IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY PENNSYLVANIA

CIVIL ACTION – LAW

LEBANON SOLAR I, LLC,	:	
Appellant	:	
	:	
v.	:	**2022-00553**
	:	
NORTH ANNVILLE TOWNSHIP	:	
BOARD OF SUPERVISORS,	:	
Appellee	:	
	:	
and	:	
	:	
GRADY SUMMERS,	:	
Intervenor		

ORDER OF COURT

AND NOW, this 26th day of January, 2024, in accordance with the attached Opinion, upon consideration of the Land Use Appeal filed by Lebanon Solar I, LLC, and upon consideration of the arguments and information presented by the parties, the Order of this Court is as follows:

1. The decision of the North Annville Township Board of Supervisors that the conditional use application of Lebanon Solar I, LLC (LEBANON SOLAR) was deficient relating to bonding and stormwater management is AFFIRMED. The

decision of North Annville Township to deny the conditional use application of LEBANON SOLAR is therefore AFFIRMED.

2. All other grounds relied upon by North Annville Township to deny the application of LEBANON SOLAR are rejected.
3. All parties are advised that they have thirty (30) days from today's date in which to appeal the decisions we have rendered today.
4. Copies of this Opinion and Order are to be served upon all counsel of record. North Annville Township is directed to post a copy of this Order and Opinion at a conspicuous location within the Township's office for a period of at least thirty (30) days from today's date.

BY THE COURT:

_____J.
BRADFORD H. CHARLES

BHC/pmd

cc: Court Administration
Elizabeth Dupuis, Esq.// 330 Innovation Blvd., Ste 302, State College PA 16803
Paul Bametzreider, Esq.// 1601 Cornwall Rd., Lebanon PA 17042
William L. Cluck, Esq.// 587 Showers St., Harrisburg PA 17104

IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY PENNSYLVANIA

CIVIL ACTION – LAW

LEBANON SOLAR I, LLC, **Appellant**	:	
v.	:	**2022-00553**
NORTH ANNVILLE TOWNSHIP BOARD OF SUPERVISORS, **Appellee**	:	
and	:	
GRADY SUMMERS, **Intervenor**	:	

APPEARANCES

Elizabeth Dupuis, Esq.	**For Plaintiff**
Paul Bametzreider, Esq.	**For North Annville Township Board of Supervisors**
William Cluck, Esq.	**For Grady Summers**

OPINION BY CHARLES, J., January 26, 2024

This is a dispute that implicates money, politics, zoning principles and the ability of landowners to use their own property as they deem appropriate. The North Annville Township (TOWNSHIP) Board of Supervisors found itself in the middle of these conflicting considerations.

Emotions were so high at the Conditional Use Hearing before the TOWNSHIP Board of Supervisors that a lawyer for an objector blurted out "F--- you!" while a third-generation farmer tried to explain the economic realities of farming that led him to become a part of the project proposed by Appellant LEBANON SOLAR.[1] Our goal today – and it is a daunting one – will be to divorce emotion from decision-making as it relates to this land use appeal. In doing so, we find ourselves in stark disagreement with the reasoning employed by TOWNSHIP to deny LEBANON SOLAR's conditional use application. That said, we ultimately agree with TOWNSHIP that LEBANON SOLAR's application is deficient. Our reasoning will be set forth below.

I. FACTUAL BACKGROUND

LEBANON SOLAR is a company that was created in order to build and operate a large, multi-million-dollar solar farm on farmland located in North Annville Township (TOWNSHIP).[2] On May 3, 2021, LEBANON SOLAR submitted an application seeking permission to create a 1,234-acre solar farm. This application was later amended to a request for 858 acres. (The

[1] Had a lawyer done this inside Courtroom #3 of the Lebanon County Courthouse, he would have been referred to the Pennsylvania Bar Association Disciplinary Board by this jurist. On behalf of the entire legal profession, this Court would like to apologize to Mr. Brent Kaylor for the lawyer's unseemly outburst.

[2] According to papers filed by LEBANON SOLAR, the company was incorporated in Delaware and has its headquarters in Andover, MA.

proposed 858-acre solar farm will hereafter be referred to as "THE PROJECT").

THE PROJECT was comprised of twelve (12) separate lots owned by seventeen (17) different individuals or entities. All of the lots were located in TOWNSHIP's A-1 Agricultural Zone. An Ordinance was passed by TOWNSHIP in 2019 that *permits* solar farms as a conditional use within the A-1 Agricultural Zone. However, the permitted use is subject to conditions outlined in § 5.22 of the Ordinance. That section states:

> "a. Section 522 – As of the effective date of this Ordinance, Solar Farms (Utility Scale Solar Applications) shall be a conditional use subject to the following conditions:
>
> **1.** No Solar farm may be established upon any farm land or Agriculturally Zoned land which has an Agricultural Conservation Easement filed against it which remains in effect.
>
> **2.** The minimum lot size for the establishment of any Solar Farm shall be fifty (50) acres.
>
> **3.** The solar panels and/or other implements used in the construction and structure of the Solar Farm including, but not limited to, any solar panels shall be set back a minimum of fifty (50) feet from any adjacent lot line.
>
> **4.** A permanent evergreen vegetative buffer must be provided or fencing which accomplishes the same purpose of buffering.
>
> **5.** The maximum lot coverage may not exceed fifty (50%) of the total lot size.
>
> **6.** The Applicant must demonstrate that it has adequate liability insurance in minimum amounts of one million ($1,000,000.00) per incident and two million ($2,000,000.00) per aggregate.

7. The Applicant must demonstrate and provide adequate bonding to remain in place to be used by the Township if the applicant ceases operation and fails to remove the panels or other implements related to the use within one hundred and eighty (180) days of the cessation of operation.

8. The Applicant must have an approved Stormwater Management Plan as required by the Lebanon County Stormwater Management Ordinance."

(This Section will hereafter be referred to as "Section 522")

Some TOWNSHIP residents, including Grady Summers (hereafter INTERVENOR), became upset at the prospect of a solar farm located in their primarily agricultural area. These residents organized to object to THE PROJECT.

Public hearings were conducted by TOWNSHIP's Board of Supervisors on January 25, 2022, January 26, 2022, and February 24, 2022.

It is obvious from reading the 400-page transcript of proceedings that LEBANON SOLAR's proposal was predicated upon the belief that it could submit one application that would cover the entire project spread over twelve (12) different parcels of land. The entirety of testimony provided by LEBANON SOLAR presupposed that the conditional use criteria quoted above should be applied to the aggregate area of land that comprised the entire project. (*See,* N.T. 13-23). When INTERVENOR raised the argument that each parcel should be considered a separate "lot", LEBANON SOLAR responded by producing option agreements from all landowners comprising

the project. (N.T. 290). These agreements explicitly provided LEBANON SOLAR with permission to make proposals related to the project on behalf of all landowners. (N.T. 294).

Also addressed at the Conditional Use Hearing was the adequacy of LEBANON SOLAR's bonding and stormwater management plans. From the beginning, LEBANON SOLAR took the position that "An adequate amount of financial security can only be determined once a design of the proposed development is finalized." (N.T. 25; Proposed Finding 31). Similarly, LEBANON SOLAR promised that it would provide a stormwater management plan suitable to the County of Lebanon. (N.T. 26; Proposed Finding 32). On rebuttal, LEBANON SOLAR presented an expert who testified that issues such as bonding and stormwater management should all be considered "as part of the land development process after the Conditional Use Hearing determines whether the use is allowed in that district." (N.T. 342). That same expert testified that it would be impossible for LEBANON SOLAR to definitively determine bonding or stormwater management issues at a Conditional Use Hearing stage because THE PROJECT planning was still "incomplete". (N.T. 354, 356).

It is apparent from the record that the Conditional Use Hearing was conducted before a standing-room only audience. When public comment was solicited, numerous people came forward. Most opposed THE PROJECT. Some favored it. Fairly summarized, those who opposed THE PROJECT were concerned about water run-off (N.T. 193), impairment of

"scenic views" (N.T. 199; 215) and the lack of definitive planning for THE PROJECT. (N.T. 213). On the other hand, several of the farmers who participated in THE PROJECT testified about the economic challenges facing farmers in North Annville Township. These farmers pointed out that a solar farm would preserve the character of the area in a way that a massive housing development would not.

On April 5, 2022, TOWNSHIP's Board of Supervisors convened to render a decision. The Board acknowledged that it had met in "an executive session" prior to April 5. The Board also recessed to another room for deliberation. Seven (7) minutes later, the Board reconvened. One Board member abstained from voting because a part of the proposed project was owned by members of his extended family. The two other Board members voted to deny the application. No explanation was afforded as to why the application was denied.

A subsequent written Opinion was authored on May 12, 2022. Fairly summarized, the written Opinion based TOWNSHIP's denial on these grounds:

(1) The inability of each of LEBANON SOLAR's proposed twelve (12) lots to comply with the conditions set forth in the Ordinance.

(2) The fact that no bond nor stormwater management plan was submitted with the application.

(3) The fact that LEBANON SOLAR's buffering proposal was deficient.

LEBANON SOLAR immediately indicated its desire to appeal TOWNSHIP's decision. What occurred next was a cascade of legal filings pertaining to the manner by which LEBANON SOLAR went about communicating its desire to appeal. Eventually, this Court rendered a written Opinion on February 13, 2023 that afforded LEBANON SOLAR the ability to have its substantive legal rights adjudicated by this Court. To the extent necessary, we incorporate by reference the entirety of our February 13, 2023, Opinion regarding the procedural aspects of LEBANON SOLAR's appeal.

A Pre-Trial Conference was conducted with counsel on April 6, 2023. We established a briefing schedule. All briefs were received by this Court by August 1, 2023. The issues raised by the parties are now before this Court for disposition.[3]

[3] This case represents the second time in the 24-year career of this jurist that he has not rendered a decision within 120 days following receipt of the parties' argument. We self-reported our tardiness to Pennsylvania's Association of Pennsylvania Courts together with our promise that we would render a decision by February 15, 2024. We also wrote a letter to all counsel explaining our tardiness. We will not comment further, except to say that the record produced to this Court was massive and the arguments were nuanced.

II. GENERAL LEGAL PRINCIPLES

We will begin our analysis with a recitation of general legal principles governing the parties' dispute. In order of what we perceive to be their importance, we will briefly describe principles that create a proverbial "playing field" within which the parties' disputes can be addressed.

A. Rights of Property Owners

As a general philosophy, this Court has always believed in the fundamental right of American citizens to use their own property as they deem appropriate free from robust governmental interference. In the case of ***Pidgorodetskiy v. Zoning Hearing Board of Lebanon***, No. 2013-02185 (February 26, 2014) we expressed our "deep respect for ownership rights." We stated: "As a general precept, landowners should be free to use their own property in the manner they deem appropriate and necessary." *See also,* ***Tanner v. East Hanover Township Zoning Hearing Board***, No. 2020-01432 (August 26, 2021) ("We also believe firmly that each American landowner possesses a legal right to free use and enjoyment of his/her property unless the government can establish that such use violates a clearly defined Zoning Ordinance that was created to protect others in the community from land uses that are deemed harmful to the community.")

The philosophy of this Court regarding land use appeals is not just a matter of personal opinion. Pennsylvania's Supreme Court has stated:

> "The right of landowners in this Commonwealth to use their property as they wish, unfettered by governmental interference except as necessary to protect the interests of the public and of neighboring property owners, is of ancient origin, recognized in the Magna Carta and now memorialized in Article 1, Section 1 of the Pennsylvania Constitution (protecting as an 'inherent right of mankind...acquiring, possessing and protecting property')."
>
> ***In Re: Realen Valley Forge Green Association***, 838 A.2d 718, 727 (Pa. 2003).

Our Commonwealth Court has expanded upon this general proclamation by stating that local governmental authorities "must remember that property owners have certain rights which are ordained, protected and preserved in our Constitution and which neither zeal nor worthwhile objectives can impinge upon or abolish." ***Cleaver v. Board of Adjustment of Tredyffrin Township***, 200 A.2d 408, Note 4 (Pa. 1964).

Perhaps because of these fundamental precepts, our Commonwealth Court has recognized that:

> "[Zoning] Ordinances must be construed expansively so as to afford the landowner the broadest possible use and enjoyment of his land."
>
> ***THW Group LLC v. Zoning Board of Adjustment***, 86 A.3d 330, 336 (Pa. Cmwlth. 2014), citing ***Rabenold v. Zoning Hearing Board of Palmerton Township***, 777 A. 2d 1257 (Pa. Cmwlth. 2001).

Thus, courts must interpret "ambiguous language" in a manner "in favor of the property owner and against any implied extension of a restriction." ***Williams Holding Group LLC v. Board of Supervisors of West Hanover Township***, 101 A.3d 1202, 1213 (Pa. Cmwlth. 2014).

In this case, twelve (12) different TOWNSHIP landowners have combined to request that they be permitted to use their own property to create a solar farm. We cannot and will not depreciate the importance of the landowners' fundamental right to pursue such a project on their own land.

B. Conditional Use

As articulated in the background portion of this Opinion, a conditional use is one that is specifically *permitted* by a Zoning Ordinance provided that specified conditions are met. As our Commonwealth Court has recognized: Conditional uses are uses expressly permitted, provided that the applicant meets the specific standards set forth in a Zoning Ordinance. *See,* ***Williams Holding Group LLC v. Board of Supervisors of West Hanover Township***, 101 A.3d 1202 (Pa. Cmwlth. 2014). The Commonwealth Court has described a conditional use ordinance as a "legislative presumption that the use is consistent with the health, safety and welfare of the community." ***In Re: Richboro CD Partners***, 89 A.3d 742, 745 (Pa. Cmwlth. 2014). Zoning applicants are entitled to use their land as permitted by a conditional use unless the proposed plan does not comply with the conditions expressly outlined in the Ordinance or where "the presumption that the use is consistent with the public health, safety and welfare is rebutted by any objectors." *See,* ***In Re: Drumore Crossing, L.P.***, 984 A.2d 589, 595 (Pa. Cmwlth. 2009).

Procedurally, conditional use disputes fall within the jurisdiction of the Municipal governing board – in this case the Township Supervisors – rather than a Zoning Hearing Board. ***In Re: Thompson***, 896 A.2d 659 (Pa. Cmwlth. 2006). There is law indicating that because conditional use litigation and disputes involving special exceptions are similar in nature, the standards governing litigation of each should be identical. *See,* ***Sheetz Inc. v. Phoenixville Borough Council***, 804 A.2d 113, Note 5 (Pa. Cmwlth. 2002).

In this case, the TOWNSHIP has declared that LEBANON SOLAR's application did not comply with the conditions established in its Ordinance as foundational for creation of a solar farm. In denying the application, TOWNSHIP did not conclude that the conditional use is somehow contrary to the general health, safety or welfare of surrounding landowners. Thus, the sole question now before this Court is whether THE PROJECT complies with all conditions established by the Zoning Ordinance for creation and operation of a solar farm.

C. Scope of Review

This Court did not receive any additional factual testimony beyond that which was presented to the TOWNSHIP Board of Supervisors at three (3) public meetings. Because of this, we are bound to accept all credibility determinations rendered by the TOWNSHIP. *See,* 53 P.S. §11005-A; ***Petition of Dolington Land Group***, 839 A.2d 1021 (Pa. 2003). That said,

when a fact finder such as TOWNSHIP "deliberately ignores relevant, competent evidence, the capricious disregard standard of review can be applied." *See,* ***Leon E. Wintermyer v. Workers Compensation Appeal Board***, 812 A.2d 478 (Pa. 2002). Thus, any "capricious disregard" of evidence by the fact finder can and must be considered by this Court. *See,* ***Taliaferro v. Darby Township Zoning Hearing Board***, 873 A.2d 807, 814 (Pa. Cmwlth. 2005). As it relates to legal conclusions, our Appellate Courts have said that "[A Zoning Hearing Board's] interpretation of its own Zoning Ordinance is entitled to great weight and deference." ***Kohl v. New Sewickly Zoning Hearing Board***, 108 A.3d 961, 968 (Pa. Cmwlth. 2015). However, our scope of review regarding legal determinations has been described as "plenary". *See,* ***In Re: Realan Valley Forge Green Association***, supra.

III. ARGUMENTS OF THE PARTIES

The briefs submitted by the parties are among the most informative and entertaining this Court has ever encountered. Both sides employed William Jennings Bryan-esque hyperbole when proffering their arguments. For example, LEBANON SOLAR stated: "Rather than apply the Ordinance as written, the Board engaged in mental gymnastics to interpret its Ordinance in an illogical manner in order to prohibit the project, favoring politics over the Constitutional rights of its own residents..." (LEBANON SOLAR's Brief at page 13). In addition, LEBANON SOLAR accused

TOWNSHIP's Board of Supervisors of impermissible bias: "From the initial submittal of LEBANON SOLAR's application, it was beleaguered by bias and pre-judgment from members of the Board which resulted in the violation of its due process rights to an unbiased decision-making tribunal." (LEBANON SOLAR's Brief at page 43). On the other hand, INTERVENOR's brief accused LEBANON SOLAR of "misrepresentation" because it had the temerity to argue that the TOWNSHIP accepted its conditional use application for one solar farm project instead of twelve (12) separate smaller projects. (Page 13 of INTERVENOR's Brief). Moreover, TOWNSHIP argued that LEBANON SOLAR "relies on a non-sensical interpretation of the Zoning Ordinance..." (Page 23 of Brief).

We certainly understand the passion that has been stirred up by LEBANON SOLAR's proposed project, but we will not adopt the invective of the parties' rhetoric. In terms of substance, these are the arguments that the parties have presented:

(1) PROJECT as involving one (1) lot or twelve (12)[4]

TOWNSHIP evaluated THE PROJECT as involving twelve (12) separate "lots". TOWNSHIP reasoned that each of the lots that were

[4] Both sides have included separate sections in their briefs regarding the different ways that LEBANON SOLAR's project would not comply with the conditional use requirements of §522 if the analysis were to be predicated upon twelve (12) separate lots instead of one (1). For example, there is no dispute that some of the individual lots that make up the solar farm project are less than fifty (50) acres in area. We see no point in separately addressing all of the specific arguments as to why the requirements of §522 cannot be met if one considers each of the twelve (12) individual plots of land to be "lots". Suffice it to say that if TOWNSHIP's interpretation of THE PROJECT as requiring compliance on a lot-by-lot basis is correct, LEBANON SOLAR's application is doomed.

combined to create the solar farm project required separate compliance with all of the conditional use requirements of §522 of the Ordinance. Thus, TOWNSHIP believes that unless each and every lot of the proposed solar farm complies with all of the size, coverage, setback and buffering requirements of the Ordinance, THE PROJECT cannot be permitted. LEBANON SOLAR disagrees strenuously with TOWNSHIP's interpretation of the term "lot" found in the Ordinance. LEBANON SOLAR points out that it combined twelve (12) different lots to create an 865-acre solar farm and that the solar farm, viewed in its entirety, complies with all requirements of Section 522 of the Solar Farm Ordinance.

In addition to the above, the parties debate the importance of TOWNSHIP's acceptance of LEBANON SOLAR's application for an 865-acre solar farm. LEBANON SOLAR argues that by allowing it to submit an application for a solar farm comprised of twelve (12) separate lots and by allowing litigation on that project to proceed through three (3) public hearings, TOWNSHIP effectively waived its right to conclude that twelve (12) separate applications should have been filed and that twelve (12) separate hearings should have been conducted. In response, TOWNSHIP argues that it receives many requests relating to zoning compliance and that it cannot be expected to triage all of these requests in order to provide preliminary guidance and advice to applicants.

2. Buffering

Section 522 requires that a solar farm applicant provide: "A permanent evergreen vegetative buffer...or fencing which accomplishes the same purpose". In addition to its finding of non-compliance based upon the precept that all twelve (12) parcels require separate buffering, TOWNSHIP also included in its decision that "The applicant fails to provide a suitable vegetative buffer or a fence which accomplishes the same purpose of buffering around the entire exterior perimeter of the project area..." Once again, LEBANON SOLAR argues that final decisions regarding buffering should be deferred until the land development phase of THE PROJECT. In addition, LEBANON SOLAR presented drawings and testimony that the entire 865-acre project would be buffered.

3. Stormwater Management/Bonding

Everyone agrees that LEBANON SOLAR has committed to comply with all applicable stormwater management regulations governing its project. LEBANON SOLAR also committed to provide a bond in an amount "suitable to the Township." TOWNSHIP believes that this is not enough. According to TOWNSHIP, a "future promise" to comply with a conditional use requirement is not enough under applicable case law. LEBANON SOLAR responds that it is typical in projects such as this for bonding and stormwater management to be addressed once final plans are completed and submitted to the County. LEBANON SOLAR states that its commitment

to comply with bonding and stormwater management provisions is all that it can or should be required to provide at this point in time.

4. Unbiased Decision-Making

LEBANON SOLAR accuses TOWNSHIP's Board of Supervisors of "bias and pre-judgment" that rose to the level of violating its due process rights. According to LEBANON SOLAR, the TOWNSHIP Board was responsible to act in a "quasi-judicial capacity" and was bound by rules of impartiality that should govern adjudicators. LEBANON SOLAR believes that the TOWNSHIP Board of Supervisors "co-mingled" its quasi-judicial role with "that of an advocate." (LEBANON SOLAR's Brief at page 45). LEBANON SOLAR specifically references a North Annville Township Planning Commission meeting that occurred on June 7, 2021. According to LEBANON SOLAR, TOWNSHIP Supervisors expressed opposition to the solar farm project and directed the Planning Commission to issue a supplemental recommendation in opposition to THE PROJECT.

TOWNSHIP argues that the record of the conditional use application proceeding must demonstrate bias, prejudice, capricious disbelief or pre-judgment and it does not. According to TOWNSHIP, it is up to each individual TOWNSHIP Supervisor to discern whether he/she could judge issues impartially. TOWNSHIP points out that what occurred before the Planning Commission in June of 2021 is not a part of the record of this

proceeding. Thus, whatever occurred at that Planning Commission meeting is irrelevant to what is now before the Court.

IV. ANALYSIS

A. Definition of "Lot"

The parties' dispute over the definition of the term "Lot" is unique. We have not been able to locate any Pennsylvania Appellate decision that governs this question, although numerous cases impact it in a way that is more than merely collateral.

TOWNSHIP argues that the term "Lot" is specifically defined in the Ordinance. That much is true. The Ordinance defines "Lot" as "a legally defined tract, parcel or plot of land, whether occupied or capable of being occupied by buildings." TOWNSHIP's expert argued that this definition is not ambiguous and that twelve (12) parcels of land cannot legally create one single "Lot". (N.T. 163-164). In response, LEBANON SOLAR's expert described the term "Lot" as ambiguous because it could have specifically included the word "individual" or it could have specifically prohibited an aggregation of parcels.

In the opinion of this Court, the Ordinance does not come close to addressing whether the term "Lot" must be limited to what is depicted on a tax map, nor does it indicate whether the term "Lot" can be deemed to include numerous parcels of property that a developer plans to lease or acquire in order to complete a development project.

Considerable case law exists to establish that when a term in an Ordinance is ambiguous, it must be interpreted in the light most favorable to the landowner. In the case of ***In Re: Richboro CD Partners***, 89 A.3d 742 (Pa. Cmwlth. 2014), the Pennsylvania Commonwealth Court stated:

> "Whether a proposed use falls within a given category of a Zoning Ordinance is a question of law subject to this Court's plenary review. Although a municipal legislative body is entitled to deference in its interpretation of the Zoning Ordinance, it is axiomatic that an undefined term must be interpreted in accordance with the common and approved usage and that any doubt concerning the meaning of an undefined term should be resolved in favor of the landowner and the least restrictive use."
>
> **Id** at page 747.

Similarly, in ***Williams Holding Group LLC v. Board of Supervisors of West Hanover Township***, 101 A.3d 1202 (Pa. Cmwlth. 2014), the Court stated: "A key element in evaluating conditional use decisions by a governing body is whether requirements contained in the Zoning Ordinance are specific and objective or vague and subjective." The Court cited §603.1 of the Municipality Planning Code (MPC), which states:

> "In interpreting the language of the Zoning Ordinance 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 addition, the Commonwealth Court has generally declared that "Ordinances must be construed expansively so as to afford the landowner the broadest possible use and enjoyment of his land." ***THW Group LLC v.***

Zoning Board of Adjustment, 86 A.3d 330,336 (Pa. Cmwlth. 2014), citing ***Rabenold v. Zoning Hearing Board of Palmerton Township***, 777 A.2d 1257 (Pa. Cmwlth. 2001).

To the extent that TOWNSHIP argues that the definition of "Lot" found in the Ordinance requires this Court to adopt its argument about segregation of parcels for purposes of compliance with Section 522, we reject TOWNSHIP's argument. At a minimum, the Ordinance is silent as to whether a "Lot" can be an aggregate of many parcels. At the very least, the definition of "Lot" found in the Ordinance is ambiguous. Either way, we reject TOWNSHIP's argument that the definition of "Lot" in the Ordinance requires us to rule in its favor.

TOWNSHIP also argues that a "lot" for purposes of a solar farm application cannot by common law be created by aggregating different parcels of land. Once again, TOWNSHIP does not present any specific statute or decisional precedent that would support this argument, nor have we found any. We are aware that the MPC defines the term "Applicant" as any person or entity having a proprietary interest in land. 53 P.S.10107. We also have located a case where a lease option holder was held to have a "proprietary interest" in land. *See,* ***SBA Towers v. Unity Township Zoning Hearing Board***, 179 A.3d 652 (Pa. Cmwlth. 2018). In addition, we also found a case that decried a myopic focus upon the word "site" without consideration of the overall scheme created by the Ordinance. *See,* ***Borough of Pleasant Hills v. Zoning Board of Adjustment of Pleasant***

Hills, 669 A.2d 428 (Pa. Cmwlth. 1995).[5] None of these cases control the issue now before us.

Based upon the totality of our research, we conclude that there are no Statutes or Appellate cases that either permit an applicant to aggregate parcels or prohibit an applicant from aggregating within one omnibus application. In the absence of governing legal principles, this Court will err on the side of the landowner.

Had the drafters of TOWNSHIP's Ordinance wanted to require that solar farms exist only within a single tax map parcel, the drafters of the Ordinance could have so stated. If the Ordinance was intended to prohibit the aggregation of parcels into a single proposed project, the drafters of the Ordinance could have said that as well. As it is, nothing prohibited LEBANON SOLAR from submitting an omnibus application encompassing twelve (12) parcels of land for which it had option agreements. We conclude that these option agreements authorized LEBANON SOLAR to submit one omnibus application on behalf of all twelve (12) landowners who chose to be a part of THE PROJECT.

LEBANON SOLAR points out that TOWNSHIP's act of accepting a single application for the entire solar farm project evidenced the TOWNSHIP's acquiescence to LEBANON SOLAR's effort to seek

---

[5] We also found several cases pertaining to the so-called Doctrine of "Merger" that could viscerally be relevant. (*See, e.g.,* ***Polish Hill Civic Association v. City of Pittsburgh Zoning Board***, 285 A.3d 718 (Pa. Cmwlth. 2022). However, the Doctrine of Merger was held not to apply in absence of an Ordinance adopting a Merger of Lots Provision. *See,* ***Loughran v. Valley View Developers Inc.***, 145 A.3d 815 (Pa. Cmwlth. 2016).

conditional use for the entire project based upon one (1) application. In one of its legal briefs, LEBANON SOLAR used the term "estoppel" to argue that TOWNSHIP should be prevented from rendering a decision that effectively required separate applications by each separate landowner.

Estoppel is a concept applied most frequently by courts in equity. Estoppel is an equitable doctrine based upon the French word "estoup", which was employed to close the mouth of an individual who attempts to speak or act inconsistent with prior positions. (*See,* Black's Law Dictionary (9th. Ed.), definition of estoppel found at page 629). Courts deciding land use disputes have used the moniker of "estoppel" to apply principles of fundamental fairness in regulating land use. *See, e.g.* ***Springfield Township v. Kim***, 792 A.2d 717 (Pa. Cmwlth. 2002). The case of ***In Re: Kreider***, 808 A.2d 340 (Pa. Cmwlth. 2002) stated that three different estoppel-based arguments can be applicable in land use disputes:

(1) Estoppel based upon a "vested right" that was created by affirmative action on the part of a municipality;

(2) Estoppel based upon a municipality's acquiescence and inaction in the face of a known and obvious zoning infraction; and

(3) Estoppel based upon intentional or negligent misrepresentations by a municipality.

We are not completely sure that TOWNSHIP's ministerial act of accepting one application from LEBANON SOLAR triggers the concept of estoppel. It was, after all, LEBANON SOLAR's choice to submit one single

application. However, we are also unwilling to accept the INTERVENOR's argument that LEBANON SOLAR's position constitutes a "misrepresentation" that is meaningless to our decision. The truth is that LEBANON SOLAR submitted one application for a solar farm and the parties thereafter expended over one year of time, effort and money to argue about the efficacy of the single application. It seems to this Court that if TOWNSHIP believed from the outset that a segregated analysis of each of the twelve (12) parcels comprising THE PROJECT was required by its Ordinance, TOWNSHIP could and should have made that point far earlier in the solar farm application process.

The owners of twelve (12) different parcels of property have entered into agreements to transform portions of their land into a solar farm. Each of these landowners could reasonably be justified in relying upon the political decision of their elected representatives to declare solar farms as a permitted conditional use. In the opinion of this Court, it is fundamentally unfair of TOWNSHIP to signal its landowners that property can be used for a solar farm and then, when confronted with the reality of opposition by voters, neuter the Ordinance it created by relying upon an unduly restrictive interpretation of it.

As outlined in the section of this Opinion involving legal principles, decisions regarding use of real estate should be best left to the owners of that real estate. While exceptions based upon the public good exist, a landowners' fellow citizens should not generally be able to prevent that

landowner from using his/her property in a manner that is specifically permitted by an Ordinance.

For all of the reasons outlined above, we will err on the side of respecting the rights of landowners to freely use their property, and we will reject the effort of TOWNSHIP to apply a novel legal theory to prevent a use that was conditionally approved in its own Ordinance. We therefore reject TOWNSHIP's effort to require every one of the twelve (12) parcels that comprise LEBANON SOLAR's project to individually comply with the specifications of conditional use.

Having chosen to accept LEBANON SOLAR's application as a single unitary proposal, we have examined the record to ascertain whether the totality of THE PROJECT complies with all of the conditions specified in Section 522.[6] LEBANON SOLAR presented copious evidence that THE PROJECT encompassed more than fifty (50) acres. (*See*, e.g. N.T. 17). LEBANON SOLAR also presented evidence about its setback compliance as it relates to the outer boundaries of THE PROJECT. (N.T. 20). No one, including INTERVENOR, expressed serious opposition to LEBANON SOLAR's arguments regarding the size of its project or setback requirements from outer boundaries.

The issue of lot coverage was challenged. LEBANON SOLAR presented testimony at the initial hearing that impervious surfaces associated with THE PROJECT would comprise only 25.2 acres, which

[6] The conclusions of TOWNSHIP regarding bonding, stormwater management and buffering will be addressed separately in other sections.

constituted less than 3% of the total project size. (N.T. 22-23). When opponents argued that inclusion of the solar panels itself should have been factored into LEBANON SOLAR's lot coverage calculations, LEBANON SOLAR presented additional evidence on rebuttal that even if the solar panels were considered to be impervious structures, that would still create a total project impervious coverage of 20.4%. (N.T. 378). Nothing in TOWNSHIP's findings challenges the conclusion that when THE PROJECT is viewed in its entirety, impervious structure coverage is less than 50%.

In speaking with counsel at the time of the Pre-Trial Conference, it was clear that everyone agreed that with respect to size, lot coverage and setback requirements, the salient issue was whether the term "Lot" should be construed to encompass the entire project or whether compliance with each separate parcel would be necessary. Because we have resolved this issue in favor of LEBANON SOLAR, we are logically required to rule today that TOWNSHIP erred by concluding that LEBANON SOLAR's application violated size, coverage and setback requirements of Section 522. We therefore reverse those aspects of TOWNSHIP's decision.

B. Buffering

Subsection 4 of Section 522 requires: "a permanent evergreen vegetative buffer must be provided or fencing which accomplishes the same purpose of buffering." LEBANON SOLAR has presented a plan that depicted the exterior boundaries of its project. The plan included proposals

for buffering and fencing, although the "exact type and location will be determined later." (N.T. 20-21). LEBANON SOLAR promised that the entire project would be encased in vegetation and fencing. However, LEBANON SOLAR admitted: "We cannot represent that we have succeeded 100% in doing that [protecting residential "viewsheds"]". (N.T. 72).

At the Conditional Use Hearing, numerous residents complained about having to look at unsightly solar panels. (*See*, N.T. 194; 199; 208; 215; 220). INTERVENOR's expert testified that vegetative buffering should not be "at the discretion of the applicant". (N.T. 172). He stated that the purpose of buffering "is to assuage the view or the visibility of the solar panel from the adjoining property owners." (N.T. 172). Even LEBANON SOLAR's expert was not comfortable with the language of the Ordinance. He stated: "I don't like the fact that it's a vegetative buffer and/or...fencing because there are two different – serves two purposes...Fencing is used for security. Buffering is used to protect against adjoining property owners." (N.T. 339).

TOWNSHIP may have regrets in terms of how it worded the language of its Ordinance regarding buffering. However, the language of Criterion 4 requires vegetative buffer **or** fencing. The language is "either-or"; it does not require both fencing for protection and vegetation to protect what the experts refer to as "viewsheds".

For purposes of our decision today, we must only discern whether LEBANON SOLAR's proposal complies with Section 522. Although

LEBANON SOLAR deferred details until a later time, it did display plans showing that the entire project would be "buffered" with either vegetation or fencing. At this juncture, that is all that is required. We therefore hold that LEBANON SOLAR has complied with Criterion 4 of Section 522 regarding buffering.

C. Stormwater Management/Bonding

Addressing TOWNSHIP's finding that LEBANON SOLAR failed to present enough evidence regarding bonding and stormwater management is far, far more difficult than rejecting its findings regarding the definition of "Lot". We begin with the recognition that the Ordinance included provisions regarding bonding and stormwater management for a reason. Testimony was presented that the "life" of this project will be 30-35 years. (N.T. 14). What will happen thereafter? TOWNSHIP has a vested interest in making sure that enough resources exist to decommission THE PROJECT so that the land can be returned to agricultural use. That is the purpose of bonding. As it relates to stormwater management, construction of a large-scale solar farm in the middle of an agricultural district could create water run-off issues for neighboring farmers. During heavy storms, especially during planting season, stormwater run-off could wreak havoc upon the ability of neighboring farmers to productively grow crops. We cannot and will not therefore declare the bonding and stormwater management provisions of Section 522 to be surplusage.

LEBANON SOLAR argues that bonding and stormwater management are issues that can and should be deferred until the land development phase that THE PROJECT must still transition through. LEBANON SOLAR's project manager stated: "An adequate amount of financial security can only be determined once a design of the proposed development is finalized." (N.T. 25). LEBANON SOLAR's expert testified that bonding issues are typically "considered as part of the land development process after the Conditional Use Hearing determines whether or not the use is allowed in that district." (N.T. 342). LEBANON SOLAR promised in its presentation to provide bonding, a letter of credit or other financial security "acceptable to the Township." (N.T. 26).

As it relates to stormwater management, LEBANON SOLAR similarly promised to create a stormwater management plan in accordance with Lebanon County's Subdivision and Land Development Ordinance (SALDO) during the development phase of THE PROJECT (N.T. 25-26). LEBANON SOLAR's expert argued that stormwater management is an issue that is ordinarily addressed after conditional use is determined. (N.T. 341-343).

The INTERVENOR presented an expert who opined that LEBANON SOLAR's bonding proposal constituted nothing more than a "promise of future compliance" that is inadequate to comply with Section 522 of the Ordinance. (N.T. 178). Similarly, the expert for INTERVENOR described all of the Chesapeake Bay Watershed as "an incredibly sensitive area" and was critical of LEBANON SOLAR's unwillingness to provide more definitive

stormwater management plans in its conditional use application. (N.T. 180-181).

Fortunately, there is decisional precedent regarding the question of whether details of a large-scale project should be addressed at the Conditional Use Hearing or at a later time. Unfortunately, the case law is anything but clear.[7]

Both parties cite and rely upon the case of ***In Re: Thompson***, 896 A.2 659, 670 (Pa. Cmwlth. 2006). In ***Thompson***, the Commonwealth Court stated: "An applicant for special exception or conditional use must demonstrate that his proposed use meets the applicable requirements of the Zoning Ordinance when the application is submitted. A promise to comply or conditions compelling future compliance cannot cure an otherwise non-compliant application." **Id** at page 680 (citations omitted; emphasis in original). On the other hand, the Commonwealth Court also recognized that: "Generally, satisfying the criteria for conditional use is just one step of the subdivision approval process...Conditional use proceedings involve only the proposed use of the land, and do not involve the particular details of the design of the proposed development." **Id** at page 670. The Commonwealth Court specifically stated that stormwater management

[7] Interestingly, even INTERVENOR's expert acknowledged that the case law governing promises of future compliance is uncertain. When asked whether LEBANON SOLAR's position that they cannot adequately assess a bond amount at this phase of the development, INTERVENOR's expert stated: "I'm not sure of that. I don't want to say I agree or disagree. I'm not sure of that. There's so many cases..." (N.T. 179).

issues "are to be addressed further along the permitting and approval process." **Id** at page 671.

Another case cited by both parties is ***Schatz v. New Britain Township Zoning Hearing Board***, 596 A.2d 294 (Pa. Cmwlth. 1991). In ***Schatz***, the Appellant applied for a special exception seeking to construct an inpatient drug and alcohol rehabilitation facility. The Zoning Hearing Board of New Britain Township determined that the proposed use fit the description of a "convalescent home" as defined in the Ordinance. However, the Board held that the applicant "did not meet his burden of proof regarding the special and general requirements for a special exception." The applicant appealed to the Court of Common Pleas, which took no additional evidence. The Court of Common Pleas ruled in favor of the applicant, and New Britain Township appealed. Pennsylvania's Commonwealth Court addressed numerous issues. Most pertinent to the case now before this Court was the Township's concerns about stormwater management. As it related to that issue, the Commonwealth Court stated:

> "We agree with Common Pleas that an application for special exception is not required to address such issues. Such issues are to be addressed further along in the permitting and approval process. Zoning only regulates the use of land and not the particulars of development and construction."
>
> **Id** at page 298 (citations omitted; emphasis in original).

We searched diligently for a case that could clarify the proclamations in ***Thompson*** and ***Schatz***, and enlighten us as to whether and to what extent bonding and stormwater management must be addressed in a

conditional use application process. We only found two cases that could provide such insight.

In ***In Re: Richboro CD Partners***, 89 A.3d 742 (Pa. Cmwlth. 2014), the Commonwealth Court addressed a conditional use application pertaining to a shopping center. One of the key questions presented in ***Richboro*** involved the adequacy of design plans and specifications submitted with the conditional use application. The Township argued that the plans submitted were insufficient. The applicant argued that detailed plans could not possibly be presented until a later stage of the development process.

The Commonwealth Court began its analysis by citing ***Thompson***. The ***Richboro*** decision described ***Thompson*** as addressing "what a Township may and may not require a conditional use applicant to demonstrate at this crucial first step of the land development stage." **Id** at page 749. The Court then stated:

> "Addressing the difference between use of land, which was a proper inquiry at the conditional use stage, and the particulars of development and construction, which was not, this Court identified a series of examples of the difference, stating: 'What we garner from these cases is that an applicant seeking conditional use approval must demonstrate compliance with the express standards and criteria of an ordinance that relates specifically to the conditional use.' Therefore, the standard applied to conditional use applications is whether the plan submitted complies with all Zoning requirements; an applicant is not required to present particular details of the design of the proposed development at the conditional use stage, however, an intention or promise to comply with all Zoning requirements is insufficient to show entitlement to a conditional use."

Id at page 749 (citations omitted).

In assessing the suitability of plans submitted at a conditional use proceeding, the Court in ***Richboro*** focused upon the degree of detail submitted in the application. Citing the case of ***In Re: Drumore Crossings***, 984 A.2d 589 (Pa. Cmwlth. 2009), the Court held that it would be error for a municipality to require "detail that went far beyond the Zoning Ordinance requirements for the use of land and reached into the mechanics and operations of that use." **Id** at page 750. Ultimately, the Commonwealth Court concluded:

> "While Richboro cannot be required to submit a plan that details compliance with every aspect of the SALDO in order to obtain conditional use approval, Richboro cannot obtain conditional use approval with a VOD plan that makes compliance with the SALDO impossible and is directly at odds with the express criteria set forth in the Ordinance...Under this Ordinance, an applicant for a conditional use in the VOD must demonstrate that its plan complies with the applicable sections of the SALDO and the conditional use application may be denied if it does not comply."
>
> **Id** at page 750.

Based upon this analysis, the Commonwealth Court rejected Richboro's plan as insufficient to comply with the mandates of the Ordinance.

The second case that provides instruction pertaining to the amount of detail required in a conditional use application is ***Brookview Solar I, LLC v. Mount Joy Township Board of Supervisors***, 2023 WL8264544 (Pa. Cmwlth. Nov. 30, 2023). ***Brookview*** also involved creation of solar power infrastructure, though the plan in ***Brookview*** did not appear to be as

extensive as the plans now before this Court. In ***Brookview***, the Board of Supervisors of Mount Joy Township were deadlocked[8] regarding a conditional use application. The trial court therefore undertook responsibility to render a decision. One of the issues submitted to the trial court involved "completeness of application". As in this case, the parties cited both ***Thompson*** and ***Schatz***. As in this case, the applicant argued that it could not provide detailed stormwater management plans, indicating that these types of issues "will be addressed at a later phase in the permit process." The applicant argued that at the conditional use phase, all that was necessary was to demonstrate "a substantial likelihood of compliance with the requirements of the Zoning Ordinance."

Pennsylvania's Commonwealth Court disagreed with the applicant. The Court stated:

> "The trial court held that Brookview did not meet its burden of "demonstrating" compliance with [the Zoning Ordinance]. Brookview argues...it was required to demonstrate merely a "substantial likelihood" that it will satisfy this requirement...future proceedings before the Township and State agencies will oversee permits needed for the project. The trial court rejected this argument because Brookview's application did not even address stormwater management, let alone demonstrate a substantial likelihood of compliance with stormwater management requirements...
>
> Brookview also asserts that it could not address all the stormwater management requirements because its solar energy system is at the preliminary planning stage. Brookview's engineer, however, testified during cross-examination that 'it is possible to do a preliminary

[8] Apparently, the Board of Supervisors was comprised of five individuals. One recused himself. The remaining four split in terms of a decision. As a result, the application was denied by operation of law.

> stormwater plan that would demonstrate the location of facilities on the property'...He explained, however, that it was 'too speculative to be able to provide detail as to stormwater' at this stage...By not addressing stormwater management, Brookview's application did not satisfy a specific conditional use requirement [of the Zoning Ordinance]. Accordingly, the trial court did not err in determining that Brookview's application was properly denied."

In this case, TOWNSHIP rendered two findings related to bonding and stormwater management. Those findings are:

> "25. The Board finds that Applicant has failed to comply with Criterion Number 7 of the Ordinance by failing to submit appropriate bonding as required by Criterion Number 7 in as much as Applicant's promise of future compliance does not meet the criterion.
>
> 26. The Board finds that Applicant has failed to comply with Criterion Number 8 of the Ordinance which requires the submission of evidence of an approved stormwater management plan as required by the Lebanon County Stormwater Management Ordinance. A promise of future compliance does not constitute evidence of compliance with Criterion Number 8."

(Page 7 of TOWNSHIP's written decision.)

LEBANON SOLAR asks us today to overturn TOWNSHIP's decision not to accept its promises of future compliance. We simply cannot and will not blithely reject TOWNSHIP's insistence upon compliance with the letter of its solar farm conditional use Ordinance.

We understand and accept LEBANON SOLAR's position that detailed bonding and detailed stormwater management plans cannot be proffered at this initial phase of the land development process. At the conditional use phase of development, detailed plans depicting the locations of all solar

panels and related infrastructure do not exist. Therefore, the specific cost of decommissioning could not be precisely determined and preparing specific plans depicting trenching and water retention simply cannot be presented. While we acknowledge these realities of land development, we cannot endorse LEBANON SOLAR's position that all it is required to present at a Conditional Use Hearing are promises.

A multitude of additional information could have been presented by LEBANON SOLAR regarding bonding and stormwater management. Included among this information would have been the following:

- What is LEBANON SOLAR? Is it a "shell" corporation? Is it a subsidiary of a more established company that has robust resources? What are the assets of LEBANON SOLAR? What resources are available to LEBANON SOLAR that could be accessed to decommission THE PROJECT if a bonding company becomes insolvent?
- Has LEBANON SOLAR received a letter of commitment from a financial institution related to THE PROJECT? If so, what institution? What is the financial health of the institution? What is the amount of the credit that is available?
- Has LEBANON SOLAR communicated with any reputable bonding company? Has preliminary approval for a bond been offered?
- Does any information exist regarding cost of decommissioning a solar farm? What would it involve? Who could accomplish

decommissioning? What would be necessary to return the land involved back to a state suitable for agriculture?

- What experience does LEBANON SOLAR have with stormwater management, especially related to other solar farms? Has LEBANON SOLAR contracted with a company that has expertise in developing stormwater management systems? Has such a company conducted even a preliminary survey of the land designated for THE PROJECT?
- Is it possible to create a stormwater management plan that would assure adjoining landowners that stormwater run-off would not affect their farming activities? Does the company hired by LEBANON SOLAR to address stormwater management have experience in protecting adjacent farms from water run-off issues?

We are confident that there are probably hundreds of other preliminary questions that LEBANON SOLAR could have addressed in their conditional use application proposal. Even general information as outlined above would have been extremely helpful to TOWNSHIP and its residents. However, no such information was presented. Instead, LEBANON SOLAR merely stated: "Trust us. We will do it correctly." As LEBANON SOLAR no doubt learned during the Conditional Use Hearing, residents of North Annville Township have very little trust in LEBANON SOLAR. Obviously, neither did TOWNSHIP's Supervisors.

We agree with TOWNSHIP's Board of Supervisors that LEBANON SOLAR's application was deficient as it related to bonding and stormwater management. Very little other than promises was presented. While we certainly understand that details could not be presented at a Conditional Use Hearing, mere promises are not enough. Accordingly, we affirm the decision of TOWNSHIP to reject LEBANON SOLAR's application based upon its failure to comply with Subsections 7 and 8 of Section 522.

D. Unbiased Adjudicators

LEBANON SOLAR complains that the entire conditional use process was "beleaguered by bias and prejudgment from members of the Board which resulted in the violation of its due process rights to an unbiased decision-making tribunal." (LEBANON SOLAR's Brief at page 43). LEBANON SOLAR accused TOWNSHIP's Supervisors of "unlawful deliberation on the application". It also complained that the Board of Supervisors undertook an advocacy role against LEBANON SOLAR in proceedings involving TOWNSHIP Planning Commission. (*See*, page 46 of LEBANON SOLAR's brief.). Although LEBANON SOLAR is not completely clear about what it would like this Court to do about the "bias", we presume that LEBANON SOLAR seeks a decision in its favor based upon bias displayed by TOWNSHIP's Board of Supervisors. TOWNSHIP responds by stating that the record of this case is devoid of evidence implicating bias on the part of TOWNSHIP's Supervisors. No hearing was conducted

regarding bias on the part of the Supervisors, nor did any witness testify about specific statements made by Supervisors in opposition to THE PROJECT.

The key case regarding bias on the part of a Township Supervisor tasked with serving as an adjudicator emanated from Lebanon County. In the case of ***In Re: Arnold***, 984 A.2d 1 (Pa. Cmwlth. 2009), a Township Supervisor for North Cornwall Township was accused of bias because he met privately with representatives of Wal-Mart regarding a proposed development in his Township and he issued statements to local newspapers that he believed the Wal-Mart development would actually improve traffic conditions in his Township. The Supervisor promised that he could impartially adjudicate a conditional use application. This Court agreed that the Supervisor could serve in adjudicatory capacity. When the application was approved, objectors appealed based upon their allegations of bias against the Supervisor. Pennsylvania's Commonwealth Court affirmed the decision of this Court and stated:

> "Due process requires a local governing body in the performance of its quasi-judicial functions to avoid even the appearance of bias or impropriety. A showing of actual bias is unnecessary in order to assert a cognizable due process claim; the mere potential for bias or the appearance of non-objectivity may be sufficient to constitute a violation of due process. However, 'while an appearance of non-objectivity is sufficient to trigger judicial scrutiny, the significant remedy of invalidation often depends on something more tangible.' Recusal is required only where the record demonstrates bias, prejudice, capricious disbelief or prejudgment. If a Supervisor thinks he is capable of hearing a case fairly,

> his decision not to withdraw will ordinarily be upheld on appeal.
>
> Generally, recusal is warranted where a member of the tribunal participates as an advocate or witness, publicly expresses predisposition, or has a financial interest or fiduciary relationship with a party in interest. [Cases cited where recusal required when Board member 'publicly expressed predisposition against a project', where a Board member undertook an 'advocacy role before the Board as a private citizen' and where Board members 'signed and filed petitions in opposition to the Zoning Ordinance at issue'.].
>
> Supervisor Brooks' statements to local newspapers cannot necessarily be interpreted as support for the development. Supervisor Brooks merely noted his belief that traffic conditions would improve if the property was developed. He did not state that the property should be developed, a statement which would have indicated pre-judgment or a degree of actual bias."
>
> **Id** at page 8-9.

This case is very similar. Here, allegations of bias have been proffered by LEBANON SOLAR. However, no proof to support those allegations was presented. Only two of the three Supervisors of North Annville Township participated in the decision to deny LEBANON SOLAR's application. No evidence of any statements in opposition to LEBANON SOLAR's project was presented with respect to either of these two Supervisors. In the absence of such proof, we cannot and will not declare that TOWNSHIP's Board of Supervisors was biased to the point where LEBANON SOLAR's due process were violated.

V. CONCLUSION

There is quite a bit that we do not know about LEBANON SOLAR's project and its etiology. Some questions, such as why the same Board of Supervisors who passed an Ordinance in 2019 to permit a solar farm turned around and relied upon a tortured interpretation of the Ordinance in order to deny permission to construct one, we do not need to know. However, there are other questions, particularly those related to bonding and stormwater management, that would be essential for us to know in order to approve THE PROJECT. One of the TOWNSHIP residents who appeared at the Conditional Use Hearing stated: "We can't get answers. The answer's always, those details will come later, we'll give those details later". We sympathize with Aaron Miller's statement.

Ultimately, we will affirm the decision of TOWNSHIP to deny LEBANON SOLAR's conditional use application. However, we do so because we find LEBANON SOLAR's application presentation to be inadequate, not because we believe that mobilized and angry residents of North Annville Township should have the ability to prevent twelve (12) of their fellow citizens from pursuing their ability to create a solar farm that was conditionally approved by TOWNSHIP's elected representatives.

We have a great deal of sympathy for the twelve (12) farmers who sought to utilize their own land in a way that was economically advantageous to their families. Nevertheless, we cannot with intellectual honesty approve a project as consequential as the one proposed by

LEBANON SOLAR based solely upon promises of future compliance, especially since those promises were not sufficient to convince TOWNSHIP's elected representatives. In the opinion of this Court, LEBANON SOLAR's application and presentation fell short of what was required regarding bonding and stormwater management.

We will enter an Order today to affirm TOWNSHIP's denial of LEBANON SOLAR's application. We do so with regret for how this decision will adversely impact the twelve (12) landowners who wanted their land to be used for this project. We also do so with hope that North Annville Township will not eventually regret what has occurred regarding this project.