

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

PAUL J. KRAMER, et al., : CV-2023-01192  
Appellant, : (consolidated into 2023-01189)  
v. : CV-2023-01348  
 : (consolidated into 2023-01189)  
ZONING HEARING BOARD OF :  
MUNCY TOWNSHIP, :  
Appellee, :  
AND :  
 :  
SOLAR RENEWABLE ENERGY, LLC, :  
Appellant, :  
v. :  
 :  
ZONING HEARING BOARD OF :  
MUNCY TOWNSHIP, :  
Appellee. : LAND USE APPEAL

**OPINION AND ORDER**

**I. BACKGROUND**

Solar Renewable Energy LLC (hereinafter “Solar”) applied for a special exception under the terms of the Zoning Ordinance of Muncy Township (hereinafter the “Ordinance”), seeking approval for the construction of a Principle Solar Energy System (hereinafter the “System”) on vacant land situate along Quaker Church Road in Muncy, Lycoming County, Pennsylvania bearing Lycoming County tax parcel number 41-353-141 (hereinafter the “Parcel”). A hearing on that application was held on July 17, 2023, before the Zoning Hearing Board of Muncy Township (hereinafter the “Zoning Hearing Board”). The evidentiary record was closed at the conclusion of the July 17, 2023, hearing. The Zoning Hearing Board conducted a deliberation session on August 21, 2023, and rendered its written decision dated September 25, 2023 (hereinafter the “Written Decision”) granting the application for a special exception, subject to twelve (12) conditions.

Paul J. Kramer and Melissa Kramer and numerous other landowners (hereinafter collectively the “Appellant Landowners”) filed a Notice of Appeal of the Written Decision on October 24, 2023, to docket number 2023-01189. Solar filed a Notice of Intervention to the appeal at docket 2023-01189. Solar also filed a Notice of Appeal to the Written Decision to docket number 2023-01192. Appellant Landowners filed a second appeal on December 5, 2023, to docket number 2023-01348. The appeals filed to 2023-

01189 and 2023-01192 were consolidated by Order of this Court dated November 3, 2023, on motion of counsel for the Zoning Hearing Board. By Order dated November 16, 2023, filed to docket 2023-01192, the Court indicated that the second Appellant Landowners appeal (now docketed to 2023-01348) would be consolidated with the appeals filed to dockets 2023-01189 and 2023-01192.

In its Opinion and Order of March 5, 2024, the Court found that that the deliberation session conducted on August 21, 2023, was not a hearing for purpose of 53 P.S. §10908(9). For that reason, and because Solar never agreed to keep the record open after the July 17, 2023 hearing, the Court held that the forty-five (45) day period for a decision under that Section commenced on July 17, 2023, and expired on August 31, 2023. Because the Zoning Hearing Board written decision was rendered far later, the Court concluded that Solar is entitled to the benefit of a “deemed approval” under 53 P.S. §10908(9). That deemed approval is not subject to appeal by the Zoning Hearing Board, since an appeal may only be filed by a party in interest who opposed the application. *Board of Supervisors of East Rockhill Township v. Mager*, 855 A.2d 917, 920 (Pa. Commw. Ct. 2004). The deemed approval did not, however, effect the appeal rights of any other party in interest, who opposed the application. *Gryshuk v. Kolb*, 685 A.2d 629, 631 (Pa. Commw. Ct. 1996).

As more fully set forth in the Opinion and Order of March 5, 2024, and because these appeals are from a deemed approval, the conditions imposed by the Zoning Hearing Board have been rendered a nullity. Thus, the Court must conduct these appeals *de novo*, and must make its own findings of fact and conclusions of law. *DeSantis v. Zoning Hearing Board of City of Aliquippa*, 53 A.3d 959, 962 (Pa. Commw. Ct. 2012)(citing *Gryshuk v. Kolb*, 685 A.2d 629, 634 (Pa. Commw. Ct. 1996)).

In an effort to resolve any lingering issue of standing, the Court Ordered that any party challenging the standing of any appellant of record file a motion challenging standing pursuant to 53 P.S. § 11005-A. No such Motion was filed. After thorough briefing by all parties in interest, oral argument on the appeal was conducted on July 9, 2024. The appeal is now ripe for decision.

## **II. ISSUES PRESENTED**

- A. Whether Solar has met the objective requirements of the Ordinance regarding noise.
- B. Whether Solar has met the objective requirements of the Ordinance regarding a plan of emergency procedures.
- C. Whether Solar has met the objective requirements of the Ordinance regarding Impervious Coverage.
- D. Whether Solar has met the objective requirements of the Ordinance regarding glare.

## **III. ANSWERS TO ISSUES PRESENTED**

- A. Solar has met the objective requirements of the Ordinance regarding noise.
- B. Although Solar has not yet met the objective requirements of the Ordinance regarding a plan of emergency procedures, it is not clear that the requirement must be satisfied in the context of an application for a special exception.
- C. Solar has met the objective requirements of the Ordinance regarding Impervious Coverage.
- D. Solar has not met the objective requirements of the Ordinance regarding glare.

## **IV. DISCUSSION**

- A. Solar has met the objective requirements of the Ordinance regarding noise.

Section 16.25.2.6 of the Ordinance provides that:

A noise study will be performed and submitted with the application. The noise study will be performed by an independent noise study expert and paid for by the applicant, Noise from a PSES shall not exceed 50 dBA, except during construction, as measured at the property line of non-participating landowners. The study shall be subject to review and approval by the Township, the costs of the same to be paid by applicant.

Solar arranged for a noise study “performed by an independent noise study expert and paid for by the applicant.” That study revealed that the System would not produce noise in excess of 50 dBA, as measured at the property line. Notes of Testimony (hereinafter “N.T.”), July 17, 2023, at 95-104. Appellant Landowners contend that the noise study did not include actual field measurements of noise produced by the System.

The Court concludes that the argument is meritless. First, the Ordinance includes no such objective requirement. Second, requiring Solar to produce a noise study revealing the “as built” noise level, prior to securing a permit for a special exception, would be absurd. Third, it appears to the Court that the Township would be entitled to enforce the Ordinance after construction of the System, including the portion of Section 16.25.2.6 which provides that “Noise from the PSES shall not exceed 50 dBA, except during construction.”

B. Although Solar has not yet met the objective requirements of the Ordinance regarding a plan of emergency procedures, it is not clear that the requirement must be satisfied in the context of an application for a special exception.

Section 16.25.2.10 of the Ordinance provides that:

A Contingency Plan of Emergency Procedures shall be developed by the PSES owner consistent with standard operating practices of the industry and furnished to the Township, the local fire company and the County Department of Emergency Services at the time the application for a permit is submitted. The same shall be reviewed and updated, if necessary, every five (5) years.

At the hearing conducted on July 17, 2023, Solar witness Seth Berry testified that Solar “would plan in the case of this project to have a contingency for emergency procedures in place.” N.T., July 17, 2023, at 55. Because Solar did not present the proposed plan at the hearing, that objective requirement of the Ordinance has not yet been satisfied. Appellant landowners contend that the phrase “at the time the application for a permit is submitted” refers to the application for a special exception, and thus the requirement of Section 16.25.2.10 must be satisfied before a special exception is granted. Solar contends that the requirement must be satisfied in connection with a subsequent application for a building permit.

Section 2.2 of the Ordinance defines a Zoning Permit as follows:

A permit indicating that a proposed use, building, or structure is in accordance with the provisions of this Ordinance and authorizing an applicant to proceed with the construction or development of the use, building or structure.

It appears to the Court that Section 2.2 can be read as defining a permit granting a special exception, or a building permit, or both. Thus, the meaning of the phrase “at the time the application for a permit is submitted” in Section 16.25.2.10 is ambiguous.

Section 603.1 of the Pennsylvania Municipalities Planning Code, 53 P.S. § 10603.1, provides that:

In interpreting the language of zoning ordinances to determine the extent of the restriction upon the use of the property, the language shall be interpreted, where doubt exists as to the intended meaning of the language written and enacted by the governing body, in favor of the property owner and against any implied extension of the restriction.

In the unpublished opinion of *Alleman v. N. Newton Twp. Bd. of Supervisors*, No. 1511 C.D. 2018, 2019 WL 5208606, at \*3 (Pa. Commw. Ct. 2019), our Commonwealth Court observed that 53 P.S. § 10603.1 “often conflicts with the principle of deference to the governing body’s interpretation.” The Court noted, however, that the board of supervisors in that matter appeared to agree with the interpretation asserted by the landowner.

In this matter, the Zoning Hearing Board granted the special exception, conditioned upon, among other things, later submission of the Contingency Plan required by Section 16.25.2.10 of the Ordinance. It is instructive that, although that Section requires that the Contingency Plan be developed, submitted, reviewed and updated, it does not require Township approval of the Plan. For those reasons, and because 53 P.S. § 10603.1 requires that doubt be resolved in favor of the property owner, the Court concludes that development and delivery of the Contingency Plan required by Section 16.25.2.10 is a condition which must be satisfied *no later than the time of an application for a building permit to construct a Principal Solar Energy System, but is not a condition to an application for a special exception for that use.*

C. Solar has met the objective requirements of the Ordinance regarding Impervious Coverage.

Subsection 16.25.3.4.2 of the Ordinance under “Impervious Coverage” provides that:

The area beneath the ground mounted PSES is considered pervious cover. However, use of impervious materials under the system could cause the area to be considered impervious and subject to the impervious surfaces limitations provided for in the applicable statutes, ordinances, rules and regulations and if the PSES impervious surfaces exceed the permitted impervious area, the developer shall comply with the said statutes, rules and regulations.

Subsection 16.25.3.4.2 identifies which PSES components will be regarded as impervious for the purpose of calculating impervious coverage limitations. Section 16.25.3.5 provides that “PSES owners are required to follow the current PA [Department of Environmental Protection (“DEP”)] Guidelines for Solar Collectors as a best management practice for storm water management.”

At the hearing conducted on July 17, 2023, Solar witness Joe Burget, a licensed professional land surveyor, testified regarding a variety of site issues related to the System. He testified that, upon special exception approval “we would be doing a land development plan...it would go to the county. It would go to the Board, it would go to your township engineer. Everybody would review based on SALDO, so we would have to follow all the stormwater guidelines based on the township stormwater.” N.T., July 17, 2023, at 84.

In response to a question regarding consultation with the Lycoming County Department of Conservation, Burget testified that:

Well, if -- we would need to do an MPDS permit if the conservation district determined that we needed one. So what we would do is we would put on the plan all of our disturbed areas, posts, accesses coming in, all that kind of stuff, we would submit that to the conservation district and they would review that erosion control plan and then they would determine if we needed to do an MPDS permit. And if they determined we needed to do one then we would do one, yes, sir. That would all be handled at the land development stage.

N.T., July 17, 2023, at 85.

The Court granted Solar leave of Court to supplement the record. At the supplemental hearing conducted on May 1, 2024, Solar introduced additional testimony by Burget to the effect that the System will be constructed within Ordinance setback limitations, on a grass field, and will result in less than ten percent (10%) impervious site coverage. N.T., May 1, 2024, at 19-34. Because the applicable maximum permitted impervious coverage is forty percent (40%), the Court concludes that Solar has met the objective requirements of 16.25.3.4. The question of whether a future land development plan or storm water management plan to be submitted by Solar may or may not meet the standard articulated in Section 16.25.3.5 of the Ordinance remains to be seen.

D. Solar has not met the objective requirements of the Ordinance regarding glare.

The issue of potential glare from the System is the subject of Ordinance Subsections 16.25.2.5.1 and 16.25.2.5.2. They provide as follows:

16.25.2.5.1: All PSES shall be placed such that concentrated solar radiation or glare does not project onto nearby structures, roadways or beyond the boundaries of the land upon which it is located.

16.25.2.5.2: The applicant has the burden of proving that any glare produced does not have significant adverse impact on neighboring or adjacent uses. Township will require anti-glare coating and the Township may, in its sole and absolute determination, require applicant to provide the Township with a glare report/study. The said report/study may be required at the time of application, or any time thereafter. The said report/study shall be subject to review and approval by the Township. The cost of the review and approval shall be paid by applicant or owner.

At the hearing conducted on July 17, 2023, Solar witness Seth Berry testified that the solar panels will be constructed of the required anti-glare materials. N.T., July 17, 2023, at 29. In response to a question regarding the potential for glare in the future, counsel for Solar responded that:

If in 20 years that condition has changed, as long as this ordinance hasn't been changed, it would become a zoning enforcement matter. The applicant has to continue complying with the provisions of the ordinance even after the application, so just approving it tonight does not mean that they have a free pass as far as glare goes forever.

N.T., July 17, 2023, at 30-31.

While counsel's argument regarding the potential for future enforcement action under Ordinance Subsection 16.25.2.5.1 has merit, it does not address the predicate question of what proof Subsection 16.25.2.5.2 requires for a special exception. The Court concludes that Solar has complied with the objective requirement of Subsection 16.25.2.5.2 regarding the use of anti-glare coating, but has not complied with the uniquely worded requirements of Subsection 16.25.2.5.1 which requires that the proposed solar array "shall be placed such that concentrated solar radiation or glare does not project onto nearby structures, roadways or beyond the boundaries of the land upon which it is located." While Subsection 16.25.2.5.2 empowers the Township to require a glare study, the Court concludes that no such study is mandated by that Subsection. The Court cannot,

however, find any evidence in the record to support the conclusion that Solar sustained its “burden of proving that any glare produced does not have significant adverse impact on neighboring or adjacent uses.” Obviously, an applicant could meet that burden through the results of a glare study. Alternatively, an applicant might introduce testimony from a witness knowledgeable in the field of glare from solar panels, to testify regarding the potential for glare from the System. What is clear from this record is that Solar introduced no evidence upon which the Court could base a finding that the System will not produce glare having a significant “impact on neighboring or adjacent uses.” In the absence of that evidence, Solar did not sustain its burden of proof under Subsection 16.25.2.5.2 of the Ordinance.

The Court has conducted a de novo review of the record, in order to reach its own Findings of Fact and Conclusions of Law. That review has included a comparison of the record testimony to the 34 numbered paragraphs contained in the Zoning Hearing Board’s Written Decision under the heading “Findings of Fact.” Many of those numbered paragraphs are supported in the record, some are not, and some are merely conclusions of law. In order to permit the parties to compare the Court’s review to the original Findings, the Court deems it appropriate to identify those paragraphs which appear to be true findings, to identify those findings which are supported in the record, to identify findings which are merely conclusions of law, and to reach new findings where necessary. The Court has conducted its review of both the original record, and the testimony presented at the hearing conducted on May 1, 2024. Since the purpose of that hearing was to supplement the record and to illustrate the effect of the Applicant’s revised plan dated April 26, 2024 (N.T. May 1, 2024, at 20), the Court has considered testimony which was not available to the Zoning Hearing Board on July 17, 2023.

## **V. FINDINGS OF FACT**

1. This Finding is supported in the record.
2. This Finding is supported in the record.
3. This Finding is supported in the record.
4. Conclusion of law, supported in the text of the Ordinance.
5. Conclusion of law, supported in the text of the Ordinance.
6. This Finding is supported in the record.
7. This Finding is supported in the record.



8. This Finding is supported in the record, but the interconnection approval was the subject of testimony at the hearing conducted on May 1, 2024, N.T. pages 9-11.
9. This Finding is supported in the record.
10. This Finding is supported in the record.
11. This Finding is only partially supported in the record. The Applicant presented the sound modeling report as described. Further, the record of the May 1, 2024, hearing supports a finding that the fixtures which produce sound have been relocated to a position thirty (30) feet further from the property line than first proposed. N.T. May 1, 2024, at 38. The conclusion that the report does not meet the Ordinance requirement is not supported in the record.
12. This Finding is supported in the record.
13. This Finding is supported in the record.
14. This Finding is supported in the record.
15. This Finding is supported in the record.
16. This Finding is supported in the record.
17. This Finding is supported in the record.
18. This Finding is supported in the record.
19. This Finding is supported in the record.
20. This Finding is supported in the record.
21. This Finding is not supported in the record. The Project meets Ordinance setback requirements. N.T. May 1, 2024, at 22-29.
22. This Finding is supported in the record.
23. This Finding is supported in the record.
24. This conclusion is not supported in the record, because the hearings were conducted on an application for a special exception, and not an application for land development. It is entirely possible that a future land development application may require both a stormwater management plan and a National Pollution Discharge Elimination System (“NPDES”) permit.
25. This conclusion is not supported in the record, because the hearings were conducted on an application for a special exception, and not an application for land development. It is entirely possible that a future land development application may require evidence to support the conclusion that the Applicant

has complied with Ordinance Section 16.25.3.5. The record of the May 1, 2024, hearing supports a finding that the Applicant has followed DEP requirements in design. N.T., May 1, 2024, at 30-34.

26. This conclusion is not supported in the record, because the hearings were conducted on an application for a special exception, and not an application for land development. It is entirely possible that a future land development application may require evidence to support the conclusion that the Applicant has complied with Ordinance Section 16.25.3.6. The record of the May 1, 2024, hearing supports a finding that the Applicant has followed Ordinance requirements for screen buffer plantings. N.T., May 1, 2024, at 36.
27. This Finding is supported in the record.
28. This conclusion is not supported in the record, because the hearings were conducted on an application for a special exception, and not an application for land development. It is entirely possible that a future land development application may require evidence to support the conclusion that the Applicant has complied with Ordinance Subsection 16.25.3.8.1. The record of the May 1, 2024, hearing supports a finding that the Applicant has complied with Ordinance fencing requirements in design. N.T., May 1, 2024, at 34-37.
29. This Finding is supported in the record.
30. This Finding is supported in the record.
31. This conclusion is not supported in the record. The record of the May 1, 2024, hearing supports a finding that the Applicant has complied with Ordinance service cart way requirements in design. N.T., May 1, 2024, at 25.
32. This Finding is supported in the record.
33. This Finding is supported in the record.
34. This Finding is supported in the record.

## **VI. CONCLUSIONS OF LAW**

1. Because the System proposed by Solar will produce energy primarily for off-site use, the System meets the definition of Principal Solar Energy System set forth in Section 2.2 of the Ordinance.
2. The System did not predate November 9, 2022, and thus must comply with the requirements set forth in Sections 16.25 et seq. of the Ordinance.
3. The record of the hearing conducted on July 17, 2023, supports the conclusion that the System proposed by Solar complies with Section 16.25.2.2 of the Ordinance.
4. The record of the hearing conducted on July 17, 2023, as supplemented by the record of the hearing conducted on May 1, 2024, supports the conclusion that the System proposed by Solar complies with Section 16.25.2.3 of the Ordinance.
5. The record of the hearing conducted on July 17, 2023, supports the conclusion that the System proposed by Solar complies with Section 16.25.2.4 of the Ordinance.
6. The record of the hearing conducted on July 17, 2023, supports the conclusion that the System proposed by Solar complies with some, but not all, of the requirements of Subsection 16.25.2.5.2 of the Ordinance. While the proposed System will be constructed of anti-glare materials, and while a glare study is not mandated by that Subsection, Solar failed to meet its burden of proving that any glare produced by the System will not have significant adverse impact on neighboring or adjacent uses.
7. The record of the hearing conducted on July 17, 2023, supports the conclusion that the System proposed by Solar complies with Section 16.25.2.6 of the Ordinance.
8. The record of the hearing conducted on July 17, 2023, supports the conclusion that the System proposed by Solar complies with Section 16.25.2.7 of the Ordinance.
9. The Court concludes that the requirements of Section 16.25.2.8 of the Ordinance are not a condition to a special exception.

10. The Court concludes that the requirements of Section 16.25.2.9 of the Ordinance are not a condition to a special exception.
11. The Court concludes that the requirements of Section 16.25.2.10 of the Ordinance are not a condition to a special exception, but rather are a potential condition to a land development permit. While that the Section might be interpreted as imposing a condition to a special exception, the Court concludes that Solar is entitled to the benefit of the more favorable interpretation, pursuant to 53 P.S. § 10603.1.
12. The Court concludes that the requirements of Subsections 16.25.2.11.1 or 16.25.2.11.2 of the Ordinance are not conditions to a special exception.
13. The Court concludes that Section 16.25.2.12 requires an applicant to execute an acknowledgement prior to the issuance of a zoning permit, but does not create any independent requirement of proof by the applicant as a condition to a special exception.
14. The Court concludes that Subsection 16.25.2.13.1 requires that any PSES comply with all other applicable subdivision and land development requirements, but does not create any independent requirement of proof by the applicant as a condition to a special exception.
15. The Court concludes that Subsection 16.25.2.13.2 requires that any PSES be repaired, maintained, and replaced consistent with applicable industry standards, but does not create any independent requirement of proof by the applicant as a condition to a special exception.
16. The record of the hearing conducted on July 17, 2023, as supplemented by the record of the hearing conducted on May 1, 2024, supports the conclusion that the System proposed by Solar complies with Section 16.25.3.1 of the Ordinance.
17. The record of the hearing conducted on July 17, 2023, as supplemented by the record of the hearing conducted on May 1, 2024, supports the conclusion that the System proposed by Solar complies with Section 16.25.3.2 of the Ordinance, including Subsections 16.25.3.2.1 and 16.25.3.2.2 and 16.25.3.2.3.
18. The record of the hearing conducted on July 17, 2023, as supplemented by the record of the hearing conducted on May 1, 2024, supports the conclusion that

the System proposed by Solar complies with Section 16.25.3.3 of the Ordinance.

19. The record of the hearing conducted on July 17, 2023, as supplemented by the record of the hearing conducted on May 1, 2024, supports the conclusion that the System proposed by Solar complies with Section 16.25.3.4 of the Ordinance, including Subsections 16.25.3.4.1 and 16.25.3.4.2. Issues related to storm water management are better addressed in connection with a land development permit application, rather than an application for a special exception.
20. The Court does not interpret the requirements of Section 16.25.3.5 of the Ordinance as a condition to a special exception.
21. The Court does not interpret the requirements of Section 16.25.3.6 of the Ordinance as a condition to a special exception. Rather, that Section imposes requirements related to a land development application.
22. The Court does not interpret the requirements of Section 16.25.3.7 of the Ordinance as a condition to a special exception. Rather, that Section imposes requirements related to a land development application.
23. The record of the hearing conducted on July 17, 2023, supports the conclusion that the System proposed by Solar complies with Section 16.25.4 of the Ordinance, including Subsections 16.25.4.1 and 16.25.4.2. In any event, those Subsections impose requirements related to a land development application.
24. The Court concludes that Section 16.25.5 requires an applicant to execute an agreement with the Township, but does not create any independent requirement of proof by the applicant as a condition to a special exception.
25. The Court concludes that Section 16.25.6 requires an applicant to execute an agreement with the Township, and provide financial security, but does not create any independent requirement of proof by the applicant as a condition to a special exception.

## ORDER

**AND NOW**, this 13<sup>th</sup> day of August 2024, it is hereby Ordered and directed as follows:

- a. The appeal filed by Appellant Landowners, from the deemed approval of the application of Solar Renewable Energy LLC for a special exception, is sustained, and the deemed approval is reversed. The Court concludes that Solar Renewable Energy LLC has met nearly all of the objective requirements of the Zoning Ordinance of Muncy Township for a special exception for the use of a Principal Solar Energy System, but has not complied with the uniquely worded requirements of Subsection 16.25.2.5.1 which requires that the proposed solar array “shall be placed such that concentrated solar radiation or glare does not project onto nearby structures, roadways or beyond the boundaries of the land upon which it is located” and Subsection 16.25.2.5.2 which requires that “the applicant has the burden of proving that any glare produced does not have significant adverse impact on neighboring or adjacent uses.”
- b. Nothing set forth herein is intended to preclude Solar Renewable Energy LLC, or any other party in interest, from submitting a revised application for a special exception, or a new application.
- c. Nothing set forth herein is intended to suggest that the proposed Principal Solar Energy System is not an appropriate subject for a special exception, nor that Lycoming County tax parcel number 41-353-141 is not a proper location for Principal Solar Energy System.

BY THE COURT,

William P. Carlucci, Judge

WPC/aml

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