

January 9, 2024

Via Regular United States Mail and E-mail

Lydia H. Caparosa, Esquire
MacDonald Illig
1001 State Street, Suite 700
Erie, PA 16507

Re: Wilson Solar Conditional Use Application and Rezoning Applications

Dear Attorney Caparosa:

Please find enclosed Venango Township Supervisors' Proposed Findings of Fact and Conclusions of Law regarding Wilson Solar's Conditional Use Application and Rezoning Applications. Thank you.

Very truly yours,

NIETUPSKI ANGELONE, LLC

By 
Anthony Angelone, Esquire

AA/jlk
enclosures
cc: Venango Township Supervisors (Via email – w/encl.)

**BEFORE THE BOARD OF SUPERVISORS OF
VENANGO TOWNSHIP**

IN RE: :
: :
Conditional Use Application of :
Wilson Solar, LLC :

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

AND NOW, comes the Venango Township Board of Supervisors, by its solicitor, Nietupski Angelone, LLC, and submits the following Proposed Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

I. Preliminary Matters

1. Wilson Solar, LLC (“Wilson”) submitted a conditional use application to Venango Township (“Township”) on July 27, 2023, for the construction and operation of a solar energy system (the “Solar Project”). Wilson is a wholly owned subsidiary of Birch Creek Development, LLC (“Birch Creek”). The Solar Project is proposed to be located on land west of Wattsburg Road, occupying approximately 1,129 acres and consisting of 14 parcels owned by one of six landowners (the “Property”). The Property is located in the Township’s Agricultural District except that 2 of the 14 parcels are located in the Township’s Residential District.

2. Simultaneous with the filing of the conditional use application, Wilson filed rezoning applications for the 2 Residential classified parcels, parcels 44010023000900 and 44010023001000. All three applications were consolidated for convenience.

3. The Township Board of Supervisors (“Board”) advertised and conducted public hearings on September 20, 2023¹, and November 1, 2023², during which the parties were afforded an opportunity to present witnesses and exhibits into evidence. The public hearing was closed on November 1, 2023, though the record remained open for the admission of additional documents by Wilson and the Township.

4. On November 1, 2023, the Venango Township Planning Commission formally submitted a second revised recommendation to the Board. As a result, and at the request of the applicant, procedural requirements for the Board’s decision and finding of facts were extended to January 8, 2024.

5. At both the September 20, 2023, and November 1, 2023 hearings, the Board permitted public comment and questions. Those members of the public that are residents are considered as Objectors for purposes of these proceedings.

6. Appearing for Wilson was Jenna Bickford, Esquire of McDonald, Illig, Jones & Britten, LLP.

7. Members of the Board who heard the evidence presented were:

¹ The transcript for the September 20, 2023, hearing is referred throughout as “TR 9/20/23.”

² The transcript for the November 1, 2023, hearing is referred throughout as “TR. 11/1/23.”

- i. Dean Curtis, Supervisor and Chairperson.
- ii. Michael Vogel, Supervisor; and
- iii. David (DJ) Austin, Supervisor.

8. The following witnesses testified on September 20, 2023:

- i. Andrew Urquhart from Birch Creek;
- ii. Tom Katelhon from Kimly-Horn;
- iii. Resident Gregory Brumagin;
- iv. Resident Bruce Whitehair;
- v. Resident Ed Snippert;
- vi. Resident Brian Butler;
- vii. Resident Marybeth Zeman;
- viii. Resident Geraldine Jarmolowicz;
- ix. Resident Ms. Pfadt;
- x. Kathy Facchiano;
- xi. Resident Dean Bertges;
- xii. Resident Lori Zaumseil;
- xiii. Resident Troy Zaumseil;
- xiv. Resident Ralph Gilkinson;
- xv. Resident Dale States;
- xvi. Brenda Costa, Executive Director of the French Creek Valley Conservancy;
- xvii. Resident Joe Mizikowski;
- xviii. Resident Richard Haibach;
- xix. Resident Josh Zasada;
- xx. Jake Banta, a friend of some residents that asked him to attend the meeting;
- xxi. Resident Cindy Young;
- xxii. Resident Dale Jagta;
- xxiii. Resident Sadie Twaroski

9. The following witnesses testified on November 1, 2023:

- i. Richard Kirkland, Jr., Certified General Appraiser
- ii. Resident Brian Butler;
- iii. Resident Bruce Whitehair;
- iv. Resident Dan Evans;
- v. Resident Nicole Keller;
- vi. Resident Scott Campbell;
- vii. Resident Doug Brumagin;
- viii. John Knox, Esquire, attorney for Rosemary and Bruce Whitehair;
- ix. Resident Fred Gerard;
- x. Resident Victoria Meehan;
- xi. Resident Dale States;
- xii. Resident Dan Callihan;
- xiii. Resident Tina Trohoske; and
- xiv. Resident Ed Snippert.

10. During the hearings, the Township and Wilson introduced or attempted to introduce into the record various exhibits (See attached List of Exhibits, Exhibit 1). The Board will cite these exhibits as relevant in these findings of fact and conclusions of law.

II. Township Zoning Ordinance

11. The Township is a township of the second class, organized and existing under the Second-Class Township Code, 53 Pa.C.S. §65101, *et seq.*

12. In 2023, the Township Board of Supervisors adopted Ordinance No.2023-01, (“Solar Ordinance”) now codified as part of the Venango Township Zoning Ordinance (“Venango Zoning Ordinance”).

13. The Solar Ordinance in conjunction with the Venango Zoning Ordinance regulates solar energy systems, also known as commercial solar farming, within the Township. The Solar Ordinance provides for the use of solar farming in certain designated districts.

III. Wilson Solar Project Application

14. Wilson submitted its application for the Solar Project on July 27, 2023. The application and supporting materials totaled 51 pages in length (See Exhibit A) and consisted of the following:

- a. Conditional Use Application.
- b. A narrative setting forth how Wilson will comply with applicable sections of the Zoning Ordinance.
- c. Plan Maps.

15. The Township Planning Commission reviewed the Wilson Conditional Use and Rezoning Applications and provided the Township Supervisors with its recommendations on August 15, 2023. (See Exhibit C).

IV. Case of Wilson

16. Applicant Witness - Andrew Urquhart (TR 9/20/23, pp. 31-45):

- a. Mr. Urquhart is the Birch Creek Director of Development.
- b. That Wilson will have a decommissioning Bond satisfactory to the Boards requirements.
- c. That Wilson will be adequately insured for all risk.
- d. Will provide 150-200 construction jobs.
- e. Will provide regular maintenance.
- f. Project will take 10 to 12 months of construction beginning in 2025.
- g. Once construction is completed, will have minimal traffic.
- h. Will commit to repair all township roads utilized for construction.

- i. Minimal additional money to township
- j. Will likely result in townships recapture of some clean and green rollback.
- k. Although testified that Project will provide additional tax revenue to Township, this is speculative at best. In fact, he testified that that applicant had engaged a 3rd party to provide more definitive details. This was not provided.
- l. Could not provide information on the durability of the panels considering the adverse weather conditions in Venango but would provide such information as requested by the Board. This was never submitted.
- m. Confirmed the existence of lead and cadmium in panels. No studies known of regarding long term impact.

17. Applicants Witness - Thomas Katelhon (TR 9/20/23, pp. 46-63):

- a. Employed as a civil engineer for Kimley-Horn, an independent company.
- b. Responsible for Project's site layout, stormwater control, erosion control, permitting, etc.
- c. Project consists of approximately 1,100 acres over 14 parcels.
- d. Describes the Project as "a lot of solar panels that are scattered throughout these properties".
- e. Specifics of Project consists of a 30-foot vegetative buffer to screen Project from public.
- f. They confirm they had to re-do the map on the application initially provided as they had included solar panels incorrectly on one of the parcels.
- g. Project requires the removal of approximately 125 acres of trees.
- h. At conclusion of construction/installation of panels, trees will be planted.
- i. Anticipate 3-5 years before trees achieve height of 10 feet. More than 10 years before trees reach mature height of 30-50 feet.
- j. Minimal noise associated with operation of panels. He wasn't sure of decibel levels though they were estimated in the application at _decibels.
- k. Minimal glare – panels have an antireflective material – they are designed to absorb sunlight does not reflect it.
- l. Relying on state to monitor environmental due diligence.
- m. Plan requires several roads crossing over streams and wetlands on different parts of the Project. He states that he has not seen any studies indicating negative impact on groundwater, emission of radiation or other harmful substances. The statement is equivocal "there should be none" yet provided no studies to support this.
- n. Will also assist the Township to do an overall emergency development plan.

18. Applicants witness - Richard Kirkland, Jr. from Kirkland Appraisals, LLC offered testimony on Applicants' behalf, relevant portions of which are as follows (TR 11/1/23, pp. 30 – 37, 44 – 76, 79 – 82, 84, 88, 92 – 98, 100 – 102, 105):

- a. Mr. Kirkland has been doing impact analysis on projects affecting property values for approximately twenty (20) years and specifically solar farms for the past fifteen (15) years.
- b. A paired sales analysis was done, analyzing sales of homes or farms that are next to the solar farm.
- c. If developed as proposed, this project would have no impact on adjoining properties.
- d. Along with the paired sales analysis a sales resale analysis was done.
- e. The number one thing that causes a negative impact on property value is going to be something other than air, water, and soil.
- f. It is typically found that the impact on property value is noise from very loud things that would include things like railroads, airports, outdoor amphitheaters, and things of that nature.
- g. They have not found any impact to property values due to noise.
- h. In this project noise, traffic or odor are not expected to cause a negative impact.
- i. Environmental or hazardous materials are also not expected to cause a negative impact as many tests have been done on solar farms by the EPA and studies put out by North Carolina State University and no impact was found in those studies/tests.
- j. The conclusion of the report is that the matched pair analysis shows no negative impacts in home values, due to abutting or adjoining a solar farm, as well as no impact to abutting or adjacent vacant, residential, or agricultural land.
- k. He stated he did not visit Venango Township and therefore did not do a site visit.
- l. He states he cannot give an opinion on the environmental impact of solar farms.
- m. He states that appearance can have a negative impact on property values.
- n. He states that he performs similar reports on a regular basis for Solar companies in other states.
- o. He states that he uses the same basic research for all his findings performed throughout the country.
- p. He admitted that Solar farms can have a negative impact on property values but does not feel it is the case in this Project. Again, he admits not having ever visited Venango Township.
- q. He admits that 25% of his annual revenue comes from Solar companies.

V. Case of Individual Objectors

19. More than one hundred (100) residents appeared at the two hearings, all of whom stated their objections to the Solar Project.

20. The majority and central theme of the objections was the size of the Project. Many expressed no objection to the concept, but the size was an issue.

21. Another block of the community expressed concern about the change in the character of the community due to topography and its visual impact.

22. Most significantly, 3 residents expressed concern due to their proximity to the Project and that the solar developments will be on three of the four sides of their respective properties. And while the Project provides for the placement of vegetation to help obstruct the view of the panels, Applicant's testimony indicates it would be at least ten (10) years for the vegetation to grow to that level.

23. Relevant portions of the comments and objections of residents and other participants at the hearing are summarized as follows:

- a. Resident Gregory Brumagin stated that the project drastically changes the character of the Township and specifically the neighborhood affected, which is a cause for concern. Also, the proposed project offers zero long term benefits to the Township, offers zero concessions to adjoining landowners. (TR 9/20/23, pp. 97 – 102.)
- b. Resident Bruce Whitehair stated that the project is way too large, one of the largest in Pennsylvania for a small Township like Venango. (TR 9/20/23, pp. 102 – 107.)
- c. Resident Ed Snippert stated that the project is too extensive and that there are numerous unanswered questions. (TR 9/20/23, pp. 107 – 109.)
- d. Resident Brian Butler stated that he has seen this with gas well leases in the past where after you sign up you get undermined and that he can't find information online about Wilson Solar. (TR 9/20/23, pp. 109 – 116.)
- e. Resident Marybeth Zeman stated her concerns about wildlife and noise levels. (TR 9/20/23, pp. 116 – 119.)
- f. Resident Geraldine Jarmolowicz stated her concern that she will be surrounded by the solar farm on three (3) sides of the farm and that we need to protect our land. (TR 9/20/23, p. 120)
- g. Resident Ms. Pfadt stated that the one hundred twenty-five acres of the trees should be replaced with the same type of tree removed immediately, not when the project is done. (TR 9/20/23, pp. 121 – 122.)
- h. Kathy Facchiano stated that surrounding properties are impacted is evidenced by the people opposing the project at the hearing. Also stated, why Venango Township and not somewhere else? (TR 9/20/23, pp. 122 – 125.)

- i. Resident Dean Bertges wanted to know if the lease payments are going to cover the entire property being leased or just the portion where the panels are on. (TR 9/20/23, pp. 125 – 126.)
- j. Resident Lori Zaumseil stated as follows (TR 9/20/23, pp. 126 – 131.):
 - (i) Questions whether Wilson Solar, who appears to be an invisible entity, disappears in ten years, and abandons the project, do the residents have any recourse?
 - (ii) Doesn't understand why they can't say no and can only put conditional uses on this.
 - (iii) Birch Creek's website shows only two projects completed by Pine Gate Renewables despite saying they've completed thirty-six (36).
- k. Resident Troy Zaumseil questioned where the components are manufactured and what kind of manufacturing standards are being used? Also questions whether the aluminum rails will oxidize and increase the PH or decrease the PH level in the soil. (TR 9/20/23, pp. 132 – 134.)
- l. Resident Ralph Gilkinson stated his observation that people are complaining about not knowing what's going on, but they don't ever come to the meetings. If they had come to meetings they'd have known more about this early on. (TR 9/20/23, pp. 134 – 135.)
- m. Resident Dale States stated as follows (TR 9/20/23, pp. 135 – 141.):
 - (i) Cannot reject the application solely because of infrastructure but it can be part of the reason.
 - (ii) Disagrees that the panels are impervious.
 - (iii) There's no water on the site if there is a fire so this can be rejected for that or should be made a condition.
 - (iv) Pounding the poles ten (10) feet into the ground will put the decibel above what it is allowed to be.
- o. Resident Joe Mizikowski made an observation that he sees the fences around solar farms while traveling all over on highways and it looks like a prison and the Township shouldn't have that. (TR 9/20/23, pp. 146 – 147.)
- p. Resident Richard Haibach made an observation that there are rights-of-way on the map that are nonexistent/incorrect and therefore question the accuracy of everything. (TR 9/20/23, pp. 147 – 149.)
- q. Resident Josh Zasada questioned whether a study on Jones Road was done? And what about the trucks going on Hill Road? (TR 9/20/23, pp. 149 – 153.)
- r. Jake Banta, a friend of several residents that asked him to attend the meeting, made the observation that there have been over 430 solar panel fires in the United States in just 2022. So, what happens when there is a

fire? Evacuation is required so how is that dealt with? (TR 9/20/23, pp. 153 – 156.)

- s. Resident Cindy Young questioned whether local unions be utilized for jobs or how would jobs be brought to the community? Also observed that the project would generate eighty (80) megawatts. (TR 9/20/23, pp. 156 – 157.)
- t. Resident Dale Jagta stated his belief that Solar people are sun worshipers, and they are taking down the land God provided for us. And the solar company is held accountable by the Sovereign God. (TR 9/20/23, pp. 159 – 161.)
- u. Resident Sadie Twaroski stated as follows (TR 9/20/23, pp. 161 – 164.):
 - (i) The building of the solar panel farm will take away the very things that the residents love and will drastically affect several factors such as wildlife's food source.
 - (ii) If decide to sell your home the value will decrease in direct correlation to this project.
 - (iii) The project will be extremely disruptive for young children trying to sleep with the noise, trying to get in and out of the house/down the road during the construction process.
 - (iv) Being exposed to electromagnetic radiation daily for thirty – forty years, what are the health concerns regarding that? It is not proven to be 100% safe.
- v. Resident Brian Butler wanted assurance that the Supervisors are representing the residents and not what they just feel is right, not what the Supervisors just want to do but do what's right for the residents. (TR 11/1/23, pp.129 – 133.)
- w. Resident Bruce Whitehair stated that many townships in Pennsylvania have denied solar farm developers conditional use permits and that across the country 182 permits have been denied. Also, no conditions on this project have been addressed. (TR 11/1/23, pp. 133 – 141.)
- x. Resident Dan Evans stated that as assistant chief of Wattsburg Hose Company, why were they not notified prior to the first hearing? Things like training and equipment need addressed for the fire department and all mutual aid partners. (TR 11/1/23, pp. 141, 143 – 144.)
- y. Resident Nicole Keller observed that a map of the average daily solar resource shows that all of northwestern PA falls in the under 4 kw/meter squared per day, the lowest amount in the continental US. Also, this project would destroy the ecosystem, provide constant noise, pollution of French Creek, heavy truck traffic, decreased home values, an unfathomable mess to clean up, endangering children and providing no benefit to Township residents. (TR 11/1/23, pp. 146 – 152.)

- z. Resident Scott Campbell observed that an online petition in opposition of the solar farm has one hundred thirty-two (132) signatures, more than the petition for the solar farm. (TR 11/1/23, pp. 153 – 154.)
- aa. Resident Doug Brumagin observed that the appraiser testified that there was a small chance that the property values could decrease. (TR 11/1/23, pp. 154 – 158.)
- bb. Attorney John Knox, attorney for Rosemary and Bruce Whitehair questioned (TR 11/1/23, pp. 159 – 170.):
 - (i) Whether or not the Board conferred with Wilson Solar to draft Ordinance 1 – 2023.
 - (ii) Why was the first meeting published in the Corry Journal and not Erie Times.
 - (iii) Why was the executive session held after the first meeting not advertised.
- cc. Resident Fred Gerard opined that this project is creating a landfill dump that is going to be toxic when the panels die. Further, things like training and equipment need to be addressed for the fire department and all mutual aid partners. (TR 11/1/23, pp. 170 – 174.)
- dd. Resident Victoria Meehan observed, regarding rezoning, that another resident was told not to try rezoning this way because then everyone would want to do that, so it needs to be fair when it comes to how residents are treated and other people coming in are treated. (TR 11/1/23, pp. 200 – 201.)
- ee. Resident Dale States stated that the submitted plan has no size/dimensions of the panels. Also concerned that nothing in the Building Code book on solar farms so they can do whatever they want and that all of the material is impervious material per the Building Code. (TR 11/1/23, pp. 201 – 210.)
- ff. Resident Dan Callihan observed that the project is too big. (TR 11/1/23, pp. 212 – 215.)
- gg. Resident Tina Trohoske opined that common sense dictates that the house values will not remain the same or go up in value. (TR 11/1/23, pp. 216 – 225.)
- hh. Resident Ed Snippert observed that at approximately 1,300 feet from the closest panel they will be able to be seen from his house. Also observed that he has solar panels on their barn and no gain in this weather, snow didn't go off them this morning for four hours. (TR 11/1/23, pp. 225 – 229.)

VI. Findings of Fact

44. The Board finds that the Venango Township Solar Ordinance specifically, the Venango Township Zoning Ordinance generally, and the Venango Township-Wattsburg Borough Area Comprehensive Plan 2006, as amended, are controlling in this determination.

45. The Board finds that the Solar Ordinance is not intended to be read in a vacuum as the broader provisions of the Venango Zoning Ordinance clearly provides that the application of *any* land use must meet the mandates of the specific ordinance addressing such use (Solar Ordinance) as well as the general requirements of the Venango Zoning Ordinance and Comprehensive Plan.

46. The Board finds that Venango Township residents have expressed legitimate concerns that their property values would be negatively impacted which Wilson attempted to address with the testimony of Richard Kirkland, Jr. The Board finds Mr. Kirkland's testimony and report of limited credibility, especially since he has never visited the Township. A reading of the report and testimony reveals his conclusions are based on standard national studies. The Board will, therefore, give that testimony its appropriate weight.

47. The Board finds that Venango Township residents have also expressed legitimate and non-speculative concerns that impact generally the overall objectives of both the Venango Zoning Ordinance and the Comprehensive Plan. Specifically, and significantly, at least 3 residents expressed serious concern due to their proximity to the Project and due to the proposed solar developments being on three of the four sides of their respective properties. Each panel has a maximum height of fifteen (15) feet. And while the Project provides for the placement of vegetation to help obstruct the view of the panels, Applicant's testimony indicates it would be more than ten (10) years before the vegetation grows to that level. Furthermore, Wilson did not specifically provide a credible opinion on the decrease in value of property having a solar farm on three of its four sides.

48. This Board finds that the maps submitted with Wilson's application show the specific location of the approximate 400 acres of 300,000 solar panels dispersed in eleven (11) different clusters and abutting five (5) different Township roads. A close review of the application, therefore, further demonstrates that the size and layout of this Project, as submitted, is inconsistent with the Venango Township Comprehensive Plan, specifically as it fails *to limit irregularly dispersed development patterns*. This random and irregularly dispersed development pattern is also a significant contributing factor to the several residents' concerns that 3 of the 4 sides of their properties will contain solar panels. *Venango Township Zoning Ordinance, Article 1, Section 105; Venango Township – Wattsburg Borough Area Comprehensive Plan, 2006, "Land Use" (pp 13-14).*

49. This Board finds that the removal of 120 acres of trees will cause significant diminution of the forestry in the proposed project area. This Board, therefore, finds that the size and layout of this Project, as submitted, is inconsistent with the Venango Township Comprehensive Plan where it fails *to preserve the natural resources in the community*. *Venango Township Zoning Ordinance, Article 1, Section 105; Venango Township – Wattsburg Borough Area Comprehensive Plan, 2006, "Environmental" (p 10).* While this finding in and of itself may not lead to a denial of this application, it, in conjunction with the remaining findings of this Board, further supports the Board's decision in this matter.

50. This Board finds that the Project, as submitted, will have an obvious impact on the appearance of many different areas of the Township and from multiple viewpoints. While Wilson proposes to shield these sites with vegetation as required by ordinance, the reality is that there are multiple different and unconnected areas that will be impacted, each visible from different parts of the Township which will be seen for years (estimated at more than 10 years) before the vegetation grows to point that will shield the view of the panels. The removal of 120 acres of trees will also contribute to the negative impact. Again, Wilson's proposed replacement of trees removed with young trees in other areas will not provide any significant impact to the altered appearance for nearly a generation. The many hills in this proposed area also makes hiding these proposed solar panels virtually impossible and contributes to the applicant's failure to prove otherwise. This Board, therefore, finds that the size, layout and location of this Project, as

submitted, is inconsistent with the Venango Township Comprehensive Plan, specifically as it fails to enrich the residents in the community by seeking to **improve the aesthetic quality and visual impact of the man-made environment and by preserving and enhancing the natural environment**. *Venango Township Zoning Ordinance, Article 1, Section 105; Venango Township – Wattsburg Borough Area Comprehensive Plan, 2006, “Aesthetic” (p 11)*.

51. For reasons previously stated, this Board finds that the Project, as submitted, is inconsistent with the Venango Township Zoning Ordinance in that it detracts **from the use and enjoyment of adjoining or nearby property owners**. *Venango Township Zoning Ordinance, Article 1, Section 105; Venango Township – Wattsburg Borough Area Comprehensive Plan, 2006*.

52. For reasons previously stated, this Board finds that Wilson’s proposed project, as submitted, is inconsistent with the Venango Township Zoning Ordinance in that **it substantially changes the character of the neighborhood in which it would be located**. *Venango Township Zoning Ordinance, Article 1, Section 105; Venango Township – Wattsburg Borough Area Comprehensive Plan, 2006*.

53. For the foregoing reasons collectively, this Board finds that the Project, as submitted, is inconsistent with the Venango Township Zoning Ordinance in that it is **detrimental to the general welfare of the public**.³ *Venango Township Zoning Ordinance, Article 1, Section 105; Venango Township – Wattsburg Borough Area Comprehensive Plan, 2006*.

CONCLUSIONS OF LAW

I. General Zoning Standards

1. Zoning Ordinances need to “give consideration of the character of the municipality, the needs of the citizens and the suitability’s and special nature of particular parts of the municipality”. (See, Section 603(a) of the MPC.)

2. The stated overall purpose of the Venango Township Zoning Ordinance is to act in accordance with Sections 603 and 604 of the MPC and to implement the community development objectives of the Venango Township Comprehensive Plan.

3. The Board has exclusive jurisdiction to hear and render final adjudications on Conditional use applications and rezoning applications. (MCP, Section 913.2 and Venango Township Zoning Ordinance, Section 309.)

II. Conditional Use Standards

4. It is well-settled that special exceptions and conditional uses are not actual exceptions or variances from a zoning ordinance, but rather are uses permitted by right if the standards enumerated in the zoning ordinance are met. *Bray v. Zoning Bd. Of Adjustment*, 410 A.2d 909, 911 (Pa. Cmwlth. 1980). While the fact that a use is permitted as a conditional use evidences a legislative decision that the particular use is consistent with the health, safety, and welfare of the community, an applicant is not entitled to conditional use where it does not satisfy the specific and objective criteria in a zoning ordinance for that use. *In re Drumore Crossings, L.P.*, 984 A. 2d 589, 595 (Pa. Cmwlth. 2009).⁴

³ The Board recognizes the benefits of solar development and its permitted use as established by the Township’s solar ordinance. Any development, however, needs to meet all the requirements of the Venango Township Zoning Ordinance and be consistent with the intent of the Township’s comprehensive plan. This Board will entertain any application for solar development within the parameters of those requirements.

⁴ Because the law regarding conditional uses and special exceptions is virtually identical, the burden of proof standards is the same for both. *Sheetz, Inc. v. Phoenixville Borough Council*, 804 A.2d 113 (Pa. Cmwlth. 2002).

5. In considering whether a conditional use is to be granted, the Board is required to address three inquiries: (1) whether the applicant's use falls within the parameters of the conditional use being sought; (2) whether the "specific" requirements of the ordinance applicable to that conditional use have been met; and (3) whether the "general", non-specific or non-objective requirements and purposes of a Township's zoning ordinance have been satisfied. *See Bray*, 419 A.2d at 912-13.

6. With respect to the first two inquiries of the conditional use analysis, the applicant need only make a *prima facie* case that the plan being proposed complies with all the requirements of the zoning ordinance. *See In re Richboro CD Partners, L.P.*, 89 A.3d 742, 749 (Pa. Commw. 2014); *Bailey*, 690 A.2d at 1326. This burden requires an applicant to demonstrate "compliance with the specific criteria of the ordinance." *Id.*

7. Where an ordinance specifically places the burden upon an applicant to establish that approval of the application will not be detrimental to the health, safety, and general welfare of the community, or otherwise violative of any other zoning ordinance provisions, the applicant will also have the burden of persuasion and proof on that issue. In *Derr Flooring Co. v. Whitemarsh Township Zoning Board of Adjustment*, 285 A.2d 538 (Pa. Commw. 1971), the Commonwealth Court instructed that when a zoning ordinance specifically places the burden upon an applicant to establish that approval of the application will not be detrimental to the health, safety, and general welfare of the community, the burden of persuasion on that issue does not shift to objectors but rather remains with the applicant. *Id.* at 542. In this matter, the Venango Zoning Ordinance does place that burden on an applicant per Article 10, Section 1001.

III. Use Classification

8. The proposed Solar Project clearly falls within the definition of a "Principal Solar Energy System (PSES)" which is authorized as a conditional use in Agricultural I and Industrial I Zoning Districts in which 12 of the 14 parcels are located. **HOWEVER**, the proposed Solar Project is **not** authorized in parcels 44010023000900 and 44010023001000 which are classified as Residential Zoning District.

9. As previously indicated, Wilson, simultaneously with the Conditional Use Application herein, filed a request for rezoning of the two Residential parcels which determination is also addressed herein.

IV. Specific Ordinance Criteria

10. Wilson has generally complied with the conditional use application requirements of the Solar Zoning Ordinance.

V. General Ordinance Criteria

11. The **Venango Township Zoning Ordinance** clearly provides that the burden of general considerations including health, safety, and general welfare considerations remains with the applicant. Article 10, Section 1001 of the Zoning Ordinance specifically provides, in part:

"1001 General Criteria for Special Exceptions and Conditional Uses
Special Exceptions and Conditional Uses shall only be granted if the proposed use meets the following general criteria, in addition to any specific criteria established in this Ordinance...

The applicant must demonstrate that the proposed use complies with the following:

- A. The proposed use shall be consistent with the Venango Township Comprehensive Plan.*
- B. The proposed use shall be consistent with the purpose and intent of this Ordinance and the zoning district within which it will be located.*
- C. The proposed use shall not be detrimental to the public health, safety, or general welfare.*
- D. The proposed use shall not detract from the use and enjoyment of adjoining or nearby properties.*
- E. The proposed use shall not substantially change the character of the neighborhood in which it would be located.”*

(See Venango Township Zoning Ordinance, Article 10, Section 1001.)

* * * * *

12. The language unequivocally delegates the burden of proof on the specifically identified general and public welfare considerations to Wilson. As such, in determining whether conditional use approval for the Project is appropriate, the burden of proof and persuasion on both the specific requirements of the Solar Ordinance **and** the considerations enumerated in Section 1001 of Article 10 of the Venango Ordinance rests with Wilson. See *Brookview Solar I, LLC v. Mount Joy Township Board of Supervisors, et.al., 1055 C.D. 2022 (Pa. Cmmw. Ct., Nov.30, 2023)* where the township ordinance places the burden on the applicant to demonstrate that the proposed 1,000-acre use will not substantially change the character of the lots used by a solar energy system or adversely affect the character of the neighborhood or the reasonable use of neighboring lots.

13. The Board has by ordinance authorized a Principal Solar Energy System as a conditional use in the Agricultural I and Industrial I Districts. The satisfaction of that criteria, however, does not relieve applicant from satisfying its burden of persuasion and proof with respect to the specific criteria of the Venango Zoning Ordinance as outlined in Section 1001. See *MarkWest, 184 A.3d at 1059; Allegheny Tower Assoc. v. City of Scranton Zoning Hearing Bd., 152 A. 3d. 1118, 1123-24 (Pa. Cmwlth. 2017); Greaton Properties v. Lower Merion Twp., 796 A.2d 1038, 1045-46 (Pa. Cmwlth. 2002)*. Consequently, Wilson was required to present evidence with respect to the same.

14. The **Venango Township-Wattsburg Borough Area Comprehensive Plan 2006** provides in part:

“Article 1 General Provisions

105 Community Development Objectives

The Community Development Objectives of this Ordinance are enumerated in detail by the Venango Township – Wattsburg Borough Area Comprehensive Plan. These can be generalized as follows:

- A. **Preserve and enhance the natural and cultural resources in the community** (emphasis added);*
- B. Promote energy conservation;*
- C. **Enrich the lives of all residents in the community by seeking to improve the aesthetic quality and visual impact of the man-made environment and by preserving and enhancing the natural environment** (emphasis added);*

D. Establish a diversified and enduring business structure in the community which provides residents with a variety of employment opportunities while at the same time preserving a healthful, secure, and pleasant residential environment;

E. Enhance the economic development potential of the PA-8/PA-89 corridor between Lowville village and Wattsburg Borough with a village/mixed use concept;

F. Provide adequate housing for the current and future residents of the community;

G. Provide for the safe and convenient circulation and movement of goods and people within the community;

H. Provide the quantity and quality of community facilities, services, and utilities necessary to meet the physical, social, cultural, recreational, and aesthetic needs of the community and to do so in a timely and fiscally responsible manner;

I. Provide and perpetuate a land use pattern in the community that includes a wide variety of interrelated land uses in proper proportion. These land uses must be able to function efficiently, and feature an optimum degree of compatibility between land uses, development, and the natural environment;

*J. Encourage the concentration of land uses in discernable clusters and limit both strip development and **irregularly dispersed development patterns** (emphasis added);*

K. Discourage the adverse scattering of higher and medium density residential development; and

L. Encourage the development of an identity for Venango Township through the revitalization of Lowville village.

15. The **Venango Township-Wattsburg Borough Area Comprehensive Plan 2006** was amended in 2016 with Venango Township Resolution # 2016-6 which in its Exhibit A provides, in part, the creation of an “**Agricultural/Rural Resource**” category which intent is to “*protect and encourage the continued use of land for agriculture uses and to conserve pieces of land large enough to allow for efficient farm operations and associated enterprises...*” This amendment reiterates the importance of agriculture in the Township. Eliminating close to 1,000 acres of the A-1 Agricultural District from potential farm operations and associated enterprises for at least 35 years is not consistent with this objective. Again, the size and shape of this proposed project is not conducive to meeting this objective.

16. As a final point, on November 7, 2023, the Venango Township Planning Commission provided the Board of Supervisors with an updated response to the Wilson application. Applicant Wilson had an opportunity to address the Planning Commission concerns particularly as it applies to Section 1001 of the Venango Zoning Ordinance. In its December 29, 2023, reply, Wilson implies that the Township’s Solar Ordinance, the Township already considered all Section 1001 factors. Therefore, all 10 factors are presumed to have been met and the applicant no longer has any burden to satisfy those criteria as part of a conditional use application.

This is simply not accurate. Again, Venango Township Zoning Ordinance Section 1001 language is clear and unambiguous where it states, “*conditional uses shall only be granted if the proposed use meets the following general criteria **in addition to any specific criteria established in this Ordinance for the particular use**”.* A conditional use applicant, therefore, must meet the 10 criteria set forth in Section 1001 **in addition to** the specific criteria of the ordinance for the particular use.

17. While Wilson, as applicant, has sufficiently met the application requirements for conditional use with respect to the Solar Ordinance, it has not met its burden of proof and/or persuasion for the criteria found in the Venango Zoning Ordinance, Comprehensive Plan for the reasons articulated in these findings. The request must, therefore, be DENIED.

18. Regarding the request for a change of the zoning for parcels 44010023000900 and 44010023001000, this Board is reluctant to change zoning designations for any township parcel as it deems any such change as a deviation from the purposes of the comprehensive plan. Prior Township resident's applications have been denied for this reason. Consistent with this rationale, the Board remains reluctant to change this policy in the absence of a compelling reason which the Board does not find here. The request for change of zoning must, therefore, be DENIED.

CONCLUSION

For the foregoing reasons, Wilson's conditional use application for the Solar Project is hereby **DENIED**. The Order signed by the Venango Township Board of Supervisors is attached.

For the foregoing reasons, Wilson's application for the change of zoning for parcel 44010023000900 is hereby **DENIED**. The Order signed by the Venango Township Board of Supervisors is attached.

For the foregoing reasons, Wilson's application for the change of zoning for parcel 44010023001000 is hereby **DENIED**. The Order signed by the Venango Township Board of Supervisors is attached.

Respectfully Submitted,

NIETUPSKI ANGELONE, LLC

By: 

Anthony Angelone, Esquire
Solicitor for Venango Township
3204 State Street
Erie, PA 16508

EXHIBIT 1

- A. July 27, 2023 letter from Jenn Bickford, Esquire on behalf of Wilson Solar submitting their Conditional Use Application, Project Narrative, Written Description, Affidavits of Authority and two copies of a Site Plan.
- B. Corry Journal Legal Notice publishing notice of the September 20, 2023 public hearing.
- C. Venango Township Planning Commission's August 15, 2023 response to the Wilson Solar Conditional Use Application.
- D. County of Erie Planning Commission's August 30, 2023 response to Venango Township's proposed zoning changes.
- E. August 2023 email exchange between John McGranor and Jessica Horan of the Erie County Department of Planning and Community Development regarding Venango Township's proposed zoning changes.
- F. Venango Township's August 16, 2023 Notice to adjoining property owners of the September 20, 2023 Conditional Use Hearing.
- G. August 28, 2023 letter to Venango Township from residents Bruce and Rosemary Whitehair stating questions and concerns regarding Wilson Solar's Conditional Use Request.
- H. September 8, 2023 letter to the Whitehair's from Venango Township Solicitor in response to their letter.
- I. Resident Leonard and Linda Vogel's opposition letter to Venango Township.
- J. Leonard and Linda Vogel's September 7, 2023 opposition letter to Venango Township.
- K. Leonard Vogel response to Township Supervisor's and Zoning Board regarding Conditional Use Request.
- L. Project Narrative/Written Description to be studied and addressed by an unknown author.
- M. September 14, 2023 letter from Jenna Bickford, Esquire on behalf of Wilson Solar with updated Site Plans.
- N. September 15, 2023 letter from Jenna Bickford, Esquire on behalf of Wilson Solar providing additional information requested by Venango Township.
- O. September 20, 2023 Conditional Use Hearing sign-in sheet.
- P. November 1, 2023 Second Conditional Use Hearing sign-in sheet.
- Q. Wilson Solar Conditional Use Plan.
- R. Erie Regional Chamber and Growth Partnership letter of September 20, 2023 addressed to Venango Township in support of Wilson Solar's Conditional Use request.
- S. September 19, 2023 email to Venango from resident Sadie Nowoczynski in opposition of Wilson Solar's Conditional Use request.
- T. September 30, 2023 letter from Kirkland Appraisals to Birch Creek Development (Wilson Solar) providing an expert opinion on the impact of the proposed project.
- U. November 1, 2023 Conditional Use Second Hearing Agenda.
- V. List of adjoining property owners of the proposed project.
- W. November 1, 2023 Conditional Use Second Hearing publication.
- X. October 17, 2023 letter in support of the proposed project by Richard and Julie Gibson.
- Y. October 30, 2023 letter in support of the proposed project by James E. May.
- Z. PennState's "Municipal Officials' Guide to Grid-Scale Solar Development in Pennsylvania", Section 1: Grid-Scale Solar Basics.
- AA. PennState's College of Agricultural Sciences Article on Potential Economic Impact of Community Solar in Pennsylvania.

- BB. Elsevier.com article titled, “Shedding light on large-scale solar impacts: An analysis of property values and proximity to photovoltaics across six U.S. states.
- CC. The University of Texas at Austin, LBJ School of Public Affairs’ May 2018 Policy Research Project titled "An Exploration of Property-Value Impacts Near Utility-Scale Solar Installations”.
- DD. Testimony by PSATS before the Senate Agriculture & Rural Affairs and Local Government Committees on Local Government Perspective on Solar Farms from May 25, 2021.
- EE. November 7, 2023 Memo to Venango Township Supervisors regarding the Planning Commissions Response to the updated Wilson Solar LLC Maps and Public Hearings.
- FF. December 29, 2023 letter from Attorney Lydia Caparosa on behalf of Wilson Solar in response to the November 7, 2023 Venango Township Planning Commission Memo.

**BEFORE THE BOARD OF SUPERVISORS OF
VENANGO TOWNSHIP**

IN RE: :
: :
Conditional Use Application of :
Wilson Solar, LLC :

ORDER

AND NOW, this 9th day of January, 2024, upon consideration of the Wilson Solar, LLC conditional use application submitted on July 27, 2023, for the construction and operation of a solar energy system, and for the reasons set forth in this Board's Findings of Fact and Conclusions of Law, the application is **DENIED**.

VENANGO TOWNSHIP BOARD
OF SUPERVISORS



Dean Curtis, Chairman



Mike Vogel, Secretary



David Austin