STATE OF NORTH CAROLINA	**IN THE GENERAL COURT OF JUSTICE** **SUPERIOR COURT DIVISION** **FILE NO. 14 CVS 00053**
COUNTY OF LINCOLN	
GARY DELLINGER, VIRGINIA DELLINGER, and TIMOTHY S. DELLINGER, **Petitioners,** **vs.** **LINCOLN COUNTY, LINCOLN COUNTY BOARD OF COMMISSIONERS, and STRATA SOLAR, LLC,** **Respondents,** **and** **TIMOTHY P. MOONEY, and MARTHA McLEAN** **Intervenor Respondents.**	)

DECISION ON REMAND

THIS MATTER came on to be heard before the Lincoln County Board of Commissioners pursuant to that Decision on Appeal of the Lincoln County Superior Court, the Honorable Yvonne Mims Evans, Judge Presiding, remanding the matter back to the Board of Commissioners by Order dated February 20, 2015.

Based upon the Court's remand, the Board undertook to make additional findings of fact as to Board's previous finding in the negative that the Applicant's proposed use will not substantially injure the value of adjoining property unless the use is a public necessity.

Chairman Carrol Mitchem had previously recused himself from participating in the instant matter. Commissioner Bill Beam, as Vice Chairman of the Board, was therefore the replacement Commissioner to moderate over the deliberation. Commissioner Beam recused himself from the deliberation of the matter because he did not believe he could render a fair decision since he was not a sitting commissioner at the time of the original quasi-judicial hearing.

Wesley Deaton, attorney for the County, advised the remaining members that it would now be necessary to choose a Chairperson for the limited purposes of this deliberation. Upon motion made by Commissioner Cecelia Martin and seconded by Commissioner

Martin Oakes, and unanimously approved, Commissioner Alex Patton was appointed Chairman.

No new evidence was taken, and further no argument by any parties was allowed. After a deliberation of the Board, upon Motion of Martin Oakes, the Board rendered the below Findings of Fact by a 2-1 vote, with Commissioners Alex Patton and Martin Oakes in favor, and Commissioner Cecilia Martin in opposition.

FINDINGS OF FACT IN SUPPORT OF THE BOARD'S DECISION AS TO ELEMENT THREE OF THE APPLICANT'S REQUIREMENTS:

1. The use requested by the Applicant is not a public necessity. The Applicant never claimed the use to be a public necessity, nor did the Applicant submit any evidence to that effect.

2. The burden is on the Applicant to prove that the proposed use will not significantly injure the value of the adjoining property. We find that the applicant has failed to meet its burden of proof. Although it did meet its burden of production and provided evidence as to this element, we found the evidence unpersuasive for the reasons below in this paragraph 2.

A. There was little data upon which the Applicant could rely to show the use would not injure the value of adjoining properties in this particular use of the kind of properties at issue.

The Applicant tendered, without objection, Richard Kirkland as an expert witness in appraisal.

Mr. Kirkland stated, "I started looking at national studies looking into seeing what kinds of impacts they see and there's not a lot of useful information on that for this type of size so I had to go out and do my own study."

Mr. Kirkland was asked by Planning Board member Floyd Dean, "When you were looking at comparable sales, did you find any neighborhoods that had solar farms adjacent to them that had homes that were in the range of $500,000 to $2,500,00?" Mr. Kirkland stated that he had not looked at any like that.

Mr. Kirkland submitted two examples which he contended were comparable for analysis. One was where a development was going next to an existing solar farm and the second was a potential solar farm going next to a development.

Commissioner Klein stated, "I guess you have now given us two comparable pieces of information but it doesn't suggest to me that this sampling is enough to draw any

conclusions."

Mr. Kirkland stated that there was no way one "..could apply statistical analysis to this at this time. Solar farms of this nature in North Carolina is only a very recent activity and that's one of the functions of finding these at this time, looking at matched pairs, is there is not many solar farms out there to look at."

Commissioner Klein asked if the sample size could be expanded to the southeast to obtain representative samples.

Mr. Kirkland replied, "If you look at expanding out again, you find more solar farms, but again statistics are really-appraisal technique is not statistics, there is no real way to apply the information I get from South Carolina to what is going on here, there is a lot of local nuance that wind up getting trapped into everything."

Because one of the comparables Mr. Kirkland submitted was for property being developed next to an existing solar farm, we find this *not* to be competent comparable data, and thus find there to be only one comparable: Spring Gardens.

B. The appraisal report that the applicant submitted (see Kirkland Appraisals.pdf) referenced only a single solar farm as being comparable. In that case (Spring Gardens) while the applicant claimed two post-solar farm sales as being matched pairs, one did not contain sufficient data (house type, square footage, etc. were all missing) and the other was a Ranch type house being compared with the 1.5 and 2 story houses in the same subdivision. Therefore, Mr. Kirkland's testimony rested on the sale of a single property of a different type than the "comparables" found in the same subdivision, and in subdivisions adjacent or close to the instant application. Furthermore, the average values in the neighborhood Mr. Kirkland testified to are $220,000 to $240,000, while the houses within one mile of the proposed solar farm average more than $460,000 (from the Beck testimony described below). Testimony from another appraiser (Beck) pointed out that the Spring Gardens solar farm was built on property zoned industrial, as documented in Kirkland's own report (p.17), who therefore concluded that the subdivision's original pricing built in the expectation of something "ugly" being built next door.

C. The Applicant's witness offered testimony that a Verizon center did not affect property values of adjacent properties. However, because this center was not a solar farm, we don't find this example to be comparable or instructive.

In summary, the testimony which the Applicant submitted in support of its assertion that the proposed use would not substantially injure the value of adjoining or abutting property was not persuasive. It failed to include examples that were reasonably comparable to the Applicant's proposed use and the properties located near the Applicant's proposed use.

3. In addition, opponents to the Applicant's proposed use brought forward credible, substantial evidence that in fact the proposed use *would* substantially injure the value of adjoining or abutting property.

A. First, there was testimony from Martha McLean, a homeowner who had a property abutting the proposed solar farm. Ms. McLean had her property listed for sale and under contract at the time the Applicant filed its solar farm application. When the solar farm project was announced, the proposed purchaser terminated the purchase contract, and Ms. McLean testified, without objection from the Applicant, that the reason for the termination was the proposed solar farm. No evidence was presented to rebut or contradict Ms. McLean's assertion, and thus we find it credible that in fact, the proposed solar farm was the cause of Ms. McLean losing the contract on the sale of her house. We therefore find that the injury to the value of Ms. McLean's property, due to the proposed use, is significant, substantial and actual damage.

B. The opponents further submitted the testimony of Randy Beck and Geoffrey Zawtocki, both licensed appraisers working for Fred H. Beck & Associates. Both appraisers were tendered as experts without objection.

The appraisers submitted evidence, without objection, that the properties located near the proposed use had a median value higher than the median values near other solar farms, including the solar farms cited in Mr. Kirkland's testimony. They further testified that higher-priced home buyers (i.e. buyers of homes like the ones located in the area surrounding the proposed solar farm) are pickier and thus more apt to view "ugly" views more negatively than moderate-price home buyers. They testified, and we find credible, that because of this the proposed use would substantially injure the values of adjacent and adjoining properties.

C. Furthermore, the opponents to the application presented evidence of a solar farm located in Clay County, North Carolina. Their evidence tended to show that the Clay County Board of Equalization and Review reduced assessments on 19 properties in a neighborhood adjacent to a solar farm by 30 percent, which we find is significant and likely to be repeated in the current case. This evidence was taken without objection, and we find it to be a credible example that solar farms can substantially reduce and injure the values of adjacent properties, and further that this Applicant's proposed use would substantially injure the values of adjacent properties.

In sum, the Board based its previous decision to find *against* the Applicant as to the third element on (1) the failure of the Applicant to meet its burden of persuasion and (2) affirmative evidence submitted by opponents to the Application that the proposed use in fact would cause substantial injury to the value of adjoining properties. Because the Applicant never contended or submitted evidence that the proposed use was a public necessity, the above-referenced findings caused the Board to rule against the Applicant as to the third element in its previous December 16, 2013, decision.

Entered this the ____ day of March, 2015.