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April 4, 2022

Client/Matter No. 19306/29

**EMAIL AND REGULAR MAIL**
Michele M. Gittinger, Secretary
Southampton Township Planning Board
Southampton Township
5 Retreat Road
Southampton, NJ 08088
(mgittinger@southamptonnj.org)

**Re: BEMS Southampton Solar Farm, LLC**
**Application for Minor Site Plan Approval – Community Solar Facility**
**Block 2702, Lots 3, 4, 5, 7 & 8 (BEMS Landfill Property)**

Dear Ms. Gittinger:

As you know, this firm is counsel to BEMS Southampton Solar Farm, LLC in connection with the above-referenced application. I understand there was a question raised regarding the nature of the applicant's standing to make this application. I recognize that the circumstances here are a bit unique, but nothing that we have not done before (many times). The question is easily addressed as the applicant is both the designated redeveloper of the property and the successor-in-interest to the tax sale certificates applicable to the property formerly owned by Southampton Township. I have already discussed this with George M. Morris, Esq. and Peter Lange, Esq. and my understanding is that we are resolved on this issue.

That being said, for the benefit of the Board, some background is appropriate. The applicant is the designated redeveloper of the property in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et. seq. The applicant was so designated by Township Resolution 2020-79. The Township and the applicant have entered into a purchase and sale and redevelopment agreement dated July 29, 2020 by which the applicant has agreed to redevelop the property with a utility-scale solar farm (the subject of this application) and purchase from the Township certain tax sale certificates previously owned by the Township applicable to the property.

The LRHL provides that "[u]pon the adoption of a redevelopment plan … the municipality … may proceed with the clearance, replanning, development and redevelopment of the area designated in that plan." N.J.S.A. 40A:12A-8. In order to carry out "the terms of the

redevelopment plan," the LRHL provides that the municipality may arrange or contract with redevelopers for the performance of redevelopment work. Id. Once a redeveloper is selected by the governing body to undertake the redevelopment of an area designated as an area in need of redevelopment and subject to a redeveloper plan, that redeveloper has *exclusive* standing to make applications and obtain the approvals necessary for the implementation of the plan. See, generally, N.J.S.A. 40A:12A-1, et. seq., and, see also, Jersey Urban Renewal v. Asbury Park, 377 N.J. Super. 232 (App. Div. 2005), and, Applied Monroe Lender, LLC v. City of Hoboken Planning Bd. et. al, Docket No. A-3048-15T3 (App. Div. 2017). As confirmed by both the Jersey City and Applied Monroe Lender courts, even an underlying *property owner* whose property is subject to a redevelopment area designation and redevelopment plan *does not have standing* to bring applications where a redeveloper for that area has been designated by the municipality. See, id.

Consider also Vineland Const. v. Pennsauken Twp., 395 N.J. Super. 230 (App. Div. 2007), in which a property owner asserted that as the owner of the property and a long-time taxpayer, it had the right to redevelop its property consistent with the redevelopment plan. In that case, the municipality, however, had properly designated a redeveloper to redevelop the designated redevelopment area. According to the court, the fact that the property owner was capable of redeveloping its own property through private efforts was irrelevant in light of the fact that a redeveloper had been appointed. In that situation, even if the redeveloper were not the owner of title to the property, the property owner would be entitled only to fair compensation, but the redeveloper would still be able to proceed with all necessary development and approvals for the redevelopment effort.

The purchase and sale and redevelopment agreement for the property, referenced above, provides in pertinent part that, following the assignment of the municipally-owned tax sale certificates (which occurred by way of Resolution 2020-87), the applicant has standing and the *Township's consent and approval* to "file such applications and seek such governmental action with respect to the [p]roperty as [the applicant] may deem necessary and appropriate." Moreover, "any Governmental Authority shall be entitled to rely on this provision as evidence of authority thereof." The term "Governmental Authority" is defined broadly in the agreement to include any agency with jurisdiction over the property and includes the Planning Board.

Additionally, because of the assignment to the applicant of tax sale certificates 740, 741, 742, 743, and 744 pertaining to the BEMS landfill, the applicant has title to the property by virtue of the New Jersey Tax Lien Statute. See, N.J.S.A. 54:5-42. The applicant is in the process of perfecting that title by way of a strict tax lien foreclosure, which is nearly complete. In the interim, the applicant succeeds to the rights of the municipality in the tax sale certificates, including to receive rents from the property or to put the property to its highest and best use, which it is doing by virtue of this application.

In any event, we have utilized this same legal framework for applications in Mount Olive, Chester, and Washington Townships in Morris County; Ocean Township in Ocean County; and others. The legal analysis has been accepted by the NJDEP, NJBPU, and PJM Interconnection, L.L.C. (the regional electric grid operator). There is no question that the applicant has the required standing to make this application before the Planning Board.

Thank you for your attention to this matter. We look forward to presenting this application at the Board's April 21, 2022 meeting. Should you need anything else on this, please do not hesitate to contact me.

Very truly yours,

STEVEN P. GOUIN

SPG/aep
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