

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CIVIL DIVISION

BETHLEHEM AUTHORITY,

Appellant

v.

THE ZONING HEARING BOARD  
OF PENN FOREST TOWNSHIP,

Appellee

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No. 19-0417

LAND USE APPEAL

FILED  
CARBON COUNTY  
PROTOSTARY  
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Gregory L. Mousseau, Esquire	Counsel for Penn Forest Township Zoning Hearing Board
Thomas S. Nanovic, Esquire	Counsel for Penn Forest Township
Bruce K. Anders, Esquire	Counsel for 42 Intervenorors
James F. Preston, Esquire	Counsel for Bethlehem Authority
J. William Fontaine, II	Pro Se

MEMORANDUM OPINION

Serfass, J.- March 9, 2021

On January 11, 2021, Atlantic Wind, LLC (hereinafter "Atlantic Wind") filed a Notice of Appeal to the Commonwealth Court of Pennsylvania seeking review and reversal of this Court's zoning appeal decision as set forth in our memorandum opinion and order of May 29, 2020 under docket number 19-0417. In that opinion and order, we affirmed the decision of the Penn Forest Township Zoning Hearing Board, having found that the zoning hearing board's findings, conclusions and decision were supported by substantial

evidence and that the board neither abused its discretion nor committed an error of law in denying Atlantic Wind's special exception application for a wind turbine project.

Atlantic Wind previously filed an appeal seeking identical relief, under docket number 19-0416, on June 24, 2020. We note that on December 29, 2020, Atlantic Wind and co-Appellant, Bethlehem Authority, were ordered by the Commonwealth Court to file a Notice of Appeal relative to docket number 19-0417 within twenty-one (21) days to preserve that appeal and avoid abandonment.<sup>1</sup> Accordingly, after Atlantic Wind filed its Notice of Appeal pursuant to the Commonwealth Court's order, we issued an order dated January 19, 2021, directing the Appellant to file a Concise Statement of Matters Complained of on Appeal. We issued this 1925(b) order as a precaution against Atlantic Wind raising additional issues from those previously raised in its appeal of June 24, 2020 under docket number 19-0416.


Atlantic Wind complied with this Court's 1925(b) order on February 9, 2021. Upon receipt and review of the 1925(b) Statement, it appears that the matters complained of in the instant appeal are identical to the issues raised by Atlantic Wind in its June 24, 2020 appeal. Therefore, we find that the issues raised by the Appellant in its concise statement of February 9, 2021 were

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<sup>1</sup> Bethlehem Authority did not file a second notice of appeal. As a result, Bethlehem Authority's appeal from the matter docketed at 19-0417 was abandoned pursuant to the Commonwealth Court's order dated February 3, 2021.

thoroughly addressed in this Court's memorandum opinion of October 23, 2020. Consequently, we rely on that opinion and incorporate the same in response to the issues raised on appeal in the instant matter. We have also attached hereto a copy of the aforesaid memorandum opinion for the convenience of the Honorable Commonwealth Court and respectfully recommend that our order of May 29, 2020 be affirmed for the reasons contained therein.

BY THE COURT:

  
Steven R. Serfass, J.