

**BLAIRSTOWN TOWNSHIP  
LAND USE BOARD  
February 18, 2019**

**MINUTES**

The Blairstown Township Land Use Board met in a regular session on Monday, February 18, 2019, at 7:30 pm at the Blairstown Municipal Building, 106 Route 94, Blairstown, New Jersey. The following members were present: David Keller, Nicholas Mohr, Rosalie Murray, Michael Repasky, Steven Sikkes, James Sikkes, Wickliffe Mott, Marianna Stires, and Norman Talley. The following members were absent: Barbara Green, Richard Mach, and Debra Waldron. Also present were: Board Engineer, Ted Rodman, Board Attorney, Roger Thomas, and Board Secretary, Linda Grohs.

**SALUTE TO THE FLAG:** was recited.

**ADMINISTRATION OF OATHS:**

Roger Thomas administered the Oaths of Office to Board members: David Keller, Nicholas Mohr, Rosalie Murray, Steven Sikkes, Wickliffe Mott, Marianna Stires, and Norman Talley.

**ROLL CALL:** was taken.

**THE SUNSHINE STATEMENT:** was read.

Meeting was called to order by Roger Thomas, Esq. who stated:

“Adequate notice of this meeting of the Blairstown Township Land Use Board has been provided in accordance with the Open Public Meetings Act (Chapter 231.P.L. 1975)”.

**REORGANIZATION:**

At this time, Roger Thomas called for nominations for the 2019 Chairperson.

Jim Sikkes was nominated as Chairman by David Keller and seconded by Rosalie Murray. There were no further nominations made for Chairperson.

**Action:** Roll call vote: Keller, Mohr, Murray, Repasky, S. Sikkes, J. Sikkes, Mott, Stires, Talley – yes.

Chairman Sikkes assumed the Chair, and called for nominations for the 2019 Vice Chairperson.

David Keller was nominated as Vice Chairman by Mrs. Murray and seconded by Mr. J. Sikkes. There were no further nominations made for Vice Chairman.

**Action:** Roll call vote: Keller, Mohr, Murray, Repasky, S. Sikkes, J. Sikkes, Mott, Stires, Talley – yes.

At this time Chairman Sikkes, called for the following nominations:

**Action:** The nomination for Roger Thomas, Esq., Dolan & Dolan, to serve as Board Attorney, was duly made by Mrs. Murray, seconded by Mr. Keller. Roll call vote: Keller, Mohr, Murray, Repasky, S. Sikkes, J. Sikkes, Mott, Stires, Talley – yes.

**Action:** The nomination for Ted Rodman, Rodman Associates, to serve as Board Engineer, was duly made by Mr. Keller, seconded by Mrs. Murray. Roll call vote: Keller, Mohr, Murray, Repasky, S. Sikkes, J. Sikkes, Mott, Stires, Talley – yes.

There was no nomination for Land Use Board Planner. Chairman Sikkes explained the Board has no need at this time.

**Action:** The nomination for Linda Grohs to serve as Board Clerk, was duly made by Mrs. Murray, seconded by Mr. S. Sikkes. Roll call vote: Keller, Mohr, Murray, Repasky, S. Sikkes, J. Sikkes, Mott, Stires, Talley – yes.

**Action:** The nomination for Barbara Green to serve as Board Secretary, was duly made by Mr. Keller, seconded by Mr. J. Sikkes. Roll call vote: Keller, Mohr, Murray, Repasky, S. Sikkes, J. Sikkes, Mott, Stires, Talley – yes.

### **Resolution Complying with the Open Public Meetings Act**

This Resolution will include adoption of the Schedule of Meetings and designation of The New Jersey Herald, Star Ledger, and Express Times as official newspapers, complying with the Open Public Meetings Act.

**Action:** A motion was duly made by Mr. Mohr, seconded by Mr. Keller, to adopt the Schedule of Meetings. Roll call vote: Keller, Mohr, Murray, Repasky, S. Sikkes, J. Sikkes, Mott, Stires, Talley – yes.

### **LAND USE BOARD DEADLINE DATES:**

Chairman Sikkes declared that submission of information supporting applications must arrive at Town Hall **10 calendar days prior to meetings**. He explained this is an effort to give the Board members enough time to review the documents.

### **MINUTES OF PREVIOUS MEETINGS:** (As distributed prior to the meeting date).

Minutes of the December 17, 2018 Regular Meeting of the Land Use Board were carried to the March 18, 2019 meeting for changes/corrections. There was no meeting in January 2019.

### **APPEAL OF ADMINISTRATIVE OFFICER:** None

### **RESOLUTIONS:** None

### **COMPLETENESS:**

#### **LB #01-19, Tangent Energy Solutions/Blair Academy Solar Facility, Block 1402, Lot 11 - Preliminary and Final Major Site Plan and *D Use Variance***

Attorney Michael Selvaggi introduced himself from Lavery, Selvaggi, Abromitis & Cohen, on behalf of Tangent Energy Solutions. Application was filed in December 2018, and Mr. Rodman issued a report in January 2019 with a number of comments. Plans were further revised to be consistent with Mr. Rodman's comments. Mr. Rodman issued another report on Friday, February 15 (dated February 14), that indicates a few items that Mr. Selvaggi feels the Board needs to consider granting waivers on for completeness.

The first item (comment #1) is the most significant, addressing the LOI. As background, this application is being pursued by Tangent on behalf of Blair Academy. They will be erecting a solar facility to provide energy for Blair Academy. This is Blair Academy's second endeavor as they had a company in 2016 pursue a similar project, and that company went bankrupt. Prior to the bankruptcy, they had completed the wetlands delineation and filed the application with the DEP. Prior to going bankrupt, the company did not notify Blair Academy they had the application pending and they had withdrawn the application. Their current engineer, Mr. Pelizzoni, had the benefit of the wetlands delineation that had been done, and he based the layout in accordance with that delineation. They feel confident that the siting of the facility as

laid out by Mr. Pelizzoni will be consistent with the LOI. They understand Mr. Rodman's concerns and do not ask that the LOI requirements be excused; they simply ask the Board to grant a waiver and make it a condition of approval. They will promptly apply for the LOI and if it changes, they will return to the Board to change the array. They feel there is not a risk of this happening.

Mr. Thomas asked Mr. Rodman that in his report of February 14, 2019, recognizing there are a number of requested waivers, if he has a recommendation concerning the issue of completeness. Mr. Rodman stated yes, that Items 1-10 become conditions of approval if the Board acts tonight.

Mr. Thomas asked the Chairman and Members of the Board if they concur with Mr. Rodman that they deem the application complete.

Chairman Sikkes asked for a motion to deem complete.

**Action:** A motion was duly made by Mr. Keller, seconded by Mrs. Murray, to deem LB #01-19, Tangent Energy Solutions/Blair Academy Solar Facility, Block 1402, Lot 11 - Preliminary and Final Major Site Plan and *D Use Variance* complete. Roll call vote: Keller, Mohr, Murray, Repasky, Mott, Stires, Talley, and J. Sikkes – yes. Abstain – S. Sikkes. Absent – Green, Mach, and Waldron. Mr. Thomas stated now that the application has been deemed complete, there has been a submission of additional maps and since received in advance they can be assumed to be part of the original application. Mr. Selvaggi agreed.

Mr. S. Sikkes is recused from this application, and due to personal circumstances he left the meeting.

#### **PUBLIC HEARING:**

#### **LB #01-19, Tangent Energy Solutions/Blair Academy Solar Facility, Block 1402, Lot 11 - Preliminary and Final Major Site Plan and *D Use Variance***

Mr. Selvaggi explained that this is the property known as Lot 11 in Block 1402 which is an 88 acre tract across from Blair Academy. They are pursuing a solar energy facility to be consistent with Blairstown ordinance Section 19-611 and except for Rt. 94 separating the campuses they would be fully conforming. Mr. Thomas rendered an opinion about five weeks ago on the question of whether this facility could exist on this property by itself. Mr. Thomas' assessment (and Mr. Selvaggi agrees) that the ordinance reads that a solar facility can be used in combination or accessory to the principal use. The energy to be generated is all going to be used to offset the demands or needs of Blair Academy, but because it is not on the same property (due to Rt. 94), this facility is going to be a stand-alone. The energy cables will be run under Rt. 94 and will get to the campus in that manner. Because of the technicality, they need a use variance and a site plan.

Mr. Thomas swore in Andrew Meserve, Tangent Energy Solutions in Kennett Square, PA. Tangent is an energy company; they build and operate many solar and gas generation facilities. They have an energy management platform that helps customers, like Blair Academy, manage high energy cost. They are here tonight with Jim Frick from Blair, Jessica Caldwell (Planner), Rich Pelizzoni (Engineer), and Michael Selvaggi (Attorney). They are proposing to build a 990 kw solar array and that energy will be directly consumed by Blair through a hard wire cable, bored under Rt. 94. There is not a lot of construction and it will connect with Blair's electrical infrastructure. They have an application in with the DOT as it is going under a state highway. Tangent has done this with a number of schools in the Bethlehem area and in New York boroughs of Manhattan and Staten Island. They have a lot of experience in building and operating energy plants in North America. Mr. Meserve stated that these are long-term agreements with the school because they are responsible for operating the system well and only get paid if it makes electricity and the school can buy it.

Mr. Selvaggi asked if the panels are grounded in concrete foundations and asked for an explanation of the installation. Mr. Meserve stated that these are ground-mounted solar systems with a fixed array. They don't track the sun. They pound the post into the ground and then put a racking system on the posts. They use the soil and the compactants of the soil to hold the system in place. Pending the acceptance of zoning, they will get a geotech engineer to do soil samples to understand how far to pound the posts, the wind load, the snow loads, etc. This is an unobtrusive construction process. There is a small concrete pad to hold the electrical equipment and they are responsible for mowing and maintaining the property.

Mr. Keller stated that they said the energy from this facility will be directed to Blair Academy, but there is a note on the plans that says it is going to be connected to the grid on Park Street. Mr. Meserve said one of the drawings shows where they go under Route 94 and tie in. There is a pole line on Park Street where Blair's meter is from JCP&L and the tie-in will be on Blair's side of that meter. Mr. Keller said the energy is going directly to Blair and not to general distribution. Mr. Meserve confirmed.

Mr. Mohr stated that it is a grid tie system so the grid functions as a battery if the generation is in excess of Blair's instantaneous consumption. Mr. Meserve said that was correct and through the net metering rules of New Jersey. If there is a time when the system produces more electricity than Blair is currently using, it actually stops and spins backwards. The key is how many times you spin forward at the end of the month. Mr. Mohr said you are limited to and still have to be a net consumer at the end of the year. You cannot produce more than you can consume throughout an entire year.

Mr. Selvaggi asked the size of the panels; Mr. Meserve said they are 3 ft. x 5 ft. and made from the same silicone used by Intel and Texas Instruments semiconductors. When a photon hits it, electrons scatter and it is a natural principle, the same principle that Bell Labs invented approximately 60-70 years ago. Mr. Selvaggi asked if there were any hazardous materials in the panels, and Mr. Meserve answered they are very pure silicone and even the solders do not have lead in them anymore.

Mr. Rodman questioned where they show going under Route 94 and if that is anywhere near where the cattle tunnel is now. Mr. Meserve said it is close, and Mr. Rodman was asking if they had to drill, were there any alternatives. Mr. Meserve stated that, when checking with the Department of Transportation, they would rather they actually drilled, just a vertical and horizontal drilling under the road. The DOT was concerned that if they used the old cattle crossing and they had to repair Route 94 in the future, then they would have to move that. Mr. Rodman thought cost-wise it would be more expensive to drill than to use the cattle crossing which is still there and usable.

Mr. Selvaggi stated that they would be mowing the grass and asked what the anticipated maintenance schedule and frequency would be on the site. Mr. Meserve stated that they do semi-annual maintenance with trucks that test all the voltages and to visually see that things have not been broken. They also put a camera at every site so they can see remotely what is going on. They also have a lot of instrumentation on the arrays of the sun. They have an algorithm and if it is not producing what it should be, they check the cameras to see if covered with snow. There is one truck and one maintenance person.

Chairman Sikkes asked about the screening, and Mr. Meserve said there is a seven (7) foot chain link fence around it. The site is not seen from anywhere as there is a lot of growth there. Mr. Rodman stated that the Applicant had provided some drawings, but asked for some testimony on the record for that later. Mr. Selvaggi stated that Mr. Pelizzoni had prepared those plans and will address.

Mr. Selvaggi asked how many panels will be in this array. Mr. Meserve said there are about 2,578 panels. Mr. Selvaggi stated that with a seven (7) foot fence, how high are the panels. Mr. Meserve said

they will be lower than the fence, about five (5) feet. Everything will be behind the fence and the fence will be a security since electricity is involved. Mr. Selvaggi asked how tall the shed will be. Mr. Meserve said the electrical equipment will be serviced by a standing person and will not be any taller than the fence. Mr. Selvaggi reiterated that everything will be behind the fence. Mr. Meserve said that anything outside the fence will be underground.

Mr. Selvaggi asked if, after you go under Route 94, will anything be built on Blair Academy's campus. Mr. Meserve said no.

Mr. Thomas said that Mr. Meserve stated that this was a long-term arrangement and asked how long the contract would be. Mr. Meserve said twenty (20) years. Mr. Thomas asked if Mr. Meserve felt the solar panel life would be twenty (20) or thirty (30) years; Mr. Meserve answered thirty plus (30+) years. Mr. Thomas asked if there was a renewable provision in the contract. Mr. Meserve said correct, and at the end of the standard contract the school can renew, they can buy it for what is the greater of fair market value or \$1 (for tax purposes), or they can have Tangent remove it at Tangent's cost and put the land back the way it was. Mr. Thomas stated that there is a provision (without getting into any proprietary discussion about the contract) in there that will require at the end of the contract (whenever that may be) that there will be a remediation so that the panels will be removed and the land will be restored to more or less its original state. That is in the contract and therefore a condition to that effect would not violate the terms of the contract. Mr. Meserve said that was correct.

Mr. Mott asked what would be the anticipated percentage of Blair's electrical use. Mr. Meserve said he would have to get back to him. Mr. Frick said it would be about 25%.

Chairman Sikkes asked about how the grading would affect the topography. Mr. Meserve said they will have to do a little grading and will have to check once they do the geotech testing. Mr. Selvaggi stated that Mr. Pelizzoni will address this when they go through Mr. Rodman's report.

There were no more questions from the Board and no questions from the Public.

Mr. Thomas swore in Mr. Richard Pelizzoni with the firm Whitman located in Allentown, Pennsylvania and Cranbury, NJ. Mr. Pelizzoni holds a Bachelor's and Master's Degree in civil engineering from NJIT. He has been practicing land development approximately thirty-five (35) years. He has completed about 60 megawatts of ground managed systems in New Jersey and Massachusetts. He has testified before many Land Use Boards and Boards of Adjustment in New Jersey, mostly in Morris County, Hunterdon, and Somerset. Mr. Pelizzoni is a licensed professional engineer in New Jersey, New York, and Pennsylvania.

Mr. Selvaggi stated that Mr. Pelizzoni oversaw the plans and asked him to review them from an engineering aspect as to what is proposed on this site. Mr. Selvaggi asked Mr. Pelizzoni if these were the plans that were recently revised and he stated that was correct. Mr. Pelizzoni explained that this site is on the south side of Route 94 across from the campus itself. He located Park Street and an access driveway that services the 88 acres. They are going to concentrate on about 4 acres for the solar array. In reference to the LOI, all the wavy lines show wetlands, wetlands buffer, flood hazard area, and riparian zones. They are placing the solar array to avoid any of those sensitive lines. The solar array feeds through their equipment through the transformer switch gear, underground along the driveway, under Route 94, and ties in on the north side of Route 94. Mr. Selvaggi asked in reference to his previous comment on the LOI and having it waived for completeness, if Mr. Pelizzoni had the benefit of reviewing all the work that was previously completed. Mr. Pelizzoni agreed that he did and that he had worked with the prior firm to develop some of their mapping. This is the end result of that mapping. The application

was in Trenton for about six months and very close to being approved. Mr. Pelizzoni feels very comfortable that this will pass DOT approval.

The array has to be set on a certain slope and has a maximum slope that the panels can be set on. The slopes here range from about 15-20% slopes and they can only do 12%. They set the low end at what they thought they could raise it up to and graded their 12% into the site. This takes some earth work. He explained to Mr. Frick that they will lose this excess material somewhere on this 88 acre site. Mr. Thomas asked if there would be no removal from the overall site but that it would be lost on the four (4) acres. Mr. Pelizzoni confirmed and said some would be lost from and some would be reused on the four (4) acres. There will be no trucking offsite or Mr. Rodman will be advised. Mr. Keller stated that there does not appear to be a lot of excess from reviewing the grading plan. Mr. Pelizzoni stated that there will be about 400 yards of excess material.

Mr. Thomas asked what the remainder of the 88 acres would be used for now or intended to be used for. Mr. Rodman advised that if there is soil to be removed, the Applicant would need to get a soil removal permit from the Township and would be a condition. Mr. Selvaggi stated that one of the limiting factors would be once the LOI is obtained that there would be areas they cannot use. Mr. Pelizzoni stated that there are excessive wetlands areas and Mr. Rodman said they cannot be used for fill, and Mr. Pelizzoni agreed. Mr. Selvaggi asked what is driving the LOI concerns and where are the waterways. Mr. Pelizzoni showed on the map that there is the Paulinskill River and a flatter area adjacent to it and a wetlands area. They have put a 300 foot buffer along the wetlands line and because it is a stream there is a riparian area and a "riparian zone". There also is another river bed that shows up on the plans and they added a riparian buffer to that also which gives them another 150 feet. Mr. Thomas said this is southeast of the array. Chairman Sikkes asked what is the other river bed? Mr. Pelizzoni stated that when the other firm did their work they not only did the Paulinskill but another crossing. Both Mr. Rodman and Chairman Sikkes asked if it is the Jacksonburg Creek. Mr. Pelizzoni answered that it is a dry river bed but they attached a 150 foot buffer to that riparian zone. Mr. Mohr asked what the four (4) acres consists of now. Mr. Pelizzoni stated that it was used in the past as farmland, and there is some scrub on it. Mr. Mohr asked if it was not the area that is flat and planted with trees, and Mr. Pelizzoni confirmed. Mr. Selvaggi asked Mr. Pelizzoni to explain the contours and site profiles. Mr. Pelizzoni stated that the lay of the land along Route 94 is all uphill in the westerly direction to the site. Mr. Selvaggi stated that standing or driving on Route 94, you are looking at four (4) acres of solar panels, and asked what are you going to see. Mr. Pelizzoni showed an aerial with the array and all the sensitive lines on Sheet 12 of 14. Mr. Pelizzoni then showed a color version of the aerial view and Mr. Thomas asked that it be marked as Exhibit A-1, which is dated February 5, 2019. Mr. Pelizzoni showed a winter aerial and all the blue-gray area is the wooded area, which runs west, east, to south, along the river, and to the north. They took two sight lines, one through the northern part and one through the southern part of the site. Mr. Pelizzoni pointed out areas on the map from sight line 1. Between Route 94 and the arrays is wooded area which can be seen today. Although there are no leaves on the trees right now, there are woods, both deciduous and coniferous type of plantings and mature growth (probably 30-50 feet high) which provide nice screening between Route 94 and the arrays. It is about 160 feet at the closest point from Route 94 to the arrays. From sight line 2, there is the same type of arrangement going down and up to the site. There are trees on both sides of the lower areas where the streams are. Sight line into the arrays is looking through the trees and you really don't see much in the back. In this case, from Route 94 to the arrays is about 350 feet. Mr. Selvaggi said that nothing in the construction calls for the disturbance of either one of those profiles in terms of the trees, the slopes, or anything like that, and Mr. Pelizzoni confirmed this.

Chairman Sikkes asked if the direction of the panels caused any interference of the trees on the site. Mr. Pelizzoni said no as all the panels are to drop off on the other slope of the site and it is all downhill from Route 94 which he showed on the map.

Mr. Mohr asked about boring down under Route 94. Mr. Pelizzoni said the electrical line will come out of the arrays, there will be a trench operation down the driveway, and the bore will be underneath Route 94.

Mr. Keller stated that the Board is very sensitive to screening for solar panels as they had a bad experience with one in a much more visible area. Some of the screening died and it was a difficult situation. Sight line #1 is drawn from the height of a person's eye in a car up to a point where you have graded, but once your eye gets to that point and it follows up over the hill, I am not sure you are not going to be able to see some of the arrays. The Board needs to be sure we are not going to have a problem with screening on the site. Mr. Pelizzoni stated that this is a 45 degree and if you follow it up to the knob of the contour, you couldn't possibly see the fence. Mr. Pelizzoni offered that once constructed, the Board should walk the site with Mr. Rodman and if the Board sees something that needs screening, they would make it a part of their rule. Mr. Keller asked to have this be a condition of approval.

Mr. Mohr asked about (the sight line) from a southbound perspective from northerly down to a point closer where you look across the wet field. Mr. Pelizzoni said he did not have a sight line there. Mr. Mohr stated that the predominance of people who spend any time there, unless you are standing in an accident directing traffic, travel north or south. If you travel north, you don't see anything, but if you travel south from town, you might catch it again. Mr. Pelizzoni stated that once constructed if the Board sees anything, they will screen it. Mr. Mohr stated that as long as we are in agreement that it is beyond the scope of the two sight lines that are drawn on the print, he is in agreement with that. Mr. Pelizzoni stated from the southbound side, there are trees in the area that will not be disturbed and the same sight line will be seen from Route 94. Mr. Mohr restated that he is in agreement as long as it is not just the two sight lines shown on the drawing.

Mr. Keller stated that Note 12 refers to a clearing and demo plan and there is no clearing and demo plan in that set. Mr. Pelizzoni agreed, but they can provide one as not much clearing will be done. There are some fringes of woods to be cleared but that would be the extent of the clearing. Mr. Keller stated that it may not be necessary to provide the clearing and demo plan but it is referred to in the plan and is not there.

Mr. Selvaggi asked about the impact of stormwater runoff and having to account for that. Mr. Pelizzoni said that in 2010 or 2012 the State of New Jersey had many solar projects going on. They stated that solar panels themselves are not impervious coverage, only the posts and the concrete pad are impervious coverage. On this project and following regulations, they looked at the drainage areas in pre and post development and figured out the runoff on the site. There are three drainage areas on the site and we looked at each area (both pre and post development) and found that with the very limited impervious coverage of 70-80 square feet, they did not fall under those regulations. However, they are disturbing more than one area of the property so they do fall under those regulations for a major development. They looked at the fact that the pre and post runoff has to be the same at the same time and the same quantity CFM, and they are the same except for one area due to the slight shift of the grading done on the plan. There was a slight increase in the post condition because of the larger drainage area. Taking into account the entire drainage, there is a reduction of 2-3 CFM so essentially the pre and post runoff is the same at the same time.

Mr. Keller asked what the proposed groundcover under the solar panels will be when complete. Mr. Pelizzoni stated that they are a shade tolerant grass that has to be maintained periodically. He believes

that it is a fescue and other shade tolerant mix that will go underneath the solar panels. The Soil Conservation District has reviewed and they have made no comments.

Mr. Thomas asked if there is any requirement for any mowing. Mr. Pelizzoni said yes, and because the low end of the panel is about two (2) feet off the ground, they want to keep the vegetation lower than that because it would shade the sun. There will be a periodic mowing, and the fescue growing is about one foot high and will be maintained. Mr. Thomas stated that the semi-annual basis was for the electrical equipment but no comment with regard to the ground maintenance, but he assumes that is part of the contract. Mr. Meserve confirmed that anything inside the fence is their responsibility, and they pay a lot of landscapers.

Mr. Selvaggi asked Mr. Pelizzoni if the access in and out of the site will remain a gravel driveway. Mr. Pelizzoni stated that it is a gravel driveway now and will stay that way. Due to construction activity, the driveway will be restored on completion to its preconstruction state.

Mr. Mohr asked if there is an access road inside the fence. Mr. Pelizzoni answered that there is no access road; there is a gate and once at the gate, it will be walking or a small ATV type of vehicle. Mr. Meserve said that due to the nature of the fence and the solar modules, there is actually enough room to get a vehicle in there. Mr. Mohr's concern was that there was an emergency situation with a missing person inside the fence of one of these type facilities and there wasn't room to get in with a vehicle. Mr. Meserve stated that they like to make room to access for maintenance. Mr. Mohr stated that pickup-wide would suffice. Mr. Pelizzoni said he believes it is about 10-15 feet from the arrays to the fence so a pickup truck could get in.

Mr. Thomas assumes there is a transformer or inverter onsite. Mr. Meserve says there are multiple smaller inverters hanging from the rack. The AC wiring will go to the transformer that is on the concrete pad to bring up to a higher voltage. Mr. Thomas asked what the noise component is for the transformer. He assumes that if there are mini inverters they are not going to be a noise generator. Mr. Meserve stated that they are de minimis outside of 50 feet. Mr. Thomas asked what the closest residence is to the site, and Mr. Selvaggi confirmed he is referring to the four (4) acre site. Mr. Pelizzoni answered that the closest residence was at least 500 feet. Mr. Rodman stated that they addressed that in the EIS. Mr. Mohr asked what kind of inverters they are using and Mr. Meserve answered that they are string inverters with a high RF (radio frequency). Mr. Meserve is not sure what that means in terms of sound, and Mr. Thomas said the Board could have a sound test at the completion of the site if they are concerned. Mr. Pelizzoni said the equipment itself generates 65 decibels at the source, let alone at the property lines. Mr. Selvaggi stated that the ambient noise at Route 94 is probably louder.

Mr. Selvaggi addressed Mr. Thomas' concerns about what happens at the end of the contract. If the site was to be returned to its natural state, given the construction proposed, that would not be too difficult, correct? Mr. Pelizzoni said it is now just grass, scrub, and trees. If they pull all the posts out and panels out, once the equipment is gone, it will be back to how it was.

Mr. Rodman's report and conditions were reviewed.

- Item #1 on the LOI becomes a condition.
- Items # 2-7 and #10 were discussed.

On additional comments:

- #1 will be heard from the Planner
- #2 Mr. Rodman will handle calculations

- #3 concerns the gravel driveway being restored to preconstruction
- #4 on Indian sites was raised by Historic Preservation Committee and no sites in vicinity. Mr. Mott stated that the scales on the 100-year old maps were too hard to determine. Mr. Selvaggi also stated that if sites were found, they would stop.
- #5 Mr. Rodman will inspect re landscaping for sight lines
- #6 height of fence will be seven (7) foot high (change from 6' high)
- #7-9 were discussed
- #10 and 11 are conditions (WCPB and WCSCD approvals)
- #12 will take place (preconstruction meeting/deposit inspection escrow)

There were no questions from the Public.

Mr. Thomas swore in Mr. James Frick, 2 Park Street, Blairstown, who is the Chief Operating Officer at Blair Academy. Mr. Frick was involved in the negotiation with Tangent for the solar array. Mr. Selvaggi asked Mr. Frick how much energy the facility will help offset their current demand, and Mr. Frick answered that it will offset about 25% of their current usage. Mr. Frick also confirmed that it is a 25-year agreement. Mr. Thomas stated that the original company had financial problems, and that Mr. Meserve indicated that as part of the contract they have entered into, they understand it is their responsibility after 25 years, and that Tangent will restore the site to its original state. Mr. Frick stated that he understands this. Mr. Thomas asked if Tangent were to go bankrupt for some unfortunate reason within the 25 years, he doesn't think it is unreasonable to impose that same condition on Blair Academy, and Mr. Frick agreed.

There were no other questions from the Board and no questions from the Public.

Mr. Selvaggi explained that they need a D(3) Variance and they will offer information about the positive and negative criteria from their Planner, Jessica Caldwell.

Mr. Thomas swore in Jessica Caldwell, 145 Spring Street, Suite E, Newton. Mr. Thomas asked if she was a professional planner in the State of New Jersey for more than ten (10) years, and Ms. Caldwell answered yes and that it is twelve (12) years. Mr. Thomas asked if she has been qualified as a professional planner in New Jersey before Planning Boards, Land Use Boards, and Zoning Boards, and Ms. Caldwell confirmed.

Mr. Selvaggi asked Ms. Caldwell to provide her opinion as to whether the application is entitled to D(3) variance relief and why.

Ms. Caldwell stated that the site is just under 89 acres and as testified they are proposing to disturb about four (4) acres to construct an accessory net metered solar use facility for Blair Academy. This means that all energy as is classified will go to Blair Academy or into the meter to offset their use. This will be approximately 25% of what they use, not more than 100% of what they use.

The Ordinance conditionally permits solar energy systems of this type, essentially in all zones in the community according to 19-611. While this is an accessory net metered use, it is not on the same lot as Blair Academy. Since this is the way the conditional use ordinance is set up, it does not meet the conditions of that Ordinance. They are required to get a D(3) conditional use variance where they don't meet all the conditions of the conditional use.

The governing case for this type of variance is Coventry Square, US Board of Adjustment. In that case the court stated that a conditional use application's inability to meet all the conditions doesn't necessarily negate the appropriateness of the site for the use. Coventry Square found that conditional uses are presumed by the zoning ordinance to be suitable for the site given the certain conditions that are in the

ordinance. They are essentially deemed permitted uses. The Applicant needs to answer (in the D(3) conditional use variance) whether the site is still suitable for the use despite not meeting all the conditions. The main condition not being met is that the site is not on the same side of Route 94 as Blair Academy.

There are a couple of other conditions involved with this ordinance. Section 19-611 C. (2) (b) states that the ground installation is permitted in the side or rear yard of said lots provided, however, that if said solar energy collection panels are visible to residential lot lines or zones, the lot owner shall provide buffering. The site is set back quite far from the road, and sight line profiles have been shown that the use will not be seen from the road. They have agreed according to this condition to provide buffering if necessary. Ms. Caldwell thinks they meet the essence of this condition, however it is difficult to say if they are in the side or rear yard as there is no principal structure.

The third condition is about architectural considerations which address exposed hardware, supporting structures, framing, and piping. All of this shall be finished in non-reflective surface and consistent with whatever color scheme of the principal building on the lot. Since there is no principal building or color scheme to match, everything within the fenced area will be non-reflective, essentially a neutral color. They feel that it won't be seen by anyone other than those traveling onto the site to inspect it or maintain the property. They feel that this essentially meets that condition.

With respect to being an accessory use on a separate lot, there is really no negative impact. The site is quite large, being almost 89 acres and only impacting four (4) acres. They believe it will not be visible, it will have no sound, noise, glare, or any kind of exterior impacts to the adjacent properties. Given that the condition is that it is accessory to another structure really is that the structure is just across the street. Ms. Caldwell doesn't feel that any of the items they are not meeting or may be just close to meeting within the conditional use ordinance negatively impact the site in any way that it cannot accommodate this use. Again, they have to meet negative criteria which is no substantial detriment to the public good. There are no exterior impacts, and they will buffer where any might be seen after the site is constructed. Ms. Caldwell doesn't feel there is any impairment to the zone plan or ordinances, given the fact that it is a conditionally permitted use and it essentially meets the conditions as if it was on the same lot as the permitted use.

Ms. Caldwell feels that it meets all the burdens of the statutory criteria and the variance could be granted by the Board.

There were no questions from the Board and no questions from the Public.

Chairman Sikkes asked if there were any questions from the Public in regard to this application and there were none.

Mr. Selvaggi stated that he hopes the Board agrees that they have demonstrated their entitlement and realizes that there are some conditions that Mr. Thomas will walk the Board through. He believes that this is an application that deserves approval of the conditional use variance as well as the site plan approvals.

Mr. Thomas reviewed the conditions of granting the variance as follows:

1. Representation by applicant that, at the conclusion of the useful life of the project, the site will be restored by this applicant, Tangent or its successors or assigns, or in the unfortunate event that something should happen to Tangent that it will be the responsibility of Blair Academy to assume that responsibility. This was agreed to by Mr. Frick of Blair Academy.

2. It would be agreed that there will be additional plantings, if necessary and as may be necessary, along the view corridor of Route 94. This is not necessarily just at the view points referenced on the map but also anything along Route 94 within a reasonable distance to assure there is no reasonable view alongside this corridor.
3. Additionally, there would be an agreement for regular maintenance of the groundcover by the applicant.
4. Ms. Caldwell mentioned and it is inherently in the plan, but the materials to be used onsite will be non-reflective materials.

Mr. Thomas then reviewed comments on Mr. Rodman's report as follows:

1. With regard to completeness, this would be subject to the LOI and the DEP.
2. This includes the review by Mr. Rodman of the stormwater calculations
10. & 11. Outside agency reviews and approvals (WCPB and WCSCD)
12. The requirement for a preconstruction meeting with appropriate escrow fees in place.

Lastly, the payment of all appropriate fees and taxes.

Chairman Sikkes asked for a motion to approve the D Variance.

**Action:** A motion was duly made by Mrs. Murray, seconded by Mr. Keller, to approve the D Use Variance with Conditions for LB #01-19, Tangent Energy Solutions/Blair Academy Solar Facility, Block 1402, Lot 11. Roll call vote: Keller, Mohr, Murray, Repasky, Mott, Stires, and J. Sikkes – yes. Absent – Green, Mach, S. Sikkes, and Waldron.

Chairman Sikkes asked for a motion to approve the Preliminary and Final Major Site Plan.

**Action:** A motion was duly made by Mr. Keller, seconded by Mrs. Murray, to approve the Preliminary and Major Site Plan with Conditions for LB #01-19, Tangent Energy Solutions/Blair Academy Solar Facility, Block 1402, Lot 11. Roll call vote: Keller, Mohr, Murray, Repasky, Mott, Stires, and J. Sikkes – yes. Absent – Green, Mach, S. Sikkes, and Waldron.

### **CORRESPONDENCE:**

**Township Attorney Dawn Sullivan's Letter dated January 4, 2019, re Alert Bulletin – Federal Communications Commission Order on Wireless Broadband Development Includes a New "Shot Clock" on Municipal Review** – Dawn Sullivan to discuss with Township Committee and/or prepare recommended Ordinance to create a "Right-of-Way" Permit System to protect the aesthetic requirements of the municipality's ROW.

**Roger Thomas' Letter to Land Use Board Secretary dated January 14, 2019 – First Presbyterian Church Deed** - This letter, accepting Deed from a legal viewpoint, was requested by Charles O'Connell, Esq., attorney for First Presbyterian Church.

### **Roger Thomas' Letter to Land Use Board – Annual Report 2018**

Mr. Thomas stated that his letter to the Land Use Board attaching the 2018 Annual Report must be reviewed and approved and referred to the Governing Body. He reviewed the variances acted upon by the Land Use Board and does not feel that any require a change in the ordinances.

Chairman Sikkes asked for any questions from the Board on Mr. Thomas' report. Mr. Repasky asked that even though there were ordinance changes which are a result of some of these variances, they have already been taken care of. Mr. Thomas confirmed this.

Chairman Sikkes asked for a motion to approve Mr. Thomas' report.

**Action:** A motion was duly made by Mr. Mohr, seconded by Mr. Repasky, to approve Mr. Thomas' 2018 Annual Report to the Land Use Board. Roll call vote: Keller, Mohr, Murray, Repasky, Mott, Stires, Talley, and J. Sikkes – yes. Absent – Green, Mach, S. Sikkes, and Waldron.

**New Jersey Planner** – November / December 2018

### **OTHER BUSINESS:**

**Master Plan for 2020** – Copies of the Resolution adopting the 2010 Master Plan Re-Exam and the Periodic Re-Examination Report for Its Master Plan dated September 2010 were emailed and are in Land Use Board Members' packets to begin the discussion for this topic. Original Master Plan and prior re-exams are available for review in the Land Use Secretary's Office. A copy of the Rutgers slide on Master Plan Elements and its reexamination has been included in packets.

Chairman Sikkes advised that everyone received a copy of the Master Plan and everyone must review and give input to Board Secretary to review at the March meeting.

### **NEW BUSINESS:**

**Blairstown Open Space Plan** – submitted by Joel McGreen. This plan needs review and adoption by the Land Use Board as an element of the Municipal Master Plan.

Mr. Joel McGreen of the Open Space Committee advised that their intent is to revise the Open Space Plan to get any additional funding for Green Acres. The original Open Space Plan is from 2001; it is obviously time to be redone. The plan has to be approved by the Land Use Board, included in the Township's Master Plan, and there have to be two public meetings associated with it.

The plan advises what they have preserved so far which is roughly 1,100 acres of land, half of it is open space and the other is farmland preservation. In terms of open space, the Township Committee does not want to own additional land. They are actually trying to sell three (3) lots currently to the Parks and Recreation Division of the DEP. What is stated in the plan is that they will tend to partner with land conservancies so that the Township will not have to own properties and pay the maintenance upkeep of owning additional properties. In the past the Township has partnered with Ridge and Valley on at least three (3) projects for about 600 acres. Any other conservancy that wants to pursue this again, they might partner with. They currently have about \$165,000 in funding that was going to be used for a property on Route 94, but the owner reneged on the contract. They would like to use the money on a future project and it has been extended to the end of 2019 whether they get to close on a new project. The intent is to get this approved and they have another ten (10) years to get funding and to preserve additional properties.

Mrs. Murray said she had no questions, and that Mr. McGreen had done a super job.

Mr. Repasky commented that when drawings are provided, the roads should be put in a little bit darker so that they can see them. They all know the roads but they don't know where all the creeks are that show up. Mr. McGreen advised that there is a larger map outside.

Mr. McGreen questioned the Board on public meetings and if it would be with the Land Use Board and for the next two months. Mr. Thomas stated that they have to be noticed. Today would be one public meeting and next month would be the second meeting. If there is any comment from the Public that would be incorporated, then the Board can adopt it.

**Ordinance No. 2019-02:** An Ordinance to amend Chapter 19 “Land Development”, Section 19-901 “Fees” of the Code of the Township of Blairstown (Zoning Permit Fee Revisions).

Chairman Sikkes advised that he has discussed this with the Zoning Officer and the Township Committee, and the fees definitely have to be changed.

Mr. Thomas advised that the Board has to make a determination as to whether this Land Development Ordinance is consistent with the Master Plan and it is for many reasons.

Chairman Sikkes asked for a motion to approve Ordinance No. 2019-02.

**Action:** A motion was duly made by Mr. Keller, seconded by Mrs. Murray, to approve Ordinance No. 2019-02. Roll call vote: Keller, Mohr, Murray, Repasky, Mott, Stires, Talley, and J. Sikkes – yes. Absent – Green, Mach, S. Sikkes, and Waldron.

**PUBLIC PORTION:**

Mr. Adam Baker, a potential new member of the Land Use Board, introduced himself. He moved into Blairstown in 2017. Mr. Thomas noted that Mr. Baker was a member of the Allamuchy Land Use Board and was a contributor to that Board so it is not that he is coming with no experience.

Mr. Mott questioned if the Board was supposed to vote on the Open Space Plan for acceptance. Both Chairman Sikkes and Mr. Thomas replied that no, there have to be two meetings and then the vote.

**VOUCHERS:** Professional services rendered.

**Action:** Upon a motion duly made by Mr. Keller, seconded by Mrs. Murray, escrow vouchers, as attached to these minutes, were approved. Roll call vote: Keller, Mohr, Murray, Repasky, Mott, Stires, Talley, and J. Sikkes – yes. Absent – Green, Mach, S. Sikkes, and Waldron.

**ADJOURNMENT:**

Chairman J. Sikkes asked the Board for a motion to adjourn.

**Action:** Upon a motion duly made by Mr. Mohr, seconded by Mr. Keller and unanimously carried, the meeting was adjourned at 8:58 pm.

Respectfully submitted,

Linda J. Grohs, Board Secretary