**BEFORE THE FAIRVIEW TOWNSHIP**
**ZONING HEARING BOARD**

# DECISION

**IN RE: APPLICATION OF SOLAR RENEWABLE ENERGY C/O DOUGLAS BERRY**
**APPLICATION NO. 2023-01**

| | |
|---|---|
| APPLICANT(S): | Solar Renewable Energy c/o Douglas Berry |
| HEARING DATE: | January 19, 2023, continued to February 16, 2023 |
| DECISION DATE: | February 16, 2023 |
| APPEARANCES: | Douglas Berry – Applicant |
| | Joseph Burget (Surveyor for Applicant) |
| | Annette Enrico (in opposition to the Application) |
| | Debra Latsha (neutral) |
| | Phoenix Flentge (in opposition to the Application) |
| | Ray Conley (in support of the Application) |
| | Stephen Waller, Township Zoning Officer |
| HEARING EXHIBITS: | Exhibit 1 – Application (including all submittals thereto) |
| | Exhibit 2 – Solar Array Information (marked as A-1) |
| | Exhibit 3 – Glare Study (marked as A-2) |
| | Exhibit 4 – ZO § 300-75 with Comments (marked as A-3) |
| | Exhibit 5 – ZO § 300-99 with Comments (marked as A-4) |
| | Exhibit 6 – PUC Approval Letter (marked as A-5) |
| | Exhibit 7 – Background Info. and Site Plans (marked as A-6) |
| | Exhibit 8 – Updated Site Plans (submitted at Feb. 16th Hearing) |
| LETTER SUBMITTAL: | Debra Latsha email (dated Jan. 20, 2023) |
| SUBJECT PROPERTY: | Property located off Lewisberry Road, Lewisberry, PA 17339, having Tax ID No. 27-000-PF-0163.00-00000 |

## BACKGROUND

This decision of the Fairview Township Zoning Hearing Board (the "***Board***") is from an application filed by Solar Renewable Energy c/o Douglas Berry (the "***Applicant***") with Fairview Township (the "***Township***") (the "***Application***"), seeking zoning relief under the Township's Zoning Ordinance (the "***Ordinance***") for (i) a special exception under Section 300-15 –Uses by Special Exception and Section 300-75 – Additional Supplemental Standards and Requirements for Specific Principal Nonresidential Commercial Uses – Solar Energy Production Facilities. The zoning relief is for the construction and operation of a solar energy production facility at property located off Lewisberry Road, Lewisberry, PA 17339, having Tax ID No. 27-000-PF-0163.00-00000 (the "***Property***"), which is located Township's Rural Living (RL) Zoning District.

A hearing was held on the Application on Thursday, January 19, 2023 at 6:30 p.m. at the Fairview Township Building where initial testimony and evidence was taken, and thereafter the hearing was continued, with consent from all parties present, in order to review new information

first presented at the hearing, to Thursday, February 16, 2023 at 6:30 p.m. at the Fairview Township Building. The Zoning Hearing Board was represented by Timothy Mader (Chairman), Mark Perry (Vice Chairman), and Keith Bashore. All published, mailed, and posted notices were duly given, with no objection thereto being made in writing or orally at the time of the hearing (as continued). Questioning/testimony in opposition to the Application was offered by the Township residents as noted above, and the individuals noted above where therefore provided party status. After hearing the testimony and viewing the evidence in this matter, the Board makes the following determinations:

## FINDINGS OF FACT

1. Applicant is the equitable owner of the Property pursuant to a pending agreement of sale, said Property being located in the Township's Rural Living (RL) Zoning District (the "***RL Zone***") and consisting of roughly 15.37 acres.

2. The Property is unimproved, being an open field with a wooded area and stream through the center of the Property and bordered by Lewisberry Road (S.R. 382) along the northeastern side and partially along the south by residential dwellings.

3. The Property is currently used solely for agriculture in order to grow and cut hay.

4. The Application proposes a solar energy production facility which would provide for an estimated 2,500 solar panels on a variety of arrays (the "***Proposed Use***") on the Property, which is a permitted use in the RL Zone by special exception pursuant to the regulations of §300-75 of the Ordinance.

5. Except as provided below, Exhibit 8, as submitted on February 16, 2023 and reviewed and discussed at the portion of the hearing held on February 16th, accurately displays the Proposed Use from a plan perspective, including setbacks, proposed buffering/screening, tree removal and replanting, fencing, access, and the situation of the solar panels and arrays.

6. Exhibit 8 incorrectly identifies the number of solar panels, with Applicant testifying that it now planned on roughly 2,500 solar panels (whereas the plans at Exhibit 8 state "3,160 Panels Being Proposed") [Note – no factual statement is being made on the actual number of panels illustrated on the plan drawing].

7. Exhibit 4 reproduced § 300-75(C) of the Ordinance, and also provided comments to said section meant to establish Applicant's compliance with § 300-75(C), with said written comments being read directly into the record at the hearing. with Comments (marked as A-3)

8. Exhibit 5 reproduced § 300-99 of the Ordinance, and also provided comments to § 300-99(E)(3) meant to establish Applicant's compliance with the general special exception requirements, with said written comments being read directly into the record at the hearing.

9. The Proposed Use would provide for limited disturbance in a total amount of 0.417 acre, with all arrays located on stand poles driven into the ground, with steel beams running along the arrays on the ground.

10. The Proposed Use would have a single access to Lewisberry Road as depicted on Exhibit 8 as introduced at the hearing.

11. Applicant would service the Property 4-6 times a year to cut the grass growing around and under the solar arrays.

12. The solar arrays themselves would have the specifications provided in Exhibit 2 as introduced at the hearing.

13. All electric lines would be trenched underground, and a concrete pad would be constructed for the transformer.

14. Applicant stated that a number of trees would need to be removed as designated on Exhibit 8, and that new trees would be planted in the locations designated on Exhibit 8.

15. The Proposed Use would be enclosed via a 6 foot "cattle fence", which would also be screened by evergreen trees along the border of the Property and outside the fence, all as depicted on Exhibit 8.

16. The proposed solar arrays would face South, and would have a height of 9-10 feet at the highest point of the array/panel.

17. The Proposed Use would have 13.6% impervious surface, as required to be calculated under §300-75 of the ZO, as depicted on the plans provided at Exhibit 8.

18. Upon being questioned by the Board, Applicant admitted that the glare study did not contain all of the information required to be included in a glare study pursuant to § 300-75(C)(10)(a) of the Ordinance because, as Applicant stated, the panels would be manufactured with anti-glare material (as provided in the specifications at Exhibit 2).

19. Stephen Waller, Township Zoning Officer, testified on behalf of the Township, including confirmation the notice requirements for the Application and hearing have been met.

20. Mr. Waller testified regarding opacity percentages, and stated that pursuant to the Ordinance evergreen trees alone cannot meet a 90% opacity requirement, that they can only be used for 25% of required screening, and that in his opinion the only available options would be slated fencing (or similar opaque fencing) or the construction of a berm.

21. Ms. Enrico and Mr. Flentge, being Township residents and adjoining neighbors of the Property, provided testimony in opposition to the Proposed Use related to environmental, aesthetic, and sight/glare concerns.

## CONCLUSIONS OF LAW

1. The glare study as submitted failed to comply with and provide the required information found in Section 300-75(C)(10)(a) of the Ordinance.

2. The Proposed Use, the plans submitted, and the testimony provided at the hearing failed to demonstrate screening of not less than 90% opacity as required by Section 300-75(C)(9)(d)(3).

3. Due to the forgoing, Applicant failed to establish the elements required by § 300-75(C) of the Ordinance to permit a solar energy production facility at the Property by special exception.

4. Due to the inability to meet the requirements of § 300-75(C), the Board did not perform any analysis on, or render any conclusion on, whether the Applicant fulfilled its requirements to establish compliance with the general special exception conditions provided at § 300-99(E)(3), as such analysis was rendered moot by the forgoing legal conclusions.

## DECISION

Mr. Bashore moved to deny the special exception request under § 300-75(C) of the Ordinance (related to solar energy production facilities) because Applicant failed to (i) submit a glare study that complied with § 300-75(C)(10)(a) and (ii) Applicant failed to demonstrate screening of not less than 90% opacity pursuant to § 300-75(C)(9)(d)(3), all based on the evidence presented at the hearing. Mr. Perry seconded the motion. Upon a vote, the Fairview Township Zoning Hearing Board unanimously approved the motion to deny the relief requested in the Application.

**APPLICANT SHALL ABIDE BY ALL FEDERAL, STATE AND LOCAL LAWS, REGULATIONS AND ORDINANCES PERTAINING TO PERMISSIONS GRANTED BY THIS DECISION.**

**APPLICANT SHALL PROCEED PURSUANT TO THIS DECISION IN ACCORDANCE WITH THE TESTIMONY AND EXHIBITS PRESENTED AT THE HEARING.**

Date: 2/23/23

Timothy Mader, Chairmen

**ANY PERSON AGGRIEVED BY THIS DECISION OF THE FAIRVIEW TOWNSHIP ZONING HEARING BOARD MAY APPEAL TO THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA. THE APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS FROM THE MAILING OF THESE FINDINGS OF FACT, CONCLUSIONS OF LAW AND THE ABOVE DECISION.**

**MAIL DATE:** 2-27-23

Established 1803
FAIRVIEW TOWNSHIP

**ZONING HEARING BOARD APPLICATION**

**YORK COUNTY, PENNSYLVANIA**

❖ ***Part 1:***

**APPLICANT(S)/EQUITABLE OWNER**
Name: Solar Renewable Energy C/O Douglas Berry
Address:

Phone: (717) 571-1151

**EXISTING OWNER OF PROPERTY:**
Name: Homer B. & Romain G. Conley Trust
Address: 1186 Lewisberry Rd
Lewisberry PA 17339

**PROPERTY LOCATION:**
Address: Lewisberry Road

Lot Size: 15.37 Acres
Date Purchased: July 24th 1950
Location: Tax Parcel - 27000PF0163000000

**PRESENT USE OF PROPERTY:**
General Farming

**EXISTING ZONE:** Rural Living

❖ ***Part 2:***

**ZONING REQUEST (Identification of the applicable request(s)):**

( ) SUBSTANTIVE CHALLENGE

(X) SPECIAL EXCEPTION

( ) VARIANCE

( ) APPEAL OF THE ZONING OFFICERS DECISION

SECTION(S) OF ZONING ORDINANCE WHICH APPLY TO THIS REQUEST - Please identify the specific section(s) of the Zoning Ordinance involved in the request):
300-15 As Per Table 4-2 In Accordance with 300-75

❖ ***Part 3:***

**DESCRIPTION OF REQUEST:**

SEE NARRATIVE/PLAN

❖ ***Part 4***

LIST ALL INDIVIDUAL PROPERTY OWNERS WITHIN 200 FEET OF THE PERIMETER OF THE ENTIRE PROPERTY.

| NAME | ADDRESS | USE TYPE |
|---|---|---|
| Eimerbrink, Tanya R. | 1200 Lewisberry Rd. | Residential |
| Bozis, Ronald A & Beverly A | 1216 Lewisberry Rd. | Farm |
| Fisher, Brennen R | Lewisberry Rd. | Farm |
| Smith, Steven Douglas | 1218 Lewisberry Rd. | Residential |
| Yinger, Galen A | 1254 Lewisberry Rd. | Farm |
| Shenk, Darian M & Flentge, Phoenix C | 799 Siddonsburg Rd. | Residential |
| Stanley, William T | 801 Siddonsburg Rd. | Residential |
| Minskey, Kara & Trey | 803 Siddonsburg Rd. | Residential |
| Pietro Enterprises Inc Attn Sam Bontselis | 805 Siddonsburg Rd. | Residential |
| Diller, Barry L & Roberta J | 807 Siddonsburg Rd. | Residential |
| Miller, John R | 825 Siddonsburg Rd. | Residential |
| Latsha, Debra M & John | 827 Siddonsburg Rd. | Farm |
| Rexroth Limited Partnership Attn Jim and Kenneth Rexroth | 1141 Lewisberry Rd. | Farm |
| Fureman, Bruce E | 1167 Lewisberry Rd. | Residential |
| Ruff, James A & Pierce, Hazel S | 1165 Lewisberry Rd. | Residential |
| Enrico, Annette | 1186 Lewisberry Rd. | Residential |

❖ ***Part 5 For office use only:***

# ZONING HEARING BOARD CHECKLIST

Application Received:_____

Property Zoned:_____

Asking for Special Exception, Variance or Appeal:_____

Case No.:_____

Fees Paid:_____

Hearing Date:_____

Draft Public Notice sent to Attorney for review:_____

Notice sent to Newspaper:_____

Notice Published in Newspaper:_____

Notice Mailed to Property Owners in 225ft. Buffer:_____

Public Notice Posted on Property:_____

ZHB Packets Mailed and Emailed:_____

**PROJECT NARRATIVE**
**(Special Exception)**

## I. Section 300-15 Fairview Township Zoning Ordinance Variances

Pursuant to Section 300-15 of Fairview Township Zoning Ordinance and to provide greater understanding and direction to the Zoning Hearing Board, Applicant addresses the following considerations as set forth within the Ordinance

### A. Subject Tract

The subject property is currently a vacant tract being a southwesterly facing tract with frontage along Lewisberry Road. The proposed improvements involve the construction of a stand-alone multi-panel solar array for solar collection. The tract is currently zoned Rural Living. The proposed use is allowed with special exception approval as described in zoning ordinance section 300-15. Due to the nature of the proposed system being a direct connection to the utility grid, no building or accessory is needed for the operation of the system.

The current property is under contract for Solar Renewable Energy to purchase the property and to install a solar array within the property as per the attached exhibits. Solar Renewable Energy will own and maintain the solar array. They will have an agreement with the Public Utility Commission and the public utility provider to tie all electric that is produced directly back into the grid for the public to utilize.

The proposed improvements would fall in line with the nature to allow for solar collection system (public utility) as cited in the above section.