

IN THE SUPREME COURT OF OHIO

In the Matter of the Application of Oak Run)
Solar Project, LLC for a Certificate of) Supreme Court Case No. 2024-1477
Environmental Compatibility and Public)
Need to Construct a Solar-Powered Electric) On Appeal from the Ohio Power Siting
Generation Facility in Madison County, Ohio) Board, Case Nos. 22-549-EL-BGN and
) 22-550-EL-BTX

In the Matter of the Application of Oak Run)
Solar Project, LLC for a Certificate of)
Environmental Compatibility and Public)
Need to Construct a Transmission Line in)
Madison County, Ohio)

**AMICUS BRIEF OF DR. JOHN BOECKL IN SUPPORT OF THE
OAK RUN SOLAR PROJECT**

Dated: March 12, 2025

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STATEMENT OF INTEREST OF AMICUS CURIAE

Dr. John Boeckl is a local resident of Monroe Township who lives 1,000 feet downwind of the site of the future Oak Run Solar Project (the “Project”). He intervened to support the Project in the Ohio Power Siting Board (“OPSB”) proceeding. He now submits this amicus brief to explain why the OPSB’s issuance of a Certificate of Environmental Compatibility and Public Need (“Certificate”) should be affirmed.

Dr. Boeckl is not a participating landowner, and he will not receive any lease payments if the Project is constructed. The only direct benefit that he stands to receive upon completion of the Project is a modest one: as part of an effort to compensate neighbors for any inconvenience incurred during the construction of the Project, the Applicant has agreed to provide Dr. Boeckl with a residential solar energy system for his roof.

Dr. Boeckl chose to support the Project for four main reasons. First, as someone who lives very close to the Project site, Dr. Boeckl concluded that a solar farm would be far less disruptive to his lifestyle than any of the likely alternatives, such as a large-scale dairy farm or housing development. In particular, it would be vastly less disruptive than the mega-dairy that was previously proposed for the same site, which would have housed 5,428 dairy cattle, generating millions of gallons of manure, polluting local waterways, and causing foul odors to waft onto his property. Second, as a research scientist with professional expertise in solar cell technology, Dr. Boeckl understood that replacing existing sources of generation, such as aging coal power plants, with solar energy facilities would significantly reduce air pollution and water pollution. Third, as a taxpayer, Dr. Boeckl recognized that the Project would provide a boost of economic activity to the region, including by creating jobs and increasing tax revenue. Fourth, Dr. Boeckl saw the Project as an opportunity for the State of Ohio to become a world leader in agrivoltaics, the dual use of land for solar energy generation and agricultural production. In

particular, as a recreational beekeeper, Dr. Boeckl was appreciative of the Project's plans to incorporate and maintain high-quality habitat for honeybees and other pollinators as part of its agrivoltaics and vegetation management plans. The OPSB recognized many of these benefits in its March 21, 2024 Opinion & Order ("Opinion") granting the Certificate.

PRELIMINARY STATEMENT

The Appellants' merit brief is a broadside against the general idea of using Ohio farmland for solar generation masquerading as a technical analysis of the purported deficiencies of the Application for this particular Project. Indeed, while Appellants open their brief by raising concerns about the "loss of farmland" and "environmental damage," it is readily apparent that any concerns they may have on those two topics are rooted in more abstract concerns about the purported "aesthetic incongruity [of solar farms] with rural landscapes." *See* Appellants' Merit Brief at 1. All of these impacts, including viewshed impacts, are adequately addressed in the Opinion, and the Appellants have identified no basis for the Court to conclude that the OPSB acted unlawfully or unreasonably in approving the Project.

Here, the Opinion granting the Certificate was supported by extensive evidence in the administrative record and was based on a reasonable review of evidence and arguments from both sides. The OPSB lawfully and reasonably concluded that the Project satisfied all criteria for approval, including, in particular, that it represents the minimum adverse environmental impact and that it will serve the public interest, convenience, and necessity.

STATEMENT OF FACTS

Amicus Curiae hereby adopts and incorporates by reference the Statement of the Facts submitted by the OPSB as Appellee and Oak Run Solar, LLC as Intervening Appellee. This section offers a brief supplement, focusing on evidence submitted by Dr. Boeckl.

On March 7, 2023, Dr. John Boeckl filed a motion to intervene in this proceeding as a

community member who lives near the Project and as someone with professional expertise in solar cell technology. On April 7, 2023, the motion was granted. On May 10, 2023, Dr. Boeckl filed testimony in support of the Project. *See* Direct Testimony of Dr. John Boeckl dated May 10, 2023 (“Boeckl Tr.”).

In his direct testimony, Dr. Boeckl testified, by way of background, that he had been an Ohio resident for his entire life, and that he had lived 1,000 feet from the Project site for 23 years. *Id.* at 2:8-12. For the last 33 years, Dr. Boeckl had served as a civilian employee of the U.S. Air Force, including as the Senior Focal Point for the Materials and Manufacturing Directorate of the U.S. Air Force Research Laboratory. *Id.* at 2:2-17. Dr. Boeckl’s Ph.D. research and doctoral thesis were focused on solar cell materials. *Id.* at 2:20-22. After receiving his Ph.D., Dr. Boeckl continued to study solar cell materials and other solid-state materials for another 18 years as a Research Scientist. *Id.* at 2:21-22, 3:1.

Dr. Boeckl testified that he supported the Project because of its environmental and economic benefits. *Id.* at 3-4. With respect to environmental impacts, Dr. Boeckl testified that, “as a scientist who understands the causes and impacts of climate change, as well as conventional air and water pollution,” he understood that “replacing conventional fossil fuel power plants such as coal-fired power plants, with renewable energy sources, such as solar energy projects, will help to mitigate climate change while improving local air quality and reducing the risk of water pollution.” *Id.* at 4:1-6. Dr. Boeckl further testified that, as someone who lives close to the Project site, “the construction and operation of a solar farm at the site would be far less disruptive” than other possible land uses, such as a large-scale dairy farm (*i.e.*, mega-dairy) or a housing development. *Id.* at 4:7-11. He explained, by way of example, that the previous owner of the site submitted an application in 2007 for a facility that would have housed

5,428 dairy cattle. *Id.* at 4:11-14. He noted that he lived “approximately 1,000 feet downwind of the site” and that he was “deeply concerned about the odors that would have wafted onto [his] property.” *Id.* at 4:14-15. He further testified that he was concerned about the “vast quantities of manure that would have been generated at the site, which could [have] leaked into the water and harmed the fragile ecosystems of the Little Darby Creek and Spring Fork.” *Id.* at 4:15-18. Considering the alternatives, Dr. Boeckl testified that he “would be thrilled to live near a relatively quiet, non-polluting, low-traffic solar farm instead.” *Id.* at 4:18-19.

With respect to economic benefits, Dr. Boeckl testified that “the surrounding region has a serious opportunity to benefit from the boost of economic activity and tax revenue that the Project will deliver.” *Id.* at 4:20-21. He explained that the project will deliver “hundreds of millions of dollars in revenue to the local school districts and tens of millions of dollars to the fire department, ambulance, and other services,” which he believes “will increase the quality of services in the town or help to offset [his] own tax burden or both.” *Id.* at 4:21-23, 5:1-3. In addition, Dr. Boeckl testified that the developer had agreed to provide his household with a residential rooftop solar energy system upon completion of the project, as a part of a Good Neighbor Agreement to mitigate impacts to those who live closest to the site. *Id.* at 3:19-22.

Beyond these immediate benefits, Dr. Boeckl testified that, in his capacity as a “professional who develops international research partnerships,” he believed the Project offered an “opportunity for Ohio to become a focal point as the U.S. leader in the global transition to renewables.” *Id.* at 5:4-7. Dr. Boeckl further testified that the Project was “at the cutting edge on at least three dimensions, including total generation capacity, total battery storage capacity, and commitment to agrivoltaics.” *Id.* at 5:7-9. Finally, Dr. Boeckl specifically testified that the Applicant’s commitment to employ agrivoltaics on 2,000 acres of the Project area would “truly

distinguish Ohio as a leader,” given the fact that the largest agrivoltaics project in the country, as of May 2, 2023, was less than 5 acres. *Id.* at 5:9-12. Notably, the OPSB ultimately ordered the Project to include 4,000 acres of crops and 1,000 sheep on site as a condition of approval. *See* Opinion ¶ 221.

STANDARD OF REVIEW

Under R.C. 4906.12, the Court must apply the same standard of review to an OPSB order that it would apply to an order of the Public Utilities Commission: the Court only “will reverse, vacate, or modify a board order ‘if, upon consideration of the record, [it is] of the opinion that such order was unlawful or unreasonable.’” *In re Application of Duke Energy Ohio, Inc.*, 166 Ohio St.3d 438, 2021-Ohio-3301, ¶ 11 (quoting R.C. 4903.13); *see also In re Application of Black Fork Wind Energy, L.L.C.*, 138 Ohio St.3d 43, 2013-Ohio-5478, 3 N.E.3d 173, ¶ 10.

Importantly, “[the Court] will presume orders are reasonable; it falls to an appellant to upset that presumption.” *Duke Energy Ohio, Inc.*, 166 Ohio St.3d 438, 2021-Ohio-3301, ¶ 79 (citing *In re Application of Columbus S. Power Co.*, 129 Ohio St.3d 271, 2011-Ohio-2638, 951 N.E.2d 751, ¶ 18). In addition, while the Court reviews legal questions de novo, the Court “will not reverse or modify a [power siting] board decision as to questions of fact when the record contains sufficient probative evidence to show that the board’s decision was not manifestly against the weight of the evidence and was not so clearly unsupported by the record as to show misapprehension, mistake or willful disregard of duty.” *In re Application of Champaign Wind, L.L.C.*, 146 Ohio St.3d 489, 2016-Ohio-1513, 58 N.E.3d 1142, ¶ 7.

ARGUMENT

I. Proposition of Law: The Board Acted Lawfully and Reasonably in Finding that the Project Complies with R.C. 4906.10(A)(3) and (6), Because It Represents the Minimum Adverse Environmental Impact and Because It Will Serve the Public Interest, Convenience, and Necessity

In their Brief, Appellants identify several bases for opposition to the Project, including “concerns about the loss of farmland, aesthetic incongruity with rural landscapes, and environmental damage.” *See* Appellants’ Merit Brief at 1. Importantly, however, Appellants have failed to establish that the OPSB’s findings on any of these impacts were manifestly against the weight of evidence or that they were so clearly unsupported by the record as to show misapprehension, mistake or willful disregard of duty. *See In re Application of Champaign Wind, L.L.C.*, 146 Ohio St.3d 489, 2016-Ohio-1513, 58 N.E.3d 1142, ¶ 7. As described below, there was ample evidence in the record for the OPSB to find that the design features of the Project, as well as the conditions set forth in the Stipulation, would adequately address any reasonable concerns about viewshed impacts, loss of farmland, and environmental impacts. Based on that evidence, the OPSB lawfully and reasonably concluded that the Project represents the minimum adverse environmental impact and that it will serve the public interest, convenience, and necessity.

A. Concerns About Visual Impacts Are Adequately Addressed

While viewshed impacts may be a valid topic for the OPSB to consider when evaluating an application, Appellants have identified no basis to conclude that the OPSB acted unlawfully or unreasonably in evaluating the evidence of viewshed impacts of this Project. Rather, the OPSB lawfully and reasonably concluded that the Project’s viewshed impacts would be “mostly absorbed into the landscape,” as a result of “Project design.” Opinion ¶ 154.

As to the specific contention that the Application lacked necessary information on vegetative screening plans to be deemed complete, *see* Appellants’ Merit Br. at 19, the OPSB

already considered and rejected that argument, *see* Opinion ¶¶ 114-20. Specifically, the OPSB found:

We are not persuaded by the Townships’ arguments regarding the completeness of the Application. Although the Townships argue that the Application is not complete as required by Ohio Adm. Code 4906-3-06, the Board notes that its determination of completeness was issued on November 1, 2022. The November 1, 2022 letter signified that the Board had received sufficient information to begin its review of the Application, although additional information could be requested to ensure a full and fair assessment of the Facility. We note that on April 6, 2023, the Townships filed a motion to supplement the Application, alleging similar completeness arguments. During hearing, the ALJ denied this motion, stating that the motion was premature and that parties were not precluded during the hearing to raise any of the alleged issues and to further articulate them in briefs (Tr. I at 12). As noted by the Applicant, the Townships had an opportunity to request further information during discovery and to raise these issues with expert witnesses during the evidentiary hearing. We agree that if the Townships represent that the Application was incomplete and prejudicial to its participation in the proceedings, the Townships needed to provide compelling evidence in support of such allegations. However, we find that no arguments were raised by the Townships involving other sections of the Ohio Administrative Code or Revised Code to convince us to abandon or modify the R.C. 4906.10(A)(1)-(8) framework for evaluating a solar application. Further, the Board notes that the Supreme Court of Ohio weighed in on this issue, holding that the Board did not fail to comply with its own regulations when determinations such as these were made in other solar cases, essentially finding that the Board is the entity best situated to interpret the intent of its regulations. *See In re Application of Alamo Solar I, L.L.C., Slip Opinion No. 2023-Ohio3778.*

See Opinion ¶ 119.

At a more granular level, the witness testimony made clear that viewshed impacts will be limited, as very few households will be anywhere close to the Project infrastructure. In particular, as Sean Flannery testified, the two battery storage facilities and substations are “a little over 4,800 feet away, so just over 9/10ths of a mile” from the nearest residences. Tr. Vol. I at 78:9-17. As Flannery further testified, because of how consolidated the Project area is, there are “only 8 homes within 500 feet of our fenceline.” *Id.* at 79:12. The OPSB, for its part, found that only 7 residences would be located within 493 feet of project equipment. Opinion ¶ 154.

To the extent that the very small number of households within close range of the Project

may be subject to adverse viewshed impacts, the Stipulation endorsed by the OPSB contains sufficient provisions to ensure that visual impacts are adequately addressed. Importantly, Condition 14 specifies that, before commencing construction, the Applicant must file “a landscape and lighting plan” developed “in consultation with a licensed landscape architect.” Opinion ¶ 111(14). This plan will “address the aesthetic and lighting impacts of the Facility with an emphasis on any locations where an adjacent non-participating parcel contains a residence with a direct line of sight to the Project area.” *Id.* As the OPSB found, this requirement and other factors related will ensure that the visual impacts of the Project are “mostly absorbed into the landscape.” *Id.* ¶ 154.

The OPSB lawfully and reasonably found, based on the evidence, that the measures to mitigate viewshed impacts were consistent with a finding that the Project represents the minimum adverse environmental impact pursuant to R.C. 4906.10(A)(3) and that it will serve the public interest, convenience, and necessity pursuant to R.C. 4906.10(A)(6).

B. Concerns About Loss of Farmland Are Adequately Addressed

To the extent the Appellants have genuine concerns about the loss of farmland, it is important to understand that this Project is not an ordinary solar project. Rather, it is an industry-leading agrivoltaics facility that will be *required* to incorporate 4,000 acres of crops and 1,000 sheep on site, allowing 70% of farmable lands to stay in production. Opinion ¶¶ 220-21. Yet nowhere in their brief do the Local Governments even use the term agrivoltaics. Nor do the Local Governments even mention that the Project will include sheep, crops, or habitat for honeybees and other critical pollinators. Ultimately, any purported concerns about the loss of farmland appear to be rooted in concerns about how the placement of solar panels on farmland will affect the appearance of that farmland—not how solar development might affect agricultural productivity. The OPSB lawfully and reasonably found that any concerns about loss of farmland were

adequately addressed by the provisions requiring ongoing agricultural production, limiting the grading of soil during construction, and restoring farmland for future use upon decommissioning. *Id.* ¶ 154.

Appellants appear to be in denial about the fact that the Project will include any agricultural activities at all. A telling example of their unwillingness to acknowledge this reality is a passage of their brief describing the testimony of a witness who “love[s] to watch the farmers plant and harvest the crops across the road.” *See* Appellants’ Merit Br. at 8. The obvious implication of that testimony is that the construction of a solar farm would deprive the witness of the experience of watching farmers working in the fields. However, as discussed above, at least 70% of the farmable land on site will remain in production. *See* Opinion ¶ 221. Under those conditions, the witness who enjoys watching farmers plant and harvest crops may not lose the opportunity to watch the harvest.

Moreover, the OPSB’s Opinion makes abundantly clear that, when looking at the details of *this particular Project*, concerns about the loss of farmland are misplaced. In the Opinion, the OPSB ordered the Project to include 1,000 sheep and 2,000 acres of crops after the first year of operation, with the total acreage of crops rising to 4,000 acres within 8 years of operation. *See id.* ¶¶ 154, 220-21. The OPSB found that this agrivoltaics program would help to “minimize the impact on agricultural land.” *Id.* ¶ 154. Equally important, the OPSB adopted its Staff’s findings that the Project would advance the goal of agricultural preservation by providing a bulwark against sprawl. Specifically, OPSB noted that “the land will be protected from permanent industrial or residential development, and . . . could be returned to agricultural use upon decommissioning.” *Id.*

In reaching these conclusions, the OPSB found that the Applicant had been responsive to

local concerns. In particular, the OPSB found that “the dual-land use potential that agrivoltaics unlocks addresses a primary concern of Project skeptics: the conversion of land to a use other than agriculture.” *Id.* ¶ 220. The OPSB further concluded that “Oak Run’s strong commitment to agrivoltaics is additional evidence of Oak Run’s responsiveness to feedback from the local community.” *Id.* ¶ 221.

In addition to finding that the Project’s agrivoltaics component would help to mitigate local concerns about the loss of farmland, the OPSB found that the ambitious nature of the Project’s agrivoltaics component would serve the public interest in its own right. The OPSB explained that the Project would be the “nation’s largest agrivoltaics project,” which would provide a unique opportunity to put Madison County and the state of Ohio “at the forefront” of an “innovative” practice. *Id.* ¶ 220. The OPSB further emphasized that the Project would support an academic partnership with Ohio State University (OSU), noting that “[t]he collaboration between Oak Run’s sister company and OSU will not only improve the effectiveness of agrivoltaics at this Facility, but it will help to establish BMPs [best management practices] for the cultivation of crops alongside utility-scale solar operations, which will further benefit future projects in the state of Ohio and around the world.” *Id.* ¶ 220.

The Board’s determination that concerns about loss of farmland were adequately addressed is supported by ample evidence.

C. Concerns About Adverse Environmental Impacts Are Adequately Addressed

Finally, the Project will have significant environmental benefits and comparatively small adverse impacts. There is an abundance of evidence in the record to support the OPSB’s determination that the Project represents the minimum adverse environmental impact.

With respect to environmental benefits, the OPSB acknowledged testimony from Dr. Boeckl and the Ohio Environmental Council that “Oak Run benefits the public interest as a

mitigation to climate change” and that “unlike other generation facilities, the Project would not require any burning of fossil fuels and does not require large amounts of cooling water.” *See id.* ¶ 206.

With respect to adverse impacts, the Staff Report of Investigation, submitted on March 28, 2023, and discussed at length in the OPSB’s Opinion, found that they would be relatively minor. Among other things, the Staff Report found that: (a) it was “unlikely” that construction or operation would adversely impact drinking water supplies; (b) there would be “[n]o impacts” to wetlands or streams; (c) no listed species were identified during field surveys; (d) any impacts to listed species “can be avoided by following seasonal restrictions”; (e) any impacts from construction noise would be “temporary and occur away from most residential structures” and could be mitigated by time-of-day restrictions; (f) any impacts to roads during construction could be mitigated by a road use agreement; (g) visual impacts to landowners in the immediate vicinity of the area could be mitigated by setbacks and landscaping plans; (h) that the Applicant had “committed” to mitigating impacts to farmland, including by restoring farmland temporarily affected during construction and “ensur[ing] that adverse impacts to drain tile systems will not extend outside the project area”; and (i) that the Applicant had committed to use solar panels that are not hazardous or toxic. Staff Report at 35-36.

Witness testimony provided further evidence that any adverse impacts from the Project would be minimal. For example, Applicant’s witness Courtney Dohoney testified that less than 3 acres of trees would be cleared for the Project and that none of those areas would be associated with forested streams. Tr. Vol. I at 138:12-22. Indeed, while the original Application would have required clearing 41.7 acres of upland forest, the record shows that the Applicant met with the Ohio Department of Natural Resources and the Darby Creek Association, listened to their

concerns, and adopted their recommendations to limit tree clearing in the Project area. *See* Applicant Ex. 11, Response to Seventh Data Request Filed on February 6, 2023, at 2.

Accordingly, the Applicant revised the Project layout so that only 2.2 acres would need to be cleared for the generation facility. *Id.* at 3. The Applicant’s preferred alternative for the transmission facility will require clearing only 0.8 acres of trees. *Id.*

Based on the findings in the Staff Report and witness testimony, the OPSB found that the Project “sufficiently incorporated Staff’s recommendations to ensure that the Project’s ecological adverse impacts will be minimal.” Opinion ¶ 190.

Finally, while the anticipated adverse environmental impacts of the Project are extremely limited, the same cannot be said of other possible land uses, such as a large-scale dairy-farm (i.e. mega-dairy) or housing subdivision. As Dr. Boeckl testified, “the construction and operation of a solar farm at the site would be far less disruptive to [his] lifestyle” than the mega-dairy that was previously proposed for the site. Boeckl Tr. at 4:7-9. Dr. Boeckl explained:

In 2007, the previous owner of the site, Orleton Farms, LLC, submitted a permit application to the Ohio Department of Agriculture for a dairy facility that would have housed 5,428 dairy cows at the site. I live approximately 1,000 feet downwind of the site and was deeply concerned about the odors that would have wafted onto my property. I was also concerned about the vast quantities of manure that would have been generated at the site, which could [have] leaked into the water and harmed the fragile ecosystems of the Little Darby Creek and Spring Fork. I would be thrilled to live near a relatively quiet, non-polluting, low-traffic solar farm instead.”

Id. at 4:11-19. Whereas Dr. Boeckl reasonably feared that the proposed mega-dairy would pollute the Little Darby Creek and Spring Fork ecosystems, the record evidence shows that a solar farm does not present such a threat. Staff found that “[s]tream and wetland impacts are not anticipated” from the Project. Staff Report at 41; *see also* Opinion ¶ 88. Staff further found that “solar facilities are an unlikely potential source of contamination” in general. Staff Report at 27.

Nonetheless, conditions in the Stipulation, which was adopted by the Certificate, further mitigate any water quality impacts by limiting grading and thus limiting runoff. In particular, the Condition 23(b) limits grading to less than 20 percent of the farmland, with the goal of grading no more than 5 percent. *See* Opinion ¶ 111(23)(b). This measure will not only reduce runoff but also help to preserve agricultural soils for ongoing and future use. *See id.* ¶¶ 57, 102, 154.

CONCLUSION

Appellants are opposed to the use of Ohio farmland for utility-scale solar generation, primarily for aesthetic reasons. However, that is not a sufficient basis to reverse a lawful and reasonable decision of the OPSB to issue a Certificate for this Project.

The Project will provide major economic and environmental benefits with minimal adverse impacts. Moreover, any adverse impacts will be mitigated by the conditions set out in the Stipulation approved by the OPSB and are negligible compared to those that would result from allowing the Project site to be used instead for a mega-dairy, such as the one proposed in 2007, or a housing subdivision. The OPSB lawfully and reasonably found that the Project would have the minimum adverse environmental impact and that it would serve the public interest, convenience, and necessity.

Appellants have offered no basis to conclude that these findings were not supported by evidence—much less that they were manifestly against the weight of evidence. The Court should affirm the issuance of a Certificate and allow the Project to move forward.

Dated: March 12, 2025

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this filing will be electronically served via the Ohio Power Siting Board's e-filing system and via electronic mail on all parties referenced in the service list of the docket.

Dated: March 12, 2025

/s/ Trent Dougherty
Trent Dougherty