

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION**

OLYMPUS ENERGY LLC,

Appellant,

v.

WEST DEER TOWNSHIP BOARD OF
SUPERVISORS,

Appellee,

MARCIA BRISSET, an adult individual
and RYAN KOLENO, an adult individual.

Intervenors.

No: SA 22-000022

OPINION

James, J.

August 23, 2022

This appeal arises from the decision of the Appellee West Deer Township Board of Supervisors (“Board”) which denied Appellant Olympus Energy a conditional use to construct a Dionysus Well Pad for the operation of a Deep Well Site. The proposed well site is located at Crestwood Drive and 1501 Middle Road Extension in the R-2 Semi-Suburban Residential Zoning District in the Township of West Deer. A Deep Well Site is permitted in an R-2 District as a conditional use. Olympus Energy filed the Conditional Use Application on October 20, 2019. Intervenors Marcia Brisset and Ryan Koleno are Township residents who appeared in opposition to the Application. The Board held nine hearings from August of 2021 through November of 2021. On December 15, 2021, the

Board denied Olympus Energy's Application finding that they failed to establish compliance with each of the Ordinance's requirements at Section 210-120A(21) for a Deep Well Site. The Board also determined that Olympus Energy did not establish that the use will not endanger the health and safety of residents or deteriorate the environment as required by Section 201-117. It is from that decision that Olympus Energy appeals.

When the trial court takes no additional evidence, the scope of its review is limited to determining whether the Board committed an error of law, abused its discretion or made findings not supported by substantial evidence. Mars Area Residents v. Zoning Hearing Board, 529 A.2d 1198, 1199 (Pa. Cmwlth. 1987). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Valley View Civic Association v. Zoning Board of Adjustment, 501 Pa. 550, 462 A.2d 637, 640 (1983).

It is well-settled that special exceptions and conditional uses are not actual exceptions or variances from a zoning ordinance, but rather are uses expressly permitted, provided that the applicant meets certain enumerated standards. Bray v. Zoning Board of Adjustment 410 A.2d 909, 911 (Pa. Cmwlth. 1980). When a municipality authorizes a conditional use, a presumption arises that the governing body has already considered that the use is consistent with the public health, safety, and welfare. An applicant is entitled to conditional use approval unless it is determined "that the use does not satisfy the specific, objective criteria in the zoning ordinance for that conditional use," or the presumption is rebutted by any objectors. See In Re: Drumore Crossings, L.P., 984 A.2d 589, 595 (Pa. Cmwlth. 2009). Under Bray, once an applicant proves that its proposed use falls within the parameters of the conditional use being sought, and the specific

requirements of the ordinance have been met, then the burden shifts to those opposed to the conditional use application to present evidence that the health, safety and general welfare requirements have not been met. Bray at 912-13. Here, the Board properly denied the Conditional Use Application because it found that Olympus Energy did not meet its burden that the requirements of Section 210-120A(21) were satisfied. Specifically, the Board concluded that Olympus Energy failed to meet its burden that the setback requirement set forth in Section 210-120A(21)(a)[1] was met. That Section states:

A deep well site which would be placed more than 650 feet from any preexisting building located off the property where the deep well site is sited may be permitted as a conditional use in the R, R-1, R-2, R-3 and I Zoning Districts, provided such property upon which the oil and gas well site would be placed is 1/2 acre or more in size...

Section 210-6 defines deep well site as “[t]he areas occupied by the facilities, structures, materials and equipment, whether temporary or permanent, necessary for or incidental to the preparation, construction, drilling, fracturing, production, or operation of a deep well.” Section 210-6 defines building as “a structure that is enclosed and portions of which are protected from the weather and are usually climate controlled (heated and/or air conditioned), and that is usable for habitation or as a working environment.” The Board found that the proposed Dionysus Well Pad is a deep well site pursuant to this Section. Therefore, based on those definitions, the Board found that the entire well pad shall be treated as a facility included as part of the deep well site. The edges of the well pad itself must be at least 650 feet from any preexisting building to be in compliance. The Board found at Conclusion of Law No. 21 that the edges of the well pad itself did not comply with the 650 feet provision of the Ordinance. It further noted at that Conclusion, that three buildings encroach within 650 feet of the boundaries of the well pad. Specifically, the

Consolidated Communications hut is approximately 466 feet from the edge of the flat well pad, the Safety Properties, LLC building is approximately 602 feet from the edge of the flat well pad and the Spedd, Inc. building is approximately 620 feet from the edge of the flat well pad. The Board noted that the setback waivers do not exempt Olympus Energy from complying with the 650 foot setback requirement. During the hearing testimony, Olympus Energy admitted that the Consolidated Communications hut is located within the setback but asserted that it does not qualify as a building under the Ordinance. The Board disagreed, relying on the testimony and its own interpretation of the Ordinance, concluding that it qualifies as a building and thus violates the setback requirement.

In Conclusion of Law No. 39, the Board noted that the Ordinance required them to address the “general criteria” set forth in Section 210-117. They applied the standards in Bray to find that the general criteria in that Section constitute either general detrimental effects or general policy concerns, both of which place the burden on the Objectors. Citing several examples, the Board concluded in Conclusion of Law No. 41, that the Objectors demonstrated with a high degree of probability that the proposed Deep Well site would substantially affect the health, safety and welfare of the community, greater than what is normally expected from this type of use. The Board noted that the Objectors provided testimony that the well pad will not be screened properly, the haul route will cause a disturbance to traffic patterns, other similar well pads in other municipalities have caused detrimental sound and vibration effects and that Olympus Energy has a significant history of Department of Environmental Protection violations.

The record in this case supports the Board’s denial of Olympus Energy’s Conditional Use Application. Olympus Energy failed to prove that the setback

requirements set forth in the Ordinance were satisfied and the Objectors established that the proposed use would endanger the health, safety, morals and welfare of the Township. Therefore, based upon the foregoing Opinion, the Board's denial is affirmed and Olympus Energy's appeal is denied and dismissed.

By the Court:

Joseph M. James