IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DAUGHERTYS RUN ROAD SOLAR I, LLC, Appellant,	:	NO. CV-2024-01278
vs.	:	CIVIL ACTION – LAW
OLD LYCOMING TOWNSHIP BOARD OF SUPERVISORS, Appellee,	:	LAND USE APPEAL

OPINION & ORDER

The above-captioned case was commenced by Notice of Land Use Appeal, filed on November 19, 2024. Daughertys Run Road Solar 1, LLC (hereinafter "Appellant") appealed a written decision—issued on October 22, 2024 (hereinafter the "October 22nd Decision")—by the Old Lycoming Township Board of Supervisors (hereinafter "Appellee"). The subject property is located at 916 Daughertys Run Road, Williamsport, PA 17701, with a Tax Parcel number of 43-348-138.A. (hereinafter the "Property"), situate in Old Lycoming Township, Lycoming County, leased by the Appellant. Appellant's Land Use Appeal appeals only condition number one (1) from Appellee's October 22nd decision.

Shortly thereafter, Kathleen M. Caputo (hereinafter "Petitioner") filed a Petition to Intervene (hereinafter "Petition") on December 24, 2024, contending that the determination of the Appellant's appeal would affect a "legally enforceable interest of Petitioner," because Petitioner owns real property within the vicinity of the Property in question, and that the Appellant's proposed solar array would "generate[] noise on a consistent basis and decrease[] local property values," and that construction of the solar array "will adversely affect Petitioner's use of the property, including by potentially damaging Petitioner's well." Pet.'s Petition (unpaginated). That Petition was denied by the Opinion and Order of this Court of April 29, 2025.

I. BACKGROUND

Appellant filed an application for a conditional use to construct a 3MW Solar Facility at the Property (hereinafter generally referred to as the "Solar Facility"). Appellee scheduled and duly noticed a public hearing on the application for September 23, 2024. The Court has carefully reviewed the transcript of those proceedings, together with marked exhibits.

Appellee marked and accepted nine (9) exhibits, including the zoning permit application (Board Exhibit 1), the conditional use application (Board Exhibit 2), a GSI map and report (Board Exhibit 3), the Zoning Ordinance, Section 27-202 (Board Exhibit 4), the published notice of hearing (Board Exhibit 5), the posted notice of hearing (Board Exhibit 6), letters to surrounding property owners (Board Exhibit 7), a letter dated September 19, 2024, from the Old Lycoming Township Planning Commission (Board Exhibit 8), and Old Lycoming Township Zoning Ordinance Section 27-1002 (Board Exhibit 9). Notes of Testimony, hereinafter N.T. 7-9).

Counsel for the Township introduced the testimony of Township Manager Ann-Marie Brown, who testified to the contents of the Planning Commission letter introduced as Township Exhibit 8 (N.T. 10-13). The Court has reviewed Exhibit 8, which lists thirteen (13) numbered issues, collectively referred to as matter which the Planning Commission suggests "be considered." Issues number 1 and 2 and 3 and 5 and 6 and 7 and 9 and 10 and 11 and 12 and 13 appear to be specific to the Solar Facility. Issues number 4 and 8 appear to be general suggestions for future improvement for consideration of solar projects in general. Issue number 4 states "The Supervisors should consider increasing the minimum lot line setbacks, particularly in regard to residential property setbacks." **Exhibit 8 contains no specific recommendation for a setback on the Solar Facility.**

The Township introduced the testimony of Township Zoning Officer Kyle Kehoe. Kehoe testified "I do not have any specific conditions other than the memo that was proposed from our office from the engineer, John Poff." N.T. 16. Kehoe testified that the Property was posted, pursuant to applicable law.

The Township introduced the testimony of Engineer John R. Poff. N.T. 18-23. Poff testified to eight (8) conditions to approval set forth in his letter to Old Lycoming Township, dated September 3, 2024. **That letter, which is attached to Board Exhibit 8, makes no reference whatever to the issue of setbacks.**

Board Exhibit 9, Zoning Ordinance Section 27-1002 regarding Conditional Uses, lists multiple "Criteria for Conditional Uses." **That Section, which is attached to Board Exhibit 9, makes no reference whatever to the issue of setbacks.**

Timothy Mills, Senior Project Developer for Appellant, explained the nature of the proposed Solar Facility (N.T. 24-60). He also introduced Applicants Exhibits 1 through 4. Exhibit 1 was in the nature of a Powerpoint description of the proposed Solar Facility.

Exhibit 2 was a noise study for the proposed Solar Facility, which included a recommendation for installation of a six (6) foot tall absorptive barrier surrounding the equipment pad. Exhibit 3 was a glare study for the proposed Solar Facility, which concluded that the Solar Facility would produce no glare. Exhibit 4 as a Real Estate Adjacent Property Value Impact Report, which concluded that the installation of similar facilities to the Solar Facility has no consistent measurable effect on the value of surrounding properties.

Beginning at transcript page 61, the Board entertained questions and comments from third parties. Kathleen Caputo stated that she "dropped off to the Township yesterday a couple resources." Counsel for the Township permitted those two documents to be introduced as Caputo Exhibits 1 and 2 (N.T. 62).

The Court has carefully examined Caputo Exhibits 1 and 2. Caputo Exhibit 1 is a photocopy of material on an internet website maintained by a company known as "Go Solar Florida State." Naturally, no representative of Go Solar appeared at the hearing. Caputo Exhibit 1 contains a section titled "What to Expect When Living Near a Solar Farm. That section states that, for homes under 50 feet away from the solar farm "it is not recommended to live in such close proximity." For homes 50-150 feet away, the same section states "May experience some minor glare and noise disturbance, but unlikely to be too problematic. Consider vegetation buffer." For homes over 300 feet away, the same section states "Very unlikely to notice the solar farm at this distance."

Caputo Exhibit 2 is a photocopy of material on an internet website maintained by a company known as Community & Environmental Defense Services. Naturally, no representative of Community & Environmental Defense Services appeared at the hearing. The following claim is set forth on their internet home page:

How to stop development threatening neighborhood health, safety and tranquility

> CEDS helps people to preserve the health, safety, and tranquility of their neighborhoods when threatened by excessive traffic, proposed gas stations, landfills, and many other Issues We Can Help You Win. CEDS uses a unique approach that greatly increases our clients' success in winning land development battles and a long list of other issues posing a threat to a neighborhood. Our approach is far more effective and costs a fraction of what our clients would pay if they just hired a lawyer or other professionals

The Court has carefully reviewed the contents of hearing transcript pages 61 through 113. Quentin Wood, Senior Civil Project Engineer for Appellant, stated that the proposed

Solar Facility is 277 feet from the building situate on the property owned by Kathleen Caputo (N.T. 33 and 66). Wood observed that the applicable zoning ordinance requires a 50-foot setback (N.T. 68). Caputo claimed that the setback should be 600 feet or more, based upon the two (2) internet documents marked Caputo Exhibits 1 and 2. The record contains no other support for that claim (N.T. 68).

A resident named Frank Sherman stated that "Our house is currently 410 feet." (N.T. 80). Thus, it appears to the Court that the closest occupied dwelling is Caputo.

Matt Caputo stated "my biggest concern is the setbacks again of this project." (N.T. 81).

An unidentified male inquired about setbacks, and was advised by Timothy Wood that the Solar Facility would be constructed with "whatever is in the existing zoning ordinance for the zoning district, they would be subject to those setbacks, not additional setbacks." (N.T. 98).

At transcript page 100, Supervisor Kastner referred to the Planning Commission recommendation contained in Exhibit 8 to the effect that "The Supervisors should consider increasing the minimum lot line setbacks, particularly in regard to residential property setbacks." Exhibit 8 contains no specific recommendation for a setback on the Solar Facility.

After recess, the Board voted to approve the Solar Facility, subject to eight (8) conditions (N.T. 112-113). Among those conditions is the imposition of a five hundred-foot (500) setback "from any parcel with an existing residential structure thereon and the setback is from the property line and not the residential structure." Since the testimony of both Kathleen Caputo and Wood indicated that proposed location of the Solar Facility was 277 feet from her home (N.T. 33 and 66) and since Wood testified that the distance of the proposed Solar Facility to the property line was 151 feet (N.T. 66), the Court infers that the practical effect of the set-back Condition 1 is to require that the Solar Facility be constructed with a setback of 626 feet from the nearest occupied structure (increasing distance from property line from 151 feet to 500 feet).

II. ZONING ORDINANCE SETBACK REQUIREMENT

The applicable zoning ordinance setback requirements are set forth in Lycoming County Zoning Ordinance Section 27-303. It is undisputed that Section 27-303 establishes setback requirement as follows: Front yard setback of the greater of 40 feet from roadway edge or 65 feet from roadway center line. Rear yard setback of 50 feet. Side yard setback of 20 feet. Appellee has proposed construction of the Solar Facility with a front yard setback of 780 feet, a side yard setback of 49 feet, and a rear yard setback of 54 feet. While those proposed setbacks meet the requirements of Section 27-303, the proposed side yard and read yard setbacks are far less than the 500 feet established by Appellee Condition 1.

III. JURISDICTION

Pursuant to 53 P.S. § 11002-A—"Jurisdiction and venue on appeal; time for appeal—subsection a, "[a]ll appeals from all land use decisions rendered pursuant to Article IX[] shall be taken to the court of common pleas of the judicial district wherein the land is located…." Since the Property, 916 Daughertys Run Road, Williamsport, PA 17701, Lycoming County Tax Parcel number of 43-348-138.A. is situate in Lycoming County, this Court has jurisdiction.

IV. STANDARD AND SCOPE OF REVIEW

This Court has taken no additional evidence on appeal. When the trial court takes no additional evidence, the scope of review in an appeal is limited to a determination of whether the governing body "abused its discretion or committed an error of law." *Warwick Land Development, Inc. v. Board of Sup'rs of Warwick Tp., Chester County*, 695 A.2d 914, 917 n. 6 (Pa. Commw. Ct. 1997) (citing *Rouse/Chamberlin, Inc. v. Board of Supervisors of Charlestown Township*, 504 A.2d 375 (Pa. Commw. Ct. 1986)); *see, generally, Appeal of M.A. Kravitz Co., Inc.*, 460 A.2d 1075, 1081 (Pa. 1983)("In considering a zoning appeal, where the court of common pleas takes no additional evidence, the appellate courts are limited to a determination of whether the board committed an abuse of discretion or error of law.").

It is undisputed that the Solar Facility is permitted as a special exception in the zoning district which includes the Property. In the matter of *Coal Gas Recovery, L.P. v. Franklin*

Township Zoning Hearing Board, 944 A.2d 832 (Pa.Cmwlth, 2008), our Commonwealth Court analyzed the proper consideration of an application for a special exception as follows:

> A special exception is a use that is expressly permitted by a zoning ordinance. *Broussard v. Zoning Board of Adjustment of the City of Pittsburgh,* 831 A.2d 764, 769 (Pa.Cmwlth. 2003). Once an applicant for a special exception proves that its proposed use meets the criteria found in the zoning ordinance, "it is presumed that the local legislature has already considered that such use satisfies local concerns for the general health, safety and welfare and that such use comports with the intent of the zoning ordinance." *Id.* at 772.
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> Nevertheless, Section 912.1 of the Pennsylvania Municipalities Planning Code (MPC), Act of July 31, 1968, P.L. 805, *as amended,* added by Act of December 21, 1988, P.L. 1329, 53 P.S. § 10912.1, provides, in relevant part, that a zoning hearing board, while granting a special exception, may attach such reasonable conditions and safeguards, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of this act and the zoning ordinance. However, the ability to impose a condition on a special exception is not unfettered. Conditions must be reasonable and must find support in the record warranting the imposition of such conditions; otherwise, the imposition of conditions constitutes an abuse of discretion.
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> *Coal Gas Recovery, L.P. v. Franklin Township Zoning Hearing Board*, 944 A.2d 832, 838-39 (Pa.Cmwlth, 2008), citing S*abatine v. Zoning Hearing Board of Washington Township,* 651 A.2d 649, 655 (Pa.Cmwlth.1994).

Moreover, "[a]n abuse of discretion exists if the Board of Supervisors' findings are not supported by substantial competent evidence." 695 A.2d at 917 n. 5; *see In re Richboro CD Partners, L.P.*, 89 A.3d 742, 754-755 (Pa. Commw. Ct. 2014)("In conditional use proceedings where the trial court has taken no additional evidence, the Board is the finder of fact, empowered to judge the credibility of witnesses and the weight afforded to their testimony; a court may not substitute its interpretation of the evidence for that of the Board.")(citing *Tennyson v. Zoning Hearing Board of West Bradford Township*, 952 A.2d 739, 743 n. 5 (Pa. Commw. Ct. 2008); *In re Cutler Group, Inc.*, 880 A.2d 39, 46 (Pa. Commw. Ct. 2005)); *see, generally, Valley View Civic Association v. Zoning Board of Adjustment*, 462 A.2d 637, 639-640 (Pa. 1983)("the Board abused its discretion only if its findings are not supported by substantial evidence.").

"Substantial evidence" is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. 462 A.2d at 640 (citing *Consolidated Edison Co. v.*

NLRB, 305 U.S. 197 (1938); *Republic Steel Corp. v. Workmen's Compensation Appeal Board*, 421 A.2d 1060 (Pa. 1980); *Norfolk and Western Railway Co. v. Pennsylvania Public Utility Commission*, 413 A.2d 1037 (Pa. 1980); *Pennsylvania State Board of Medical Education and Licensure v. Schireson*, 61 A.2d 343 (Pa. 1948); *Pennsylvania Labor Relations Board v. Kaufmann Department Stores, Inc.*, 29 A.2d 90 (Pa. 1942)).

V. QUESTION PRESENTED

Whether Appellee committed an error of law, or abused its discretion by imposing Condition 1, requiring that "The Project shall be setback five hundred (500) feet from the property line of adjacent properties with existing residential structures."

VI. ANSWER TO QUESTION PRESENTED

Appellee committed an error of law, or abused its discretion, by imposing Condition 1.

VII. ANALYSIS

This Court has reviewed the twenty-three (23) "Findings of Fact and Conclusions of Law" entered by the Appellee in the Written Decision of October 22, 2024. Since Appellee elected to lump Findings and Conclusions together, it is difficult for this Court to determine when Appellee was attempting to make a finding based upon substantial evidence, and when Appellee was simply reaching a legal conclusion. The Court will first restate the law on conditional use under 53 P.S. § 10603, then proceed to address each of the twenty-three (23) "Findings of Fact and Conclusions of Law."

In *Clinton County Solid Waste Authority v. Wayne Township*, 643 A.2d 1162 (Pa. Commw. Ct. 1994), our Commonwealth Court restated that, under 53 P.S. § 10603(c)(2), "it is clear that the Supervisors, as the governing body of the township,[] have the authority to grant conditional uses pursuant to the express standards and criteria set forth in the zoning ordinances enacted by the Supervisors to regulate land use pursuant to the police power." 643 A.2d at 1168 (citing 53 P.S. § 10603(c)(2); 53 P.S. § 10601; *Hill v. Zoning Hearing Board of Maxatawny Township*, 597 A.2d 1245 (Pa. Commw. Ct. 1991)). What is equally clear and "well-settled" is the law on conditional uses:

> A conditional use is one that has been legislatively approved for a particular zoning district, so long as the proposed use satisfies the standards for such a use set forth in the zoning

> ordinance. *Ligo v. Slippery Rock Township*, 936 A.2d 1236, 1242 (Pa.Cmwlth.2007). Once that burden is satisfied, the applicant is entitled to the conditional use, and the burden shifts to the objectors. The objectors must prove, to a high degree of probability, that aspects of the proposed use will adversely impact the health, safety and welfare of the community in ways not expected by the legislative body when it established its list of approved, conditional uses. *East Manchester Zoning Hearing Board v. Dallmeyer*, 147 Pa.Cmwlth. 671, 609 A.2d 604, 610 (1992). Speculation of possible harms is not sufficient to satisfy this burden. *Id*.
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> ….
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> Reasonable conditions are those that advance a valid zoning interest and are supported by the evidence of record. *See* ROBERT S. RYAN, PENNSYLVANIA ZONING LAW AND PRACTICE § 9.4.19 (1981).

HHI Trucking & Supply, Inc. v. Borough Council of Borough of Oakmont, 990 A.2d 152, 159 (Pa. Commw. Ct. 2010); *City of Hope v. Sadsbury Tp. Zoning Hearing Bd.*, 890 A.2d 1137, 1147-1148 (Pa. Commw. Ct. 2006); *see, e.g., In re Richboro CD Partners, L.P.*, 89 A.3d 742, 754 (Pa. Commw. Ct. 2014)("In order to deny a conditional use based upon the high degree of probability that the traffic impact will pose a substantial threat to the community, objectors have a high burden. Objectors must demonstrate that the conditional use will generate traffic patterns not normally generated by other permitted uses and that this abnormal traffic pattern will pose a substantial threat to the health, safety, and welfare of the community.")(citing *Joseph v. North Whitehall Township Board of Supervisors*, 16 A.3d 1209, 1217 (Pa. Commw. Ct. 2011); *Borough of Perkasie v. Moulton Builders, Inc.*, 850 A.2d 778, 782 (Pa. Commw. Ct. 2004); *Appeal of Brickstone Realty*, 789 A.2d 333, 341–342 (Pa. Commw. Ct. 2001)).

In *HHI Trucking and Supply, Inc.*, the property owner requested approval to build a concrete plant in a zoning district where a concrete plant was permitted as a conditional use. 990 A.2d at 155. Access to the proposed concrete plant was provided by a road which lacked shoulders, had deteriorating pavement, and experienced significant truck traffic. *Id*. During the hearings on the property owner's conditional use application, objectors to the application argued that the proposed concrete plant was located near residential neighborhood homes. *Id*. The property owner presented expert witnesses who addressed, among various issues, the trucking traffic on the access road, construction and operation of the concrete plant, storm water management, noise, etc. *Id*. Objectors to the application also presented expert witnesses to refute the expert testimony presented by the property owner. *Id*. Residents of that borough also testified of their concerns regarding the adverse impact of the propose concrete plant to their community. *Id*. At the conclusion of those hearings, the borough

council granted the property owner's application, but imposed thirty-three (33) conditions, many of which addressed the plant operations, stormwater management, lighting, traffic, etc. *Id*. The property owner appealed fourteen (14) of those thirty-three (33) conditions, contending that those conditions were "unreasonable and effectively prevent it from either building or operating its proposed plant." *Id*. A challenged condition, for example, was with regard to "Transportation and Traffic Improvements," which stated that the property owner "shall facilitate and pay for the engineering and construction of roadway improvements to widen" the access road in question "to alleviate existing structural and safety problems that exist due to the current narrowness" of that access road. *Id*. The trial court, which did not take any additional evidence, reasoned that those fourteen (14) conditions were unsupported by the record evidence; therefore, the trial court affirmed the approval of the property owner's application but voided the fourteen (14) conditions imposed by the borough council. *Id*. The borough council, relying on *Leckey v. Lower Southampton Township Zoning Hearing Boa*rd, 864 A.2d 593, 596 (Pa. Commw. Ct. 2004), appealed to the Commonwealth Court, arguing that the trial court erred in voiding those fourteen (14) conditions because the trial court's order did not specifically address each of those conditions, and therefore erroneously "placed the burden on [the borough council] to justify each condition." *Id*.

Our Commonwealth Court rejected the borough council's argument:

> First, the trial court did not place the burden upon Borough Council. Rather, the trial court held that HHI met its burden on appeal by showing that the 14 conditions were unreasonable.
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> Second, *Leckey* does not mean, as suggested by Borough Council, that a municipality can devise conditions out of thin air and without any reference to the record evidence. The trial court held, although not expressed in precisely this way, that where a municipality imposes a condition to prevent "harm" for which there is no evidence in the record, that condition is not reasonable. Stated otherwise, the municipality abuses its discretion when it imposes a condition without supporting evidence in the record. This logic is consistent with our holding in *Coal Gas Recovery, L.P. v. Franklin Township Zoning Hearing Board*, 944 A.2d 832 (Pa.Cmwlth.2008), where we stated that when findings of a zoning hearing board are not supported by record evidence, the board has abused its discretion.
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> Third, a reasonable condition is one that relates to a standard adopted in the applicable zoning ordinance. This is necessary because a zoning hearing board's jurisdiction is limited to

> enforcement of the zoning ordinance. A zoning hearing board does not enjoy broad, inchoate powers to advance its members' vision of what constitutes the public welfare or even the public welfare as defined in a variety of environmental protection statutes, be they state or federal. Other governmental agencies bear that enforcement authority.[] A zoning hearing board's authority is defined by the MPC and the zoning ordinance.
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> In sum, to be reasonable, a condition must relate to a zoning ordinance standard or be authorized by the MPC. Factual findings on which the condition is premised must be supported by record evidence. If not, a zoning hearing board, or municipality, abuses its discretion when it imposes such a condition. In *Commonwealth ex rel. Corbett v. Snyder*, 977 A.2d 28 (Pa.Cmwlth.2009), this Court defined an abuse of discretion as "a judgment that is plainly unreasonable, arbitrary or capricious, fails to apply the law, or was motivated by partiality, prejudice, bias or ill will." *Id*. at 41 (quoting *Ambrogi v. Reber*, 932 A.2d 969, 974 (Pa.Super.2007)).

HHI Trucking & Supply, Inc. v. Borough Council of Borough of Oakmont, 990 A.2d 152, 160 (Pa. Commw. Ct. 2010).

Our Commonwealth Court, in *HHI Trucking & Supply, Inc.*, concluded, for example, that the conditions regarding "Transportation and Traffic Improvements"—which required the property owner to widen the access road, were "unreasonable *per se*"—and therefore unlawful—because those conditions were "relate[d] 'to off-site transportation or road improvements'" and therefore violated 53 P.S. § 10603(c)(2). *Id*. at 163 (quoting 53 P.S. § 10603(c)(2)). The Commonwealth Court, in affirming the trial court's order, further explained that "[i]n the absence of evidence in the record explaining their need, these conditions appear to have been drawn from thin air, which is arbitrary and capricious. Further, without evidence, it is impossible to determine whether the municipality has acted reasonably in its imposition of a condition." *Id*.

In this matter, the Board imposed as Condition 1 setback requirements which are at least ten (10) times the distance required in Lycoming County Zoning Ordinance Section 27-303. That Condition is not based upon any objective criterion, but appears to result from comments from some hearing attendees related to their speculative health or safety concerns.

> A special exception is not an exception to the zoning ordinance, but rather a use to which the applicant is entitled unless the zoning board determines, according to the standards set forth in the ordinance, that the proposed use would adversely affect the community. *Manor Healthcare v. Lower Moreland Township Zoning Hearing Board,* 139 Pa.Commonwealth Ct. 206, 590 A.2d 65 (1991); ****683*** *Johnson v. North Strabane Township,* 119 Pa.Commonwealth Ct. 260, 546 A.2d 1334 (1988), *petition for allowance of appeal denied,* 521 Pa. 625, 557 A.2d 727 (1989). Once the applicant has met his or her burden of proving that the proposed use meets the specific and objective requirements for a special exception under the zoning ordinance, a presumption arises that it is consistent with the health, safety and welfare of the community. *Manor Healthcare; Appeal of R.C. Maxwell Company,* 120 Pa.Commonwealth Ct. 251, 548 A.2d 1300 (1988). The burden then shifts to the objectors of the application to present evidence and persuade the zoning board that the proposed use would have a generally detrimental effect on public health, safety and welfare or will conflict with the expressions of general policy contained in the ordinance. *Manor Healthcare; Ralph & Joanne's v. Nashannock Township Zoning Hearing Board,* 121 Pa.Commonwealth Ct. 83, 550 A.2d 586 (1988). This shift occurs because it is presumed that in considering a particular use for a particular zoning district, such general matters as health, safety and general welfare and the general intent of the zoning ordinance have been considered by the Township when it provided for a special exception for the proposed use. *Schatz; Appeal of Baird,* 113 Pa.Commonwealth Ct. 637, 537 A.2d 976 (1988), *petition for allowance of appeal denied,* 521 Pa. 613, 557 A.2d 344 (1989).
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> The burden placed on the objectors is a heavy one. They cannot meet their burden by merely speculating as to possible harm, but instead must show a high degree of probability that the proposed use will substantially affect the health and safety of the community. *Manor Healthcare; Tuckfelt v. Zoning Board of Adjustment,* 80 Pa.Commonwealth Ct. 496, 471 A.2d 1311 (1984).

East Manchester Township Zoning Hearing Board v. Dallmeyer, 147 Pa.Cmwlth. 671, 682-83, 609 A.2d 604, 610.

The Court finds that the speculative setback concerns expressed by some hearing attendees fell far short of establishing a high degree of probability that the proposed use will substantially affect the health and safety of the community. In fact, the noise study, glare study, and Real Estate Adjacent Property Value Impact Report, introduced as Applicants Exhibits 2, 3, and 4 provide ample evidence to the contrary.

The Court has carefully reviewed the twenty-three (23) "Findings of Fact and Conclusions of Law" set forth in the Appellee's written decision dated October 22, 2024. The Court finds as follows:

1. This Appellee Finding is a true Finding of Fact and is supported by the record.
2. This Appellee Finding is a true Finding of Fact and is supported by the record
3. This Appellee Finding is a true Finding of Fact and is supported by the record.
4. This Appellee Finding is a true Finding of Fact, and is supported by the record.
5. This Appellee Finding is a true Finding of Fact, and is supported by the record.
6. This Appellee Finding is not a true Finding of Fact, but a restatement of the Township Ordinance.
7. This Appellee Finding is not a true Finding of Fact, but is an accurate interpretation of the Township Ordinance.
8. This Appellee Finding is a true Finding of Fact, and is supported by the record.
9. This Appellee Finding is a true Finding of Fact, and is supported by the record.
10. This Appellee Finding is a true Finding of Fact, and is supported by the record.
11. This Appellee Finding is not a true Finding of Fact, but a restatement of the Township Ordinance.
12. This Appellee Finding is not a true Finding of Fact, but simply a legal conclusion based upon the Board reaction to the evidence presented by Appellant.
13. This Appellee Finding is not a true Finding of Fact, but simply a legal conclusion based upon the Board reaction to the evidence presented by Appellant.
14. This Appellee Finding is not a true Finding of Fact, but simply a legal conclusion based upon the Board reaction to the evidence presented by Appellant.
15. This Appellee Finding is not a true Finding of Fact, but simply a legal conclusion based upon the Board reaction to the evidence presented by Appellant.
16. This Appellee Finding is not a true Finding of Fact, but simply a legal conclusion based upon the Board reaction to the evidence presented by Appellant, and the Board's consideration of the RA Zoning District under the Township Ordinance.
17. This Appellee Finding is a true Finding of Fact and is supported by the record.
18. This Appellee Finding is a true Finding of Fact and is supported by the record.
19. This Appellee Finding is a true Finding of Fact and is supported by the record.
20. This Appellee Finding is a true Finding of Fact and is supported by the record.

21. This Appellee Finding is a true Finding of Fact and is supported by the record.
22. This Appellee Finding is a true Finding of Fact and is supported by the record.
23. This is a pure legal conclusion regarding the action of the Board.

After a thorough review the record, the Court is constrained to conclude that the Board's imposition of Condition 1, requiring that "The Project shall be setback 500 hundred (500) feet from the property line of adjacent properties with existing residential structures" is inconsistent with Ordinance Section 27-303, and is not supported by substantial evidence in the record. Rather, it appears to the Court that the Board created Condition 1 "out of thin air." Although several lay witnesses expressed speculative concerns about the setbacks, no witness testified to any specific issue created by the proximity of the Solar Facility to the property lines. Caputo Exhibit 1 is a photocopy of material on an internet website maintained by a company known as "Go Solar Florida State," which asserts that a solar far should not be situate within 50 feet of a residence. Where a solar far is situate 50-150 feet away, Caputo Exhibit 1 asserts "May experience some minor glare and noise disturbance, but unlikely to be too problematic. Consider vegetation buffer." Caputo Exhibit 2 is a photocopy of material on an internet website maintained by a company known as Community & Environmental Defense Services, which claims that its approach in "winning land development battles" is "far more effective and costs a fraction of what our clients would pay if they just hired a lawyer or other professionals." The Court finds that the speculative setback concerns expressed by some hearing attendees fell far short of establishing a high degree of probability that the proposed use will substantially affect the health and safety of the community. The record contains abundant evidence to the contrary.

Condition 1 establishes setback requirements far in excess of those set forth in Ordinance Section 27-303. Because the imposition of far greater setback requirements than those established in the applicable ordinance is not supported by substantial evidence in the record—the Board abused its discretion. By way of brief example, the Planning Commission made no recommendation regarding a specific setback for the Solar Facility. Township Zoning Officer Kyle Kehoe testified "I do not have any specific conditions other than the memo that was proposed from our office from the engineer, John Poff." Engineer John R. Poff testified to eight (8) conditions to approval set forth in his letter to Old Lycoming Township, dated September 3, 2024. That letter, which is attached to Board Exhibit 8, makes no reference whatever to the issue of setbacks.

ORDER

And now, this 26th day of June, 2025, for the reasons more fully set forth above, it is hereby ORDERED and DIRECTED as follows:

1. The Appellant's Land Use Appeal (filed November 19, 2024) is hereby GRANTED;
2. Condition 1 of the Written Decision dated October 22, 2024, requiring that "the Project shall be setback 500 hundred (500) feet from the property line of adjacent properties with existing residential structures" is STRICKEN.

IT IS SO ORDERED.

BY THE COURT,

_____
William P. Carlucci, Judge

WPC
cc: Jeffrey J. Malak, Esquire
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Wilkes-Barre, PA 18701
Zachary M. DuGan, Esquire