

Eastern Pennsylvania Zoning Hearing Board Rejects a Developer's Application for Large-Scale Solar Project

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With the development of large-scale renewable energy projects, municipal land use officials and private developers face the dilemma of how to classify and address such uses when zoning ordinances do not expressly mention them. Such omissions may be intentional, or, more often, may simply be the result of failures to update their ordinances to account for the changing energy production market.

A recent example of how these issues play out was a decision by the Lower Mount Bethel Township, Northampton County Zoning Hearing Board. There, Glidepath Ventures, LLC d/b/a Prospect 14, desired to construct a 61,000 solar panel facility to generate electricity for public consumption within the Township. The developer had targeted a 130-acre property located largely within the Township's Agricultural District, and partially within its Conservation District. The Township zoning ordinance does not permit solar panel facilities in any district but does permit "any other use not otherwise listed in any zoning district" as a conditional use within the Township's Industrial District. Although the developer argued that there was no suitable undeveloped property within the Industrial District, the Township's expert testified that there was a suitable site within that zone, although the undeveloped space was limited.

At bifurcated hearings spanning several months, the Developer initially sought a use variance to allow the solar facility in the Agricultural and Conservation Districts or, in the alternative, challenged the validity of the Zoning Ordinance, alleging that it was legally defective by excluding the proposed use. After finding that the developer had failed to establish the requisite unnecessary hardship for the grant of a use variance, the Board considered whether the use was either *de jure* or *de facto* exclusionary by either expressly or in practice prohibiting the legitimate solar facility use. Ultimately, the Board held the ordinance was not exclusionary because it did not expressly prohibit solar facilities, and the proposed use could be permitted as a conditional use in the Industrial District because it was not otherwise listed in any zoning district.

The Board issued its written decision on April 28. As of this date, no appeal has been filed.

The decision in *Glidepath Ventures* highlights the need for municipalities and developers alike to consider how they classify and define renewable energy uses. By failing to provide for a legitimate use, the Township was placed in a precarious situation, and if it had not included a provision permitting all other uses within the Industrial District, the ordinance may have been found to be *de facto* exclusionary and therefore invalid. In addition, the decision is indicative of the disconnect between the type of use and land considered by developers to be functional for larger renewable energy products, and what zones municipalities believe to be suitable from a zoning context. How municipalities classify and define renewable energy uses will likely continue to evolve as renewable energy development increases and cases such as *Glidepath Ventures* become more prevalent.

Tags: [renewable energy projects](#), [use variance](#), [zoning ordinances](#)

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