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September 2, 2020

VIA REGULAR MAIL & EMAIL

Ms. Alfia Schemm, Land Use Board Administrator

INDEPENDENCE TOWNSHIP

286B Route 46

PO Box 164

Great Meadows, New Jersey 07838

Re: Technical Review

Great Meadows I Solar - Use Variance Application

Block 21, Lot 38

Independence Township, Warren County

FCE No. INWL067C3

Dear Ms. Schemm:

Our office originally received the following documents in support of the above-referenced Use Variance application:

1. Township of Independence Application to The Land Use Board, dated December 9, 2019.
2. Township of Independence Land Use Board Variance Application Checklist not dated.
3. A plan entitled "Solar Farm Concept Plan, Great Meadows I, Block 21, Lot 38, Township of Independence, Warren County, NJ" prepared by Matarazzo Engineering, LLC, dated November 18, 2019.
4. Email from Land Use Board Administrator dated December 23, 2019 confirming receipt of \$200 Variance Application Fee and \$500 Variance escrow deposit.

The following additional information was received on June 17, 2020:

5. A plan entitled "Solar Farm Concept Plan, Great Meadows I, Block 21, Lot 38, Township of Independence, Warren County, NJ" prepared by Matarazzo Engineering, LLC, dated May 15, 2020.

PROJECT SUMMARY

The applicant in this matter, Pio Costa Enterprises, L.P., is seeking a Use Variance to permit the installation of a photovoltaic electric generation system (Solar Farm) on Block 21, Lot 38. Lot 38 is predominantly farmland with some wooded areas comprising a total of approximately 156 acres. The western portion of the property fronts on NJ. Route 46 and much of the easterly portion of the property runs along the Pequest River.

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The proposed solar farm encompasses an area of approximately 24 acres located at the easterly side of the property along the Pequest River. The proposed power output of the facility is 5 MW. Driveway access is provided from N.J. Route 46 and the facility is to be connected to the existing JCP&L power grid in N.J. Route 46.

The property is located in the Township's COM/PROF (Commercial/Professional Zone) where photovoltaic systems are not a permitted, accessory or conditional use. It is also located within the Highlands Planning Area. A Use Variance pursuant to N.J.S.A. 40:55D-70d is required and although not being applied for at this time, Preliminary and Final Site Plan will ultimately be necessary to permit construction of this facility. This review will focus strictly upon the Use Variance application.

The applicant appeared before the Land Use Board at the July 20, 2020 meeting and the Use Variance Application was determined to be complete subject to the following being provided prior to the public hearing:

1. The applicant shall provide proof that property taxes are current.
2. The applicant shall provide proof of publication of the hearing notice in the newspaper.
3. The applicant shall provide proof of written notice to property owners within 200 feet.

It is our understanding that the public hearing on this matter is scheduled for the September 21, 2020 Land Use Board meeting.

INITIAL TECHNICAL REVIEW – USE VARIANCE

We offer the following technical comments on the use variance:

1. Lot 38 comprises approximately 156 acres located COM/PROF (Commercial/Professional) and B (Business) Zoning Districts. The proposed solar farm is situated on approximately 24 acres of the site at easterly end of the property along the Pequest River within the COM/PROF Zone. Solar facilities are not a permitted use, accessory use or conditional use within the zone, necessitating a “d1” variance for a Use not permitted within the zone.
2. The Municipal Land Use Law designates solar facilities as an “inherently beneficial use”. For the granting of a “d1” variance the statute requires proof that there are (1) special reasons for the granting of the variance which are found to promote the general welfare of the community, and (2) the granting of the variance will not impair the intent of the Zone Plan/Master Plan and will not be a substantial detriment to the public good.
3. The special reasons or positive criteria for the granting of the variance is satisfied by virtue of the statute defining solar facilities as an inherently beneficial use.



4. Testimony must be provided by the applicant to justify that the negative criteria is satisfied. The Medici court case provides that by an enhanced quality of proof the applicant must identify the various public interests which may be at stake in the granting of the variance and balance any detriments to those interests against the inherently beneficial nature of the use. Potential issues which may need to be considered, as applicable, are the loss of agricultural lands, impacts within the flood plain or riparian zones of the Pequest River, disturbance of steep slopes, impacts on critical habitat and forest resources, impacts on cultural or historic resources, and the disruption of scenic views and views from nearby residences or buildings.
5. We recommend that Mr. Banisch review and provide further comments on this Use Variance application.

Should the Board approve this Use Variance application, the applicant will need to submit an application for Preliminary/Final Site Plan approval in order to proceed further towards the construction phase of this project.

I trust this report is satisfactory. Please do not hesitate to contact me if you have any questions.

Very truly yours,

FINELLI CONSULTING ENGINEERS, INC.

Michael S. Finelli, P.E., P.P., C.M.E.
Land Use Board Engineer

- c: All Land Use Board Members, via Board Administrator
Eric Bernstein, Esq., LUB Attorney, via email only
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Kevin Krystopik, Esq., via e-mail only
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