

**In the Supreme Court of Ohio**

In the Matter of the Application of : Case Nos. 2023-1011  
BIRCH SOLAR 1, LLC for a Certificate :  
Of Environmental Compatibility and : Appeal from the Ohio Power Siting  
Public Need for a Solar-Powered : Board  
Electric Facility Located in Allen and :  
Auglaize Counties, Ohio. : Case No. 20-1605-EL-BGN

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**AMICUS BRIEF OF THE BOARD OF COMMISSIONERS OF AUGLAIZE  
COUNTY AND THE BOARD OF TOWNSHIP TRUSTEES OF LOGAN  
TOWNSHIP, AUGLAIZE COUNTY, OHIO  
NOT EXPRESSLY SUPPORTING THE POSITION OF EITHER PARTY**

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## I. AMICUS CURIAE STATEMENT OF INTEREST AND INTRODUCTION

The Board of County Commissioners of Auglaize County, Ohio (Auglaize County) and the Board of Township Trustees of Logan Township, Auglaize County, Ohio (Logan Township) are the legislative bodies of Auglaize County and Logan Township, respectively. Auglaize County and Logan Township were created in 1848 by an act of the Ohio Legislature. Both Auglaize County and Logan Township are political subdivisions of the State of Ohio being the most local level of government serving the citizens of Auglaize County and Logan Township, respectively. Auglaize County and Logan Township, in furtherance of their governmental interests, filed a Notice to Intervene on August 19, 2021 with the Ohio Power Siting Board in the Appellants Petition for a Certificate of Environmental Compatibility and Public Need proposing construction and operation of a 300 megawatt solar energy facility, partially, in their respective jurisdictions. As the proceedings and investigation before the Ohio Power Siting Board continued Auglaize County and Logan Township entered into negotiations with the Appellant to insure the citizens of Auglaize County and Logan Township were protected, as was the infrastructure in the both jurisdictions. Accordingly, Auglaize County entered into a Drainage Road Use and Maintenance Agreement, “DRUMA” benefitting both Auglaize County and Logan Township, if the proposed facility were to be approved by the Ohio Power Siting Board. Subsequently, Auglaize County and Logan Township joined other interveners and the Appellant in a Joint Stipulation to be filed for consideration of the evidentiary hearing before the Ohio Power Siting Board. **However**, Auglaize County and Logan Township only jointly stipulated with a portion of the Joint Stipulation. Specifically, Auglaize County and Logan Township jointly stipulated only to Sections I and II of the written Joint Stipulation. Auglaize County and Logan Township took “no position” as to whether the Power Siting Board should issue the

certificate to allow Appellant to proceed. Additionally, Auglaize County and Logan Township did include as part of their “no position” recommendation of Section III of the Joint Stipulation a letter referencing Substitute Senate Bill 52 (codified at Ohio Revised Code 303.57 et. seq.). In the letter attached and incorporated to the stipulations, Auglaize County and Logan Township acknowledged Appellant’s petition is not subject to the restrictions as set forth in Sub. SB 52 as Appellant is “grandfathered” due to the language of the newly enacted statutory scheme of providing restrictions for certain solar energy projects. Auglaize County and Logan Township did set forth as part of their “no position” recommendation, the conclusion except for the “grandfathering” language, the Appellant’s project would not be permitted due to the action of Auglaize County on April 26, 2022 restricting the proposed projects similar to Appellant’s.

The interests of Auglaize County and Logan Township in filing this amicus brief is solely to clarify its position on the proposed project. A review of some of the other briefs filed by other friends of the Court inadvertently misstate the position of Auglaize County and Logan Township as to its “no position” recommendation and supplemental letter filed as part of the Joint Stipulation. The “no position” of Auglaize County and Logan Township has not changed. Auglaize County and Logan Township did however indicate to the Power Siting Board through the Joint Stipulation that the project would be restricted from approval if Substitute Senate Bill 52 (SB 52), which gave local governments authority to restrict unincorporated areas from solar projects, had been effective as to the Appellant’s application.

## **II. STATEMENT OF FACTS AND CASE**

Auglaize County and Logan Township, amicus curiae herein, for the sole purpose of this brief, adopt the substantive and procedural history set forth in the Ohio Power Siting Board’s opinion and order filed October 20, 2022 as their Statement of Facts and Case

### III. ARGUMENT

Auglaize County and Logan Township file this amicus brief for the sole purpose of setting forth accurately their position before the Ohio Power Siting Board during its review of the Applicant's proposed construction and operation of a solar project partially to be located in Logan Township, Auglaize County, Ohio. As that position was to recommend a "no position" stance before the Siting Board Auglaize County and Logan Township will not now take a position or file individual arguments to each of the Appellant's Assignments of Error. Rather, Auglaize County and Logan Township wish to use this brief to clearly state what is in the record before the Ohio Power Siting Board and before this Court. It was the position of Auglaize County and Logan Township that they could best protect their community by obtaining the best agreement with the Appellant which would provide the most protection and benefit to its community in the event the Ohio Power Siting Board were to grant the Appellant's application. As evidenced by the partial Joint Stipulation, with attachment, agreed to by Auglaize County and Logan Township, it was clear the provisions of Sub. SB 52 (ORC §303.58) were not applicable to the Appellant's application due to the "grandfather provisions contained therein. It was equally clear and evident the Board of County Commissioners of Auglaize County, Ohio had previously restricted, pursuant to ORC §303.58, the construction and operation of projects such as proposed by Appellant which did not qualify for the "grandfathering" provisions. How the Ohio Power Siting Board considered the partial stipulations and what weight to give to the stipulations was within the discretion of the Siting Board. Lastly, as the partial stipulation was filed with the Siting Board any testimony to be provided at hearing by Auglaize County and Logan Township would have been redundant, at best.

### III. CONCLUSION

The Board of County Commissioners of Auglaize County, Ohio and the Board of Township Trustees of Logan Township, Auglaize County, Ohio respectfully request this Court review the two Boards' position as contained in the Joint Stipulation and the attachment thereto when considering the public sentiment and evidence regarding whether there is approval or objection to the proposed Certificate of Environmental Compatibility and Public Need. Any effort to restate or give any other meaning to the position of Auglaize County and Logan Township ignores the clear statements contained within the stipulation filed with the Ohio Power Siting Board. The statement attached in the letter to the Joint Stipulation sets forth the restrictions adopted by Auglaize County "but for" the grandfathered status of Appellant's application for the Certificate required of the Administrative agency.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

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