

# Greene County Industrial Development Authority

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## GCIDA Board Meeting Minutes September 2, 2021

### I. The meeting was called to order at 1:00 PM. Those present were as follows:

*Mike Belding, Chairman*

*George Scull, Vice Chairman*

*Greta Mooney, Secretary*

*Phil Hook, Treasurer*

*Cheryl Semonick, Board Member*

*Ernie DeHaas, Solicitor*

*Rich Cleveland, Exec. Dir – Community Development*

*Connie Bloom, IDA Associate*

#### **Phone:**

*Crystal Simmons, CDBG/HOME Director*

*Greg Firely, BCES Senior Project Manager /  
Environmental Scientist AMO Environmental  
Decisions*

#### **Public:**

*None*

### II. “If a potential conflict, you are duty bound to disclose”

### III. New Business

#### a. Solar Business Development

##### i. Lease Option Agreement

*Mr. Belding stated the sole purpose for this meeting is to go through the Lease Option Agreement and everyone has had a chance to look at the preliminary version. He continued Ernie, Gene Grimm and George had some points and the goal at the end of this is to submit the agreement back to Jamie. He explained the process was sped up due to an application window that they want to submit. Mr. Belding stated we need to have this to NJR by September 7<sup>th</sup> otherwise the next opportunity is March 2022, however, we want to make sure it is a good product and both the County and NJR is treated fairly.*

*Mr. Belding stated the easiest way is to go through the document from top to bottom. Mr. DeHaas agreed and continued that he drafted some revisions for the lease option agreement. Mr. DeHaas believes they need the Option by next week and getting the Option done first makes more sense. He continued we may be able to send the Option to them today if we come to a consensus. Mr. DeHaas offered to run through the changes he made and after the meeting he would be able to send the revised document to all the Board members for approval then send to NJR.*

*Mr. DeHaas started reviewing the document. He stated we will insert a date at the top and there is some reference to an effective date, however, he did not notice a definition of it. He suggested putting in parentheses the date we insert would be the effective date, which triggers the deadline for the term of the Option. Mr. DeHaas explained NJR sent one document and the Ground Lease is to be an attachment to that.*



Mr. DeHaas pointed out in the first whereas clause they indicate the Township of Mather and it was changed to reflect town of Mather and also changed the property description to the County tax maps since these are parcels. Mr. DeHaas stated based on preliminary conversations he was not aware they estimated how many acres they intend the lease area to be but hearing what was just discussed it is about 1/3 of the total acreage for the four parcels. Mr. DeHaas stated the way this agreement is worded, the developer will designate what the area is with no consent from the Authority. Ms. Mooney stated she feels it needed to either be a minimum dollar amount or a minimum acreage amount. She continued she feels the dollar amount is better because it would give the IDA more opportunity to do something with the acreage. Mr. DeHaas referenced another client who signed an agreement and they signed for a set number of acres which allowed them to accept a lower amount for rent. He added the amount of rent proposed to the IDA is good in comparison to the previously mentioned client. Ms. Mooney mentioned she would prefer to tie them into a dollar amount versus a set number of acres. Mr. Hook stated we know they want around forty acres so we could say consisting of no more than forty-five acres and Ms. Money questioned that he wanted to have a maximum. Mr. Hook confirmed. Mr. Belding asked the original estimate was how much and Ms. Bloom replied forty, however, after they received the wetland report they reduced to thirty – thirty-five. Ms. Mooney thinks they are subtracting the wetland acreage from the usable acreage, however, there is always something that is unusable when you lease acreage. She continued that is not our problem it's theirs. Mr. DeHaas stated he struck the word usable from the language prior to this discussion. Mr. Belding stated to go with what they said, which was forty, which would include what Ms. Mooney was referring to with unusable property. Ms. Scull inquired if we can do "what we want" with the other acres they don't lease. Mr. DeHaas replied to a point and Mr. Belding added as long as we don't "shade" them. Ms. Mooney added it should be continuous acres and all member agreed.

Mr. DeHaas started discussing the easement language. He explained in a different lease the acreage outside of the lease area for which they would have easements was included in the amount of acreage for rent. Mr. DeHaas stated he has added language for that effect. He explained roads, lines, storage areas, but to Mr. Scull's point there are also solar easements, which is you can't build a building right next to the lease area if you are going to block the sunlight. Mr. DeHaas stated the solar company will have to identify these areas and calculate the acreage to be included in the rent. Mr. Hook confirmed, we are discussing easements that would be in addition to the forty acre minimum and it was agreed. Ms. Mooney stated she feels that the easements should only be ingress, regress and utility and if they want anything more than that you have to lease it. Mr. Scull asked if we should have the right to approve where they want an easement so it doesn't mess up the potential for us to do something with the other acres. Mr. Hook agreed that it could give them the potential to take a free option on where they take easements and it make sense to negotiate the easements separately. He continued this agreement would include ingress, regress and utility easements, but anything outside of this should be a separate agreement.

Mr. DeHaas said the subject of the easements would be access and utility service infrastructure. He continued, solar easements are considered areas in which we would not be allowed to construct buildings or structures, plant trees, or vegetation which in their judgement would interfere with access of sunlight. Mr. DeHaas stated this would also include if the utility company would need an easement to connect its line to the solar facility. Ms. Mooney mentioned you need to lease property for the solar easement because it doesn't really fall into an easement category. Mr. Hook agreed that it would be easy to lose a large amount of acreage to a solar easement. Mr. Hook continued; he would like for them to identify it at the outset and if they tell us where they want a lot of these things would solve a lot of problems. Ms. Bloom asked Ms. Simmons if the Gateway access point is the only one on the property and Ms. Simmons replied she believes there is an easement by the property that is owned by the Township Supervisor.



Mr. DeHaas stated he struck the word usable under Exercise of Option on page two where it referenced the rent payment per acre of the leased area and added the acreage of the easement. Mr. DeHaas continued that some of the representations need to either be qualified or changed. He stated that the language "to the best of its knowledge" should be added when referencing the ownership of the property. Mr. DeHaas also recommended the following language be added; "provided, however, the developer will search the title to the property and make its own determination as to the land owner's title prior to exercising the option". He stated that this put the onus on them and we are not making any promises beyond the best of our knowledge. Mr. Scull agreed.

Mr. Hook asked to speak on the commercial terms before moving on. He continued the purpose of us negotiating is really to get development to Greene County not to beat them up or risk the deal. Mr. Hook stated \$1,500 looks to be right in line with reasonable per acre for solar projects. Mr. Scull added he attended a few Zoom meetings and the range varied. Mr. Hook mentioned the escalator is lower than the rate of inflation and he thinks it makes sense to ask for 3% but stay at 2.5%. Mr. Hook added the average is 2.64% over the last 100 years and 2.5% is lower than the average. Mr. Belding suggested 2.5% if they disagree, we state that is not a negotiable point. Mr. Scull and Mr. Hook agreed.

Mr. DeHaas returned the conversation to the representations under Section C. He continued we should start by saying "portions of the property were used to deposit waste from coal and other mining operations and railroad ties" and then "otherwise to our actual knowledge it hasn't been used as a landfill or dump for garbage or refuse". He explained the reason he didn't limit it to coal mining is due to the four-acre part used by Alcoa. Mr. Scull added there is soil that came from Ryerson as well. Mr. DeHaas suggested adding to Section E, "the landowner has not disposed of any hazardous waste or substances". Mr. Scull mentioned the language refers to soil tests and we have done those. He asked if that is something we should disclose and Mr. Firely replied the testing that was done was through grants, therefore, they are public knowledge. Mr. Firely continued the soil samples that were done most recently shows that there are no exceedances above the non-residential standards. Mr. Scull stated, it would be to our advantage to share that information with them and Mr. Firely agreed.

Mr. DeHaas moved onto page four, paragraph 10 (a). He explained that the GCIDA is a public body bound by the Sunshine Act and Right-To-Know law and added language to the effect that the developer is aware that the landowner is an authority and bound by Pennsylvania statutes including but not limited to The Sunshine Act and the Right-To-Know law.

Mr. DeHaas indicated the Authority's name and address would need to be added to page 5.

Mr. DeHaas then continued to paragraph 13 Insurance and Indemnity subparagraph (a) and suggested adding "the developer will provide land owner with certificates of its insurance and the insurance of any agents or contractors which conduct inspections pursuant to paragraph 8 and will ensure the landowner is an additional insured on said policies". He explained the Authority doesn't have to do anything other than maintain its current insurance.

Mr. DeHaas discussed adding language to paragraph (b) that states "provided that however, the landowner shall have no duty to indemnify the developer from any losses from which it has governmental immunity under Pennsylvania law or to the extent that Pennsylvania law limits damages for which it may be held liable".

Mr. DeHaas stated paragraph (c) made reference to subparagraph (b) and he added "provided however, that the landowner shall have no such obligation arising out of the ownership and use of the Property prior to its acquisition



thereof"; meaning we would be responsible for any previous Landowners actions. Ms. Mooney mentioned the Authority knows there are environmental issues with the property (i.e., wetlands) but what if they go in and disturb the property and acquire DEP violations, would that come back on the Authority or stop with them. Mr. Hook stated DEP would take action against us, but the tenant would pay for it.

Mr. DeHaas moved onto Section 15 (a) and stated he struck the language regarding Federal and Commonwealth courts in Pennsylvania having jurisdiction and made it the Court of Common Pleas in Greene County. Mr. Hook stated in his opinion, Federal Courts are better than the Court of Common Pleas in Greene County based on the luck of the draw for the County judge. He continued he feels more comfortable with Federal court or any Commonwealth court. Mr. Hook asked where the solar company was located and Ms. Bloom replied New Jersey. Mr. Hook then stated we would be able to get Federal jurisdiction and suggested asking for Federal Court. Mr. DeHaas suggested leaving it at the option of the Authority and Mr. Hook stated he feels that would be best.

Mr. DeHaas mentioned he added a paragraph to the Miscellaneous section that they would reimburse the Authority for legal fees up to \$2,500. Ms. Bloom added that they are willing to reimburse legal fees but it would have a cap on the amount. Mr. Hook added that a rule of thumb for Commercial Real Estate development is each party expects to spend about fifty basis points of the total deal value on legal depending on how complex and we are well below that. Mr. Scull mentioned they offered to pay legal fees under Section (f) and Mr. DeHaas stated that is for litigation.

Mr. DeHaas stated he changed the Acknowledgment to a Corporate Acknowledgement. He also made changes to Attachment A regarding the Town of Mather not Township and County tax maps as before.

Mr. DeHaas discussed those were all the changes for this part of the document. Mr. Belding asked for any concerns regarding these proposed changes. Ms. Bloom inquired if the Board would take action in stages or as the document in whole. Mr. DeHaas suggested talking about the lease today as well. Mr. DeHaas added he would be able to get something to us by the end of the day and if it looks satisfactory, we can send it over the NJR with the idea of the lease being completed early next week. Mr. Belding confirmed the Board was ok with the Option part of the document. Mr. Scull asked Mr. DeHaas if he was going to get the document to the Board today and then the Board would need to give their approval via email and Mr. DeHaas confirmed. Mr. DeHaas stated the version that will be provided to the Board will have the changes tracked and will remain that way until NJR approves those changes. Mr. Hook asked if there is an option payment for each individual year and Mr. DeHaas replied yes.

Mr. DeHaas discussed some of the changes that were discussed for the Option Agreement will be incorporated into the Lease Agreement. He continued that we will need to make note that the Township now "owns" the one parcel but according to the information he had we will be getting the Deed back this month. Mr. Scull asked Mr. Firely to confirm the date of the transfer back is September 21<sup>st</sup> and Mr. Firely confirmed.

Mr. DeHaas indicated the language regarding the area being leased as well as the easements will conform to the Option Agreement. Mr. DeHaas continued onto the term of the lease. He stated that the term is twenty years with three additional 5-year terms and is totally up to them if they extend. Mr. DeHaas mentioned the changes made to the escalator in the Option Agreement; the rent will go up each year by that escalator.

Mr. DeHaas discussed the solar company retains the right to terminate the lease by giving a thirty-day written notice. Mr. DeHaas explained most leases don't give that right or gives it to both parties, however in this case the solar company determines how long the lease will be subject to the maximum term. Mr. Hook inquired about remediation on the



property after termination. Mr. DeHaas stated it is included in the Decommission portion of the agreement. Ms. Mooney asked if there is a return of payment if they cancel within a half of a year; since they are paying annually it is just a loss if they terminate early. Mr. DeHaas confirmed. Mr. DeHaas continued that the decommission period is 180 days in which they will continue to pay rent on a prorated basis. He also explained this section mentions the Authority can retain an engineer at their expense to inspect the final result. Ms. Mooney asked if there is a standard to which it is decommissioned and Mr. DeHaas stated it wouldn't be inappropriate to add it is to be in conformance with all applicable statutes, rules and regulations. Ms. Mooney added the Authority paid for all the data to know the soil levels. Mr. Scull mentioned once the solar developer disturbs the soil you may find other issues. Mr. Firely added some of the areas they are possibly looking to use were not evaluated by AMO, but covered under the BAMR letter and we could request that upon removal of their equipment they revegetate. Ms. Mooney suggested we define what is considered satisfactory.

Mr. DeHaas read the portion of the agreement that states the solar developer will remove all of their structures and restore the lease area to a field state. Mr. Scull and Ms. Mooney agreed that field state should be defined. Mr. Firely suggested adding a timeframe for the vegetation to take place and that it has established properly on their dime. Ms. Mooney stated that lease payments continue until release and Mr. DeHaas confirmed.

Mr. DeHaas moved onto section 6 where it states they have no obligation to improve the lease area. He continued to state that six months after they sign the lease area, they could walk away; you wouldn't think they would do that but it is a possibility. Mr. DeHaas noted that they can remove trees in the lease area, but also in the remainder of the property.

Mr. DeHaas discussed how the Authority would not be able to enter the leased property without the solar developer's permission and it cannot grant rights to a third party that would interfere with the Solar Developer's rights. He continued the only need he sees the Authority would have would be for inspection. Mr. DeHaas explained if the Authority would want to conduct an inspection they would need to be accompanied by a representative from the solar developer. All Board members agreed this was fine.

Mr. DeHaas explained the two aspects of the rent; the annual \$10,000 for the option and the amount based on the acreage with the escalator. He continued there is also a month to month rent on the decommissioning period.

Mr. DeHaas continued to paragraph 8, which deals with taxes. He started by saying he assumes the property is exempt from taxes and Mr. Belding added, he thinks that is true. Mr. DeHaas proposed that we establish a payment in lieu of taxes since the property is not taxed currently. Ms. Mooney suggested doing something to benefit the school district and the township. Mr. Belding stated the property that is occupied is the taxable amount and that is paid to all three taxing bodies. Mr. Scull stated that should happen once it get assessed and Mr. Belding explained only the equipment part because they are leasing the property. Ms. Bloom added that Ms. Boyd indicated they didn't expect to not pay taxes and would pay their fair share. Mr. Belding explained that Assessment would have to go out and assess the occupied land and equipment to prepare a tax bill then all three taxing bodies would get their percentage. Mr. Belding continued another way to handle this would be to pay more rent in lieu of taxes but that doesn't help the school district or the township. Mr. Scull suggested striking paragraph (a) and Mr. DeHaas added we will suggest language to fit our situation.

Mr. DeHaas indicated the same changes in the option agreement would be made to the representation in the lease agreement. Mr. Scull mentioned section (f) not being applicable regarding the Landlord not paying taxes and Mr. DeHaas mentioned that section will have to be reworded.



Mr. DeHaas mentioned the provision on title insurance which is not applicable since you can't get title insurance for property you already own, therefore this section will need work. Mr. DeHaas continued to explain the solar developer has all rights to energy produced and payments for that energy which is typical.

Mr. Scull asked if the County would have exposure if a contractor doesn't get paid and Mr. DeHaas answered no. He explained the agreement states no one claiming through the solar developer can put liens on the property.

Mr. DeHaas continued to the insurance portion of the lease and indicated the Authority would need to check to make sure the limits meet the lease requirements and Ms. Bloom stated they do not meet those limits currently. Mr. DeHaas suggested making the lease conform to the limits we have currently. Mr. DeHaas asked Ms. Bloom the current limits and she replied occurrence is one million, general aggregate two million, personal and advertising injury is one million.

Mr. DeHaas again stated we will update the indemnification section to the changes made in the option. He continued onto the Assignment section and Mr. Scull stated he would like subject to Landowner approval due to the length of the lease.

Mr. DeHaas confirmed he will change the confidentiality to conform with the option agreement language.

Mr. DeHaas made note of the solar developer having the right to terminate the lease in the event of a default by the Authority and that the Authority would have to purchase their facility. The Board agreed that they don't want that to be included. Mr. Hook asked if the default and remedies section is included in the option agreement and Mr. DeHaas stated no. Mr. Hook suggested added it. Ms. Mooney asked if there was an expiration date on the option and Mr. DeHaas stated one year with the right to renew. Mr. Hook suggested in the event of any default the solar developer should be responsible to remove the facilities. Mr. Hook also inquired on the amount of the bonding and Mr. DeHaas stated it is not mentioned. Mr. Scull added the bonding should be revisited every 8 or 10 years due to possible update and changes. Mr. Hook discussed the amount of bond versus the amount of recovery. Mr. DeHaas added the idea of a bond is to limit bonding companies but, in this case, would not limit the tenant's obligation.

Mr. DeHaas mentioned adding the same language as the option agreement regarding jurisdiction to the lease agreement. He stated that concluded his proposed changes and he will get them incorporated and emailed to the Board for approval and then we will send to the solar developer.

Mr. Scull mentioned the soil and the disturbance when they are constructing the panels and during remediation. Mr. Belding asked Mr. Firely what the the average depth of the cap and Mr. Firely believes it was about forty feet after the regrading but the least amount would be about two feet.

Ms. Mooney stated the goal is to have the Option ready to submit this week, have a draft of the lease sometime next week and possibly have everything finalized by the original date. Ms. Bloom added that September 30<sup>th</sup> was the original date, however, the Option Agreement is needed earlier due to the change in submittal date by PJM. Mr. DeHaas offered to get the Option Agreement to the Board later today and once reviewed it can be sent over to the solar developer. Ms. Mooney stated a poll could be done tomorrow and then submitted Tuesday morning. Mr. DeHaas indicated the Board should be able to meet the accelerated deadline. Ms. Mooney asked if Mr. DeHaas would have the lease changes ready to discuss at the next Board meeting on the 14<sup>th</sup> and he confirmed.

Mr. Belding asked if there were any additional comments or concerns. Mr. Scull stated what is the Board stance if the

reason for leasing the property changes due to updates to technology, would the lease need to be updated. Mr. Hook added the example battery storage, which they currently state won't happen on this property. Mr. DeHaas clarified, that if the use changes from what is described in this lease it would have to be revisited.

**IV. Public Comment**

None

**V. Executive Session**

None

**VI. Next Meeting – September 14, 2021**

**VII. Adjournment**

Mr. Belding requests a motion to adjourn the meeting at 2:15 pm.

Motion to approve- Mr. Hook

Second- Mr. Scull

All in favor.

**MEETING MINUTES CERTIFICATION**

We, the undersigned, agree that the minutes taken above were approved in their entirety by the Greene County Industrial Development Authority on October 12, 2021

  
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Chairman, Greene County Industrial Development Authority

  
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Vice Chairman, Greene County Industrial Development Authority

  
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Secretary, Greene County Industrial Development Authority