

Franklin Township Land Use Board  
Meeting Minutes  
November 3, 2022

The Franklin Township (Warren County) Land Use Board met for their regular meeting on Thursday, November 3, 2022. Chairman Meltzer called the meeting to order at 7:30 p.m. and declared all aspects of the Open Public Meeting Act had been met by posting a notice of this meeting on the Municipal Bulletin board and providing a copy to the municipal clerk. Advertisement of notice was posted in the Star Ledger of Newark, NJ and the Express Times of Easton, Pa. as well as the Franklin Township website.

The Flag Salute was led by Mr. Meltzer.

ROLL CALL:

Members Present: Mr. Butler, Mr. Corde, Mr. Herzer, Mr. Meltzer, Mr. Santini, Mr. Sigler, Mr. Onembo, Mr. Guth, Mr. Kubik, Mr. Balogh

Members Absent: Ms. Payne

Also Present: Attorney Richard Schneider, Engineer Michael Finelli

MINUTES: Motion by Mr. Onembo, seconded by Mr. Sigler to approve the minutes October 6, 2022. Roll Call: Ayes: Mr. Corde, Mr. Sigler, Mr. Onembo, Mr. Balogh. Nays: None

NEW BUSINESS:

1. T&M Pallet

Randy Tigar, 4323 Richmond Road, Easton, PA 18040 was sworn in by Mr. Schneider. Mr. Michael McCrystal, 151A Main Street, Emmaus, PA 18049 (practices law in Pennsylvania and Delaware)

Mr. Michael McCrystal was present representing Mr. Randy Tigar who was also present. Mr. Onembo indicated to the board that T&M Pallet is located on Edison Road and as formally T&M Pallet but is no longer T&M Pallet or the nature of the business changed. He indicated there has been some activity there with respect to truck and tires. Mr. Onembo said several months ago he tried to serve a cease-and-desist order, to come into this board to define his particular use, what he is doing, the hours of operation, etc. Mr. Onembo was unable to serve him, 2 weeks ago he was able to serve an associate of his and that is why Mr. Tigar is here. He needs to define a use, the hours and he is here at Mr. Onembo's last minute request. Mr. Tigar indicated he wants to leave the use the way it is as a pallet company and trucking as part of the pallet company. Mr. McCrystal asked Mr. Tigar to more specifically identify what happens at the trucking company. Mr. Tigar stated he is trying to clean the property up. There are tires that were brought in. All he wants to do right now is to clean the place up. Mr. Tigar stated is cleaning up the tires and there are some trailers there not road worthy. He has someone there transferring the tires off of them to get them off the property yesterday. He owns trailers and has 40 trailers out on a lease which are currently coming into the property

because the lease is up. They are empty and being stored on the property until he can move them. He wants to clean up and park some of his equipment there. The tires were court ordered by the NJDEP to be cleaned up. Mr. Tigar stated another NOV was received 2 weeks ago so he started getting more aggressive with the tire clean up. The DEP wants all the tires removed. Mr. Onembo stated that the tires were no part of T&M pallet. That particular use with respect to the tires was not approved by the board previously. Mr. Onembo said there was T&M Pallet happening, Randy bringing in tires and trucks which created problems, NJDEP, Health department were involved so there's a little difference on what was and what is. Mr. Onembo said that is very important for the board to understand and there has to be clear understanding on what the operation is now. Mr. Tigar indicated the hours are the same as always. Mr. Schneider understands Mr. Onembo's concern about the activities being conducted currently at the property are in conformance with any restrictions or conditions there are pursuant to the resolutions. Mr. Onembo said the nature of the potential business has changed. He said T&M is gone and if he is indicating this is going to be a storage site for tractor trailers or if tires are being brought in than that's a different operation. Mr. Finelli asked if all the tires were going to be taken off the property. Mr. Tigar indicated yes that was correct. He indicated that T&M Pallet hasn't closed the doors, he gave the company to his brother, he got sick, that is why it is shut down. Mr. Tigar said T&M Pallet is still in existence but is not operating the way it use to. Mr. Tigar said there are 40 trailers coming in and that will be it. Mr. Finelli stated if the use was going to change he has to come back before the board. Mr. Tigar stated that right now he just wants to clean up and park some equipment there. Mr. Onembo said it is in an industrial zone and the use is changing, there were specific conditions with respect to T&M Pallet before this board, now that the operation is changing he thinks that factual information has to be part of the record. Mr. Tigar stated he had trucks before with the pallet company. Mr. Tigar said he was supposed to have some sea containers come in for the tires to get shipped to India. One load this week went to Ecore and another one went to Edge and a couple loads went to Lehigh cement. He has receipts for them. Mr. Schneider commented that first the existing resolutions should be looked at. Secondly Mr. Tigar should submit a written narrative to the Zoning Officer describing what the current use of the property is, the intended use is and indicated why he believes both the current operation and intended use are consistent with the resolution or otherwise permitted in the industrial district zone, then the board with consultation with Mr. Onembo could make a determination whether it's consistent with the resolution, if it's not it could require the applicant to make an application for some form of an amended site plan approval, if it is a use other than what's permitted in the resolution but still permitted in the industrial district zone than it still requires an amended site plan before the board. That is his recommended procedure. Mr. McCrystal understands and agrees. Mr. Schneider anticipates and expects cooperation from the applicant if the board is asking him to appear to provide further clarification that he will do that. Mr. McCrystal asked that he be informed with any requests made of Mr. Tigar. Mr. Onembo asked Mr. McCrystal to submit the written summary of what is taking place now and what is planned. The Board secretary will provide Mr. McCrystal and the board members a copy of the prior

resolution. For the record it was agreed by Mr. Onembo that Mr. Tigar is allowed to remove the tire on the property. Mr. Herzer asked if the about the trailers. He wanted to know if they are just moving them around on the property? The ones that are here are it? Mr. Tigar indicated there would be more arriving for a total of 40 and that he had approval for trailer parking. Mr. Onembo asked that he gets rid of the tires and the report. Mr. Onembo said the starting hours are in the resolution and may be 7 a.m. not 6 a.m. This concluded the informal discussion.

2. Kober Solar Application

Attorney Mark Bellin was present on behalf of the applicant. They are proposing a solar field on a portion of Block 9, Lots 11 & 11.01. It will be cleaned up for solar panels. They filed an application for a use variance, preliminary & final site plan approvals. He's not sure if they need the use variance. The state statute excludes whoever provides the soil for the use on landfills as an extraction site. He stated this site is not being treated as a landfill. They are treating it as a brownfield. He said most of the tires that were not in the wetlands were removed. There is all kinds of stuff in the ground and their LSRP is creating remedial action plans. The DEP is happy they are doing it. Mr. Onembo asked if the clean up happens before the panels? Mr. Bellin said it will be. What will happen is they will prepare a remedial action work plan and the solar field is actually part of the remedial action plan. You clean it up, prepare the dirt, then put in the posts. They are capping it so to speak even though it's not a landfill the clean up takes place the same time. There are parts that solar panels will not be put on. They need to get DEP permits to pull out the tires. They will be buying the ground. They are here tonight for the application asking for a use variance because they aren't sure if they fit within the definition of a landfill, although someone could argue they are dealing with a facility of this side, they are asking for the variance even if they don't need it because otherwise they are not a permitted use. He is going on that premise. They are here for a completion hearing tonight. He referred to Mr. Finelli's report dated November 1, 2022. Mr. Bellin stated they agree with everything in it. They are going to comply with all the permits and they ask they are deemed complete and given a hearing date. Mr. Onembo stated he read Mr. Finelli's report and noticed he didn't allude to the whole cleanup. He's asking if the project has environmental issues, clean up, tires, etc. why aren't we getting a clean bill of health on that then proceed with panels. Mr. Finelli said that is not necessarily the case. He said this is a very large project which is impacting a lot of land area but conditional approvals are granted all the time and the clean up part of this application clearly is going to be discussed in more detail when the public hearing commences. Mr. Finelli said that question is perfect, what comes first. Clean up or panels. More testimony will need to be provided. Mr. Bellin stated they are working very closely with the DEP but the reality is that they build on superfund sites. Mr. Onembo asked if the DEP gives the green light. Mr. Bellin said that the remedial action work plan will go to the DEP and before a solar field can be put in he has to demonstrate compliance with the DEP. Mr. Bellin said this is what they do, they build on superfund sites. They are voluntarily cleaning up the property now to save time. The LSRP will be present to testify. Mr. Schneider asked about the access through a lot in Harmony

Township. They will do public notice to the people in Harmony within the 200' of that lot. They are not improving that access road in Harmony in conjunction with this application. Mr. Schneider stated if Harmony takes the position that they don't require any land use approvals and waive jurisdiction, that should suffice for this board, but Mr. Bellin should take that up with Harmony.

Mr. Corde made a motion to deem the application complete. Mr. Finelli stated there are certain items that should be acted on tonight as waivers to grant to the applicant and he would like the applicant state on the record that the comment numbers of certain items that can be waived for purposes of the completeness determination, clearly they will be involved in future public hearing testimony and the environmental items discussed. Mr. Corde retracted his motion. Mr. Finelli suggested that the waivers the board would be granting are checklist items #16, 26, 35 and 43. Lot frontage, lighting, description of the project and geologic investigation. Mr. Bellin stated that information will be part of the application to the board providing they waive it for purposes of completion, they will be provided at the hearing.

Mr. Corde made a motion to grant waivers from items 16, 26, 35 and 43 and to declare the application complete subject to the applicant agreeing to provide during the course of the public hearing responses to items 1a, 1b, 3, 4, 7, 8 and 10. Motion was seconded by Mr. Meltzer. Roll Call: Ayes: Mr. Butler, Mr. Corde, Mr. Meltzer, Mr. Santini, Mr. Sigler, Mr. Onembo.

The application hearing date was set for December 1, 2022 at 7:30 p.m.

#### OLD BUSINESS:

##### 1. Broadway Solar Settlement Public Hearing

Attorney Ms. Katherine Fina was present representing Broadway solar at this time. She stated the board will recall the application before this board about a year ago in 2021 for a solar facility along route 57. That application was denied, there was a desire from the board to keep the frontage along 57 as commercial. There was a complaint filed appealing that decision. Once the complaint was settled with the board on trying to come to a resolution to where that frontage does retain the commercial part. That was an agreement on both sides and as part of that settlement they are before the board again to present a plan that addresses the concerns and meets that agreement. Mr. Roseberry was present and sworn in by Mr. Schneider as an expert with Colliers Engineering and Design. He gave his background and qualifications for the board. He was accepted by the board as a civil engineer and a professional planner. A-1 was marked which is the subdivision plan, sheet 2 of 2. He stated there are 2 parts to the application. There is the major subdivision plan and part of the settlement agreement D2 commercial properties are being subdivided off the entire track. Creating 2 2.38 acre properties with frontage along 57 and the rear portion will be served by a 50 ft flag stem. The rear is 6.84 acres which will be utilized for the solar project. There are no contemplated users on the commercial tract. They are slightly undersized so whatever need for a variance is for that they will provide justification but the intent of having 2

properties and make them more marketable is beneficial to the township because the townships desire is to have them developed commercially. Mr. Schneider stated to avoid any confusion, at this point relative to the commercial lot they are not seeking any form of site plan approval, they are only carving out the lots for future commercial development. No rights are being sought to develop that property other than the creation of the lots. Mr. Roseberry stated there is a waiver associated with it that typically would require soil testing and perc tests to be done in an area not served by sewers in new lots but there is a site plan and no contemplated users they would like to defer that until the actual site plan is considered on those parcels. He stated they had no issues with Mr. Finelli's comments on the subdivision. They have applied to the County. They originally did the plan without contours on it, Warren County stated that they want contours on it Mr. Finelli allowed himself to defer to the County and he can keep the contours on it. Mr. Roseberry stated they will comply with everything on the comments on the technical review for the subdivision. Mr. Onembo asked about the 50 ft. access on the rear lot. It was stated it is on the Technical School side. Mr. Onembo stated that buffering was talked about in the past and asked if any of that changed. Mr. Schneider asked about the flag coming in adjacent to the Vo-Tech. He asked if that needed to be relocated for DOT access permits. Mr. Roseberry stated it will meet the DOT requirements. Mr. Roseberry stated the second part of the application is the site plan for the solar facility itself. The original plan that was submitted had solar panels on the entire property. It has now been pulled back to about 5 acres of solar panels now, they have also shifted the panels as far east as possible so they can maintain and plant vegetated buffers on the west side of the property. The set back of the solar panel on the west side is 50' and the setback on the east side is 30' from the property line. The buffering is solely along the western side of the property. There is no buffering on the south. The houses are on the west side. Mr. Onembo raised that there are a lot of pine type trees to the rear of that lot. Some are older and starting to die. The concern is that perhaps there should be something in place there in the event that they do die you will be looking right into the solar panels. Mr. Roseberry stated that those trees are on the neighboring property. Mr. Roseberry referred to sheet 6, any vegetation along the southerly property line is noted to remain. They are not adding any either. Mr. Schneider stated historically the board has requested a post installation landscaping review be done with the planner to see after the installation whether any supplemental landscaping is required. Mr. Onembo stated that there is a pretty good stand of pine trees that are older now and once they die what will happen. He wonders if it would make sense to provide some buffering inside that if it doesn't interfere with the area that is designated for the panels. Mr. Roseberry said he likes the idea of having a field visit with the planner to see if supplementing planting is appropriate enough in the location. Mr. Roseberry stated that is all being proposed. He touched based on Mr. Finelli's review letter. He has not received any comments from the fire chief, they will reach out again. Mr. Finelli stated that he reached out to the fire chief and the one he reached out to is no longer the fire chief. The old chief was going to follow up with the new chief and expected him to agree. Mr. Onembo asked about the 50 ft. access. It was noted by the applicant that there is a gate to it and the solar field is totally fenced

in and secured. Mr. Schneider stated with respect to Mr. Finelli's comment he suggests that the driveway be either gravel or reinforced turf. Mr. Finelli said they supplied a detail and it will be ok. Mr. Roseberry spoke about comment 21 regarding a conservation easement protecting the existing vegetation along route 57. They don't want to do that because it could be a deterrent to developing the property for potential purchasers. Other than that they agree with all the comments. The board was asked if they had any other comments. Mr. Onembo asked about lighting. There is no lighting. Mr. Schneider asked about the 30' setback on the Vo-Tech side between the property line and the solar panels. Side yard set backs were discussed further. It was determined that the side yard set back is 50'. The fence is 15' off the property line, Mr. Schneider asked why is it off the property line and 1/2 way between the property line and solar field? Mr. Roseberry stated that the fence is off set from the solar field to maintain circulation. It could be moved to the property line according to Mr. Roseberry. It was further discussed about placement of the fence and access for firefighting, mowing, weeds growing. Mr. Santini prefers it on the property line for maintenance purposes. It was the consensus to have it on the property line or about 5' at the most away from the property line. It was agreed that the fence along the Vo-Tech will be located between 0'-5' off the property line. The applicant concluded the presentation at this time. Mr. Roseberry spoke about the need for variances in relationship with the settlement agreement. He could give proofs if necessary, a lot of it goes back to the previous application. Mr. Schneider stated to the applicant since this is a plan pursuant to a settlement with specific reference to the settlement, you would agree that the settlement plan address the boards original basis for denial in that it now allows for a commercial opportunity in this zone whereas the prior plan had not allowed for commercial opportunity in one of the few remaining properties that would be available based on highlands restrictions. Mr. Roseberry stated that was correct and it goes back to the argument of whether this plan is a detriment to the zoning plan and in fact that they are now providing those commercial uses basically satisfies what was probably a previous flaw in the application. Mr. Schneider added acknowledging the commercial properties are slightly undersized as the minimum lot requirement in this zone, he asked if it was in Mr. Roseberry's professional opinion that the undersized commercial lots would potentially allow for great marketability of those commercial lots based on current market conditions and alternatively if down the road one developer wants to merge the two lots they can simply merge the two lots but that the smaller lots would potentially create the opportunity for greater commercial development. The applicant agreed and stated that is basically the argument for the variances because they could comply with one lot but they think its better opportunity and more attractive so it benefits that way then detriments in this case. Mr. Schneider stated why there may be other variances specifically with references to what he believes is a variance to permit generically for the solar fields to be located within 50' of the side yard property line as it relates to the Vo-Tech. He asked Mr. Roseberry if it was in his professional opinion that that variance may be appropriately granted and it advances the purposes of zoning by shifting the solar field further away from the residences on Bidelman, albeit at the expense of bringing it closer to the Vo-Tech property line. Mr. Roseberry stated it does

but again the use of the Vo-Tech is an institutional use where the use to the west is residential so this definitely benefits. Mr. Schneider stated that variance would include any required relief of the inverter pad as well as the side yard setback. Mr. Roseberry agreed. Mr. Schneider asked the applicant if they agree to the previously approved provisions relative to the decommissioning plan, the post approval landscape and the post approval landscaping. Mr. Roseberry stated yes. Mr. Schneider stated in otherwise to comply with all of the recommendations contained within the Finelli review report with the exception of the conservation easement for the reasons they don't want to propose a conservation easement along Route 57 recognizing that not beneficial. Mr. Roseberry stated they will. Also they agree to what was discussed regarding the fence line. Mr. Schneider added that the actual solar lot is undersized but that is being proposed to provide the development of a portion of the property for commercial development.

#### Public Comments:

Mr. & Mrs. Green, owners of 17 and 23 Bidelman. He referred to the tree discussion that took place. He has a small business at this property. Mrs. Green stated that all trees are basically dead, any green that is seen is an ivy that has taken over the whole tree line and now they see directly into the corn field. Mr. Green stated that last year they did agree on some type of tree be planted. Mr. Roseberry stated they are proposing an entire planting along the southern portion. They have a vegetative screen proposed along the entire westerly property lines and agreed to do a site inspection with the Township Planner to discuss plantings outside the area. Mrs. Green asked if the trees will be taller. Shading was discussed. Mr. Corde suggested discussing the tree removal and replacement to make it beneficial to both. Mr. Roseberry said that would be something they'd be discussion. Mr. Schneider stated that there is a proposed landscaping plan for the westerly property line. The stipulation is as to the southern property line, recognizing that they can't have shading which would preclude the proposed use, recognizing that as Mr. Kyle would, are you agreeable to some post installation review to determine some appropriate buffering so long as it doesn't interfere with the underlying use as it relates to the southern property line. Mr. Roseberry said they are to do landscaping, it will be a similar proposal as they are doing on the west side so there will be plantings as needed along that side.

There were no other public comments at this time on this application.

Mr. Schneider summarized for the Board that they are approving a settlement which would grant to the applicant major subdivision approval and minor site plan together with the variances outlined in Mr. Finelli's review report. That is the relief that would be granted subject to compliance with all of Mr. Finelli's review report with the exception of the subdivision comments relative to contours as well as the applicant not agreeing to the conservation easement. The applicant will supply a landscape buffer along the westerly property line and in accordance with the proposed plans and will agree to a post installation landscaping plan in consultation with the Township Engineer and

Planner along the southerly property line recognizing nevertheless that the landscaping cannot operate in a manner which would preclude the use of the solar fields. They'll relocate the fence along the Vo-Tech to between 0'-5' and subject to all other governmental agency approvals and filing of the plat in accordance with a major subdivision.

(Public) Ms. Green asked, they said they would do post installation and look at it but not if it inhibits the ability of the solar panels, you wouldn't put the trees then. Mr. Schneider stated that is correct because they couldn't put landscaping in to create shading or whatever the case may be. She then asked if it would be helpful to have it already in the plans and this way it could be adjusted for it if they need to do that. Mr. Roseberry stated what they are going to do is the same thing as the west side, on the south side because they don't know where all the trees are and where the gaps are now they are going to do that in the field but he agreed he would meet with them in the interim to discuss possible alternatives. They are not proposing anything now, it will be post installation. Tree sizes and types were discussed. The landscaping will be south of the fence.

Mr. Corde made a motion in accordance with Mr. Schneiders' summary. Mr. Onembo seconded it. Roll Call: Ayes-Mr. Butler, Mr. Corde, Mr. Meltzer, Mr. Sigler, Mr. Onembo, Mr. Kubik, Mr. Balogh. Nays-None. Abstain-None.

Payment of Bills:

Motion by Mr. Sigler to pay the bills. Seconded by Mr. Meltzer. Roll Call: Ayes-Mr. Butler, Mr. Corde, Mr. Meltzer, Mr. Santini, Mr. Sigler, Mr. Onembo.

PUBLIC COMMENT:

Karen Summers asked when the minutes and agenda get posted to the website. Kelley advised they are provided to the webmaster for posting. She stated the minutes are posted after adopted and the agendas are posted prior to the meeting on the homepage. She will follow up. Kelley also told her she could always provide them if she called.

Ms. Summers asked if Heritage has any update. She was advised nothing is happening at this time.

Motion by Mr. Corde, seconded by Mr. Sigler and carried by all in favor to adjourn the meeting.

Respectfully submitted,  
Kelley Smith  
Land Use Board Secretary