

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: PRELIMINARY LAND DEVELOPMENT : NO. 08 - 02,103
PLANS OF LAUREL HILL ENERGY, LLC :
: Land Use Appeal

OPINION AND ORDER

Before the Court is a land use appeal filed by Mark and Pauline Facey, Frank and Judi Piccolella, Arthur and Elke Plaxton, John E., Jr. and Beverly Brucklacher, and Gene and Dorothy Koontz (hereinafter “Appellants”) on September 12, 2008, in which they seek to reverse the approval by the Lycoming County Planning Commission (hereinafter “the Planning Commission”) of the preliminary land development plans submitted by Laurel Hill Wind Energy, LLC (hereinafter “Laurel Hill”). By Notice of Intervention filed October 8, 2008, Laurel Hill intervened in the appeal. At a conference on October 31, 2008, Appellants requested the opportunity to present additional evidence in support of their appeal but on November 18, 2008, at the time scheduled for a hearing on that request, that request was withdrawn and the parties agreed to proceed on the record below. After the filing of a certified record and briefs, argument was heard December 11, 2008.

On February 14, 2008, Laurel Hill filed an application for a zoning permit for what it calls the “Laurel Hill Wind Energy Project”.¹ The Zoning Administrator approved the application and issued the permit on May 9, 2008. An appeal of that decision was taken to the Zoning Hearing Board and after a hearing on July 23, 2008, that appeal was denied. On August 14, 2008 the Planning Commission approved the preliminary land development plans submitted by Laurel Hill and the instant appeal contests that approval, contending the approval is invalid as having been issued during a statutory stay created by the zoning permit appeal, that Laurel

¹ According to the application, the project “can be briefly described as a 70.5 megawatt (M.W.) wind powered electric generating, transmitting and interconnecting facility that will consist of up to thirty-five (35) individual wind turbines located along Laurel Hill Ridge, a new approximately two (2) mile long, 34.5 k.V. overhead transmission line, and a new switch yard and substation that will provide an interconnection to the existing electric

Hill lacked standing to apply for a zoning permit in the first instance, and that a conflict of interest renders such approval void *ab initio*.² The second and third contentions have already been addressed by this Court in the zoning permit appeal, filed to No. 08-02,232, and those discussions, including the Court's decision to address the issues on their merits even though not raised before the Board, are incorporated herein.

With respect to the issue of the statutory stay, Appellants reference Section 915 of the Municipalities Planning Code, which provides as follows:

a) Upon filing of any proceeding referred to in section 913.3 and during its pendency before the board, all land development pursuant to any challenged ordinance, order or approval of the zoning officer or of any agency or body, and all official action thereunder, shall be stayed unless the zoning officer or any other appropriate agency or body certifies to the board facts indicating that such stay would cause imminent peril to life or property, in which case the development or official action shall not be stayed otherwise than by a restraining order, which may be granted by the board or by the court having jurisdiction of zoning appeals, on petition, after notice to the zoning officer or other appropriate agency or body.

53 P.S. Section 10915.1(a). Appellants argue that the approval by the Planning Commission of the preliminary land development plans constituted "official action" and was invalid because it was taken during the period of stay created by the zoning permit appeal. The MPC stays only official action *under* "any challenged ordinance, order or approval of the zoning officer", however. In other words, as it applies to the instant case, only official action under the zoning permit which was being contested in the zoning permit appeal was stayed; action by the Planning Commission, which was not taken under that permit, was not stayed. The approval was thus not invalid on that basis.

With respect to the issue of standing to apply for the zoning permit, assuming that such issue may be raised in the context of the instant appeal from approval of land development

transmission system of the Pennsylvania Electric Company". The project plans to use approximately 706 acres of leased land in Jackson and McIntyre townships.

plans, the Court relies entirely on its discussion of the issue in its Opinion in support of the Order entered this date, to No. 08-02,232.

Finally, with respect to the alleged conflict of interest, as was stated in this Court's Opinion in support of its Order of this date, entered to No. 08-02,232, the County Commissioners are not relevant parties to the instant appeal, and while the Planning Commission rather than the Zoning Hearing Board is the entity at issue, as was the case with the Zoning Hearing Board, the Planning Commission was and is represented by counsel *not* a member of McNerney, Page, Vanderlin & Hall. Further, while a partner of McNerney, Page, Vanderlin and Hall does sit on the Planning Commission, it appears she was not present at the meeting of August 14, 2008, during which the approval at issue was given, and did not participate in that decision.³ The Court finds, therefore, that no conflict such as could raise due process concerns, exists.

In conclusion, as the Court finds that the Planning Commission's action was not stayed, that Laurel Hill had standing to apply for the zoning permit, and that no conflict of interest affected Appellants' due process rights, the Court enters the following:

ORDER

AND NOW, this 24th day of December 2008, for the foregoing reasons, the land use appeal filed by Appellants is hereby DENIED, and the approval by the Lycoming County Planning Commission of Laurel Hill's preliminary land development plans is hereby upheld.

BY THE COURT,

cc: Christian Frey, Esq.
Charles Greevy, III, Esq.
Thomas Marshall, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

Dudley N. Anderson, Judge

² Although Appellants raised two other issues in their written appeal, on November 18, 2008, the fourth and fifth issues were withdrawn and by Order of that date, the Appeal was deemed amended.

³ See Minutes of August 14, 2008, meeting of the Lycoming County Planning Commission, contained in the Certified Record filed November 12, 2008.