

Solar Energy System/Stray Voltage: Minnesota Appellate Court Addresses County Denial of Conditional-Use Permit



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The Court of Appeals of Minnesota (“Court”) addressed in a March 25th opinion the denial of a Conditional-Use Permit (“CUP”) to construct and operate a one-megawatt solar energy system (“Solar Garden”). See *In re An order Finding Certain Facts and Ordering the Denial of a Conditional-Use Permit United States Solar Corporation, et al., Relators v. Carver County Board of Commissioners*, 2019 WL 1320571.

The Solar Garden was proposed to be operated on an eight to nine acre parcel of land in Hancock Township, Minnesota.

United States Solar Corporation and USS Hancock Solar LLC (collectively “U.S. Solar”) submitted an application for a CUP to construct the Solar Garden in 2017. The Carver County Planning Commission (“Commission”) reviewed the application during a public meeting. The Commission received comments from U.S. Solar. Members of the public voiced opposition citing alleged issues such as:

- Negative impact on land values
- Generation of stray voltage (electrical current passes through an object not intended as a conductor)

The Commission unanimously voted to deny the CUP based on concerns about stray voltage potentially affecting a dairy farm 700 feet from the proposed Solar Garden.

U.S. Solar subsequently made project modifications, including moving the site more than 1,000 from the nearest dairy farm. Further, U.S. Solar moved the point of interconnection with the utility company so that it was over 1,500 feet from the nearest dairy farm.

The revised application was reviewed by the Commission.

U.S. Solar noted that it was willing to put up at least \$10,000 for an electrical reliability fund addressing the stray voltage issue and contended multiple redundancies would be built in the system to address malfunctions. Additional materials were submitted addressing the stray voltage issue including an expert’s referencing other projects that might be more likely to create stray voltage, such as:

- Storage warehouse
- Pole barn
- Manufacturing facility
- Residential development

The revised CUP application was again denied.

The application was later heard for a third time and included U.S. Solar's offer to provide an expert to address the farmers concerned about stray voltage. The application was again denied.

U.S. Solar appealed to the Court.

The Court noted that a decision in these circumstances is arbitrary and capricious:

. . . if it represents the decision-maker's will rather than its judgment, or if it is based on whim or is devoid of articulated reasons.

The Court held that the decision to deny the request for a CUP due to concerns about stray voltage was arbitrary, capricious and unreasonable.

Reasons for this holding included reference to the County Code. The Court held that Code verbiage indicating that the use not be injurious to the use and enjoyment of other property did not apply to diminished property values or the potential stray voltage.

The factual basis for the Court's decision included a reference to U.S. Solar presenting an uncontroverted expert opinion that the Solar Garden was not likely to cause stray voltage. Discounted were the County Commissioners' comments about stray voltage along with the neighbors' general concerns. The Court further indicated that a prior denial of a CUP in Minnesota Solar LLC versus Carver County Board of Commissioners was not precedential.

The Court rejected the County's argument that it properly discounted U.S. Solar's expert opinion. It stated that there was no concrete information in the record contradicting the opinion concerning association of Solar Gardens with increased risk of stray voltage.

Similarly, the County's concern regarding diminished neighboring property values was deemed an invalid reason for denying the CUP. This was the case from both a legal and a factual standpoint.

As a result, the County's denial was reversed and remanded with directions that it issue the CUP subject to reasonable conditions.

A copy of the opinion can be found [here](#).