edgmont Township*. If we were to adopt a rule that to obtain a special exception all that would be required is for an applicant to promise to come into compliance at some future date, it would make the approval process meaningless because once an applicant promises it would be entitled to receive the special exception. *Id.*, 622 A.2d at 420.

*In re Thompson*, 896 A.2d at 680.

**D. There is no evidence of bias or violation of Lebanon Solar’s due process rights**

Lebanon Solar contends “from the initial submittal of Lebanon Solar’s Application it was beleaguered by bias and prejudgment from members of the Board which resulted in the violation of its due process rights to an unbiased decision-making tribunal.”<sup>14</sup> There is no evidence of such bias and prejudgment in the record. To the contrary, after the application was submitted on May 3, 2021, prior to the initial hearing scheduled for June 24, 2021, Lebanon Solar requested a continuance in order to “conduct community outreach.”<sup>15</sup> The continuance was granted.

Lebanon Solar casts aspersions on the Board solicitor in its citation to *Horn v. Hilltown*, 337 A.2d 858 (Pa. 1975). Lebanon Solar provides the following quote from *Horn* in its discussion of the Board’s obligation when acting in its quasi-judicial capacity:

---

<sup>14</sup> Lebanon Solar inappropriately attempted to incorporate by reference its Complaint in Mandamus filed October 11, 2021. Lebanon Solar asserts it did not want to beleaguer this Court with repetitious information. Intervenor addressed the meritless claim in the withdrawn mandamus complaint previously.

<sup>15</sup> See email from Lebanon Solar counsel to the Board’s solicitor dated June 21, 2021. See Exhibit B attached hereto.

“[A] governmental body charged with certain decision-making functions ... must avoid the appearance of possible prejudice, be it from its members or from those who advise it or represent parties before it.” *Horn*, 337 A.2d at 860. There is no evidence of any possible prejudice on behalf of the Board solicitor.

Lebanon Solar also claims impermissible bias of the Board. They cite *McVay v. Zoning Hearing Board of New Bethlehem Borough*, 496 A.2d 1328 (Pa. Cmwlth 1985) and *Prin v. Council of the Municipality of Monroeville*, 645 A.2d 450 (Pa. Cmwlth 1994) for the proposition that impermissible bias “can be manifested in statements indicating opposition to a development application.” There is no evidence of any statements indicating opposition to the application. This claim is baseless.<sup>16</sup>

Lebanon Solar also asserts due process demands that a municipal governing body not comingle its quasi-judicial role with that of advocate, citing *Marshall v. Charlestown Board of Supervisors*, 169 A.3d 162 (Pa. Cmwlth 2017). There is no evidence that the Board comingled its quasi-judicial role as an adjudicator and as an advocate opposed to the application. The argument is meritless. Finally, Lebanon Solar relies on *Kresge v. Pocono Twp. Supervisors*, 501 A.2d 345 (Pa. Cmwlth 1985) where due process was violated when the functions of advocate for the township and advisor to the supervisors were performed by one attorney. *Kresge* is distinguishable where there is no evidence the Township solicitor comingled functions as advocate for the Township and as counsel to the Board.

## E. CONCLUSION

---

<sup>16</sup> We also note that Lebanon Solar never requested during the conditional use hearings that the Board or its solicitor recuse. Moreover, since *McVay* and *Prin* was decided, the Second Class Township Code was amended. It now provides: “A member of the board shall not be disqualified from voting on any issue before the board solely because the member has previously expressed an opinion on the issue in either an official or unofficial capacity.” See 53 P.S. § 65603. North Annville Township is a Second Class Township.

Intervenor respectfully requests this Honorable Court dismiss the Amended  
Notice of Land Use Appeal.

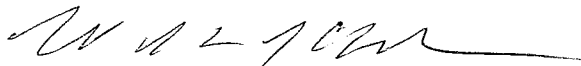
Respectfully submitted,



LAW OFFICE OF WILLIAM J. CLUCK  
By: William J. Cluck, Esquire  
Attorney Id. No. 52892  
587 Showers Street  
Harrisburg PA 17104  
717-238-3027  
[billcluck@billcluck.com](mailto:billcluck@billcluck.com)

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified 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.



LAW OFFICE OF WILLIAM J. CLUCK  
By: William J. Cluck, Esquire  
Attorney Id. No. 52892  
587 Showers Street  
Harrisburg PA 17104  
717-238-3027

**CERTIFICATE OF SERVICE**

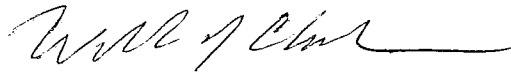
I, the undersigned, do hereby certify that I have, this 10th day of July, 2023, pursuant to Leb.Co.R.C.P. Rule 52-205.6(B), served a true and correct copy of the foregoing Brief upon the following persons and in the matter indicated:

**SERVICE BY U.S. MAIL:**

**Paul C. Bametzreider  
Barley Snyder  
1601 Cornwall Road  
Lebanon PA 17402  
(Counsel for North Annville Township)**

**Elizabeth A. Dupuis  
Anna S. Jewart  
BABST, CALLAND, CLEMENTS & ZOMNIR, P.C.  
330 Innovation Blvd, Suite 302  
State College PA 16803  
(Counsel for Lebanon Solar I, LLC)**

**Respectfully submitted,**



**LAW OFFICE OF WILLIAM J. CLUCK  
By: William J. Cluck, Esquire  
Attorney Id. No. 52892  
587 Showers Street  
Harrisburg PA 17104  
717-238-3027**

# **Exhibit A**

BEFORE  
THE  
BOARD OF SUPERVISORS  
OF  
NORTH ANNVILLE TOWNSHIP  
LEBANON COUNTY, PENNSYLVANIA

IN RE: CONDITIONAL USE APPLICATION OF LEBANON SOLAR I, LLC  
**FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION**

**FINDINGS OF FACT**

1. Lebanon Solar submitted a Conditional Use Application to North Annville Township (“Township”) on May 3, 2021, for development of a 1234-acre solar farm which was later amended to 858 acres (“The Project”). The Project is proposed to be located on property comprised of 12 individual real estate Lots owned by separate owners. The tax parcels and/or lots are owned by the following individuals:

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 II (“Landowners”) and otherwise identified respectively 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 (otherwise referred to as “The Lots”). The Lots are located in the Township’s A-1 Agricultural Zone (“A-1 District”).
2. The Township Board of Supervisors advertised and conducted public hearings on January 25, 2022, January 26, 2022, and February 24, 2022, 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. Upon the conclusion of the public hearing on February 24, 2022, the parties agreed to the following schedule for the submission of Briefs, a hearing for deliberation and decision and presentation of written decision of the Board. All parties agreed on the record to following schedule:
  - a. Briefs, including findings of fact and conclusions of law, were to be submitted by March 24, 2022.

- b. April 5, 2022 – Hearing to deliberate and render a decision.
  - c. Written decision due 45 days after April 5, 2022.  
(Tr. 2/24/22 at 385-394)
4. Parties' status was granted at the first hearing before the Board to the following individuals:
- i. Grady Summers;
  - ii. Larry Buffenmeyer;
  - iii. Brenda Buffenmeyer;
  - iv. Suzanne Forney;
  - v. Aaron Miller, III;
  - vi. John Shaver; and
  - vii. Brenda Shaver.
5. At the first hearing of the Board on January 25, 2022, Township resident Brian Tshudy ("Tshudy") entered his appearance.
6. The foregoing individuals shall be collectively referred to as "The Objectors".
7. Township is a township of the second-class, organized and existing under the laws of the Commonwealth of Pennsylvania at 53 P.S. §65101 et. seq.
8. On or about October 14, 2019, the Supervisors adopted Ordinance No. 2-2019 which amended the Township's Zoning Ordinance in order to create a separate use permitted by conditional use otherwise known as a "Solar Farm" in the Township's A-1 Zoning District.
9. Applicant submitted its application for approval of a solar farm to the Supervisors on May 3, 2021 to be developed on the lots.
10. The Township Planning Commission reviewed the application on June 7, 2021 and recommended denial of the application. On February 7, 2022, the Planning Commission again met to review the reduced Solar Farm of 858 acres and again recommended denying the application.
11. §201.3 of the Zoning Ordinance provides: "when terms, phrases or words are not defined, they shall have their ordinarily accepted meanings or such as the context may imply."
12. Ordinance 2-2019 amended §201.4 of the Zoning Ordinance by adding the following definition:



Solar farm (“utility scale solar application”): a solar application and/or applications installed on land for the sale of solar energy for the purpose of commercial gain by the landowner or tenant of the subject parcel.

13. Ordinance 2-2019 created a new §522 in the Township Zoning Ordinance establishing solar farms as a conditional use.

14. §522 of the Zoning Ordinance provides as follows:

Solar farms (“utility scale solar applications”) shall be a conditional use subject to the following conditions:

1. No solar farm may be established upon any farmland or agriculturally zoned land which has an agricultural conservation easement filed against it which remains in effect.
2. The minimum lot size for the establishment of any solar farm shall be 50 acres.
3. The solar panels and/or other implements used in the construction and structure of the solar farm, including, but not limited to, any solar panels shall be set back a minimum of 50 feet from any adjacent lot line.
4. A permanent evergreen vegetative buffer must be provided or fencing which accomplishes the same purpose of buffering.
5. The maximum lot coverage may not exceed 50% of total lot size.
6. The applicant must demonstrate that it has adequate liability insurance in minimum amounts of one million (\$1,000,000.00) per incident and two million (\$2,000,000.00) per aggregate.
7. The applicant must demonstrate and provide adequate bonding to remain in place to be used by the Township if the applicant ceases operation and fails to remove the panels and/or other implements related to the use within 180 days of the cessation of operation.
8. The applicant must have an approved Stormwater Management Plan as required by the Lebanon County Stormwater Management Ordinance.

15. Applicant’s witness, Eric Holton, presented title commitments demonstrating that none of the Lots have agricultural conservation easements filed against them which remain in effect (1/25/2022, 15-16). Applicant’s exhibits A-3, A-8 and A-13.

16. Leonard and Michael Long’s lot located at 1749 Blacks Bridge Road consists of 30.48 acres. Property ID 10

17. The lot of Dale and Thelma Hostetter located at 1595 North State Route 934 is only 49.78 acres. Property ID 8. Exhibit A-1.

18. Eric Holton testified that solar panels and other implements would be set back a minimum of 50 feet from adjacent lot lines (1/25/2022, 18-20).

19. The application of applicant specifically states that applicant shall maintain a setback for solar panels of a minimum of 50 feet from any adjacent lot line of non-participating landowners.
20. Exhibit A-12 includes certain waivers executed by some of the landowners waiving the requirement of the 50-foot set back.
21. Applicant's application indicates that applicant will install requisite buffering from non-participating property owners. Additionally, application indicates that the Applicant is attempting to secure waivers from participating landowners to waive the buffering requirement between the respective properties in order to permit a continuous field of solar panels across the property lines of adjacent participating properties.
22. Exhibit A-12 includes waivers executed by participating landowners waiving the requirement of vegetative screening along lot lines of neighboring properties.
23. Eric Holton testified that the total acreage of impervious surfaces is 25.2 acres and the total lot size as outlined is 858 acres. On this basis, he determined that 2.9% would be the total impervious surface which is less than 50%. There was no exhibit showing where impervious structures would be located on individual lots.
24. Applicant failed to submit any kind of drawing or exhibit which would demonstrate exactly where impervious surfaces would be located.
25. Applicant submitted Exhibits A-7 and A-8 which constitutes certificates of insurance in amounts of at least \$1,000,000.00 and \$2,000,000.00 respectively.
26. Applicant testified that Township will be supplied with a decommissioning plan which will include an adequate amount of financial security at the time of the submission and approval of applicant's Land Development Plan (1/25/2022, 24-25). Applicant's Ex. A-8.
27. Applicant testified that applicant will supply Township with a Stormwater Management Plan at the time of land development approval and submission of the Stormwater Management Plan with applicant's Land Development Plan (1/25/2022, 25-26). Applicant's Ex. A-8.
28. Applicant did not supply Township with a Stormwater Management Plan.

#### **CONCLUSIONS OF LAW**

1. Any foregoing conclusions of law are incorporated herein by reference as if fully set forth at length.

2. The burden of proof in proving compliance with the criteria stated in the Zoning Ordinance for a conditional use rests with the applicant. *Levin v. The Board of Supervisors of Benner Township*, 669 A.2d 1063 (Pa. Cmwlth 1995), aff'd, 547 Pa. 161, 689 A.2d 224 (1997).
3. Township's Zoning Ordinance defines the word "lot" as: "A legally defined tract, parcel, or plot of land, whether occupied or capable of being occupied by buildings".
4. An applicant for conditional use has the burden to demonstrate compliance with the specific criteria of the ordinance. 53 P.S. §10603(c)(2). See also *In re Thompson*, 896 A.2d 659 (Pa. Cmwlth. 2006).
5. Once the applicant seeking conditional use approval meets the requirements of the applicable ordinance, he has made out his prima facie case, and the application must be granted unless the Objectors present sufficient evidence that the proposed use has a detrimental effect on the public health, safety and welfare. 53 P.S. §10603 (c)(2). See also *In re Thompspon*, Supra.
6. The law is well settled where a word or phrase in a zoning ordinance is defined, a Court is bound by the definition. *Slice of Life, LLC v. Hamilton Township Zoning Hearing Board*, 207 A.2d 886, 899 (Pa. 2019).
7. Words must be construed in a zoning ordinance by their plain and ordinary meanings *Markwest Liberty Midstream and RES, LLC v. Cecil Township Zoning Hearing Board*, 102 A.2d A.3d 549 (Pa. Cmwlth 2014).
8. 53 P.S. 912.1 states that where the governing body in a zoning ordinance has stated special exceptions to be granted or denied by express standards and criteria, applications under those provisions must be decided in accordance with the established criteria. See also *Atlantic Wind, LLC v. Zoning Hearing Board of Penn Forest Township* (Pa. Cmwlth 2022).
9. Promises to comply with the criteria as stated in a zoning ordinance do not constitute evidence of compliance with the criteria of that ordinance. *Atlantic Wind, LLC Supra*.
10. Zoning ordinances should receive reasonable and fair construction in light of the subject matter dealt with and the *manifest intention of the local legislative body*. (Emphasis added.) *Northampton Area School Dist. v. ZHB of Tp. Of Lehigh*, 64 A3d 1152 (Pa. Cmwlth. 2013).

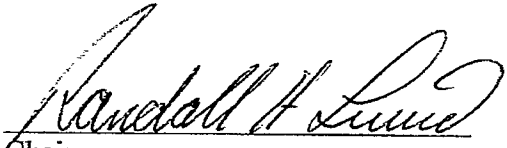
11. The Board finds that in accordance with the definition of the term “lot” under its ordinance, applicant’s application for conditional use relates to 12 separate defined lots, tracts, parcels or plots of land and not one lot.
12. The Board finds that in accordance with the plain meaning of the Word “lot”, Applicant’s application relates to 12 separate lots and not one lot and therefore all lots must individually comply with the criteria of the ordinance.
13. The Board finds that the Applicant has failed to meet its burden re the compliance of each of the 12 separate lots with the 8 criteria of the ordinance.
14. The Board finds that its intention was that each lot be considered individually under its zoning ordinance and not that a “Campus” of lots be considered as one lot as represented by the Applicant.
15. The Board finds that Applicant has complied with criteria number 1 under Ordinance No. 2-2019 by presenting evidence that there is currently no agricultural conservation easement against any of the lots proposed for the conditional use.
16. The lot of Leonard Long and Michael Long located at 1749 Blacks Bridge Road contains 30.48 acres; and therefore, fails to meet criterion number 2 of the Ordinance which requires a minimum lot size of 50 acres. Therefore, this lot may not be approved for conditional use under criterion number 2.
17. The property of Dale and Thelma Hostetter located at 1595 North State Route 934 contains 49.78 acres; and therefore, fails to meet criterion number 2 and cannot contain a solar farm as applied for by the applicant.
18. Applicant has failed to demonstrate that applicant can comply with criterion number 3 of the Ordinance which requires a 50-foot set back from adjacent lot lines. The Board would note that the 50-foot set back is not provided between 1749 Blacks Bridge Road and 445 Hostetter Lane. Moreover, the 50-foot set back is not complied with between 1595 North State Route 934 and 5501 Valley Glen Road. Failure to provide a 50-foot set back between these properties is a violation and failure to comply with criterion number 3. Applicant has failed to meet its burden regarding compliance with criterion number 3.
19. Moreover, applicant fails to demonstrate compliance with criterion number 3 and the 50-foot set back between the properties of 1754 Blacks Bridge Road and 1675 North State Route 934. Applicant also fails to demonstrate compliance with the 50-foot setback between the properties of 1749 Blacks Bridge Road and 1595 North S.R.934. Additionally, Applicant fails to demonstrate compliance with the 50-foot setback between the properties of 1595 N. S.R. 934 and 1754 Blacks Bridge Rd.

20. Applicant's proposal to comply with the setback requirement only with exterior adjacent lots fails to comply with criterion #3.
21. The Board finds that regarding criterion number 4 of the Ordinance, applicant has failed to meet its burden that it will provide a suitable vegetative buffer or a fence which accomplishes the same thing between all of the lots which are parts of the applicant's application for the same reasons as stated in 17-19. Additionally, the Applicant fails to provide a suitable vegetative buffer or a fence which accomplishes the same purpose of buffering around the entire exterior perimeter of the project area, except where Applicant proposes to voluntarily install vegetative screening in various areas to screen residential viewsheds.
22. Regarding criterion number 5, the Board finds that the Applicants have failed to comply with the lot coverage requirement because they have failed to present sufficient evidence upon which the Board can determine whether or not the applicant complies with the requirement of maximum lot coverage which shall not exceed 50% of the total lot size on each of the lots included within the applicant's application.
23. The Board specifically finds that solar panels must be included in the calculation of lot coverage and Applicant fails to include panels in his calculations and show how the panels shall be arrayed on the individual lots.
24. The Board finds that the applicant has complied with criterion number 6 by presenting Exhibit A-7 and certificates of insurance which comply with criterion number 6.
25. The Board finds that applicant has failed to comply with criterion number 7 of the Ordinance by failing to submit appropriate bonding as required by criterion number 7 in as much as applicant's promise of future compliance does not meet the criterion.
26. The Board finds that applicant has failed to comply with criterion number 8 of the Ordinance which requires the submission of evidence of an approved Stormwater Management Plan as required by the Lebanon County Stormwater Management Ordinance. A promise of future compliance does not constitute evidence of compliance with criterion number 8.

**DECISION**

The Board hereby, on this date, based upon the foregoing findings of fact and conclusions of law determines that the applicant has failed to demonstrate adequate compliance with 6 of the 8 criteria of Ordinance No. 2-2019; and therefore, applicant's application for conditional use is denied.

Date: 5/12/22

  
Chairman

## **Exhibit B**

## **Paul Bametzreider**

---

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

Paul and Bill,

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

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

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

Dave

David A. Jones, II, Esquire

**Stock and Leader, Attorneys At Law**

221 West Philadelphia Street, Suite 600

York, PA 17401-2994

Phone: (717) 846-9800

Direct Dial: (717) 849-4128

Fax: (717) 505-6539

**StockandLeader.com**

***When Decisions Matter***

***Stock and Leader is Proud to be a Recipient of the 2019 Top Producer Award from Chicago Title!***



## **Exhibit C**

**Paul Bametzreider**

---

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

Paul,

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

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

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

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

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

Dave Jones

David A. Jones, II, Esquire

**Stock and Leader, Attorneys At Law**

221 West Philadelphia Street, Suite 600

York, PA 17401-2994

Phone: (717) 846-9800

## **Exhibit D**

BEFORE  
THE  
BOARD OF SUPERVISORS  
OF  
NORTH ANNVILLE TOWNSHIP  
LEBANON COUNTY, PENNSYLVANIA

IN RE: : Public Hearing  
:  
PETITION FOR CONDITIONAL USE :  
FILED BY LEBANON SOLAR I, LLC :

TRANSCRIPT OF PROCEEDINGS

DAY 1  
(Pages 1-102)

January 25, 2022  
6:30 p.m.

WATERWORKS FIRE COMPANY  
ANNVILLE, PENNSYLVANIA

BEFORE: RANDY LEISURE, CHAIRMAN  
CLYDE MEYER, MEMBER  
ADAM WOLFE, MEMBER  
  
PAUL BAMETZREIDER, ESQUIRE, SOLICITOR

APPEARANCES:

ELIZABETH DUPUIS, ESQUIRE  
STEVEN LUCAS, ESQUIRE  
For - Lebanon Solar I, LLC

WILLIAM J. CLUCK, ESQUIRE  
For - Larry & Brenda Buffenmeyer,  
Glenn & Suzanne Forney,  
Aaron Miller, III, John & Brenda  
Shaver, Grady & Corinne Summers,  
and Mark Bachman

BRIAN TSHUDY,  
By Zoom

KATHY J. SHEFFY,  
COURT STENOGRAPHER

1 MR. BAMETZREIDER: All right. So  
2 Ms. Dupuis, if you could make sure that whatever  
3 documents that you submit to the Board, if you could  
4 also please submit that to Mr. Cluck as well, please.  
5 Okay, if you would like to proceed.

6 MR. HOLTON: Good evening. My name is Eric  
7 Holton, H-o-l-t-o-n. I am with Enel Green Power  
8 representing Lebanon Solar I, the Applicant for this  
9 proposed solar farm here in North Annville Township. We  
10 have prepared a presentation that will go through our  
11 applicant or application. It is relatively brief.

12 (ERIC HOLTON was sworn.)

13 DIRECT TESTIMONY

14 THE WITNESS: We do have a presentation.  
15 May be difficult to see from back there. We are  
16 prepared to provide copies of this, it may be overnight,  
17 but for tonight this is how we can present it to you.  
18 So we will quickly provide an overview of the project,  
19 so the key facts and figures, what it is we're proposing  
20 to do and where; but we will spend the bulk of our  
21 presentation going through our Conditional Use  
22 Application.

23 In particular, we will step through each of  
24 the eight criteria that are listed in the North Annville  
25 Township Zoning Ordinance under the Solar Ordinance.

1 in Nanoscale Science. I then worked for a wind turbine  
2 manufacturer, and I have been doing various forms of  
3 renewable energy development for approximately ten  
4 years.

5 Q. What's your role on this project? Are you the  
6 project manager?

7 A. I am the project developer. So yes, for the  
8 purposes of this, yes, I am a project manager.

9 Q. Okay. Have you ever been involved in any other  
10 Pennsylvania application for a solar project?

11 A. Yes, I have.

12 Q. Where?

13 A. Well, those are other projects I don't think are  
14 pertinent to this application, but others, yes.

15 Q. In Pennsylvania?

16 A. Yes.

17 Q. How many?

18 A. At least one.

19 Q. Is there a reason you're keeping this information  
20 from the Board?

21 A. No.

22 Q. Is this proprietary?

23 A. No. As I pointed out, I would like to keep the  
24 conversation tonight focused on zoning and use, and  
25 that's particular to this project and the application