

RESOLUTION

**CITY OF LINDEN PLANNING BOARD
APPLICATION NO. SP-1127-20
LINDEN HAWK RISE SOLAR, LLC
1451 LOWER ROAD (BLOCK 581, LOT 11.03)
1801 LOWER ROAD REAR (BLOCK 581, LOT 17)
MUNICIPAL LANDFILL REDEVELOPMENT PROJECT AREA**

WHEREAS, the Applicant, Linden Hawk Rise Solar, LLC (the “Applicant”), whose business address is 2045 Lincoln Highway, Edison, New Jersey 08817, virtually appeared before the City of Linden Planning Board via RingCentral on July 14, 2020 seeking Preliminary and Final Site Plan Approval to construct a photovoltaic and solar array with supporting switch gear equipment on a portion of the properties located at 1451 Lower Road (Block 581, Lot 11.03) and 1801 Lower Road Rear (Block 581, Lot 17) (the “Site” or the “Property”). The Site, which is commonly identified as the Linden Landfill (the “Landfill”) and is decommissioned, is in the Municipal Landfill Redevelopment Project Area (the “Redevelopment Area”) and is governed by the Municipal Landfill Redevelopment Project Redevelopment Plan (the “Redevelopment Plan”). The City of Linden owns the Site and has consented to the Application (See “AFFIDAVIT OF OWNERSHIP & AUTHORIZATION” form executed by Mayor Derek Armstead on behalf of the City of Liden and submitted with the Application); and

WHEREAS, the Applicant submitted the following documents, copies of which were available for public inspection at Planning Board Office and on the City of Linden’s website at least ten (10) days prior the virtual public hearing, for review:

- A-1 Linden Planning Board Site Plan Application, containing the following application pages and supplemental documents:
 - Application for Formal Site Plan;
 - Site Plan Checklist;
 - Affidavit of Ownership & Property Owner Authorization;
 - Corporation Disclosure Affidavit;
 - Statement of Principal Points;
 - List of Applicant’s Representatives & Professionals; and

- A-2 Preliminary and Final Major Site Plan, prepared by Carrol Engineering, dated June 15, 2020, consisting of the following ten (10) sheets (the “Site Plan”):
 - Sheet 1 of 10: Cover Sheet (Drawing Number 200.4232);
 - Sheet 2 of 10: Existing Features Plan (Drawing Number 200.4237);
 - Sheet 3 of 10: Site Plan (Drawing Number 200.4232);
 - Sheet 4 of 10: Site Plan (Drawing Number 200.4232);

- Sheet 5 of 10: Grading Plan (Drawing Number 200.4232);
- Sheet 6 of 10: Soil Erosion and Sediment Control Plan (Drawing Number 200.4232);
- Sheet 7 of 10: Soil Erosion and Sediment Control Plan (Drawing Number 200.4232);
- Sheet 8 of 10: (Soil Erosion and Sediment Control Notes and Details (Drawing Number 200.4232);
- Sheet 9 of 10: Construction Details (Drawing Number 200.4232);
- Sheet 10 of 10: Construction Details (Drawing Number 200.4232); and

WHEREAS, the Application represents a part of the City’s long-range development planning efforts, which began with the City Council’s designation of the Site as an area in need of redevelopment in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. and the adoption of the initial Redevelopment Plan on May 10, 2001, which was subsequently amended by the City Council on February 11, 2020 and approved by Ordinance Number 64-06 adopted on March 18, 2020; and

WHEREAS, the City of Linden, after conducting a public bidding process for the solar redevelopment of the Landfill in accordance with the Redevelopment Plan, awarded a ground lease for the development, construction and operation of a solar facility on the Site to the Applicant, an affiliate entity of CS Energy, a landfill solar contractor. See City Council Resolution Number 2019-325 of the City Council of the City of Linden; and

WHEREAS, the Redevelopment Plan’s land use controls and buildings regulations govern the Redevelopment Area’s use, bulk and design standards and supersede any requirements set forth in the City of Linden Zoning Ordinance. All other development regulations not specifically referenced in the Redevelopment Plan shall remain applicable.

WHEREAS, the Site is owned by the City of Linden and is comprised of approximately 174.3 acres (Lot 11.03 = 139.900 acres; Lot 17 = 34.409 acres). The Redevelopment Plan recognizes that the Landfill, which is currently underutilized, stagnant and is no longer productive, could be more useful a valuable resource contributing to and serving the community and region. The Redevelopment Plan sets forth several goals and objectives, including, but not limited to:

- The elimination of the conditions that substantially impair the sound growth and functioning of this area of the City;
- The encouragement of a development that will include uses that will provide for increased employment opportunities, tax ratables and economic growth;
- The revitalization of the area with the inclusion of land uses of appropriate type, scope and scale to meet the demands of the market area; and

- The establishment of an economically viable area conducive to a wholesome living and working environment and beneficial to the safety, health and welfare of the community; and

WHEREAS, the Redevelopment Plan principally permits a variety of “non-residential” land uses including solar array and energy storage uses, for up to twenty (20) acres of the tract. The Applicant proposes to construct a ground mounted photovoltaic and solar array with supporting switch gear. The Applicant’s total lease area is 23.88 acres, but the proposed photovoltaic and solar array will only occupy 10.7 acres on top of the Landfill., which is consistent with the intent and purpose of the Redevelopment Plan. No habitable buildings and/or structures will be constructed as part of the development. The Applicant’s proposed development will not necessitate the removal of any trees nor will it disturb any existing wetlands or transition areas. Thus, the Applicant’s proposed development is principally permitted in the Redevelopment Area.

WHEREAS, the Application fully complies with all aspects of and the zoning criteria set forth in the Redevelopment Plan. The development is consistent the City of Linden’s Master Plan and will positively contribute to the Redevelopment Area and underlying HI (Heavy Industrial) Zone District (the “HI Zone”).

WHEREAS, the Applicant was represented by Stephen F. Hehl, Esq. of the Hehl Offices of Javerbaum Wurgaft Hicks Kahn Wisktrom & Sinins, P.C. The following witnesses testified on the Applicant’s behalf:

1. John Ervin, Director of Linden Hawk Rise Solar, LLC with a business address of 2045 Lincoln Highway, Edison, New Jersey 08817; and
2. Thomas J. Fik, P.E. of Carroll Engineering with a business address of 105 Raider Boulevard, Suite 206, Hillsborough, New Jersey 08844;

WHEREAS, the Planning Board finds the following facts:

1. The Site, commonly identified as the Linden Landfill, is owned by the City of Linden and located within the Municipal Landfill Redevelopment Project Redevelopment Area.
2. The former Landfill tract in its totality is approximately 174.3 acres, of which up to twenty (20) acres may be used for solar array. The Site is encumbered with wetland and flood hazard areas. The Property contains the Hawk Rise Sanctuary, a pond, a basin and borders the Rahway River. As an existing condition, the Property frontage on Lower Road is forty feet (40’) wide.
3. The Site is governed by the Municipal Landfill Redevelopment Project Redevelopment Plan, adopted by Ordinance Number 64-06. The Redevelopment Plan principally permits a variety of “non-residential” land uses including solar array and energy storage uses.

4. The Applicant, which was appointed as the redeveloper for the solar redevelopment of the Site, proposes to construct a ground mounted photovoltaic and solar array with supporting switch gear on a portion of the Site. As is depicted on the Site Plan, the proposed ground mounted photovoltaic and solar array will occupy 10.7 acres on top of the Landfill. The proposed development is consistent with the intent and purpose of the Redevelopment Plan and adheres to all of its core requirements. Therefore, no deviations are requested and/or required.

5. The City of Linden is actively managing / monitoring the Landfill, which was closed in the year 2000, as part of the New Jersey Department of Environmental Protection's mandatory "post-closure care" period. Because the Landfill can no longer accept waste, the City has borne all costs associated with the post-closure operation, maintenance and repair efforts, without receiving any offsetting revenue in return. As such, these efforts have cost the City millions of dollars over the past decade.

6. The proposed photovoltaic and solar array, which is principally permitted in the Redevelopment Area, will be placed on top of the Landfill's vegetative cover and will not disrupt any of its existing safety controls or environmental cap. The proposed array will consist of approximately 10,719 panels and MV power generation will be limited to 4.5MWdc / 4.0MWac. No habitable buildings and/or structures will be constructed as part of the development. The Applicant's proposed development will not necessitate the removal of any trees nor will it disturb any existing wetlands or transition areas.

7. During operation the proposed photovoltaic and solar array's health and status are monitored remotely from the Applicant's control center in Edison. Security cameras are neither proposed nor required as part of the system's monitoring. The Applicant will provide a knox box to allow the City's Emergency Services to enter the Site, the location of which will be determined after consultation with the appropriate officials.

8. Regularly scheduled visits to the Site for maintenance of the area and system will take place approximately once per quarter. The Application generates minimal demand for off-street parking. The Site will only have to accommodate the Applicant's service vehicles. The proposed stone turnaround area will meet any of the Applicant's short-term parking needs.

9. Site lighting is not required for safe operation. If nighttime service is required, temporary power and lighting is accessible by the equipment needing service.

10. No nuisance impacts are anticipated from the Applicant's proposal. The proposed panels are anti-glare, inverters are located in the center of the array, and the proposed development is an established industrial area. The proposed array will be visible from the south, as it is situated on the south side of the Landfill slope. The site is buffered in this direction by the Rahway River and will not negatively impact any adjoining properties in the City of Linden.

11. The City will incur no administrative or developmental costs associated with the Applicant's proposed development. The Applicant will develop, engineer, construct, operate and maintain the solar array for twenty (20) years pursuant to the ground lease. The City will receive monthly rent payments that will offset the operational expenses associated with the Landfill. Upon the expiration of the ground lease, the Application will remove the solar array system.

12. The solar project will participate in the State's Community Solar Pilot Program (the "Program") and will generate power that will supply residents with affordable electricity. The Program's goal is to provide households, which desire to have electric from solar power but are unable due to their living situations, with access to solar power. For example, residents of apartment buildings, rented dwellings, locations with unsuitable roofs, financing, etc. can now access solar generated power and save money on their electricity bills.

13. The Application represents an opportunity to transform the Landfill from a long-underutilized parcel into an asset for the City and its citizens. From a planning perspective, the Application is consistent with and advances the Redevelopment Plan's zoning requirements and goals and objectives. Moreover, the proposed development is consistent with the City of Linden's Master Plan and Zoning Ordinance.

14. Reports from the following were incorporated into the record:

- Paul N. Ricci, AICP, PP, Board Planning Consultant, dated July 13, 2020 ("Board Planner's Review Letter");
- Nicholas J. Pantina, PE, CME, CPWM, City Engineer, dated July 11, 2020 ("City Engineer's Review Letter"); and
- Lawrence J. Kolesa, Deputy Fire Chief / Fire Official, dated July 8, 2020 ("Fire Official's Review Letter");

WHEREAS, this Resolution incorporates, by reference all discussion, presentation and testimony taken at the City of Linden Planning Board's July 14, 2020 Virtual Public Hearing as if same were set forth at length herein; and

WHEREAS, after presentation, discussion and careful consideration of the facts as set forth in the Application and the plans submitted, it is recited in this Resolution that the Planning Board of the City of Linden approves this Application subject to any and all conditions set forth here below; and

CONCLUSIONS

1. The relief sought can be granted without substantial impairment to the intent of the Municipal Land Use Law as set forth in N.J.S.A. 40:55D-1 et seq. and the City of Linden's Zoning Ordinances, Zone Plan and the Redevelopment Plan.

2. The relief sought can be granted without substantial detriment to the public good.

NOW, THEREFORE, BE IT RESOLVED, that the present application for Preliminary and Final Major Site Plan approval is hereby granted subject to the following conditions:

1. Satisfaction of the comments set forth in the City Engineer's Review Letter, including:

- a. Operations manual and/or maintenance plan shall be provided;
- b. Construction Details of the proposed 60' x 40' Switchgear Pad shall be added to the Site Plan;
- c. Dimensions shall be added to the Site Plan, identifying the buffer distance between the Proposed Switchgear Fence & Pad and existing Landfill Transformer Gas Flare Blower System; and
- d. Site Plan Sheet 10 of 10, which is currently numbered Sheet 9 of 10, shall be renumbered;

2. The Site Plan shall be revised to include the location and details of proper signage required by the International Fire Code identified in the Fire Official's Review Letter and any entrance signage referenced in the Board Planner's Review Letter;

3. The Applicant shall coordinate with the City's Emergency Services regarding the location of a Knox box for emergency access. Said Knox box location shall be added to the Site Plan.

4. The Applicant shall comply with all directions set forth in the Board Planner's Review Letter;

5. The Applicant shall work cooperatively with the City's Landfill Environmental Consultant to ensure ongoing NJDEP compliance;

6. This approval is subject to all outside agency approvals, if applicable.

- New Jersey Department of Environmental Protection (NJDEP);

- Somerset-Union Soil Conservation District;
- Federal Aviation Administration (FAA);
- Public Service Enterprise Group (PSE&G);
- New Jersey Board of Public Utilities (NJBPU); and
- Union County Planning Board

7. The Applicant will be required to post inspection fees in accordance with City Ordinances. A construction estimate shall be provided to the City Engineer and City Planner.

8. The Applicant shall apply for and obtain a Land Disturbance Permit and provide an inspection escrow fee, performance guarantee and maintenance bond in accordance with City Ordinances;

9. The development must comply with the requirements of the New Jersey Uniform Construction Code and the International Fire Code New Jersey Edition 2015 as amended by the City of Linden and all Municipal, County, State and Federal rules, regulations and statutes;

10. The Applicant shall post sufficient funds with the City to satisfy any deficiencies in its Developer's Escrow Account.

I hereby certify that the above Resolution was duly adopted by the Planning Board of the City of Linden as its Virtual Public Meeting on July 14, 2020.

Motion was by:

Seconded by:

Ayes:

Nays:

Abstentions:

Marilyn Coplan, Board Secretary

Joseph La Placca, Board Chairman