

**RESOLUTION NO. 2021-021  
PILESGROVE TOWNSHIP PLANNING BOARD  
RESOLUTION MEMORIALIZING THE DENIAL  
OF A USE VARIANCE TO APPLICATION  
NO. 2020-  
PILESGROVE SOLAR I, LLC**

**Denied:                    May 19, 2021  
Memorialized:         September 15, 2021**

**WHEREAS**, an application was filed by PILESGROVE SOLAR I, LLC (Applicant), for a use variance for the development of Solar Panels on property known as Block 60, Lots 3, 4, 4.01, 5, 8 & 9 and Block 61, Lots 3, 4, & 5 on the Pilesgrove Township Tax Map.

**WHEREAS**, the application was deemed complete without conditions.

**WHEREAS**, a public hearing was heard on August 19, 2020, September 16, 2020, October 21, 2020, January 20, 2021, February 17, 2021, March 17, 2021, April 21, 2021 and May 19, 2021 before the Pilesgrove Township Planning Board. The Applicant was represented by Keith A. Davis, Esquire of the firm of Nehmad, Perillo, Davis & Goldstein

**WHEREAS**, notice to the public was required in accordance with the Township Ordinance and Municipal Land Use Law (MLUL); and

**WHEREAS**, at all public hearing the Applicant submitted proof of notice and publication as required by law.

**WHEREAS**, the following was entered into evidence at the hearings:

- A-1 Illustration of Solar/Sheep/Agriculture Use
- A-2 Aerial Plan
- A-3 Conceptual Layout Plan
- A-4 Landscape Plan
- A-5 Visual Simulation
- A-6 Sheep Building Plan
- A-7 Facility Component Overview
- A-8 New Jersey Energy Master Plan
- A-9 Zoning Map
- A10 New Jersey Conservation Foundation Webpage Printouts
- O-1 Pilesgrove Zoning Map

- O-2 ADA Boundary Map
- O-3 Salem County Agricultural Development Area Map
- O-4 State Planned Planning Area
- O-5 Excerpt from September 2019 PAS Memo

WHEREAS, the Applicant presented the testimony of the following individuals:

- 1) Tim Daniels, Principal, Dakota Power Partners, LLC
- 2) David Capparelli, Applicant Representative – Dakota Power Partners, LLC
- 3) Bill McManus, PP, PLA – Planner/Surveyor
- 4) Erick Hetzel – Shepherdess
- 5) Richard Kirkland, MAI – appraiser
- 6) William Sapio, MAI - appraiser
- 7) Kristen Wildman – Environmental Specialist

**WHEREAS**, the Board having reviewed the plans and exhibits enumerated above and other evidence submitted, having heard and considered the testimony presented by the Applicant, Objectors and all members of the public that offered comments and testimony, and having heard the arguments of counsel and considered the reports of the Board professionals, make the following findings:

- 1. The Property is in an AR-2 Agricultural Retention District Zoning District.
- 2. The property consists of approximately 830 acres.
- 3. The Applicant is proposing the combined use of a solar facility and sheep farm on the property, as well as a chicken coup, which the Applicant later agreed to subdivide off the main property so as to eliminate the need for a use variance for multiple uses.
- 4. The Applicant testified that there would be approximately 1000 head of sheep.
- 5. There was considerable testimony from both the Applicant and Objectors regarding the adverse effect the project would have on the Bog Turtle population located near the property. The Board found both positions to be credible and took them in to consideration when evaluating the negative criteria for the Use Variance review.
- 6. The Applicant professional testified that the project would create a substantial tax revenue for the Township. The Board was advised by the Board Solicitor that tax revenue is not to be considered when making a determination on a use variance.

7. The Applicant Planner testified as to the Positive and Negative Criteria regarding the Use Variance analysis and ultimately testified that the use as proposed would justify the granting of the requested use variance.
8. The Applicant proposed multiple types of screening to prevent any negative visual effects.
9. It was testified to by multiple witnesses that the size of the project amount to approximately 8% of the entire A-2 zoning district. However, the Applicant pointed out that the difference from the A-1 and A-2 zoning district is insignificant and should be considered one district for the purpose of analyzing the size of the entire project. The Board took this comment into consideration and gave it the appropriate wight when making its determination on this use variance request.
10. The Board heard substantial testimony from the Public on the application both in support and against the proposed use. The Board considered all testimony from the Public both for and against the application in making a determination on this application.
11. The Board heard testimony and reviewed reports submitted by the Board Planner. The Board Planner specifically brought to the Board's attention the impact of such a substantial project and how it relates to the Board Use Variance review.
12. The Board heard and considered comments from its Solicitor regarding applicable case law and standards the Board was required to review in making a determination on this application.
13. In reviewing this application, the Board considered the Township Master Plan and whether it would substantially impair the intent and purpose of the zone plan and zoning ordinance.
14. The Board reviewed and considered multiple buffering plans proposed by the Applicant and considered the Applicant's willingness to further expand these buffering areas to address the concern of the Board relating to the impact of the scenic view the proposed project would cause.

15. The Applicant proposed a deed restriction on the property to declare that the property would always be utilized as farmland after the life of the proposed use.
16. The Applicant testified that the proposed use would eliminate the need for pesticides and fertilizers and will provide clean energy that will reduce the need for traditional energy.
17. The Board stipulated that proposed use is an inherently beneficial use as such the positive criteria for the Use variance is met.
18. As it relates to the negative criteria the Board following *Sica v. Board of Adjustment of Tp. Of Wall*, 127 N.J. 152 (1992) and *TWC Realty Partnership v. Zoning Board of Adjustment of the Township of Edison*, 315 N.J. Super. 205 (Law Div. 1998) analyzed the following:
  - i. What was the Public Interest at Stake.
  - ii. Identified detrimental effects which it perceives would result from the granting of the variance.
  - iii. Reviewed any reasonable conditions that could be placed on the proposed use that would reduce any perceived detrimental effect.
  - iv. The Board weighed the public interests being advanced against what remains of the negative criteria and determined whether the grant of the variance would cause a substantial detriment to the public good.
19. The Board went further to analyze and discuss the Dover Factors due to the size of the proposed use. *Dover Twp. v. Zoning Bd. Of Adjustment of Dover Twp.* 158 N.J. Super. 401, 411 (App. Div. 1978).
20. After a discussion between the Board and the Applicant regarding the above enumerated factors the Applicant agreed to the following conditions of any approval:
  - i. Reclamation Bond which is to be re-evaluated every five years
  - ii. Subdivision of the Chicken Coup portion of the property
  - iii. Limit the use to a 35-year life span, if a period of one year of inactivity the project would be considered abandoned

- iv. If the sheep farming stops the project would be in violation of any approval.
  - v. Putting a Maintenance bond in place for any proposed landscaping.
21. The Board after significant conversation with the Board Solicitor and the Applicant and after carefully reviewing the above factors found that the size of the project was to significant and therefore would be tantamount to a zoning change in accordance with the Dover standard, as such the negative criteria for the Use Variance would not be met.

**BE IT THEREFORE RESOLVED** on this \_\_\_\_ day of \_\_\_\_\_, 2021 by the Pilesgrove Township Planning Board, the use variance for the for the use of a sheep farm and solar facility as proposed by the Applicant, located on the concerned property is hereby denied .

The undersigned chairman of the Pilesgrove Township Planning Board hereby certifies that the above is a true copy of a resolution adopted by the Board on September 15<sup>th</sup>, 2021, to memorialize action taken by the Board on May 19<sup>th</sup>, 2021.

**PILESGROVE TOWNSHIP PLANNING BOARD**

**BY:** \_\_\_\_\_  
**JEFFREY STRING, Chairperson**

**ATTEST:**

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**RITA SHADE, Secretary**

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