

COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY STATE BOARD ON
ELECTRIC GENERATION AND TRANSMISSION SITING

In the Matter of:

ELECTRONIC APPLICATION OF)	
STONEFIELD SOLAR, LLC FOR A)	
CERTIFICATE OF CONSTRUCTION FOR)	
AN APPROXIMATELY 120 MEGAWATT)	
MERCHANT ELECTRIC SOLAR GENERATING)	Case No. 2022-00011
FACILITY AND NONREGULATED)	
TRANSMISSION LINE IN HARDIN COUNTY,)	
KENTUCKY PURSUANT TO KRS 278.700)	
ET SEQ. AND 807 KAR 5:110.)	

RESPONSE OF STONEFIELD SOLAR, LLC TO THIRD NOTICE OF DEFICIENCY

Stonefield Solar, LLC (“Stonefield” or “Applicant”), by and through counsel, hereby provides its response to the Third Notice of Deficiency (NOD) issued by the Kentucky State Board on Electric Generation and Transmission Siting (“Siting Board” or “Board”) on October 10, 2022, in response to Stonefield’s application for a construction certificate for a merchant solar electric generating facility and nonregulated electric transmission line submitted by the Applicant on August 19, 2022 (“Application”).

I. PROCEDURAL HISTORY: SITING BOARD APPLICATION

The Hardin County Development Guidance System Zoning Ordinance (“Ordinance”) has designated setback distances for I-2 Heavy Industrial zones, which the Applicant identified and relied on in its Application. The Application asserted Stonefield’s intent to construct the proposed solar electric generation facility and transmission line (“Project”) in Hardin County, Kentucky, on property zoned I-2. On August 22, 2022, the Siting Board issued a NOD alleging the Application was deficient pursuant to KRS 278.704(3), stating:

“The Hardin County Solar Ordinance was found invalid by Hardin Circuit Court. Therefore, the county setbacks listed in the application are not correct. The setbacks in KRS 278.704(2) apply unless a deviation is requested.”

Stonefield responded to the NOD by clarifying that the Hardin County Circuit Court did not invalidate the entire Ordinance. Rather, the court only invalidated Section 15-8 thereof, which outlined the requirements for nonlisted uses in connection with Hardin County’s conditional use permit process. Stonefield in its response stated it did not intend to rely on Section 15-8 in its Application, and that Stonefield would rely on Section 3-13 of the Ordinance which provides setbacks for properties zoned I-2.

On August 26, 2022, the Siting Board issued a second NOD alleging a related, but substantively different, deficiency with the Applicant’s intent to rely on I-2 setbacks. The second deficiency states:

“The Application and the Response to the Notice of Deficiency stated that Stonefield Solar is proposing to develop the merchant generating facility in an area zoned Heavy Industrial I-2. The Hardin County Development Guidance Zoning Ordinance (Ordinance) for Zone I-2 states, ‘the Permitted, Accessory and Conditional Uses for lots and structures are set forth in the Land Use Table.’ The Land Use Table does not list any electric generation or solar development as a permitted, accessory, or conditional use in Zone I-2. Section 15-8 of the Ordinance outlined the procedures to be followed for the grant of a conditional permit of a nonlisted use[]. Hardin Circuit Court invalidated Section 15-8. Therefore, there are no local setbacks applicable to the project and a deviation of the setbacks found in KRS 278.704(2) must be requested.”

Stonefield responded to the second NOD by stating that the Siting Board did not have authority to interpret local zoning ordinances and that solar electrical generation is a manufacturing use that is permitted within Hardin County’s I-2 zones. Stonefield further stated its intent to file a zoning map amendment application with the Hardin County Planning and Development Commission (“Commission”) to rezone participating Project properties to I-2, and requested the Board either rescind the prior NODs or deem the prior deficiencies cured.

On October 10, 2022, the Siting Board issued a third NOD, alleging that the Application was deficient pursuant to KRS 278.704(3). The third deficiency states:

“Pursuant to KRS 278.704(3), an application requires the applicant state whether there is a local ordinance that applies to setbacks. If there are no local ordinances, the applicant must file a request for a deviation from the statutory setback requirements pursuant to KRS 278.704(4).”

Rather than responding to the third NOD in the same manner as the prior two responses, Stonefield on October 31, 2022, moved for an informal conference with the Siting Board to request clarification regarding what further information would be necessary to cure the alleged deficiencies.

The Board issued an order denying Stonefield’s informal conference request on December 20, 2022. As indicated in that order, the Siting Board found Stonefield’s Application deficient because the Project could not be in compliance with the Ordinance, as required by KRS 278.706(2)(d). Specifically, the Board stated that on the date the Application was submitted, the Project’s underlying properties were predominantly zoned Rural Residential, R-2, and solar facilities are not a permitted use in R-2 zones under the Ordinance. As such, the Project could not be in compliance with current local ordinances because the zoning designation for the majority of the Project’s underlying properties was not I-2. The Board stated that “[u]ntil the property is zoned I-2, the Siting Board must review the application in light of the current R-2 zoning.”

II. UPDATE ON ZONING APPROVALS

Stonefield submitted its application for an amendment to Hardin County’s zoning map to rezone the Project’s underlying properties to I-2 on November 3, 2022. The Commission held a public hearing on Stonefield’s requested rezoning on May 2, 2023, as required by KRS 100.213. At the conclusion of the hearing, the Commission adopted Resolution 2023-008 denying Stonefield’s zoning map amendment request based on the request not being in compliance with

the four-step process for rezoning property as outlined in Hardin County's Comprehensive Development Guide.

Stonefield appealed the Commission's decision to the Hardin County Fiscal Court ("Fiscal Court") pursuant to KRS 100.213 and Section 4-3 of the Ordinance on May 23, 2023. The Fiscal Court held two special meetings on June 20 and 21, 2023, to review video recordings of the Commission's hearing. On June 27, 2023, the Fiscal Court held a hearing on Stonefield's appeal and voted 5-4 against the proposed resolution to adopt the Commission's recommendation to deny the zone change to I-2. The Fiscal Court subsequently voted 6-3 to approve the first reading of Ordinance No. 334, Series 2023, granting Stonefield's request to rezone the properties as I-2. On July 25, 2023, the Fiscal Court voted 5-4 to approve the second reading of Ordinance No. 334, Series 2023, finally granting the requested rezoning of the Project's underlying parcels to I-2. A certified copy of Ordinance No. 334, Series 2023 is attached hereto as Exhibit A.

Hardin County Citizens for Responsible Solar ("HCCRS"), a citizen group opposed to Stonefield's proposed Project, appealed the Fiscal Court's decision to Hardin County Circuit Court on August 14, 2023. HCCRS did not request a stay of the Fiscal Court's decision nor has one been granted. Thus, the I-2 zoning designation for Project properties is currently in effect.

Stonefield submitted its development plan application to the Commission simultaneously with its zoning application on November 3, 2022. Once the Fiscal Court voted to grant the I-2 zoning designation, the Commission revisited Stonefield's development plan. The Commission formally approved and recorded Stonefield's development plan on April 17, 2024, evidenced by the certificate of land use restrictions for the Project site attached hereto as Exhibit B. The 30-day appeal period on the development plan expired on May 17, 2024. Thus, Stonefield's development plan is now final.

III. CONCLUSION

Following Stonefield securing the required zoning designation and approval of its development plan, Stonefield has obtained all the necessary local zoning approvals necessary to develop the Project. Further, securing these local zoning approvals addressed the issues identified by the Board's NOD.

Therefore, the Applicant respectfully requests that the three NODs issued by the Siting Board on August 22, 2022, August 26, 2022, October 10, 2022, respectively, be deemed either rescinded or cured without need for any further filing by the Applicant.

Dated this 10th day of June 2024.

Respectfully submitted,



Gregory T. Dutton
Kathryn A. Eckert
Pierce T. Stevenson
FROST BROWN TODD LLP
400 W. Market Street, 32nd Floor
Louisville, KY 40202
(502) 589-5400
(502) 581-1087 (fax)
gdupton@fbtlaw.com
keckert@fbtlaw.com
pstevenson@fbtlaw.com
Counsel for Stonefield Solar, LLC

EXHIBIT A

**HARDIN COUNTY FISCAL COURT
ORDINANCE No. 334, Series 2023**

**AN ORDINANCE AMENDING ORDINANCE No. 269, Series 2009
ESTABLISHING THE ZONING MAP OF UNINCORPORATED HARDIN COUNTY**

** ** *

WHEREAS, the Hardin County Fiscal Court desires to operate a planning program and comply with all statutes and laws relating to the operation of a planning program for the unincorporated area of the County;

WHEREAS the existing Zoning Map of Hardin County is contained within Ordinance 269, Series 2009;

WHEREAS an application to amend the existing Zoning Map to change approximately 1030 acres located along Leitchfield Rd. and West Glendale Hodgenville Rd. from Rural Residential (R-2) and Convenience Commercial (C-1) to Heavy Industrial (I-2) was made by Stonefield Solar Project to the Hardin County Planning Commission on November 3, 2022;

WHEREAS, the Hardin County Planning Commission held a public hearing on this Map Amendment request on May 2, 2023, at which time the Planning Commission adopted Hardin County Planning Commission Resolution 2023-008 which recommended that the application for the Map Amendment be denied;

WHEREAS, the Hardin County Fiscal Court, in special-called meetings held on June 20, 2023 and June 21, 2023 held a hearing at which it reviewed the recorded sworn testimony and all exhibits introduced into the record from the May 2, 2023 Planning Commission hearing;

NOW THEREFORE, BE IT ORDAINED that the application by Stonefield Solar Project to amend the existing Zoning Map contained in Ordinance 269, Series 2009 to change approximately 1030 acres located along Leitchfield Rd. and West Glendale Hodgenville Rd. from Rural Residential (R-2) and Convenience Commercial (C-1) to Heavy Industrial (I-2) is **APPROVED**.

AND BE IT FURTHER ORDAINED that the approval of the above Map Amendment application is proper due to Hardin County Fiscal Court finding that there have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in the adopted comprehensive plan and which have substantially altered the basic character of the area.

More specifically, Hardin County Fiscal Court finds the following:

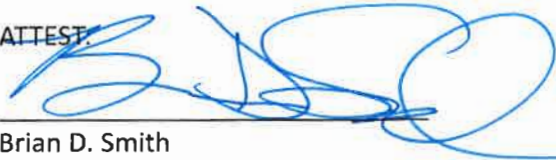
1. That Blue Oval SK has located in Hardin County since the adoption of the current Comprehensive Plan and is within proximity to the application site.
2. That since the announcement of the siting of Blue Oval SK, additional supportive industries and other commercial and industrial development has located in Elizabethtown and Hardin County which has decreased and will continue to decrease the amount of available land zoned for industrial purposes in Hardin County.

3. That it is sound public policy to make additional Heavy Industrial (I-2) property available to sustain economic growth and development in Hardin County.
4. That adjoining property, which is also owned by the property owners of this application and leased to Vulcan Materials, is currently zoned and/or permitted for Heavy Industrial use (Applicant Exhibit 1, Attachment 1; Page 1 of Planning Commission Map Amendment Summary Report; Page 50 of Planning Commission Power Point Presentation).
5. That the subject property is located less than 1 mile from existing property zoned for industrial use (City of Elizabethtown official zoning map June 22, 2023).
6. That the subject property is in close proximity to the existing Elizabethtown Industrial Park and the Elizabethtown/Hardin County Industrial Foundation has expressed an interest in purchase of the applicant property by letter December 26, 2018 (Exhibit LL).
7. That the subject property is located upon the major roadway of U.S. Highway 62 and near the Western Kentucky Parkway and Interstate 65 and has railway access with adequate transportation infrastructure for industrial use (Applicant Exhibit 1, Attachment 2).
8. That the neighboring Hardin County school expressed support of the application (Applicant Exhibit 1, Attachment 2; See also May 2, 2023 testimony of Hardin County Schools Chief Operating Officer, John Stith, at approximately 2:48).
9. That a joint work session of the Hardin County Planning Commission and the Elizabethtown Planning Commission was held on July 19, 2022, at which the Commissions discussed the importance of the area in which the applicant property is located to continued development and the economic health of the community (Applicant Exhibit 1, Attachment 2).


AND BE IT FURTHER ORDAINED, that this Ordinance has had First Reading this **27th** day of **June, 2023**, and shall now be advertised for Second Reading to be held on the **25th** day of **July, 2023** and will become effective upon adoption.



Keith L. Taul
Hardin County Judge/Executive

ATTEST: 

Brian D. Smith
Hardin County Clerk

Prepared: 

Jennifer B. Oldham
Hardin County Attorney

EXHIBIT B



**Hardin County
Planning and Development Commission**



Doc ID: 012653510001 Type: AMD
Kind: L REST
Recorded: 04/17/2024 at 02:22:19 PM
Receipt#: 2024-00003556
Page 1 of 1
Fees: \$50.00
Hardin County Clerk
Brian D. Smith Clerk

BK **1566** PG **1471**

**CERTIFICATE OF LAND USE RESTRICTIONS
COUNTY OF HARDIN
COMMONWEALTH OF KENTUCKY**

ACTION DATE: 7/25/2023 & 3/28/2024

PVA Map Number: 148-00-00-003; 004; 005; 006; 007; 010; 011; 147-00-00-043; 044; 168-00-00-006

Name and Address of Property Owner(s)
STONEFIELD SOLAR, LLC
500 SANSOME STREET, SUITE 500
SAN FRANCISCO, CA 94111

Address of Property:
LEITCHFIELD ROAD (US 62) & WEST GLENDALE HODGENVILLE ROAD (KY 222) IN
ELIZABETHTOWN & CECILIA, KY

Name of Subdivision or Development:
STONEFIELD SOLAR LLC -ZONE CHANGE TO HEAVY INDUSTRIAL (I-2) & DEVELOPMENT PLAN FOR
A "MANUFACTURING USE"

Location of Property:
A +/- 1,030 ACRE SITE LOCATED ALONG LEITCHFIELD ROAD (US 62) & WEST GLENDALE
HODGENVILLE ROAD (KY 222) IN ELIZABETHTOWN & CECILIA, KY

Type of Restrictions: (MARK all that apply):

X	Zoning Map Amendment to I-2		Variance
	Conditional Zoning Condition		Conditional Use Permit (Expires)
X	Development Plan		Other:
	Subdivision Plat		

The above records are maintained by:

Hardin County Planning & Development Commission
Hardin County Government Center
150 N. Provident Way, Suite 225
Elizabethtown, KY 42701-1436

I, Brian D. Smith, County Clerk of
Hardin County, Kentucky, hereby certify
that the foregoing instrument has been
duly recorded in my office.

By: STACEY REED, dc

Adam C. King, AICP, Director
Hardin County Planning and
Development Commission