

**Unofficial Minutes**  
**Township of Pilesgrove Planning Board**  
**October 21, 2020 Minutes**

*This meeting was held in person at the Twp. Public Works Building at the Municipal Complex.*

The Chair called the meeting to order at 7:00 p.m. He announced that the South Jersey Times and the Elmer Times were properly noticed and agenda/notices were published on the Township bulletin board and website. All of the above was done in accordance with the New Jersey Sunshine Law and the Governor's Executive Order.

Members stood for the Pledge of Allegiance.

**Roll Call**

Members:

Jeff String, Chair  
Joe Crevino  
Mark Desiato  
Milton Eachus  
Mitch Layton -- absent  
George Brooks  
Craig Lewis  
Glenn Manning-- absent

Alternate #1 Jeff Dobbs  
Alternate #2 Bill Miller  
Alternate #3 Russell Davis  
Alternate #4 Matt Hitchner

The Chair seated Mr. Dobbs for the vacant position of Mr. Haaf, Mr. Miller for Mr. Layton, Mr. Davis for Mr. Manning.

*Motion to approve minutes from September 16, 2020 minutes (Desiato/Eachus) all ayes on voice vote with Mr. Lewis abstaining.*

The Board Solicitor swore in the professionals.

**Memorialization of Resolutions**

**Resolution 2020-015 2020-013 O'Donnell and Silva, Minor Sub, B 14 Lots 3 and 3.01**  
*Motion to memorialized, (Dobbs/Crevino) all ayes on roll call.*

**Resolution 2020-016 2020-014 Kreider, Variance, B 79 Lot 1**  
*Motion to memorialize (Eachus/Desiato) all ayes on roll call.*

## **Completeness Determination**

### **2020-016 Denise and Becky Kelly bulk variance, B 224, L 3.02**

Russell Davis stepped down.

The Engineer reviewed his report and described the application, which involves a pool and various landscaping and accessories. He said he had no objection to the application being deemed complete.

*Motion to deem complete (Crevino/Desiato) all ayes on voice vote with Mr. Davis having stepped down.*

### **2020-017 John and Judy Williams, minor subdivision, B 2.08, L. 8.01**

Mr. Davis returned to the Board.

The Engineer reviewed his report and described the application. The subdivision into two lots does not create any substandard conditions or new lots. He said revised plans were submitted Oct. 21<sup>st</sup>. He had no objection to the application being deemed complete. There was discussion of the proposed pole barn, which is not in the required front yard “setback” area and does not need a variance.

*Motion to deem complete (Crevino/Brooks) all ayes on voice vote.*

### **2020-015 Trim Factory, site plan, B 80, L 2.03**

The Engineer said the Board approved the application last month, and the applicant is returning with its site plan for approval. He described the application, which includes numerous waivers that should be reviewed during the technical review and hearing rather than granting them right now. Attorney Charles Fiore for the applicant was present for questions on the application; there were none.

*Motion to deem complete (Desiato/Eachus) all ayes on voice vote.*

## **Other Business**

Changing the meeting location was discussed.

*Motion to hold the November meeting at the Elmer Grange at 7 p.m. (Crevino/Eachus) all ayes on voice vote.*

The Solicitor noticed the public that Applicant 843 Route 40 LLC (Sunoco) will be heard at the November meeting at the Elmer Grange, as well as the applications deemed complete tonight.

*The Board discussed a subcommittee meeting date for the master plan re-examination report.*

## Vouchers

*Motion to approve vouchers (Eachus/Brooks) all ayes on roll call vote.*

**Meeting recessed until 8:15p.m.**

## Public Hearings, new and continued

**2020-011 Pilesgrove Solar/Nichomus Run Solar Farm, Use/Conditional Use Variance, B 60, Lots 3, 4, 4.01, 5, 8, and 9; B 61 Lots 3, 4, 5**

*Mr. Crevino and Mr. Lewis stepped down. Mr. Hitcher was seated for Mr. Lewis.*

*Sitting for the use variance and conditional use variance: Eachus, String, Brooks, Desiato, Hitchner, Davis, Miller and Dobbs.*

Keith Davis, attorney for the client, said the applicant has submitted an environmental impact statement, which is not required until site plan approval, but the applicant voluntarily submitted it 10 days prior to tonight's meeting. Kristin Wildman, Senior Environmental Consultant, summarized the EIS. She said the report concludes there is little impact to the site and the project involves native grasslands which will benefit the wildlife and insects, and the root system will help prevent erosion into the adjacent stream, thereby improving water quality. Further, pesticide usage/runoff will be suspended, further improving water quality. There is no significant impact to prime soils on the site. She said she did look at the PLI zone in the Township, and the environmental impact would be greater because transmission lines would have to be put in through the Salem River. She said all permits and approvals for the proposed siter will be obtained. She also said the applicant has reached out to US Fish and Wildlife for habitat partnerships. All contractors will be held to standards to protect the environment. In answer to questions, she said the majority of the soils are prime and a septic system is on site to service the sheep operation. Mr. Davis said all the team is here to answer questions.

*Motion to open to the public (Eachus/Desiato) all ayes on roll call.*

Attorney Jeffrey Baron said he will cross-examine witnesses and his colleague will make a presentation.

Timothy Daniels, co-founder of Dakota Power, said the land is under contract to purchase. Under questioning, he said they do not yet have a wetlands interpretation or other environmental approvals, and he could not elaborate on contingencies. Mr. Baron asked whether he knew of the zoning at the time of signing the contract and prohibited uses, and he read that part of the ordinance. Mr. Daniels said they were aware of the PLI zone for solar, had investigated it, but the preliminary analysis was not favorable and the owner of the land in the PLI said it was not available for sale. The Board's Solicitor asked both Mr. Baron and Mr. Davis to find a way to move through the hearing with less objections and infringements on proper questioning. Mr. Baron asked about bonding.

Anthony Brewer representing a property owner who holds easements in the township, asked Mr. Daniels about sale of generated power. There were questions about need for additional power in Pilesgrove. Mr. Daniels said a number of criteria were used to select a site, and cost was one.

Mr. McMann, under questioning, said if the sheep production ended, the company would search for someone else to do the sheep operation. He said the solar permission runs with the land, and solar would continue if the other operations – sheep and poultry – ceased. Mr. Baron wanted to know why the company is having agricultural components. Mr. McMann said that's why the applicant is before the Board, asking for a solar component to add to the agricultural components. There was questioning on prohibitive uses in the ordinance. Mr. Baron said the ordinance is clear that a solar facility cannot be a principal use except in the PLI. He asked Mr. McMann why the applicant did not ask for a re-zoning.

Mr. Brewer referenced minutes from the March 12, 2019 Township Committee meeting when Dakota Power partners made a presentation. The company's attorney Steven Nehmad told the Committee that the tract of land for the proposed project is too large for a zoning variance. There was discussion about the March 2019 presentation. There was questioning regarding conditional uses, public utility uses and conditions in the ordinance. Mr. Davis, through questioning, clarified the proposed use of the property, and that sheep farming is a substantial component of the use variance and the applicant has an obligation to continue that use or be in violation of the use variance. If no one would operate the sheep farm, the applicant would be required to come back for a new variance. He also said although there was discussion with Township Committee about rezoning, no action was ever taken.

The applicant said the energy produced goes to the grid, which goes into a power net that the northeast draws from, including Pilesgrove, and could be utilized here. Mr. Miller asked for clarification on the application for a use variance for the solar facility and sheep and poultry complementary operations. Mr. Davis said the application is one unified use not permitted in the ordinance, which is why the applicant is here. There was further discussion.

Mr. Stewart focused on Mr. Nehmad's testimony with Township Committee.

The Township Planner said he had not been authorized to a study on the rezoning matter.

Mr. Baron asked further questions about the minutes.

There was an objection to the testimony of David Capparelli as a Principal Land Engineer since he is not licensed in New Jersey and therefore not qualified to testify. Mr. Davis said the objection needed to be raised at the time of the testimony, and that Mr. Capparelli was presented as a fact witness. He said a NJ Engineer would be involved at a later date.

Mr. Brewer questioned the barbed wire fence and screening plan. The applicant said barbed wire is on use at the other Dakota sites, but if the Township doesn't want it, something else would be used to deter vandalism.

There fiscal impact analysis was questioned, with the objecting attorney saying it was designed to sway board members by the revenue to be raised. Mr. Davis said it was presented to shed light on the project, He said the ESI addressed negative impact, and the fiscal statement offers that from a financial standpoint, there are none.

Mr. Baron disagreed that the fiscal impact statement was needed for positive and negative criteria. Mr. Davis requested the record show that the planner said his analysis of the sheep and poultry farming indicate \$ 80,000 per year exceeding costs, and school district could receive \$487,000 per year – a total of \$560, 000. Mr. Davis said in contrast, a residential development would have a significant negative impact. He said 400 residential units would require \$535,000 in public costs exceeding tax revenues to the township.

Mr. Miller asked for clarification on the assessed value of \$28 million dollars. The Planner said he provided testimony at first hearing how taxable improvements under state law are calculated. A detailed list of what is assessed will be submitted. Mr. Miller asked if the property is subject to roll back taxes since it is a dual use. The planner said yes, if agriculture were to withdraw.

Mr. Baron questioned whether the solar operation triggers a rollback. Mr. Miller asked whether a new entity could ask for a tax adjustment in the future. The applicant has said it will not seek farmland assessment instead of market value assessment. Mr. Davis said that Board can include any conditions of approval to run with the land and for future owners.

Mr. Kirkland, under questioning, said he is a certified appraiser with a temporary certificate from the NJ Appraisal Board specifically to work on this project to do an impact analysis. Baron questioned him on his analysis content.

Mr. Brewer called Emile DeVito, an expert in habitat with the New Jersey Conservation Foundation, where he is a staff scientist. Discussed bog turtle habitat and the impact of development. He said the bog turtle is one of the most highly endangered reptiles on the federal list, and they are incredibly sensitive to alterations in habitat. He said populations can be wiped out by changes in hydrology and sedimentation or improper soil management and natural disasters. He referred to the EIS submitted by the applicant. He said grading on the site can impact the turtle habitat and he doesn't know the amount to be done. He said losing just a couple breeding females can be disastrous to a small population. He explained that anything that happens upstream with diversion of water can have impact on critical habitat. Subsurface sand and gravel controls hydrology, so any change to that can change the pools and open habitat for the bog turtle. He said bog turtles are tiny and do not travel far; they may live their entire lives in an area the size of a football field. They are attuned to changes in the water table, know where to lay eggs, hibernate and feed. They live for decades. Any changes in wetlands can alter their seasonal movements. That's why they are rare, endangered, and declining; they are incredibly sensitive.

Mr. DeVito said he is unsure what he could recommend for this site for mitigation, because the project is so big, and know one will know impact. Someone will have to monitor the population of bog turtles beforehand and years after, but it would most likely be too late for wetlands management efforts. Mr. Davis said no pesticides would be used on this site and the applicant will take part in Partners for Habitat. Mr. DeVito said wetlands permits have no nexus to bog turtles and hydrology. He said this application won't trigger the US Fish and Wildlife Service intervention. Mr. Davis said those issues will be addressed at the site plan. Mr. DeVito said from his experience, hydrologic changes take place all the time and they are not part of the permit process.

Davis said engineered site plans would be submitted to the board for review, and it will include hydrology. Mr. DeVito said those plans won't address downstream where the bog turtles are. He said

permits that are required do not deal with what might happen downstream from the building envelope. Davis said the applicant will submit all to the board, including hydrology. Mr. DeVito said generally an applicant address plans by using models, which can be off.

Mr. Miller asked for clarification as to why a DEP permit wouldn't be reviewed by US Fish and Wildlife. Mr. DeVito said if an applicant is not asking for a permit to do something in the wetlands, there is no regulation that says you have to talk with them unless you doing something in your tract with an endangered species. No nexus, no trigger.

Mr. Miller asked if sheep farming would impact bog turtles. Mr. DeVito said if it were just sheep farming with no changes affecting underground hydrology, there would not be any impact. He added the last time NJCF looked at the site was 20 years ago.

Mr. DeVito was asked about the Clean Energy Act of 2018 and the encouragement of solar energy. He said NJCF encourages solar energy and supported the Act, but there are different subsets that promote energy alternatives. He said it doesn't mean every place is the right place.

Mr. Baron asked about listings for endangered species titles. Mr. DeVito explained the main nexus is the freshwater wetlands law, but if development is on the uplands and does not enter the wetlands or the buffer, it will not trigger a review. He said there is no regulations or permits to deal with something happening of significance upstream affecting downstream.

Motion to close to public discussion (Eachus/Desiato) all ayes on voice vote.

The Solicitor announced the meeting will end for the evening and the next meeting will be at the Elmer Grange. He said if any of the objectors wishes to submit written briefs summarizing their position on the legal issues, the Board will accept that. The Board's professionals said they want to comment on the EIS.

It was agreed legal briefs would be submitted 10 days before the meeting and the Board Secretary will distribute.

The Solicitor noticed the public that applicants scheduled for hearings will be heard at the Elmer Grant and applicants do not need to re-notice.

Motion to adjourn (Desiato/Eachus) all ayes on voice vote.

*Minutes submitted by Board Secretary Rita Shade.*