

EAST AMWELL PLANNING BOARD MINUTES
7:30 PM East Amwell Municipal Building
December 8, 2010 - Meeting

Call to Order, Attendance and Pledge of Allegiance

This meeting of the East Amwell Planning Board was opened on December 8, 2010 at 7:30 PM. The following notice was read, "In compliance with the Open Public Meetings Act, this is a regularly scheduled meeting pursuant to the annual meeting notice as published in the January 21, 2010 issue of the Hunterdon County Democrat, a copy of the agenda for this meeting was forwarded to the Hunterdon County Democrat, filed in the Township Clerk's Office and posted on the bulletin board on December 2, 2010."

Present: Fred Gardner – Vice Chair
Rob Gilbert
Bela Kamensky
Peter Kneski
Linda Lenox
Dart Sageser
Michael Weis
Roger DeLay
Planner Banisch
Attorney Norman

Excused: Gail Glashoff
Don Reilly, Chairman
Joe Wolfgang

Mr. Gardner noted that he will be chairing this evening's meeting in Mr. Reilly's absence. He explained the procedure for tonight's meeting saying that Attorney Norman will provide the legal basis for the Planning Board's review of the renewable energy ordinance listed on the agenda for discussion. Planner Banisch will then outline the ordinance for the Board and the public will be provided with an opportunity to comment. Vice Chair Gardner noted that the renewable energy ordinance is only a discussion item. He noted the discussion is on an ordinance on the general principals which should underlie the regulation of renewable energy facilities within the Township. Vice Chair Gardner stated that to date, there have been no applications submitted for any solar facilities within the Township and therefore it would be inappropriate for the Board to entertain any discussion of any presumed actions on the part of any resident or any presumption that someone may at some point be installing a solar or other renewable energy facility.

Attorney Norman stated the issue Vice Chair Gardner is raising is what is known as "Pre-judgment." He explained the Board can't consider questions as to a proposed energy facility on a specific property prior to the adoption of the ordinance because if any Board Member makes a specific comment about the property, it could be determined later that they prejudged the application. Attorney Norman stated the discussion this evening will focus on the terms of the ordinance itself and whether or not the standards are consistent with State Law. He noted that the MLUL laws have recently changed to allow renewable energy sites because they have been deemed inherently beneficial uses. Attorney Norman commented the significance of this determination is that municipalities are encouraged to adopt ordinances to control where these uses can go rather than to simply prohibit them which would then force any application to go to the Board of Adjustment. He indicated it is better to be proactive and establish guidelines.

Citizens' Privilege to Speak on Items Not on the Agenda

It was noted that no one from the public came forward for comment at this time. A motion by Rob Gilbert, seconded by Michael Weis to close to the public was unanimously approved.

Review of Minutes

A motion by Roger DeLay, seconded by Rob Gilbert to approve the Board's minutes from 11/10/10 as revised was approved with Mr. Kamensky and Ms. Lenox abstaining.

New Business – Other

Discussion: Amwell Valley Design Standards/Draft Renewable Energy Ordinance

A member of the public spoke who later identified himself as Charlie Sosino. He asked about the public notification of this evening's discussion on the solar ordinance. Attorney Norman explained tonight's meeting was for discussion purposes only. He remarked that the ordinance will be introduced at the Township Committee level and this review by the Planning Board does not require formal public notice. Attorney Norman noted that the Planning Board is simply reviewing the proposed ordinance for determination as to whether or not it is consistent with the Master Plan. He explained that after the consistency review, the ordinance will go back to the Township Committee for final reading/public hearing/adoption.

Vice Chair Gardner noted that the Board welcomes public input and will be accepting public comment on the proposed ordinance after the Board's discussion on the matter this evening.

Planner Banisch reviewed and outlined the proposed renewable energy ordinance noting the following highlights:

1. Definitions for major and minor solar facilities
2. The zoning provisions: Permitted accessory uses and conditional uses for each zone
3. Expanded conditional use standards to include:
 - a. Complying with the requirements for principal structures in the zone in which the renewable energy facility may be located
 - b. Not violating any area of land designated and regulated by NJDEP as floodplains, flood hazard areas, wetlands, wetland transition areas or riparian corridors
 - c. Proper screening from public view and historic sites
 - d. Providing landscaping plans for renewable energy facilities
 - e. The preservation of agricultural activities and prime soils
 - f. Controlling soil erosion and soil stabilization
 - g. Providing grading and drainage plans
 - h. Providing facility maintenance plans
 - i. Controlling glare
 - j. Controlling noise levels
 - k. Providing a decommissioning plan

Mr. Sageser commented that the SADC is required to establish renewable energy regulations on properties that are protected by the Right-to-Farm. He noted that the requirements have not been adopted yet and asked if the Township can establish more stringent requirements. Attorney Norman said no, however it was noted that if a property owner pulls out of Farmland Assessment, none of the Right-to-Farm protective guidelines will apply.

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Planner Banisch noted that the proposed ordinance notes that any lands qualifying for Farmland Assessment may not exceed a ratio of 1 acre of coverage devoted to solar energy generation facilities, structures and equipment to 5 acres of land devoted to agricultural or horticultural operations which is also what the SADC is proposing.

There was some discussion of possible greater refinement of the proposed ordinance to include specific guidelines for farmland assessed properties vs. non-farmland assessed parcels. Planner Banisch expressed that he believes there is a desire for the proposed ordinance to be reviewed and forwarded to the Township Committee in a timely fashion. Mr. Weis remarked that it is important for the Board to keep in mind that there is nothing currently regulating renewable energy facilities and encouraged the Board to move forward with the proposed ordinance and perhaps note in the minutes a list of issues/items that may need further refinement. Mr. Sageser agreed and noted that he believes the section in the proposed ordinance addressing the public view should probably include specifics on neighboring properties and private residences that will be impacted by the renewable energy facility. Mr. Gilbert indicated the language in the proposed ordinance only applies to public view *and* historic resources—not public view in general and he suggested the language be changed to *and/or*. Planner Banisch agreed.

Mr. DeLay noted that #4 on page 4 states, “Facilities and structures shall not be visible from adjoining residential uses or zones and shall be screened by a combination of berm(s), landscaping and fencing.” He remarked that he believes this section of the proposed ordinance addresses Mr. Sageser’s concerns.

Mr. DeLay also offered some comments regarding noise levels, security and signage. Mr. Kneski noted that based on State requirements, there are usually two standards: Daytime is 60 decibels and evening is 40 decibels.

Mr. Sageser remarked about whether or not an Environmental Impact Statement should be required for renewable energy facilities specifically related to noise and glare. Mr. Weis asked if there are standards for determining glare. Planner Banisch commented that glare standards for solar facilities are currently evolving. Attorney Norman commented that the DEP has established standards for determining odor so the presumption is they will also establish standards for glare. Mr. Sageser said that he has seen solar studies for building analysis through a computer program called *Ecotech*, “...that can type in any location, anytime—time of the year, day or night and it can determine what kind of reflectivity will be produced on houses across the street or on approaching highways.” Mr. Sageser stated it provides a measure of reflectivity. He noted his concern for renewable energy facilities being installed in this area with respect to the topography of the land not being flat, creating a potentially high level of visibility.

Mr. DeLay questioned the prohibited use of herbicides as an acceptable maintenance practice. Planner Banisch commented he is trying to curtail the possibility of an excessive use of chemicals.

Vice Chair Gardner opened the floor to public comment on the proposed renewable energy ordinance.

Larry Swanzer of 9 Rosemont-Ringoes Road came forward and suggested the Board consider an increased buffer area of possibly 150’ or greater due to the impact solar may have on property values. Mr. Weis commented that it’s important to remember that if renewable energy facilities are conditional uses, applicants have to come forward with a plan. Therefore the ordinance does not have to specify every minute detail because the applicant will need to demonstrate that they can meet all of the conditions of the conditional use.

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Dick Ginman of 125 Mountain Road came forward and suggested that the SADC regulations get incorporated into the Township's ordinance, that the ordinance establish guidelines for farmland assessed properties and non-farmland assessed properties, prohibit the Sourland Mountain zone from being clear cut for solar projects, establish detailed decommissioning guidelines and consider the potential hazards to firefighters should they need to access solar facilities in the event of an emergency.

Diane Harrington of 110 Boss Road came forward and read a statement for the record, a copy of which is attached.

Frances Gavigan of 123 Wertsville Road came forward and expressed concerns with buffering and cautioned the Board to consider the potential for multiple adjoining large parcel land owners to install solar arrays which could impact hundreds of acres.

Doreen Holley of 86 Stony Brook Road came forward and stated she teaches solar at Rutgers in conjunction with work force development for Burlington, Gloucester and Camden counties. She stated she believes the proposed ordinance may be too restrictive. She noted that solar panels are made of non-glare glass and therefore the entire issue of glare impact is irrelevant. With regard to noise, Ms. Holley indicated solar invertors hum and make less noise than a central air conditioning unit. She noted Vice Chair Gardner has a solar system on his home and can attest to the hum. Vice Chair Gardner remarked that he does have solar panels on the roof of his home and invertors in his basement and suggested that an inverter located in an open area may have a different impact. Ms. Holley commented that the invertors certainly can't be too loud if people can sleep in the home with them.

Mr. Weis commented that although Ms. Holley feels that there may be unnecessary or redundant language contained in the draft ordinance, that language may serve a purpose to the general public or from a legal standpoint. Attorney Norman added that when there is no ordinance standard for what the Township is attempting to regulate, then the application cannot be denied for that reason—the Board's decisions must be based on the ordinances in place.

Ms. Holley suggested that perhaps there is a redundancy in what the SADC is doing. She suggested the Board take their time in drafting an ordinance that doesn't contain unnecessary language like glare and noise standards.

Rich Spiegel of 1 Mountain Road came forward and stated, "If glare is such a big issue I think a good place to look to see if there are any complaints on glare is being that we are the flight pattern for 4 major airports why don't we contact either Allentown or Kennedy and ask if there are any complaints from the pilots on glare...in the ordinance I think I read something that if your neighbor is complaining about glare you will be in a position that you will be asked to change the direction of the panels." Vice Chair Gardner noted there is nothing in the proposed ordinance regarding Mr. Spiegel's last comment about post-installation glare. Mr. Spiegel asked why there is anything about glare in the ordinance if the Board isn't looking for someone to complain about the glare.

Mr. Sageser noted that the issue of glare came up at the County Breakfast Talk meeting. He said there was a consultant there who had installed a number of facilities in South Jersey and he recommended a glare and glint study be incorporated into the process. Mr. Spiegel wanted to know what could be done if anyone complained about glare. Mr. Weis remarked that if an applicant comes forward with a site plan to install a major solar facility, the Board will require that they demonstrate glare won't be an issue. He said, "The trigger is not a complaining neighbor, but rather an engineering review."

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Mr. Spiegel continued to express that solar panels must face south when they are installed and continued to question how the Board expected to address glare issues. Mr. DeLay suggested that an applicant may have to install a different type of buffering if there are glare issues. Mr. Spiegel stated, “What I’m seeing right now is a cost to the tax payer...you keep reviewing this and keep talking about things you don’t have to talk about in this economy, you’re taking my tax dollars.” Vice Chair Gardner suggested Mr. Spiegel stay on subject. Mr. Spiegel noted his first amendment rights. Attorney Norman commented that Mr. Spiegel has spoken at length and Vice Chair Gardner remarked that Mr. Spiegel’s public comment also added to the amount of time the Board’s professionals are kept at the meeting costing taxpayers money.

Mr. Spiegel then asked who incurs the cost of buffering solar projects. Attorney Norman commented that if the Township were to shut things down on the proposed ordinance because it costs money, the Board of Adjustment will have to play complete defense trying to protect the Township because the new State Law has deemed these facilities inherently beneficial. He noted that if the Township adopts some standards there will be control over where these facilities are located and what type of impact they will have on the Township.

Jerry Carney of 106 Boss Road came forward and expressed that the ordinance should consider protecting the landowner’s property value if solar facilities are installed next to residential lots.

Frances Gavigan of 123 Wertsville Road came forward again and expressed that the solar installation done by J&J on Route 202 is a good example of responsible stewardship. She said the solar panels are low to the ground, have surrounding landscaping, are located out of direct view of the office building and are tilted away from the highway.

Charlie Sosino came forward and identified himself as the brother of Diane Harrington. He stated he is not a Township resident and provided a printout of a SunEdison website location depicting a large scale solar installation. He stated, “A picture speaks a thousand words.”

A motion by Roger DeLay, seconded by Michael Weis to close to the public was unanimously approved.

Planner Banisch summarized the following revisions to be made to the draft ordinance:

1. The bottom of page 1: Addressing the maximum allowed clearing in the Sourland Mountain of 30,000 sq. ft.
2. Page 4, #3: The language will be changed to *and/or* as was previously noted regarding public view and/or historic resources
3. Language will be added to address minor ground mounted solar equipment
4. Language will be added to require a solar facility impact statement

Vice Chair Gardner noted for the public that this discussion was the first step in establishing a renewable energy ordinance. He indicated the ordinance will be recommended to the Township Committee who will hold hearings on the matter and there will be ample opportunity for the public to provide additional input.

Planner Banisch noted that he believes the renewable energy ordinance is consistent with the Master Plan.

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A motion by Dart Sageser, seconded by Rob Gilbert to recommend the renewable energy ordinance is moved to the Township Committee for their review with the noted revisions was unanimously approved by roll call vote.

Roll Call Vote: Dart Sageser: Yes, Rob Gilbert: Yes, Fred Gardner: Yes, Bela Kamensky: Yes, Pete Kneski: Yes, Linda Lenox: Yes, Michael Weis: Yes, Roger DeLay: Yes.

It was noted that Attorney Norman and Planner Banisch were excused from the meeting at this time, 9:30 PM.

Oral Reports

FOSPC – No report given.

Agricultural Advisory Committee – No report given.

Environmental Commission – Mr. Sageser reported there were two discussions at the meeting: The proposed solar ordinance and the usage of salt to treat winter road conditions.

Sourland Alliance – No report given.

HART – No report given.

COAH – No report given.

Wastewater Management – No report given.

AVAD Design Standards – No report given.

PB Secretary – No report given.

Chairman – No report given.

Correspondence

It was noted that there was no discussion on the correspondence listed on the agenda.

Open to the Public

It was noted that there was no public present at the meeting at this time.

Presentation of Vouchers

A motion by Rob Gilbert, seconded by Roger DeLay to pay the vouchers as listed on the agenda for payment was unanimously approved.

Mr. Kamensky commented that this was his last Planning Board meeting and extended his appreciation to all of the Elected Officials who had given him the opportunity to serve the community for the past ten years. Mr. Kamensky also stated how much he appreciated the employees of East Amwell saying, “They are some of the best I have seen and I especially thank Terri Stahl for the effort and work she has done hosting the HART Board meetings on a number of occasions over the past years.” Mr. Kamensky also extended his appreciation to Ms. Gavigan for all of her input to the Planning Board. He commented that he has served the Recreation Committee for three years and the Planning Board for seven years and stated that he hopes he made a beneficial contribution to the community over the past ten years. The Board thanked Mr. Kamensky for all of his service.

Vice Chair Gardner adjourned the meeting at 9:34 PM.

Maria Andrews, Administrative Officer

Note: These minutes have not been formally approved and are subject to change at the Board’s 1/12/11 meeting.