

Solar Development Application Denied Due to Tie Vote – Appeal Filed

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Renewables Law Blog

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On June 4, 2021, following 21 nights of public hearings held over the course of 15 months, a conditional use application for a proposed 75 megawatt solar energy system filed by Brookview Solar I, LLC, was denied by operation of law due to a two-two tie vote, with one abstention, by the Board of Supervisors of Mount Joy Township, Adams County. The applicant faced many of the same challenges and opposition frequently levied against traditional energy sources.

In November 2019, the applicant submitted its application for a solar energy field, proposed to be sited across eleven properties totaling approximately 374 acres of land located largely within the Township's Baltimore Pike Corridor District ("BPC") and partially within its Agricultural District ("AC"). Solar energy systems are a permitted use in the AC district and permitted as a conditional use within the BPC district under the Township Zoning Ordinance, subject to extensive use-specific regulations. The Board began holding public hearings on the application in January 2020 and concluded in March of 2021. On June 4, 2021, a motion to approve the application with conditions resulted in a 2-2-1 vote, as did a motion to deny the application. Under Pennsylvania case law, where a judicial or quasi-judicial body is equally divided, the subject matter with which it is dealing must remain in status quo, in this case resulting in a denial of the application. Due to the 2-2-1 vote, the Township did not prepare official written findings, but submitted two draft decisions in support of the Board's motions to deny and approve the application, as well as an official decision simply noting the denial as an operation of law. The applicant appealed to the Adams County Court of Common Pleas on June 28, 2021.

The appeal alleges the Board committed an error of law and/or abused its discretion by failing to approve the application. Due to the lack of an official decision, the appeal relies largely upon the limited differences between the draft denial and draft approval decisions. The appeal notes that although the two decisions overlapped on 68 findings of fact and 7 conclusions of law, the draft denial was largely based on a finding that the applicant failed to meet certain specific criteria under the Zoning Ordinance, namely that it had failed to provide a glare study, to submit stormwater plans, or to provide proper performance security related to decommissioning. The appeal alleges the record before the Board, as well as the draft approval decision, demonstrated that a complete glare study had been provided, that the applicant was not required to provide stormwater plans, and that the security met the relevant ordinance criteria. The applicant further argues that because these bases for denial all relate to alleged deficiencies in the application, they could not be considered where the Township had accepted the application as complete.

The appeal further argues the Board erred in denying the application where the draft denial decision was also based on an alleged failure to meet several general, subjective criteria of the Ordinance. After a conditional use applicant presents credible substantial evidence that the proposed use satisfies the ordinance's specific criteria, the burden shifts to any objectors to prove the application failed to meet the general, subjective criteria in the ordinance. The appeal alleges that because the draft denial decision failed to garner a simple majority, the objectors failed to meet this standard. In addition, it argues the record indicated the evidence presented by the objectors was merely anecdotal conjecture and speculation which was insufficient to meet their high burden of proof.

Although the *Brookview Solar* project involves newer technology, the legal issues are largely the same as those typically addressed in traditional Pennsylvania land use cases. Furthermore, the Court's decision on whether to review the matter *de novo* or to adopt the findings of fact and conclusions of law of either draft decision will have implications for the review of land use decisions generally, not just in the renewable energy field.

Tags: conditional use application, land use, solar energy field, zoning

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