

COMMONWEALTH OF KENTUCKY
MCCRACKEN COUNTY, KENTUCKY
MCCRACKEN COUNTY BOARD OF ADJUSTMENT

IN RE: APPLICATION FOR CONDITIONAL USE

APPLICANT: McCracken County Solar, LLC
PROPERTY LOCATION: 6200 New Liberty Church Rd., 5700 New Liberty Church Rd., 12455 Massey Rd., 4900 New Liberty Church Rd.
ZONING CLASSIFICATION: Agricultural and Rural Residential
PROPOSED CONDITIONAL USE: Level 2 Solar Energy System

The McCracken County Board of Adjustment (hereinafter “Board”) has the power to hear and decide applications for conditional use permits. *See* KRS 100.237; McCracken County Ordinance §§ 150.034, 150.107(B)(2) (hereafter “Ordinance”). This document serves as the Board’s written decision, findings of fact, and conclusions of law for the application submitted to the Board by McCracken County Solar, LLC (hereinafter “MC Solar”).

Introduction and Procedural Background

On July 28, 2021, MC Solar filed its Application for Conditional Use. By that Application, MC Solar requests for the Board to review, approve, and permit MC Solar to construct and establish “a solar farm in an AG Zone per McCracken County Ordinance 2021-03.” To be precise, MC Solar requests the Board’s approval to construct and establish a Level 2 Solar Energy System (hereafter “SES”) as set forth in Ordinance § 150.040.

MC Solar proposes to establish the SES on four contiguous parcels of property in northwestern McCracken County. MC Solar does not own those parcels. Rather, it has worked with the landowners and has or is prepared to enter into leases with them allowing MC Solar to construct, establish, maintain, and operate the SES. Construction and establishment of the SES is contingent on MC Solar receiving the requisite approvals from certain government authorities, including, but not limited to, the Board.

The four parcels are as follows. Parcel No. 1 (McCracken County Parcel No. 020-00-00-017), with address of 6200 New Liberty Church Rd., is owned by WC’s Fields LLC, 2426 Parkdale Ave., Louisville, KY 40220 and consists of approximately 294 acres. Parcel No. 1 is located in the Agricultural (hereinafter “AG”) Zone and is currently used for agricultural purposes, mainly row crops. There are no structures on Parcel No. 1. MC Solar proposes to place a portion of the SES, including electricity generating equipment, on Parcel No. 1.

Parcel No. 2 (McCracken County Parcel No. 013-00-00-026), with address of 5700 New Liberty Church Rd., is owned by Roy Lee Davis, 5215 County Line Rd., Kevil, KY 42053 and consists of approximately 107 acres. Parcel No. 2 is located in the AG Zone and is currently used for agricultural purposes, mainly row crops. There are no structures on Parcel No. 2. MC Solar proposes to place a portion of the SES, including electricity generating equipment, on Parcel No. 2.

Parcel No. 3 (McCracken County Parcel No. 013-00-00-026), with address of 12455 Massey Rd., is owned by Stephen J. and Melanie W. Kelley, 2714 SR 1181, Bardwell, KY 42023 and consists of approximately 215 acres. Parcel No. 3 is located in the AG Zone and is currently used for agricultural purposes, mainly row crops. There are no structures on Parcel No. 3. MC Solar proposes to place a portion of the SES, including electricity generating equipment, on Parcel No. 3.

Parcel No. 4 (McCracken County Parcel No. 013-00-00-032.01), with address of 4900 New Liberty Church Rd., is owned by Roy Lee Davis, Modene Davis, Thomas Logan Davis, and Carrie Davis, P.O. Box 910467, Lexington, KY 40591. Parcel No. 4 is located in the Rural Residential (hereinafter "RR") Zone and is currently used, primarily, for agricultural purposes, mainly row crops. A few barns or other accessory outbuildings are located on Parcel No. 4. MC Solar does not propose to place any electricity generating equipment on Parcel No. 4. Rather, Parcel No. 4 is crossed by high voltage transmission lines owned and maintained by Big Rivers Electric Corporation (hereinafter "Big Rivers"). On Parcel No. 4, MC Solar proposes to place transmission lines and a power substation that will carry and connect electricity generated on Parcels Nos. 1, 2, and 3 to Big Rivers' transmission lines. In other words, no electricity will be generated on Parcel No. 4.

Subject to the setback and screening requirements of Ordinance § 150.040, MC Solar proposes to use all of Parcels No. 1, 2, and 3 for electricity generation.

In accordance with KRS Chapters 100 and 424, public notice of MC Solar's Conditional Use Application and the Board's hearing on the same was duly advertised in *The Paducah Sun* newspaper on August 3, 2021. Additionally, notice of the hearing was mailed by first-class mail to the owners of adjoining property at least fourteen days in advance of the hearing.

On August 18, 2021, the Board convened, as advertised, at the Emergency Management Building of McCracken County, Kentucky, located at 3700 Coleman Road, Paducah, KY 42001 for its first hearing in MC Solar's Application (hereinafter the "First Hearing"). The First Hearing was approximately three hours long. At the hearing, MC Solar was represented by Mr. Chris Killenberg, an employee of Community Energy, a Delaware corporation, with principal place of business at Three Radnor Corporate Center, Suite 300, 100 Matsonford Rd. Radnor, PA. Mr. Killenberg informed the Board that MC Solar is a wholly-owned subsidiary of Community Energy. As shown by the "Authorized Agent" forms included with its Application, MC Solar, and thereby Community Energy and Mr. Killenberg, was authorized to present the Conditional Use Application on behalf of the underlying property owners. At the First Hearing, Mr. Killenberg presented the Application and heard and responded to questions from the Board. No other person or entity appeared at the First Hearing to speak in favor of or against MC Solar's Conditional Use Application. Additional information from the First Hearing is included below in the Findings of Fact.

During the First Hearing, the Board determined it did not have sufficient information to render a decision and also desired additional time to consider Mr. Killenberg's presentation. Therefore, the Application was tabled until the next meeting. Prior to tabling the Application, the Board requested that Mr. Killenberg provide it with a number of additional documents and information, like a proposed decommissioning plan; construction-phase traffic control plan;

material safety data sheets (“MSDS”) for the solar panels and other items to be used in the proposed SES; example leases with the property owners; an example soil erosion plan; and information on the lifecycle and recycling/disposal of solar panels. Mr. Killenberg provided this information to the Board in emails sent to the Planning and Zoning Administrator after the First Hearing.

On September 15, 2021, the Board reconvened at its regular monthly meeting and resumed the hearing on MC Solar’s Conditional Use Application (hereinafter the “Second Hearing”). The Second Hearing lasted approximately three and half hours. Mr. Killenberg was again present on behalf of MC Solar. Also present was Russ Pogue, a representative of Big Rivers. Mr. Pogue, on behalf of Big Rivers, spoke in favor of MC Solar’s Conditional Use Application. No other person or entity appeared at the Second Hearing to speak in favor of or against MC Solar’s Conditional Use Application. Much of the Second Hearing was devoted to a discussion of potential conditions the Board might elect to impose on the SES if the Board decided to approve the MC Solar’s Conditional Use Application. Additional information from the Second Hearing is included below in the Findings of Fact.

The Board did not vote on MC Solar’s Conditional Use Application at either the First or Second Hearing. The decision consistent with this document was rendered at its regular meeting on October 20, 2021.

Findings of Fact

A “conditional use” is an exception to “Kentucky’s zoning law which allows an applicant to undertake a beneficial land use not otherwise permitted in a particular zoning district.” *Drakes Creek Holding Co., LLC v. Franklin-Simpson County Bd. of Zoning Adjustment*, 518 S.W.3d 174, 179 (Ky. App. 2017). As used in KRS Chapter 100 and McCracken County Zoning Ordinances, “conditional use” is defined as “as use which is essential to or would promote the public health, safety, or welfare in one (1) or more zone, but which would impair the integrity and character of the zone in which it is located, or in adjoining zones, unless restrictions on location, size, extent, and character of performance are imposed in addition to those imposed in the zoning regulation.” KRS 100.111(6). A “conditional use permit,” is granted, is a “legal authorization to undertake a conditional use . . . consisting of two (2) parts: (a) a statement of the factual determination by the board of adjustment which justifies the issuance of the permit; and (2) a statement of the specific conditions which must be met in order for the use to be permitted.” KRS 100.111(7) (emphasis added).

The local zoning ordinance supplies the standard the Board must follow when determining whether to grant or deny a conditional use permit. *See Drakes Creek Holding*, 518 S.W.3d at 179. In McCracken County, Ordinance § 150.034(B) permits the Board to “approve or deny any applications for a conditional use permit.” Following a public hearing, the Board may grant an application for a conditional use permit only upon an “affirmative finding” that (1) the proposed conditional use “is to be located in a zone wherein such use may be permitted,” and (2) that the conditional use is (a) “consistent with the spirit, purpose, and intent of the zoning regulations,” (b) will not substantially and permanently injure the appropriate use of neighboring property,” and (c) “will serve the public convenience and welfare.” Ordinance § 150.034(A).

Because KRS 100.111(7) and Ordinance § 150.034(A) require the Board to make “factual determinations” and “affirmative findings” when considering a conditional use application, the Board makes the following findings of fact based the First and Second Hearings, MC Solar’s Conditional Use Application, and all the testimony and other documents and evidence presented both at the hearing and in the course of considering the application:

- (1) MC Solar’s Conditional Use Application was submitted to the Planning and Zoning Administrator and the Board in the procedurally correct manner.
- (2) The public was given notice of MC Solar’s Conditional Use Application as required by KRS Chapters 100 and 424.
- (3) Notice of the public hearing on MC Solar’s Conditional Use Application was appropriately provided to adjoining landowners via mailing them such notice at least fourteen days in advance of the hearing.
- (4) Ordinance § 150.051(B) sets forth the conditional uses that may be permitted by the Board in an AG Zone, and “Solar Energy Systems in Compliance with the provision of § 150.040” are specifically listed as a permitted conditional use in the AG Zone. *See* Ordinance § 150.051(B)(5).
- (5) Because SESs are a specifically listed “permitted use,” Ordinance § 150.034(A)(1) is satisfied in that MC Solar’s “proposed conditional use is . . . located in a zone wherein such use may be permitted[.]” Even though § 150.034(A)(1) is satisfied, the Board may only approve MC Solar’s Conditional Use if it also affirmatively finds that § 150.034(A)(2) is also satisfied.
- (6) Mr. Chris Killenberg has been employed by Community Energy (the owner of MC Solar) for ten years and has developed approximately 32 similar projects for Community Energy. He has developed two similar projects located in Henderson and Meade County, Kentucky. All of the prior projects have been in AG Zones or the equivalent for where the projects are located.
- (7) The SES proposed by MC Solar will be present on approximately 616 acres of land in northwestern McCracken County, and of those acres, electricity generating equipment—solar panels and their supporting structures—will cover approximately 400 acres.
- (8) According to Mr. Killenberg, if approved, this will be an approximately \$60 million investment for MC Solar and Community Energy.
- (9) If the Conditional Use Application is granted, approximately 600 acres of agricultural land in McCracken County, which has traditionally been used for row crops, will be taken out of service and no longer be available for or dedicated to agricultural use.
- (10) The proposed SES is estimated to have a lifespan of approximately 30 years. MC Solar’s leases with the property owners contain an option to renew and extend.

Therefore, at the end-of-life of the proposed SES, MC Solar will either renew the leases and continue the SES or decommission and remove it.

- (11) Currently, there are no other SESes in McCracken County, and MC Solar's Conditional Use Application is the first such application to come before and be considered by the Board under Ordinance §§ 150.034, 150.040, and 150.051(B)(5).
- (12) The proposed SES is estimated to generate approximately 60 megawatts of power per year. This is estimated to be enough electricity to power 14,000 households. The SES will connect into the electrical grid/system owned and maintained by Big Rivers, and all power generated from the SES will be sold to Big Rivers on a long-term contract.
- (13) Approximately two years ago, Big Rivers solicited bids for the generation of solar electricity, Community Energy founded MC Solar as a result, and MC Solar found a group of landowners who were interested in entering into long-term (30 year) leases so that MC Solar could establish a SES at the proposed location. This is the same process by which Community Energy has established other SESes in Kentucky.
- (14) According to Mr. Killenberg, the location of the proposed SES represents "good solar farm country" because it is relatively flat, receives consistent and sufficient rates of sunlight, and has a close connection to the electrical infrastructure provided by Big Rivers.
- (15) According to Mr. Russ Pogue, Big Rivers is in favor of power generation through SESes as a result of the federal government's increasing mandates to move toward renewable energy sources and away from fossil fuels. Big Rivers has been required to close down numerous coal-fired power plants in recent years and, in order to continue to supply power to its customers, River Rivers has been required to look toward alternative sources. While this includes converting some coal-fired power plants to natural gas, Big Rivers is looking increasingly toward SESes.
- (16) According to Mr. Pogue, Big Rivers does not own or develop SESes because it lacks the experience and technical know-how required in the solar power industry. Big Rivers does not believe it could generate electricity through solar power in a cost-effective way, but projects like those proposed by MC Solar provide a potentially viable solution.
- (17) If approved, MC Solar's SES will take six to nine months to construct. The construction phase is estimated to employ approximately 150 individuals. During the construction phase, MC Solar expects to generate noise, dust, and traffic at and near the site. The greatest amount of noise will be generated by the "hammering" required to drive the solar panel supports into the ground. MC Solar has planned to conduct such hammering during daylight hours and at times (likely between 9am and 5pm) meant to minimize the disturbance/disruption it might

cause neighbors and adjoining property owners.

- (18) Bacon Farmer Workman, a local engineering firm, conducted traffic studies and provided MC Solar with a traffic plan meant to minimize the impact of construction traffic into and out of the proposed site of the SES.
- (19) Once completed, MC Solar will employ two to three permanent employees who will be responsible for the operation and maintenance of the SES.
- (20) Mr. Killenberg represented that once complete, the SES will cause little disturbance to the area. For example, he stated that the SES will not emit high levels of noise or other disturbances. Additionally, the solar panels used should not project glare onto other properties because of "anti-glare" film on the panels and because fencing and tree/brush screenings required by Ordinance § 150.040.
- (21) None of the property owners who propose to lease their land to MC Solar live in McCracken County. They live in surrounding counties or other parts of the state.
- (22) None of the property owners who propose to lease their land to MC Solar have an ownership interest in MC Solar. The property owners' interest in the proposed SES is limited to their lease with MC Solar.
- (23) Once the project is completed, Community Energy (MC Solar's parent company) intends to sell MC Solar and this project to one or more investors. Community Energy does not intend to be the long-term owner of MC Solar or this SES project, if approved. All leases with the property owners and any contracts with Big Rivers will be transferred to the investors, if the SES is sold by Community Energy.
- (24) While MC Solar is contracted to sell electricity generated from this SES to Big Rivers, there is no way to know or guarantee that power generated by the SES will remain or be used in McCracken County. Big Rivers is owned by Jackson Purchase Energy, Kenergy Corporation, and Meade County RECC. Any power generated by this SES could be used by customers of those entities or be sold on and distributed to the national power grid.
- (25) Except for the setback requirements and screening buffers required by Ordinance § 150.040, MC Solar intends to, to the extent possible, cut and remove as many trees as possible from inside the boundaries of the proposed site of the SES. This is permitted by the leases with the property owners. According to Mr. Killenberg, these trees must be removed (1) to make room for the solar panels in the areas proposed and (2) to prevent "shading" the solar panels along the edges or outside portions of the project. He does not believe the project would be economically viable if MC Solar was not permitted to remove trees from within the boundaries of the proposed site of the SES.
- (26) MC Solar also anticipates conducting some "site work" to level and fill in certain portions of the land to accommodate the SES's solar panels. That said, MC Solar

has no right under the property owner leases to remove topsoil and does not anticipate wholesale grading or contouring of the site of the proposed SES. Once the site work is completed, MC Solar proposes to sow the site with grass seed and maintain it at the height required by Ordinance § 150.040.

- (27) MC Solar has a soil management/conservation plan for the construction phase of the SES, and Mr. Killenberg testified anticipated erosion and water runoff would be minimal after construction because the site would be sowed with grass and maintained.
- (28) At present, there is no market for used solar panels. As they are damaged or removed/replaced from the proposed site of the SES, they would be disposed of in a landfill or other site that would accept them. MC Solar hopes, but cannot guarantee, that a secondary or recycling market for used solar panels may exist in the future.
- (29) The solar panels MC Solar proposes to use on the site are largely free of toxic or hazardous substances, although under certain conditions (like fire or other destructive forces) substances like carbon monoxide and hydrogen fluoride can be generated. The solar panels also contain small amounts of lead.
- (30) Other equipment on the site, like transformers and other electrical equipment will contain some amount hazardous materials, like transformer oil. These hazards are present in any commercial electrical equipment and are not unique to the proposed SES.
- (31) The solar panels proposed for the project will become less efficient overtime. It is anticipated that the panels currently proposed will, in 30 years, only generate 70 percent of the energy they are capable of generating today. Future owners of the SES will have to decide whether to keep those panels in service or replace them with newer and/or more efficient panels.
- (32) The costs of the decommissioning plan for the site is based on estimates of the recycle/salvage value of the cooper wiring and steel beams on site. Those prices are subject to fluctuations. The decommissioning plan places no value on the solar panels themselves. Additionally, the decommissioning plan does not consider and makes no accommodation for a “zero value” to be assigned to the cooper wire and steel beams. It assumes there will always be come salvageable value to these items.
- (33) MC Solar has conducted soil evaluations and believes the proposed site of the SES is suitable for the project and would be able to sustain seismic activity, if any were to occur.
- (34) Under the leases with the property owners, MC Solar is obligated to remove materials/clean up the site of the proposed SES on behalf of the landowners, and, at the end-of-life of the project, return the land to its former condition and use.

- (35) In the event of a natural disaster or other “act of God,” MC Solar is insured, and, under the leases with the properties owners, MC Solar is required to clean up and remove the entire system if it is not operational for six months.
- (36) Upon completion, MC Solar believes the property will be subject to a property tax reassessment, which is estimated to generate \$292,000 in property taxes for McCracken County. The proposed site currently generates about \$3,000 per year in property taxes.
- (37) The Board heard testimony that, absent certain tax incentives/credits/deductions received from the federal government for solar energy projects, the SES would likely not be economically viable.
- (38) Under the SES Ordinance, MC Solar is required to post a bond equivalent to one percent of the project for the purposes of decommissioning the project. MC Solar was agreeable to increasing the amount of the bond as a condition on the permit if the Application was approved by the Board.
- (39) While Mr. Killenberg presented a decommissioning plan from another project, no decommissioning plan exists for MC Solar’s proposed SES because details of the project have not been finalized. He was agreeable to providing a finalized decommissioning project once available if the Application was approved by the Board.
- (40) Save for a concrete pad and certain equipment installed at the proposed power substation, no other buildings will be construed on the proposed site of the SES.
- (41) According to Mr. Killenberg, Community Energy and MC Solar have reached out to surrounding neighbors and have held public meetings about the proposed SES. He is unaware of any opposition.

Conclusions of Law

The Board has the power, duty, and authority to hear and decide applications for conditional use permits. *See* KRS 100.237; Ordinance §§ 150.034, 150.107(B)(2). If the Board approves a conditional use permit, “it may attach condition to the approval such as time limitations, requirements that one or more things be done before construction can be initiated, or conditions of a continuing nature.” KRS 100.237; Ordinance § 150.034(B). Following a public hearing, the Board may grant an application for a conditional use permit only upon an “affirmative finding” that (1) the proposed conditional use “is to be located in a zone wherein such use may be permitted,” and (2) that the conditional use is (a) “consistent with the spirit, purpose, and intent of the zoning regulations,” (b) will not substantially and permanently injure the appropriate use of neighboring property,” and (c) “will serve the public convenience and welfare.” Ordinance § 150.034(A).

Based on the foregoing findings of fact, the testimony and documents heard at the First and Second Hearings and presented with MC Solar’s Application for Conditional Use Permit, and following a substantial and thorough consideration and discussion of all of these matters, the Board

makes the following conclusions of law:

- (1) A SES is a conditional use that may be permitted in an AG Zone. *See* Ordinance § 150.051(B).
- (2) Although an SES is a conditional use, it varies substantially from and is not similar to the other permitted or conditional uses in the AG Zone. *See* Ordinance § 150.051(A), (B). For example, many of the permitted uses in the AG Zone are those that are traditionally associated with agricultural uses or are in some way related to them. *See, e.g.*, Ordinance § 150.051(A)(2), (3), (4), (17), (18), (19), (20), (26), (27), (29), (32), (36), (37), (39), and (40).
- (3) The term “agriculture” is defined in Ordinance § 150.016. Much like the permitted uses in the AG Zone, the definition of “agriculture” is closely associated with the term as it is used in the traditional sense. Agriculture includes all manner of growing and harvesting crops and livestock. As defined in the Ordinance, “agriculture” does not include commercial electrical power generation like that proposed by MC Solar’s SES.
- (4) In considering an application for a conditional use permit, the Board is required to determine whether, based on the testimony and evidence presented, the proposed use is “consistent with the spirit, purpose, and intent of the zoning regulations.” Ordinance § 150.034(A). Based on the testimony and evidence heard by the Board on MC Solar’s Application for Conditional Use, the Board concludes that a SES at the proposed site is not consistent with the spirit, purpose, and intent of the zoning regulations. The AG Zone is set aside primarily for agricultural uses. If the Board granted MC Solar’s Application for Condition Use, more than 600 acres of land would be removed from agricultural use for at least 30 years, if not longer. And while MC Solar represented that the land would be returned to its original condition upon the decommissioning of the SES, it acknowledged that the trees it intends to cut and the modifications to the land, even if limited, cannot be easily restored (if at all). Coupled with the presence of even limited amounts of hazardous substances both in the solar panels and in the electrical transmission equipment, the Board finds that it is, at best, uncertain that this land can be returned to its original condition or future agricultural uses. Traditionally, McCracken County and its surrounding communities have been farming communities. It is not just the farmer, the landowner, or the tenant that benefit from agricultural use of land. Farming a tract of land has a “multiplier effect” that employs others in the areas of equipment, seeds, fertilizer, and other input sales. It generates the need for mechanical services to repair broken equipment. It requires drivers to haul the harvest and local granaries to process it and place it into the market. If the Board were to grant MC Solar’s Conditional Use Application, the Board would exchange this multiplier effect for two to three jobs. The Board finds that doing so would not be consistent with the spirit, purpose, and intent of the AG Zone. Additionally, land in the AG Zone traditionally provides the best opportunity for hunting, fishing, hiking, and other outdoor recreational activities. MC

Solar's proposed SES will be surrounded by a fence for the purpose of keeping individuals and animals off of the property. While this is understandable (keeping individuals out of an area of electricity generation is laudable), it is simply another indication that, as proposed, the SES is inconsistent with the spirit, purpose, and intent of the AG Zone. Based on the considerable records before it, the Board concludes that it cannot grant MC Solar's Conditional Use Application because it cannot "affirmatively find" that constructing and establishing a SES at this location is, on balance, consistent with the spirit, purpose, and intent of the AG Zone.


- (5) In considering an application for a conditional use permit, the Board is required to determine whether, based on the testimony and evidence presented, the proposed use "will not substantially and permanently injure the appropriate use of neighboring property." Ordinance § 150.034(A). The Board acknowledges that notice of MC Solar's Conditional Use Application was provided to the public and to the adjoining landowners in accordance with Kentucky law. After being provided notice, no one from the public and no adjoining landowners appeared at approximately four and half hours of hearings to oppose or otherwise contest MC Solar's application. The silence of the public and the adjoining landowners is an indication that the proposed SES will not substantially and permanently injure appropriate uses of neighboring property. That said, the Board, as a public body, isn't constrained by the silence of neighbors. Moreover, as MC Solar's Conditional Use Application is the first to come before the Board under Ordinance § 150.040, the Board is concerned the neither the adjoining neighbors nor the general public appreciate the magnitude and impact that converting more than 600 acres of agricultural land into an SES will inevitably have on adjoining landowners, the surrounding community, and the county as a whole.
- (6) In considering an application for a conditional use permit, the Board is required to determine whether, based on the testimony and evidence presented, the proposed use "will serve the public convenience and welfare." Ordinance § 150.034(A). After considering the testimony and evidence before it and after substantial consideration and deliberation, the Board cannot "affirmatively find" that public convenience and welfare will be served by the proposed SES. There is no doubt that citizens of McCracken County must have electricity. But, as a fungible and easily transferred commodity, there's no guarantee that any electricity produced at the proposed SES will remain in or be consumed by citizens of McCracken County. At the hearings, Mr. Killenberg acknowledged that what ultimately happens to the electricity is left to Big Rivers, and Big Rivers acknowledged that it could be consumed locally or transmitted into the national power grid and sold for higher prices in other states. Moreover, there was no testimony or evidence that having this SES in McCracken County would lower, or even maintain, electricity rates paid by the citizens of McCracken County. MC Solar presented evidence that the SES would generate approximately \$300,000 a year in local property tax revenues. But, when questioned, MC Solar acknowledged that this local tax revenue is only

generated because of tax credits and other incentives provided by the federal government. Therefore, the Board cannot affirmatively find that the “tax benefit” of the proposed SES is as great as it might seem. Citizens of McCracken County pay federal taxes that subsidize the credits and incentives received from MC Solar. Therefore, any tax benefit realized by the proposed SES is “robbing Peter to pay Paul.” While the Board is appreciative of the pressures faced by Big Rivers in the renewable energy push and mandates from the federal government, the Board cannot “affirmatively find” that alleged tax benefits of the proposed SES are sufficient to serve the public welfare. Finally, the Board heard little, if any, evidence to support an affirmative finding that the proposed SES would serve the public convenience. If anything, and as outlined in more detail above, it is reasonable to conclude that public convenience would be hampered by the reduction in the “multiplier effect” attendant to agricultural use of this land.


- (7) For all of the foregoing reasons, the Board cannot “affirmatively find” that, on balance, granting MC Solar’s Conditional Use Application would be consistent with the spirit, purpose, and intend of AG Zone, will not permanently injure the appropriate use of neighboring property, and would serve the public convenience and welfare. The Board acknowledges that this was a close decision and that MC Solar was cooperative, responsive, and forthcoming in answering the Board’s questions and providing it additional information.
- (8) The Board’s decision to deny MC Solar’s Conditional Use Application was based on the testimony and evidence presented to it during these proceedings and should not be perceived as a blanket denial of or indication that the Board will deny any future applications for SESes within the county.

Decision

By a vote of three (Bogges, Smith, and Wood) to two (Williams and Shrewsberry) on this the 20th day of October, 2021, the McCracken County Board of Adjustment hereby **DENIES** the Application for Conditional Use by McCracken County Solar, LLC.


DIANE SHREWSBERRY, Chair
McCracken County Board of Adjustment

ATTEST:


GREGORY T. CANNON, Secretary
McCracken County Board of Adjustment