

1 PUBLIC HEARING
2 GREENE TOWNSHIP ZONING HEARING BOARD
3 -----X
4 PENN-MAR VARIANCE APPLICATION :
5 -----X
6 TRANSCRIPT OF PROCEEDINGS
7 BEFORE: GREENE TOWNSHIP ZONING HEARING BOARD
8 DATE: May 26, 2005
9 LOCATION: Greene Township Municipal Building
10 1145 Garver Lane
11 Scotland, PA 17254-0215
12 TIME: 5:00 p.m.
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14 BOARD MEMBERS:
15 Lee Kyler, Chairman
16 Emery Elbel
17 Ernie Turner
18
19 Also Present:
20 Travis Brookens, Zoning Officer
21 Dan Bachman, Assistant Zoning Officer
22 Philip H. Spare, Esquire (Penn-Mar Ethanol)
23 Fred Antoun, Esquire (Citizens for Quality
24 Environment)

1 C O N T E N T S
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3 No witness

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E X H I B I T S

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7 Stipulation of May 16th entered into evidence.

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P R O C E E D I N G S

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3 THE CHAIRMAN: I'll call the
4 meeting of Greene Township Zoning Hearing Board to
5 order. We will now hear from the assistant zoning
6 officer.

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7 MR. BACHMAN: Public notice was
8 posted in the Public Opinion. It reads as follows:

8 Notice of public meeting is hereby given pursuant
9 to the provisions of Pennsylvania Municipalities
10 Planning Code, Act 247 and 170 as amended and the
11 Greene Township Zoning Ordinance as amended.

12 The purpose of said public
13 hearing is for the Greene Township Zoning Hearing
14 Board to vote on the pending application of
15 Penn-Mar Ethanol, LLC for a dimensional variances
16 on the building height limitation of 45 feet and an
17 appeal determination of the zoning officer, whether
18 this proposed facility should be processed as a
19 permitted use or a conditional use.

20 Public hearing for this
21 decision is scheduled for Thursday, May 26, 2005 at
22 5:00 p.m. at Greene Township Building, 1145 Garver
23 Lane, Scotland, Pennsylvania.

24 The hearing is open to the

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1 public. Any person who needs accommodation in
2 order to gain access, should call the Township
3 prior to the public hearing date.

4 THE CHAIRMAN: Okay. This
5 meeting is to consider and vote on the various
6 application of Penn-Mar Ethanol L.L.C. and the
7 appeal of DeEtta Antoun and Citizens for a Quality
8 Environment.

9 We will proceed to discuss and
10 vote upon the matters before us. We will ask our
11 Solicitor to guide us on how to proceed.

12 MR. CLEAVER: Mr. Kyler, is

13 there anybody here representing Penn-Mar, an
14 attorney?

15 MR. SPARE: Yes, Phil Spare.

16 MR. CLEAVER: And Mr. Antoun, it
17 occurs to me that the stipulation that Penn-Mar and
18 Citizens for a Quality Environment entered into on
19 May 16th has not been made officially part of the
20 record. Would you gentlemen stipulate that that
21 stipulation can be part of the record?

22 MR. ANTOUN: I would on behalf
23 of my clients, yes.

24 MR. SPARE: Yes.

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1 MR. CLEAVER: I will have to
2 get a copy to make it a part of the record. There
3 is another housekeeping matter that needs to be
4 taken care of before you gentlemen proceed to
5 deliberate on this matter, and one thing that we
6 have to decide is in that stipulation of May 16th
7 it was stipulated that the exhibits of Mrs. Antoun
8 and Citizens for a Quality Environment, which you
9 recall is in this booklet that was presented at
10 that time. In the brief, as you know, that was
11 supplied, I supplied to you, there was an objection
12 by Penn-Mar's counsel that these had not been
13 offered into evidence. As a result of the
14 stipulation, it was stipulated that they are in
15 evidence and, you know, therefore, you are to
16 consider them except Tab 4 was objected to by
17 Penn-Mar on the basis of hearsay. Mr. Antoun

18 responded that they were not offered for the truth
19 of what was in there and; therefore, a decision is
20 going to have to be made whether or not No. 4 is
21 admitted into evidence on behalf of the appellant
22 in the case of the appeal from the zoning officer,
23 and those opposed in the case of Citizens for a
24 Quality Environment.

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1 Hearsay, basically, is a legal
2 objection to not only testimony, and the most
3 classic form that most people hear is Mr. A
4 testifies that he heard B say this, and the
5 objection is it's hearsay because an individual
6 can't cross-examine Mr. B to see if he really said
7 it or why he said it or the nature of why he said
8 it.

9 That same hearsay objection is
10 also applicable to written things such as a letter,
11 an affidavit. In this particular case the
12 objection is made to Tab 4 on the basis of the
13 applicant, Penn-Mar, not being able to examine the
14 source.

15 Everybody has stipulated in
16 that May 16th stipulation that if DeEtta Antoun --
17 if DeEtta Antoun was to testify, she went to the
18 Google search engine on the Internet, hit ethanol
19 distilleries or refineries, and this is the
20 product. So there is no question that what is
21 before you legitimately came off the Internet as a
22 result of what Mrs. Antoun obtained.

23 The question, however, is that
24 the applicant's attorney can not cross-examine the

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1 author of what is in Tab 4. I considered that and
2 on that basis I feel it is hearsay and it is not
3 admissible.

4 THE CHAIRMAN: So the first
5 thing we have to decide....

6 MR. CLEAVER: It's up to you to
7 decide whether or not you want to consider Tab 4.

8 MR. ELBEL: The way I see it,
9 since there is no way of cross-examining and so on,
10 I would make a motion that, yes, it would not be
11 admissible.

12 THE CHAIRMAN: Okay. I have a
13 motion to say that it is not admissible. Do I have
14 a second?

15 MR. TANNER: Second.

16 THE CHAIRMAN: Move and
17 seconded that we not accept Tab 4 as admissible.
18 All in agreement say aye. Opposed. None.

19 (Whereupon, the motion passed
20 3-0.)

21 MR. CLEAVER: I think the next
22 thing you should do is proceed to determine the
23 essence of the appeal of DeEtta Antoun and the
24 Citizens for a Quality Environment from the

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1 decision of the zoning officers.
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2 THE CHAIRMAN: That's where we
3 decide whether it's in a heavy industrial district?

4 MR. CLEAVER: Whether or not an
5 ethanol is a permitted use in a heavy industrial
6 district.

7 MR. ELBEL: Mr. Chairman, I
8 made two trips to the site myself. Well, once by
9 myself, and went down the road from where, I think,
10 the roofing factory -- I don't remember what the
11 street is -- but at any rate, you know, after
12 looking over there -- and on a second occasion you
13 and I both went out and with Letterkenny officials
14 and, of course, they gave us a good in-depth site
15 study at the time and, you know, after I looked it
16 over, you know, I was under the impression that
17 there was lots of homes that were well within view
18 of the site, and I couldn't see too many. And not
19 only that, the buildings that are already there
20 seem to me to fit right into the type that you
21 would have in a heavy industrial type of
22 environment.

23 THE CHAIRMAN: That's true.
24 There were several chimneys and so-called towers

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1 that belonged in a heavy industrial district. And
2 the proposed plant is in an industrial park, which
3 is what we had the tour through the industrial park
4 and saw the different areas where they were
5 discussing.

6 MR. ELBEL: Well, the thing
Page 7

7 that I'm concerned about is the fact that there are
8 a number of other manufacturing businesses out
9 there that would or would not fit in if a complaint
10 was filed like it is in this case here.

11 Agway is out there and Gabler
12 Trucking and Franklin Clothing is out there. Are
13 they considered heavy industrial manufacturing?
14 Where is the difference? It almost appears to me
15 like there may be a case of discrimination.

16 THE CHAIRMAN: It's considered
17 large scale manufacturing, and I think we ought to
18 ask our Solicitor for the definition of large scale
19 manufacturing.

20 MR. CLEAVER: The first thing
21 that you have to look at is a permitted use in this
22 district is large scale manufacturing.

23 Pennsylvania cases that define
24 manufacturing as taking one product and changing it

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1 into an entirely different product. The cases say
2 that the change cannot be merely cosmetic. It
3 can't be incidental. It must be an actual change
4 of a substance from one substance to another
5 substance.

6 So what you have to decide is
7 whether or not what is proposed here, which is
8 changing corn into alcohol, meets that definition
9 of manufacturing, and whether or not that is
10 changing one thing into a different thing.

11 As far as large scale is
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12 concerned, there is no court cases that I'm aware
13 of or any legal definition of what is large scale,
14 so I think it's up to you gentlemen to decide for
15 yourself as a matter of fact whether or not what
16 you saw presented at the hearing last month
17 constitutes a large scale plant.

18 I think that's a decision
19 you're going to have to decide. And you're going
20 to have to decide whether or not manufacturing --
21 whether changing corn into alcohol, meets the
22 definition of manufacturing.

23 MR. TARNER: I just want it on
24 the record that I did visit the site. I drove

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1 around the site as much as possible, and in what
2 use to be the main gate toward Gate 6, I went down
3 the road there to what use to be the old Host
4 Engineers on Letterkenny, and I viewed that from
5 behind the warehouses.

6 Also, when I was on the site
7 driving around I also noticed that there is water
8 towers, chimneys, different structures that are
9 basically over a 45-foot ordinance.

10 THE CHAIRMAN: There is quite a
11 few of them in that area.

12 Do I have a motion to decide
13 whether this ethanol plant is a large scale
14 manufacturing plant or not?

15 MR. TARNER: I would make a
16 motion that it is a large scale manufacturing

17 operation.

18 MR. ELBEL: I'll second that.

19 THE CHAIRMAN: Motion and

20 seconded, that it is considered large scale

21 manufacturing. All in favor say aye.

22 (Whereupon, the motion passed

23 3-0.)

24 THE CHAIRMAN: Now, the next

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1 issue that we have to talk about is whether this
2 entire plant is a building. We know that the plant
3 is composed of several buildings and various
4 structures. The various tanks, elevators, columns,
5 silos, stacks, and flares are actually not subject
6 to the Greene Township height restriction or
7 requirements. So what do you want to do about
8 those things there?

9 MR. TARNER: Mr. Chairman, I'll
10 make a motion that these are not buildings. They
11 are stacks and elevators that we are considering
12 here and are not subject to the height limitation.

13 MR. ELBEL: I'll second that
14 motion.

15 MR. ANTOUN: They're not going
16 to change their mind if you yell, in case you
17 haven't noticed that.

18 THE CHAIRMAN: In accordance
19 with the Greene Township Zoning Ordinance, the
20 stack, silos, etcetera are not subject to the
21 height requirements. I have a motion and second

22 that they are not subject to the height limitation.

23 All in favor say aye.

24 (Whereupon, the motion passed

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1 3-0)

2 THE CHAIRMAN: The next issue is

3 whether we should grant a variance for the

4 evaporators on top of the process building.

5 These evaporators are really no

6 different than chimneys and chimneys are exempt

7 from the height limitation because there is only

8 four feet considered here under the diminimus --

9 it's a minor dimensional deviation from the height
10 of 45 feet.

11 So, do you want to discuss

12 about that gentlemen? We have other structures

13 that are higher than 45 feet, but they're not

14 considered under the Township height requirements.

15 The elevators or evaporators will exceed the

16 height limit by four feet. Do you want to discuss

17 that?

18 MR. ELBEL: Mr. Chairman, the

19 fact that there are a number of other structures

20 that are 160 feet, several over 100 feet, and

21 several are over 50 feet, and we are only talking

22 about a four-foot deviation here, and it is,

23 basically, an evaporator, I really feel that -- I

24 can't call that a building as per se, the top of an

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1 evaporator.

2 As a matter of fact, I am going
3 to make a motion that we go on the diminutive rule
4 with this minor deviation of four feet.

5 MR. CLEAVER: May I ask for
6 clarification? What is the nature of your motion
7 pertaining to the variance itself, the variance
8 application. Can you read that back to us?

9 (Whereupon, the court reporter
10 read back the previous motion.)

11 MR. CLEAVER: I think you need
12 to clarify that motion, whether you're moving to
13 grant the variance or not grant the variance.

14 MR. ELBEL: I am moving to
15 grant the variance.

16 MR. CHAIRMAN: Second to the
17 motion?

18 MR. TANNER; Second.

19 THE CHAIRMAN: We have a motion
20 and second. All in favor say aye. Opposed. None.

21 (Whereupon, the motion passed
22 3-0.)

23 THE CHAIRMAN: I'm instructing
24 our Solicitor to prepare a written decision of this

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1 board setting forth those decisions. I'm asking
2 that we have this available for us to sign early
3 next week. After we review the written decision
4 and sign it, we will see it is distributed to the

5 public. This meeting is adjourned.

6 (Whereupon, the hearing was
7 concluded at 5:30 p.m.)

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1 C E R T I F I C A T E

2 I, MARI OVER, Court Reporter in and for the
3 County of Franklin, Commonwealth of Pennsylvania, do
4 hereby certify:

5 That prior to being examined, the witness
6 named in the foregoing hearing were duly sworn to
7 testify the truth, the whole truth, and nothing
8 but the truth.

9 That said hearing was taken before me at the

10 time and place set forth and was taken down by me in
11 shorthand and thereafter reduced to computerized
12 transcription under my direction and supervision,
13 and I hereby certify the foregoing hearing is a
14 full, true and correct copy of the transcript of my
15 shorthand notes so taken.

16 I further certify that I am neither counsel
17 for nor related to any party to said action nor in
18 any way interested in the outcome thereof.

19 IN WITNESS WHEREOF, I have hereunto
20 subscribed my name this ____ day of
21 _____, 2005.

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Mari J. Over