

IN THE MATTER OF

DONALD LIPPY, et al

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No.: 03-C-17-005187

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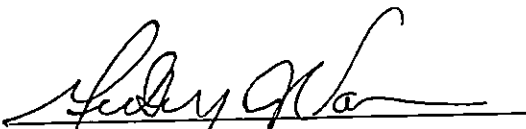
ORDER

On October 10, 2017, Donald and Kathleen Lippy filed a Memorandum in Support of Petition for Judicial Review in which they request the Court to reverse the decision of the Board of Appeals (Paper 14000). People's Counsel for Baltimore County filed a Memorandum in opposition on November 9, 2017. Respondents, Santo Mirabile, Chris Caloa, and the Hanover Road Association, filed a Response to Petitioner's Memorandum (Paper 14001) requesting that the Court affirm the ruling by the Board of Appeals.

On December 13, 2017, counsel for the Parties appeared before the Court to consider the Petitioner's request and the responses thereto. Having reviewed and considered the relevant Motions and Responses, and the arguments of counsel, and for the reasons stated on the record, it is this 15th day of December 2017, by the Circuit Court for Baltimore County, hereby

ORDERED, that Petitioner's request to reverse the Board of Appeals is denied; it is further

ORDERED, that the decision of the Board of Appeals is affirmed.


Mickey J. Norman, Judge
Circuit Court for Baltimore County

Clerk, please docket only. Copies have been provided to:

Michael R. McCann, Esquire, 118 West Pennsylvania Avenue, Towson, Maryland 21204
Lawrence E. Schmidt, Esquire, 600 Washington Avenue, Ste. 200, Towson, Maryland 21204
Carole S. Demilio, Esquire, 105 West Chesapeake Avenue, Ste. 204, Towson, Maryland 21204
Court File





Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

July 28, 2017

VIA HAND-DELIVERY

Civil Clerk
Circuit Court for Baltimore County
401 Bosley Avenue
Towson, Maryland 21204

RE: In the matter of: Donald and Kathleen Lippy
Civil Action No.: 03-C-17-005187
Board of Appeals Case No.: 16-335-SPHX

Dear Clerk:

Enclosed for filing please find the Proceedings before the Administrative Law Judge and the Board of Appeals for Baltimore County. Additionally, please allow this letter to reflect the filing of one accordion folder containing the entire Board of Appeals case file and exhibits.

Please be advised that the Record is being filed without the transcript from the hearings before the Board. It is our understanding that the Petitioner's attorney, Lawrence E. Schmidt, Esquire, has recently filed a Motion for Immediate Remand and to Suspend the Submittal of the Record. As the Judge has not yet ruled on the Motion, we are filing the record in compliance with the Maryland Rules.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in cursive script, reading "Tammy A. Zahner".

Tammy A. Zahner
Legal Secretary

Enclosures

c: Lawrence E. Schmidt, Esquire
Donald and Kathleen Lippy
Ken Donithan/Earth & Air Technologies, LLC
Andrea Van Arsdale, Director/Department of Planning
Lawrence M. Stahl, Managing Administrative Law Judge
Arnold Jablon, Deputy Administrative Officer, and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

Michael R. McCann, Esquire
Santo Mirabili/Hanover Road Association
John Lemmerman/RTF Associates, Inc.
Office of People's Counsel

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
DONALD AND KATHLEEN LIPPY

FOR JUDICIAL REVIEW OF THE OPINION OF
THE BOARD OF APPEALS
OF BALTIMORE COUNTY
JEFFERSON BUILDING – ROOM 203
105 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

IN THE MATTER OF:
DONALD AND KATHLEEN LIPPY
FOR PROPERTY LOCATED AT
15700 HANOVER PIKE

4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 16-335-SPHX

* * * * *

**PROCEEDINGS BEFORE THE ADMINISTRATIVE LAW JUDGE
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY**

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the Board of Appeals of Baltimore County and, in answer to the Petition for Judicial Review directed against it in this case, herewith transmits the record of proceedings had in the above-entitled matter, consisting of the original papers on file in the Department of Permits, Approvals and Inspections and the Board of Appeals of Baltimore County:

**ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND
DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
OF BALTIMORE COUNTY**

June 24, 2016

Petition for Special Exception filed by Lawrence E. Schmidt, Esquire on behalf of Donald and Kathleen Lippy pursuant to BCZR § 502, to grant Special Exception relief for a solar panel array field as a “public

CIVIL ACTION
NO. : 03-C-17-005187

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CIRCUIT COURT
BALTIMORE COUNTY

utility use" under BCZR § 1A01.2.C.18; or if necessary and in the alternative, a Petition for Special Hearing relief under BCZR § 500.7 to approve the proposed solar panel array field as a permitted accessory use or structure to the farm.

July 5, 2016	Entry of Appearance filed by People's Counsel for Baltimore County.
August 4, 2016	Notice of Zoning Hearing.
August 21, 2016	Certificate of Posting.
August 23, 2016	Certificate of Publication in newspaper
August 6, 2016	Letter to ALJ Beverungen from Michael R. McCann, Esquire requesting a postponement of the September 13, 2016 hearing. <i>(Received September 9, 2016)</i>
September 7, 2016	Letter to ALJ Beverungen from Lawrence E. Schmidt, Esquire objecting to Mr. McCann's postponement request.
September 8, 2016	E-mail to counsel from ALJ Beverungen advising the postponement request will be granted in part and denied in part.
September 8, 2016	ZAC Comments.
September 13, 2016	Hearing held before the Office of Administrative Hearings, Day 1.
October 12, 2016	Hearing held before the Office of Administrative Hearings, Day 2.
October 18, 2016	Opinion and Order issued by the Administrative Law Judge wherein the Petition for Special Hearing was DENIED; and the Petition for Special Exception was GRANTED, with conditions.
November 17, 2016	Notice of Appeal filed by Michael R. McCann, Esquire on behalf of Hanover Road Association and Santo Mirabili, Protestants/Appellants.
November 18, 2016	Appeal received by the Board.
November 30, 2016	Notice of Assignment issued by the Board.
February 7, 2017	Board convened for a Hearing, Day 1.
February 15, 2017	Notice of Reassignment issued by the Board.

March 16, 2017 Board convened for a Hearing, Day 2.

Exhibits submitted at Hearings before the Board of Appeals:

Petitioner's Exhibit No.

- 1 – John E. Lemmerman, Prof. LS Resume
- 2A – Aerial photo and property Plan
- 2B – Schematic Plan showing solar array diagram and landscaping
- 3 – ALJ Decision for 11121 Pfeffers Road
- 4A-C – Aerial photos of Lippy Property from “My Neighborhood”
- 5 – Lippy properties in Agricultural Easements
- 6 – John Christopher Batten, Landscape Architect Resume
- 7A – Final Landscape Plan
- 7B – Aerial View
- 7C – Lippy Brothers Solar Farm Plant List (From Exhibit 7A)
- 8A-B – Photos of solar panels – a solar array
- 9A-M – Photos of area around property

Protestants' Exhibit No.

- 1 – SDAT documents regarding Earth and Air Technologies, LLC
- 2 – PSC records from website; electricity supplier
- 3 – Maryland Renewable Energy Portfolio info from the PSC website
- 4 – Utility Customer Contact Information
- 5 – Christopher N. Jakubiak, AICP Resume
- 6 – Bill No. 178-79, Baltimore County Council
- 7 – Webster's Third New International Dictionary section
- 8 – Master Plan excerpt – Rural Legacy Program
- 9 – Aerial Photo
- 10 – March 2, 2017 letter from BGE to PSC

April 12, 2017	Written Memorandum in Lieu of Closing Argument filed by Lawrence E. Schmidt, Esquire on behalf of Donald and Kathleen Lippy, Petitioner/ Appellant.
April 12, 2017	Post-Hearing Memorandum of People's Counsel for Baltimore County.
April 12, 2017	Protestants' Post-Hearing Memorandum filed by Michael R. McCann, Esquire on behalf of Santo Mirabile, Chris Caloa, and the Hanover Road Association, Protestants.

April 19, 2017 Board convened for Public Deliberation.

April 28, 2017 Majority Opinion and Order issued by the Board wherein the Petition for Special Hearing to approve the proposed solar panel array field as a permitted accessory use or structure was DENIED; and the Petition for Special Exception to approve the proposed solar panel array field as a "public utility use" was DENIED. Concurring/Dissenting Opinion issued wherein the Board Member concurs with the majority in the denial of the Petition for Special Hearing; and dissents from the majority's decision that the proposed solar array fails to qualify as a "public utility use not permitted by right" pursuant to BCZR §1A01.2.C.18.

May 26, 2017 Petition for Judicial Review filed in the Circuit Court for Baltimore County by Lawrence E. Schmidt, Esquire on behalf of Donald and Kathleen Lippy, Petitioner/Appellant.

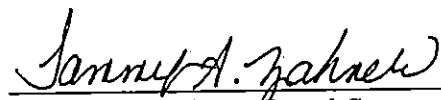
June 2, 2017 Copy of Petition for Judicial Review received from the Circuit Court for Baltimore County by the Board of Appeals.

June 6, 2017 Certificate of Compliance sent to all parties and interested persons.

June 20, 2017 Response to Petition for Judicial Review filed by People's Counsel for Baltimore County.

July 28, 2017 Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.



Tammy A. Zahner, Legal Secretary
Board of Appeals for Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3180
appealsboard@baltimorecountymd.gov

In the Matter of: Donald and Kathleen Lippy
Board of Appeals Case No.: 16-335-SPHX
Circuit Court Civil Action No.: 03-C-17-005187

c: Lawrence E. Schmidt, Esquire
 Michael R. McCann, Esquire
 Donald and Kathleen Lippy
 Santo Mirabili/Hanover Road Association
 John Lemmerman/RTF Associates, Inc.
 Ken Donithan/Earth & Air Technologies, LLC
 Office of People's Counsel
 Lawrence M. Stahl, Managing Administrative Law Judge
 Andrea Van Arsdale, Director/Department of Planning
 Arnold Jablon, Deputy Administrative Officer, and Director/PAI
 Nancy C. West, Assistant County Attorney/Office of Law
 Michael E. Field, County Attorney/Office of Law

PETITION OF DONALD & KATHLEEN LIPPY, FOR * IN THE
JUDICIAL REVIEW OF THE DECISION OF THE *
BOARD OF APPEALS FOR BALTIMORE COUNTY * CIRCUIT COURT

IN THE MATTER OF DONALD & KATHLEEN LIPPY * FOR
LEGAL OWNERS, PETITION FOR SPECIAL HEARING *
AND SPECIAL EXCEPTION ON PROPERTY LOCATED * BALTIMORE COUNTY
AT 15700 HANOVER PIKE *
4th Election District, 3rd Councilmanic District * Case No. 03-C-17-005187
Case No.: 2016-335-SPHX *
Before the County Board of Appeals *

* * * * *

RESPONSE TO PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, in accordance with Maryland Rule 7-204, submits this response to the Petition for Judicial Review filed by DONALD & KATHLEEN LIPPY and states that it intends to participate in this action for Judicial Review. The undersigned participated in the proceeding before the County Board of Appeals.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
The Jefferson Building
105 West Chesapeake Avenue, Suite 204
Towson, MD 21204
(410) 887-2188



RECEIVED
JUN 21 2017
BOARD OF ADP - 12
HQS. TIRUPATI - 513

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of June, 2017, a copy of the foregoing Response to Petition for Judicial Review was mailed to:

Lawrence Schmidt, Esquire
600 Washington Avenue, Suite 200
Towson, Maryland 21204
Attorney for Donald & Kathleen Lippy

Michael McCann, Esquire
118 West Pennsylvania Avenue
Towson, Maryland 21204

Baltimore County Board of Appeals
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204


CAROLE S. DEMILIO
Deputy People's Counsel
for Baltimore County

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
DONALD AND KATHLEEN LIPPY

FOR JUDICIAL REVIEW OF THE OPINION OF
THE BOARD OF APPEALS
OF BALTIMORE COUNTY
JEFFERSON BUILDING – ROOM 203
105 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

IN THE MATTER OF:
DONALD AND KATHLEEN LIPPY
FOR PROPERTY LOCATED AT
15700 HANOVER PIKE

4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 16-335-SPHX

CIVIL ACTION
NO. : 03-C-17-005187

FILED
2017 JUN -6 AM 11:24
CIRCUIT COURT
BALTIMORE COUNTY

CERTIFICATE OF COMPLIANCE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, the Board of Appeals of Baltimore County has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely:

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204

Donald and Kathleen Lippy
421 Lees Mill Road
Hampstead, MD 21074-1904

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, MD 21204

Santo Mirabili
Hanover Road Association
P.O. Box 121
Upperco, MD 21155

In the Matter of: Donald and Kathleen Lippy
Circuit Court Case No.: 03-C-17-005187
Board of Appeals Case No.: 16-335-SPHX

2

John Lemmerman
RTF Associates, Inc.
142 East Main Street
Westminster, MD 21157

Ken Donithan
Earth & Air Technologies, LLC
60 Aileron Court, Suite 4
Westminster, MD 21157

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, MD 21204

Lawrence M. Stahl
Managing Administrative Law Judge
The Jefferson Building, Suite 103
105 W. Chesapeake Avenue
Towson, MD 21204

Andrea Van Arsdale, Director
Department of Planning
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Towson, MD 21204

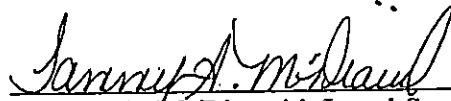
Arnold Jablon, Deputy Administrative Officer
Director of Permits, Approvals and Inspections
County Office Building
111 W. Chesapeake Avenue, Suite 105
Towson, MD 21204

Nancy C. West, Assistant County Attorney
Baltimore County Office of Law
The Historic Courthouse
400 Washington Avenue
Towson, MD 21204

Michael E. Field, County Attorney
Baltimore County Office of Law
The Historic Courthouse
400 Washington Avenue
Towson, MD 21204

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.

I HEREBY CERTIFY that on this 6th day of June, 2017 a copy of the foregoing Certificate of Compliance has been mailed to the individuals listed above.



Tammy A. McDiarmid, Legal Secretary
Board of Appeals for Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3180
appealsboard@baltimorecountymd.gov



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

June 6, 2017

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 220
Towson, Maryland 21204

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: Petition for Judicial Review
Circuit Court Case No.: 03-C-17-005187
In the Matter of: Donald and Kathleen Lippy
Board of Appeals Case No.: 16-335-SPHX

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules that a Petition for Judicial Review was filed on May 26, 2017 by Lawrence E. Schmidt, Esquire on behalf of Donald and Kathleen Lippy, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response with the Circuit Court for Baltimore County within 30 days after the date of this letter, pursuant to the Maryland Rules.

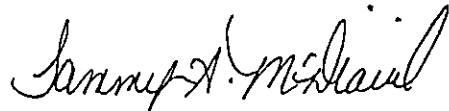
In accordance with the Maryland Rules, the Board of Appeals is required to submit the record of proceedings of the Petition for Judicial Review within 60 days. Mr. Schmidt, having taken the appeal on behalf of his client, is responsible for the cost of the transcript of the record and the transcript must be paid for in time to transmit the same to the Circuit Court within the 60 day timeframe as stated in the Maryland Rules.

Courtsmart was the official record of the hearings before the Board. The disk(s) will be copied by this office and provided to you for transcription. The transcriptionist must meet the requirements set forth in Maryland Rule 16-406d(B) which states: "*a stenographer, court reporter, or transcription service designated by the court for the purpose of preparing an official transcript from the recording.*" The Board of Appeals can assist in obtaining a qualified transcriptionist upon request.

Please be advised that the ORIGINAL transcript must be provided to the Board of Appeals no later than JULY 25, 2017 so that it may be transmitted to the Circuit Court with the record of proceedings, pursuant to the Maryland Rules.

A copy of the Certificate of Compliance has been enclosed for your convenience.

Very truly yours,



Tammy A. McDiarmid
Legal Secretary

Duplicate Original Cover Letter
Enclosure

c: Donald and Kathleen Lippy
Santo Mirabili/Hanover Road Association
John Lemmerman/RTF Associates, Inc.
Ken Donithan/Earth & Air Technologies, LLC
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer, and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

PETITION OF:
DONALD & KATHLEEN LIPPY
421 Lees Mill Road
Hampstead, Maryland 21074-1904

FOR JUDICIAL REVIEW OF THE DECISION
OF THE COUNTY BOARD OF APPEALS FOR
BALTIMORE COUNTY

Jefferson Building, Suite 2030
105 W. Chesapeake Avenue
Towson, MD 21204

IN THE CASE OF:
DONALD & KATHLEEN LIPPY, Legal Owners
of the Property located at
15700 HANOVER PIKE

4th Election District
3rd Councilmanic District

County Board of Appeals Case No. 16-335-SPHX

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY

* Case No.: C-17-5187

FILED
2017 MAY 26 AM 10:52
CIRCUIT COURT
BALTIMORE COUNTY

* * * * *

PETITION FOR JUDICIAL REVIEW

Petitioners, Donald and Kathleen Lippy, by and through their attorneys, Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC, requests judicial review of the Opinion and Order of the Board of Appeals for Baltimore County dated April 28, 2017, a copy of which is attached hereto, in the above referenced matter. Petitioner was a party below and fully participated, individually and through other counsel, in the proceedings.

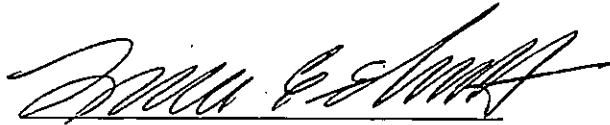


BOARD OF ALLEGES
BALTIMORE COUNTY

JUN 03 2013

RECEIVED

This Petition is filed pursuant to Rules 7-202 and 7-203(b) of the Maryland Rules of Procedure.

A handwritten signature in black ink, appearing to read "Lawrence E. Schmidt", is written over a horizontal line.

LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
Attorney for Petitioners



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

June 6, 2017

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Towson, Maryland 21204

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
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RE: Petition for Judicial Review
Circuit Court Case No.: 03-C-17-005187
In the Matter of: Donald and Kathleen Lippy
Board of Appeals Case No.: 16-335-SPHX

Dear Counsel:

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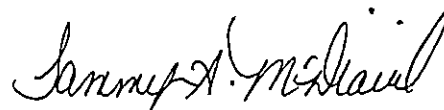
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Very truly yours,



Tammy A. McDiarmid
Legal Secretary

Duplicate Original Cover Letter
Enclosure

c: Donald and Kathleen Lippy
Santo Mirabili/Hanover Road Association
John Lemmerman/RTF Associates, Inc.
Ken Donithan/Earth & Air Technologies, LLC
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IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
DONALD AND KATHLEEN LIPPY

FOR JUDICIAL REVIEW OF THE OPINION OF
THE BOARD OF APPEALS
OF BALTIMORE COUNTY
JEFFERSON BUILDING – ROOM 203
105 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

CIVIL ACTION
NO. : 03-C-17-005187

IN THE MATTER OF:
DONALD AND KATHLEEN LIPPY
FOR PROPERTY LOCATED AT
15700 HANOVER PIKE

4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 16-335-SPHX

* * * * *

CERTIFICATE OF COMPLIANCE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, the Board of Appeals of Baltimore County has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely:

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Towson, MD 21204

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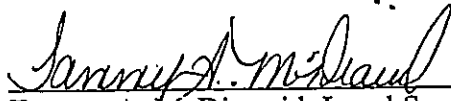
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The Historic Courthouse
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Michael E. Field, County Attorney
Baltimore County Office of Law
The Historic Courthouse
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Towson, MD 21204

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.

I HEREBY CERTIFY that on this 6th day of June, 2017 a copy of the foregoing Certificate of Compliance has been mailed to the individuals listed above.



Tammy A. McDiarmid, Legal Secretary
Board of Appeals for Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3180
appealsboard@baltimorecountymd.gov

PETITION OF:
DONALD & KATHLEEN LIPPY
421 Lees Mill Road
Hampstead, Maryland 21074-1904

FOR JUDICIAL REVIEW OF THE DECISION
OF THE COUNTY BOARD OF APPEALS FOR
BALTIMORE COUNTY

Jefferson Building, Suite 2030
105 W. Chesapeake Avenue
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IN THE CASE OF:
DONALD & KATHLEEN LIPPY, Legal Owners
of the Property located at
15700 HANOVER PIKE

4th Election District
3rd Councilmanic District

County Board of Appeals Case No. 16-335-SPHX

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY

* Case No.: C-17-5187

2017 MAY 26 AM 10:52
CIRCUIT COURT
BALTIMORE COUNTY

FILED

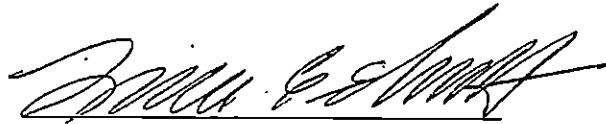
* * * * *

PETITION FOR JUDICIAL REVIEW

Petitioners, Donald and Kathleen Lippy, by and through their attorneys, Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC, requests judicial review of the Opinion and Order of the Board of Appeals for Baltimore County dated April 28, 2017, a copy of which is attached hereto, in the above referenced matter. Petitioner was a party below and fully participated, individually and through other counsel, in the proceedings.



This Petition is filed pursuant to Rules 7-202 and 7-203(b) of the Maryland Rules of Procedure.

A handwritten signature in black ink, appearing to read "Lawrence E. Schmidt", is written over a horizontal line.

LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
Attorney for Petitioners

* IN THE

* CIRCUIT COURT

* FOR

* BALTIMORE COUNTY

*

* **Case No.:** _____

* BALTIMORE COUNTY

*

*

*

*

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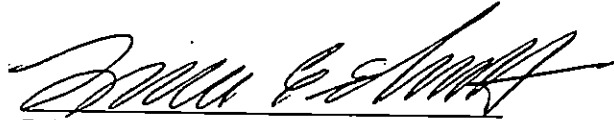
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* * * * *

Petitioners, Donald and Kathleen Lippy, by and through their attorneys, Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC, requests judicial review of the Opinion and Order of the Board of Appeals for Baltimore County dated April 28, 2017, a copy of which is attached hereto, in the above referenced matter. Petitioner was a party below and fully participated, individually and through other counsel, in the proceedings.

This Petition is filed pursuant to Rules 7-202 and 7-203(b) of the Maryland Rules of Procedure.

A handwritten signature in black ink, appearing to read "Lawrence E. Schmidt", written over a horizontal line.

LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
Attorney for Petitioners

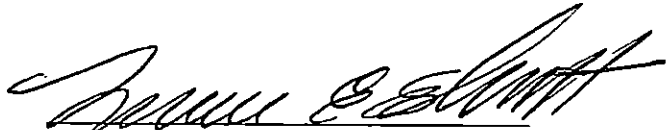
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of May, 2017, a copy of the foregoing Petition for Judicial Review was delivered to:

Michael R. McCann, Esquire
Michael McCann, P.A.
118 West Pennsylvania Avenue
Towson, MD 21204

People's Counsel for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue
Room 204
Towson, MD 21204

Krysundra Cannington, Acting Administrator
County Board of Appeals of Baltimore County
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204


LAWRENCE E. SCHMIDT

IN THE MATTER OF:
DONALD AND KATHLEEN LIPPY – LEGAL
OWNERS – PETITIONS FOR SPECIAL
HEARING AND SPECIAL EXCEPTION
FOR THE PROPERTY LOCATED AT
15700 HANOVER PIKE

4th Election District
3rd Councilmanic District

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 16-335-SPHX

* * * * *

OPINION

This matter came before the Baltimore County Board of Appeals as a *de novo* appeal of an October 18, 2016 decision of Administrative Law Judge John E. Beverungen of the Office of Administrative Hearings. In his Opinion and Order, ALJ Beverungen granted the Petition filed by Donald E. and Kathleen F. Lippy, legal owners of the property located at 15700 Hanover Pike (the “Property”), for a Special Exception to approve a proposed solar panel array as a “public utility use” on the Property. ALJ Beverungen denied the Lippy’s Petition for Special Hearing to approve the same solar array as a permitted accessory use on the Property.

Protestants Santo Mirable and the Hanover Road Association filed an appeal of the ALJ’s decision. The Board held hearings on this matter on February 7, 2017 and March 16, 2017 and publicly deliberated the matter on April 19, 2017. During the proceedings before the Board, Lawrence E. Schmidt, Esquire represented Petitioners Lippy and New Source Generation LLC. Michael R. McCann, Esquire represented Protestants Mirable and the Hanover Road Association, along with Chris Calao. Carole Demilio, Esquire appeared on behalf of People’s Counsel for Baltimore County.

FACTS

The Property is a single unimproved parcel, zoned R.C. 2 and approximately 6.5 acres in size. It is located near the intersection of Hanover Pike (Rt. 30) and Fringer Road in northern Baltimore County. Mr. and Mrs. Lippy, owners of the Property, have been farming in the region for decades. The Lippys own approximately 2,400 acres of land in the region, 2,200 acres of which are protected by agricultural easements. The Property is not in an agricultural easement area.

The testimony demonstrates that the Lippys contracted with Earth and Air Technologies, LLC ("Earth and Air") for the installation of solar panels to cover much of the undeveloped Property. Earth and Air, a private company that designs, builds and installs renewable energy systems, primarily solar, proposed the installation of approximately 6,000 panels, each approximately 3 x 6 feet in dimension and rising 4-7 feet off the ground. According to Mr. Lippy, the proposed use is intended, in contrast to the farming operations on his other lands, to provide a steadier income stream. In June 2016, the Lippys filed a Petition for Special Exception pursuant to Baltimore County Zoning Regulation ("BCZR") § 502 seeking approval of the solar panel array field as a 'public utility' use under BCZR § 1A01.2.C.18. Petitioners sought, alternatively, a Special Hearing pursuant to BCZR § 500.7 to approve the proposed solar array field as a permitted accessory use or structure to the farm.

Ken Donithan, the owner of Earth and Air, testified about the specifics of the proposed solar installation, and was accepted as an expert in power engineering.¹ He indicated that the panels proposed for the Property would produce energy that ultimately will be distributed to

¹ It should also be noted that Mr. Donithan's company has a financial interest in the approval of this project, and that his company previously has provided solar panels for use on structures on other property the Lippys own.

BGE utility lines and physically transmitted by BGE to the ultimate customers. The Lippys would own the panels, inverter, and transmission lines running from the inverter to the meter owned by BGE. Earth and Air would operate and maintain the equipment. He anticipates that the Lippys would use 60% of the power output; the remainder would be for use by others.

Mr. Donithan stated that Earth and Air is a privately held company. The company does not file reports with the Public Service Commission ("PSC"). Earth and Air is not licensed as an "electricity supplier" (Prot. Ex. #2), and does not need to meet requirements or standards the state imposes on renewable energy suppliers. He also stated that Earth and Air, unlike BGE, is not included on the list of Gas and Electric companies and "Utility Customer Contact Information" provided by the PSC. (Prot. Ex. # 4).

Mr. Donithan also discussed his company's intent to participate in the state's Community Solar Energy Generating Systems Pilot Program. That is a relatively recent project designed to provide greater access to solar-generated electricity and increase the use of solar energy in the state. According to Mr. Donithan, under this program, PCS-approved "subscriber organizations" in this area apply to BGE to operate community solar projects and connect to BGE's power grid. The ultimate community retail customer buys from BGE a share of the energy output of the supplier's system. Mr. Donithan was not clear on the billing mechanism for the project as it applies to Earth and Air. He did indicate that the PSC regulates the rates that BGE charges customers, but not the rates Earth and Air would charge. As of the hearing date, Earth and Air had not yet applied to become a subscriber organization.

Discussion

I. The Petition for Special Hearing for the Solar Array as an Accessory Structure on the Property.

The Petition for a Special Hearing seeks approval of the solar array as an accessory use to the Lippy's farm. BCZR § 101 defines "Accessory Use or Structure" as follows:

A use or structure which: (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principal use or structure served. . . .

Written in the conjunctive, this regulation provides that a proposed use is not considered an "accessory" unless it meets all four parts of the definition: it must be customarily incident and subordinate to a principal use or structure, and subordinate in area or purpose to a separate principal use or structure; the proposed use also must be located on the same lot as the principal use or structure, and must contribute to the comfort, convenience or necessity of a principal use or structure. The proposed solar array does not meet this definition. Even assuming the other requirements were met, there was no evidence demonstrating that the proposed "accessory", the solar array, is located on land that also contains a separate "principal" use or structure. The testimony establishes, rather, that the Property is unimproved, that no other structure is on the Property, and that there is no other use of the Property, farming or otherwise. The solar panels would be the sole structures on the Property, and the only use of the Property.

In some R.C. zones, the regulations recognize and permit some solar panel use as accessory structures. For instance, BCZR § 1A07.8.C.2.g. states that "[a]ccessory structures, including solar panels, antennas and storage sheds are not permitted in the front yard of any principal use. Section 400.1 is not applicable in an R.C.6 Zone." The regulations are virtually

identical for the R.C. 7 zone. See BCZR §§ 1A08.6.C.2.f. As for the R.C. 8 zone, BCZR § 1A09.7.C.2.e provides similarly that “[s]tructures accessory to residential use, excluding agricultural buildings, but including solar panels, antenna and storage shed, are not permitted in the front yard of any principal use. Section 400.1 is not applicable in an R.C. 8 Zone.” These regulations, like the definition in Section 101 above, contemplate a solar panel as an use or structure incidental to another, principal structure or use. That is not the situation in this matter. Moreover, no similar regulation exists for the R.C. 2 zone, the location of the Property. The Board therefore denies the Petition for Special Hearing.

II. The Petition for Special Exception for the Solar Array as a Public Utility.

By their Petition for Special Exception, Petitioners seek relief for the solar panel array as a “public utility use” under BCZR § 1A01.2.C.18. That regulation states as follows:

The following uses, only, may be permitted by special exception in any R.C.2 Zone, provided that in each case the hearing authority empowered to hear the petition finds that the use would not be detrimental to the primary agricultural uses in its vicinity. . . .

18. Public utility uses not permitted as of right.²

As all parties recognize, BCZR does not define the term “public utility.” In such a circumstance, the term is to be defined as in *Webster's Third New International Dictionary of the English Language, Unabridged*. BCZR § 101.1. That dictionary, first published in 1961, defines “public utility” as a “[b]usiness organization deemed by law to be vested with public interest

² Utility uses permitted in this zone as of right include “[t]elephone, telegraph, electrical-power or other lines or cables, provided that any such line or cable is underground. . . .” BCZR § 1A01.2.A.6.

usually because of monopoly privileges and so subject to public regulation such as fixing of rates, standards of service, and provision of facilities." Petitioner's solar array does not appear to meet this particular definition. There was no evidence that its owner or operating organization was vested with a public interest and granted monopoly privileges. Moreover, the testimony was also insufficient as to whether the proposed entity was subject to public regulation, with respect to such items as the fixing of rates, standards of service, or provision of facilities.

At the same time, given the advances of technology and time since the publication of that definition, it is not clear that the 1961 Webster's definition, particularly the monopoly aspect of an organization, remains the sole or appropriate method to determine what constitutes a "public utility" in 2017. See *Delmarva Power & Light Co. v. PSC*, 370 Md. 1, 15 (2002) (more recent legislation "provided a basis for shifting away from the 90-year-old guarded monopoly regime back to a competitive approach."); *AT&T v. State Dept. of Assessments & Taxation*, 1995 Md. Tax LEXIS 2, at *8-9 (Md. T.C. Jan. 26, 1995) ("technological evolution and Court intervention have altered the long distance industry to an extent certainly well beyond the comprehension of the original drafters of the statute Their perception of "public utilities" may have also altered over the years.").

Under the circumstances, the Board finds the term 'public utility,' and the provisions of BCZR § 1A01.2.C.18 relatively ambiguous. "An ambiguity exists 'when the language of the statute is subject to more than one interpretation.' Further, there are circumstances when 'an ambiguity may exist even when the words of the statute are crystal clear. That occurs when its application in a given situation is not clear.'" *Neser v. Howard Cty. Pers. Bd.*, No. 0109, 2016 Md. App. LEXIS 730, at *13 (Feb. 4, 2016) (citations omitted). A reviewing body is "justified

in looking beyond the text of the statute when 'its application in a given situation is not clear.'" *Id.* at *15. Such a broader examination is warranted here to settle on an appropriate definition of "public utility" in the current matter.

Ironically, like the BCZR, the Public Utilities article of the Maryland Code also does not define "public utility." However, § 1-101(x) of the article does provide a definition for a "public service company." That is defined as "a common carrier company, electric company, gas company. . . or any combination of public service companies." Related state regulations also lack a definition of 'public utility,' but do define the word 'utility.' Similar to the article above, it means an "electric company" as defined in Public Utilities Article, § 1-101, Annotated Code of Maryland." *See, e.g.,* COMAR 20.50.01.03(50); 20.62.01.02 (22). Section 1-101(h)(1) of the Public Utilities Article in turn defines an 'electric company' as "a person who physically transmits or distributes electricity in the State to a retail electric customer." A "retail electric customer" is itself defined as "a purchaser of electricity for end use in the State." Public Utilities Article, §1-101(cc)(3).

Taken together, for purposes of this discussion, these statutes and regulations indicate that a public utility or public service company means an entity that physically transmits or distributes electricity in Maryland to retail purchasers of electricity for end use in the state. Petitioners have not proffered any evidence to suggest they meet that definition. Rather, the testimony indicates that Petitioners convert and transmit solar energy to the BGE utility grid, but that BGE is the entity which transmits and distributes electricity to the retail electric customer.

Petitioners also point to their anticipated participation in the state's Community Solar Energy Generating Systems Pilot Program (the "Solar Program") as evidence that they are a

public utility. The legislature established the pilot Solar Program for a period of three years to promote the use of renewable energy resources and provide greater access to solar-generated electricity. The Solar Program allows customers to buy, through their electricity company, electricity generated by the solar facility, known as the “community solar energy generating system.”³ It does this through a network of electric companies, “subscriber organizations,” and “subscribers.” A ‘subscriber organization’ includes entities such as Earth and Air that install and operate solar generating systems. *See* Md. Code Ann., Pub. Util §7-306.2(a). “Subscribers” are the retail customers that purchase electricity from the subscriber organization. *Id.*

A solar energy company seeking to participate in the Solar Program as a subscriber organization first applies to the PSC for admission to the program. *See* COMAR 20.62.03.02. Next, as Mr. Donithan noted, upon PSC approval, the subscriber organization must then apply to the electric company serving the system location (here, BGE) for interconnection. *Id.* at 20.62.03.03. The electric company processes any applications submitted and administers the program. Of critical importance is the fact that unlike public utilities such as BGE, the supplier organization’s price is not regulated by the PSC. *See* COMAR 20.62.05.03B.2.(b). *See Spintman v. Chesapeake & Potomac Tel. Co.*, 254 Md. 423, 428 (1969) (“the legislature intended that the Public Service Commission should have authority to regulate the rates of a *public utility*. . . .”) (emphasis supplied).

³ It is more specifically defined as a solar energy system that: (i) is connected to the electric distribution grid serving the State; (ii) is located in the same electric service territory as its subscribers; (iii) is attached to the electric meter of a subscriber or is a separate facility with its own electric meter; (iv) credits its generated electricity, or the value of its generated electricity, to the bills of the subscribers to that system through virtual net energy metering; (v) has at least two subscribers; (vi) does not have subscriptions larger than 200 kilowatts constituting more than 60% of its subscriptions; (vii) has a generating capacity that does not exceed 2 megawatts as measured by the alternating current rating of the system’s inverter; and (viii) may be owned by any person. Md. Code Ann., Pub. Util. at §7-306.2(a)(3).

Earth and Air's potential status as a supplier organization for the limited purpose of the Solar Program does not change the conclusion that the company, the supplier organization, itself is not a public service company or public utility such as BGE. In fact, the Solar Program law draws a specific distinction between the different types of entities, stating that "[a] community solar energy generating system, including a subscriber or subscriber organization associated with the community solar energy generating system, is not: (1) an electric company; (2) an electricity supplier." Md. Code Ann., Pub. Util. at §7-306.2(c).⁴ Moreover, while a subscriber organization such as Earth and Air may operate under BGE's control for purposes of the Solar Program, the fact remains that it is treated differently under the law than an electric company, and is not physically transmitting the electricity to a retail customer. Neither are its rates regulated by the PSC. Without these attributes, it should not be considered a public utility.

The conclusion that Petitioners are not a public utility leads to the corollary finding that their proposed use of the Property does not constitute a "public utility use" as set forth in BCZR § 1A01.2.C.18. There was no evidence suggesting that Petitioner's proposed solar field is a direct use by BGE, one that is necessary for the rendering of BGE's public utility service.⁵ Allowing every entity with a connection to BGE to piggy-back upon this special exception by claiming it is a BGE use, would likely expand the scope of the special exception far beyond its apparent intended boundaries. See *Chesapeake & Potomac Tel. Co. v. Md./Del. Cable Television Asso.*, 310 Md. 553, 562 (1987) ("public utility services" are limited to those services

⁴ Similarly, the Application for Authorization to Participate in the Solar Program also distinguishes between the applicant subscriber organization and "utilities" and "electric companies."

⁵ This conclusion is strengthened by the fact that only 40% of the energy generated by the solar array will be converted for use by BGE; the majority is to be used privately by the Lippys.

that a utility company provides under "the privileges granted to it by the State."); BCZR 411.1 ("For public utility uses permitted only by special exception in addition to the provisions of Section 502, the following regulations shall apply. . . .The use must be needed for the proper rendition of the public utility's service")

The increased use of solar energy is an important and laudable goal. It is hoped the County Council will promptly address any zoning ambiguities to facilitate this goal and maintain the character of the R.C. 2 zone. Currently, however, as in *People's Counsel for Balt. Cty. v. Surina*, 400 Md. 662, 688 (2007), and *Kowalski v. Lamar*, 25 Md. App. 493, 498 (1975), the only uses in this R.C. 2 zone are those permitted as of right, and those permitted by special exception. "Any use other than those permitted and being carried on as of right or by special exception is prohibited." *Id.* The use proposed by Petitioners currently is not permitted as of right, nor by special exception. The Petition for Special Exception is denied.

ORDER

THEREFORE, FOR THE REASONS STATED ABOVE, IT IS THIS 28th
day of April 2017 by the Board of Appeals of Baltimore County

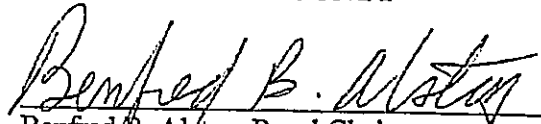
ORDERED that the Petition for Special Hearing to approve the proposed solar panel array field as a permitted accessory use or structure, be and the same is hereby **DENIED**; and it is further

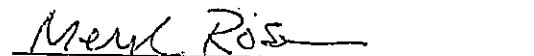
ORDERED that the Petition for Special Exception to approve the proposed solar panel array field as a "public utility use," be and the same is hereby **DENIED**.

In the matter of: Donald and Kathleen Lippy/16-335-SPHX

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

BOARD OF APPEALS
OF BALTIMORE COUNTY


Benfred B. Alston, Panel Chairman


Meryl W. Rosen

IN THE MATTER OF:
DONALD AND KATHLEEN LIPPY – LEGAL
OWNERS – PETITIONS FOR SPECIAL
HEARING AND SPECIAL EXCEPTION
FOR THE PROPERTY LOCATED AT
15700 HANOVER PIKE

4th Election District
3rd Councilmanic District

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 16-335-SPHX

* * * * *

CONCURRING/DISSENTING OPINION

First, the undersigned concurs with the majority in its opinion regarding the Petition for Special Hearing for the Solar Array as an Accessory Structure. A use or structure cannot be considered accessory in the absence of a primary use or structure on the same site to which the proposed accessory use or structure must be incidental and subordinate (among other requirements in BCZR §101). The record reflects unanimity among the parties --- the proposed solar array will be the sole, and therefore, primary use/structure on this property.

However, as to the Petition for Special Exception, the undersigned dissents from the majority's decision that the proposed solar array fails to qualify as a "public utility use not permitted by right," pursuant to Baltimore County Zoning Regulation ("BCZR") §1A01.2.C.18.

By way of background, BCZR §1A01.2 governs the RC-2 Zone, in which the property at issue falls. The proposal seeks to establish a solar array, consisting of 6,000 or so solar panels, over the property (6.5 acres). That use will be the primary and sole use for that property. Unquestionably, BCZR §1A01.2B fails to identify the proposed use as one permitted by right within the RC-2 Zone, whether expressly, implicitly or by common sense (e.g. as noted above, because the solar array is the primary and solitary use, it cannot qualify as an accessory use to be permitted by right). As such, Petitioners seek to have the solar array permitted by special

exception as a “public utility.” With that, an exercise in technological taxonomy commenced to figure out how to classify this animal --- a privately-owned and operated energy capture and distribution business that had its own energy customers, but the operation of which required BGE, clearly a public utility, and its transmission lines and meters.

Once again, the parties (and the Board) unanimously agree that the absence of a definition of “public utility” compels the Board to rely upon the definition provided by *Webster’s Third New International Dictionary of the English Language, Unabridged*. See, BCZR §101.1. That version defines “public utility” as a “business organization deemed by law to be vested with public interest usually because of monopoly privileges and so subject to public regulation such as fixing of rates, standards of service, and provision of facilities.”

Without question, Petitioners are not a public utility. It appears that determination is the dispositive factor for the Board’s majority. The undersigned concludes, however, Petitioners need not be a public utility to qualify under BCZR §1A01.2.C.18.

BCZR §1A01.2.C.18 does not end with the word “utility;” rather, BCZR identifies “Public utility uses not permitted as of right.” For this Board member, the phrase “public utility” describes the word “uses,” as opposed to identifying those that may avail itself of special exception relief for such uses. Utilizing this framework, the focus is properly upon the use, as opposed to the identification of the user.

If the County Council intended to limit application to existing public utilities, the phrase “public utility” would be expressed in the possessive, e.g. “public utility’s,” “public utilities’,” or be phrased in manner conveying the same, as in “Uses by a public utility not permitted by right.” In the absence of language, punctuation, or an indication that “public utility” was intended as a term of art to limit the applicability of §1A01.2.C.18 to a public utility, the

undersigned interprets the regulation in a more expansive manner than the majority. This approach also echoes the drive for renewable and alternative energy sources and reflects the advances in the technology permitting commercial production of the same.¹

Moreover, the Board needs to consider how the phrase "not permitted by right" fits into this analysis. Notably, BCZR § 1A01.2.B, permitting uses by right, does not limit the reach of any enumerated use to public utilities. The phrase "public utility," in fact, does not appear in BCZR § 1A01.2.B. Instead, the regulation identifies certain uses, while customarily associated with public utilities, e.g. "[t]elephone, telegraph, electrical-power or other lines or cables, provided that any such line or cable is underground; underground gas, water or sewer mains or storm drains; or other underground conduits, except interstate or international pipelines," are not exclusive to public utilities. See BCZR § 1A01.2.B.6.

Even if, arguably, the phrase "public utility" should be read in a more narrow way than the undersigned suggests, the undersigned would still find that the proposed use qualifies for a special exception under BCZR §1A01.2.C.18. The use at issue concerns the production of electricity for distribution is a use, as noted above, historically associated with a "public utility." The subsequent distribution of the captured energy into the electrical grid require BGE meters and BGE transmission lines. Merely because a private entity originates the capture and distribution does not change the use. BGE, of course, is a public utility.

Because the regulations at issue were written while the Colts still played in Baltimore, questions arise in identifying how and where this proposal, a privately-owned energy capture and distribution operation that requires a public utility's transmission lines to reach customers,

¹ Particularly, the proposed solar array is intended to be part of the Community Solar Energy Generating Systems Pilot Program. See Public Util Art. §7-306.2, and related COMAR regulations.

fits within the zoning regulations. The County Council recently has attempted to craft legislation that specifically governs solar arrays, conditions, and placement throughout Baltimore County. While those attempts continue, and are encouraged, the absence of more specific regulations is not dispositive.

The criteria for approval of a petition for special exception requires more. BCZR §1A01.2.C also requires that “in each case the hearing authority empowered to hear the petition finds that the use would not be detrimental to the primary agricultural uses in its vicinity.” With that in mind, the undersigned concludes that the presence of a solar array on these 6.5 acres in particular are not detrimental in this manner. First, the immediate adjacent properties primarily used for agriculture are owned by the Lippys and in fact, approximately 2,200 acres of the Lippys’ land have been placed into land preservation programs and easements to preserve their agricultural use. Second, Public Util. Art. § 7-306.2(d)(13) precludes equipment for a community solar energy generating system from being built on contiguous parcels of land unless the equipment is installed only on building rooftops. Because any neighboring system would be required to be limited to rooftops, the ground is preserved for agricultural use. On this point, the undersigned would encourage the County Council, when considering these issues in more specific legislation, to also fully embrace the intent to protect primary agricultural uses within the RC and other zones that prioritize it and to make sure that Baltimore County’s agricultural history and future are preserved.

The undersigned further concludes that the proposal satisfies the criteria under BCZR § 502.1 to grant the Petition for a Special Exception. The Board is also required to consider BCZR § 411.1 and find that the location of the use will not seriously impair the use of the neighboring property. On this point, the proposal presents a concern in one identifiable respect --- noise ---

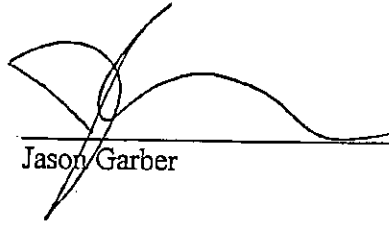
as testified to by Mr. Calao, an adjacent neighbor. While certain impacts may be generally accounted for by being a use permitted by special exception in a RC-2 Zone, the question of noise here is not one where there is sufficient evidence to determine if the noise would have an adverse effect above and beyond those inherently associated with special exception uses.

Mr. Calao testified that the system will be "buzzing like cicadas." Mr. Donithan, for Earth and Air Technologies, testified that the inverter gives off 60 decibels, but the panels give off "minimal noise." There is nothing in the record as to what would be audible at the property line separating the subject parcel with Mr. Calao's. The record is silent as to the distance the 60 decibels would carry and the frequency, regularity, hours, and duration for such sounds. To the undersigned, this is different than other public utility uses as contemplated, including, by way of example, overhead power lines.

For these reasons and to ensure that the Calaos and other neighbors can have the quiet enjoyment of their property, the undersigned, recognizing the limited record on the issue, would condition approval upon dampening the sound so that the noise from the system, whether inverter, panels or anything else, does not exceed 40 decibels within 50 feet of the neighboring houses during the daytime and 30 decibels at night time. It is expected that the screening required to be planted may assist in this regard. If additional measures are needed, however, to preserve the Calaos and other neighbors quiet enjoyment of their respective properties, then Petitioners shall be responsible for such measures. The undersigned would also impose the other conditions ordered by the Administrative Law Judge in the hearing below on this matter and as otherwise required by any County agency or department and otherwise by law.

In the matter of: Donald and Kathleen Lippy/16-335-SPHX - Dissent

April 28, 2017
Date


Jason Garber



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
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April 28, 2017

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: *In the Matter of: Donald and Kathleen Lippy – Legal Owner*
Case No.: 16-335-SPHX

Dear Counsel:

Enclosed please find a copy of the final Majority Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter, as well as a copy of Mr. Garber's Dissent.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all **Petitions for Judicial Review** filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington".

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: Donald and Kathleen Lippy
Santo Mirabili/Hanover Road Association
John Lemmerman/RTF Associates, Inc.
Ken Donithan/Earth & Air Technologies, LLC
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

IN THE MATTER OF:
DONALD AND KATHLEEN LIPPY – LEGAL
OWNERS – PETITIONS FOR SPECIAL
HEARING AND SPECIAL EXCEPTION
FOR THE PROPERTY LOCATED AT
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4th Election District
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OPINION

This matter came before the Baltimore County Board of Appeals as a *de novo* appeal of an October 18, 2016 decision of Administrative Law Judge John E. Beverungen of the Office of Administrative Hearings. In his Opinion and Order, ALJ Beverungen granted the Petition filed by Donald E. and Kathleen F. Lippy, legal owners of the property located at 15700 Hanover Pike (the “Property”), for a Special Exception to approve a proposed solar panel array as a “public utility use” on the Property. ALJ Beverungen denied the Lippy’s Petition for Special Hearing to approve the same solar array as a permitted accessory use on the Property.

Protestants Santo Mirable and the Hanover Road Association filed an appeal of the ALJ’s decision. The Board held hearings on this matter on February 7, 2017 and March 16, 2017 and publicly deliberated the matter on April 19, 2017. During the proceedings before the Board, Lawrence E. Schmidt, Esquire represented Petitioners Lippy and New Source Generation LLC. Michael R. McCann, Esquire represented Protestants Mirable and the Hanover Road Association, along with Chris Calao. Carole Demilio, Esquire appeared on behalf of People’s Counsel for Baltimore County.

FACTS

The Property is a single unimproved parcel, zoned R.C. 2 and approximately 6.5 acres in size. It is located near the intersection of Hanover Pike (Rt. 30) and Fringer Road in northern Baltimore County. Mr. and Mrs. Lippy, owners of the Property, have been farming in the region for decades. The Lippys own approximately 2,400 acres of land in the region, 2,200 acres of which are protected by agricultural easements. The Property is not in an agricultural easement area.

The testimony demonstrates that the Lippys contracted with Earth and Air Technologies, LLC ("Earth and Air") for the installation of solar panels to cover much of the undeveloped Property. Earth and Air, a private company that designs, builds and installs renewable energy systems, primarily solar, proposed the installation of approximately 6,000 panels, each approximately 3 x 6 feet in dimension and rising 4-7 feet off the ground. According to Mr. Lippy, the proposed use is intended, in contrast to the farming operations on his other lands, to provide a steadier income stream. In June 2016, the Lippys filed a Petition for Special Exception pursuant to Baltimore County Zoning Regulation ("BCZR") § 502 seeking approval of the solar panel array field as a 'public utility' use under BCZR § 1A01.2.C.18. Petitioners sought, alternatively, a Special Hearing pursuant to BCZR § 500.7 to approve the proposed solar array field as a permitted accessory use or structure to the farm.

Ken Donithan, the owner of Earth and Air, testified about the specifics of the proposed solar installation, and was accepted as an expert in power engineering.¹ He indicated that the panels proposed for the Property would produce energy that ultimately will be distributed to

¹ It should also be noted that Mr. Donithan's company has a financial interest in the approval of this project, and that his company previously has provided solar panels for use on structures on other property the Lippys own.

BGE utility lines and physically transmitted by BGE to the ultimate customers. The Lippys would own the panels, inverter, and transmission lines running from the inverter to the meter owned by BGE. Earth and Air would operate and maintain the equipment. He anticipates that the Lippys would use 60% of the power output; the remainder would be for use by others.

Mr. Donithan stated that Earth and Air is a privately held company. The company does not file reports with the Public Service Commission ("PSC"). Earth and Air is not licensed as an "electricity supplier" (Prot. Ex. #2), and does not need to meet requirements or standards the state imposes on renewable energy suppliers. He also stated that Earth and Air, unlike BGE, is not included on the list of Gas and Electric companies and "Utility Customer Contact Information" provided by the PSC. (Prot. Ex. # 4).

Mr. Donithan also discussed his company's intent to participate in the state's Community Solar Energy Generating Systems Pilot Program. That is a relatively recent project designed to provide greater access to solar-generated electricity and increase the use of solar energy in the state. According to Mr. Donithan, under this program, PCS-approved "subscriber organizations" in this area apply to BGE to operate community solar projects and connect to BGE's power grid. The ultimate community retail customer buys from BGE a share of the energy output of the supplier's system. Mr. Donithan was not clear on the billing mechanism for the project as it applies to Earth and Air. He did indicate that the PSC regulates the rates that BGE charges customers, but not the rates Earth and Air would charge. As of the hearing date, Earth and Air had not yet applied to become a subscriber organization.

Discussion

I. The Petition for Special Hearing for the Solar Array as an Accessory Structure on the Property.

The Petition for a Special Hearing seeks approval of the solar array as an accessory use to the Lippy's farm. BCZR § 101 defines "Accessory Use or Structure" as follows:

A use or structure which: (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principal use or structure served. . . .

Written in the conjunctive, this regulation provides that a proposed use is not considered an "accessory" unless it meets all four parts of the definition: it must be customarily incident and subordinate to a principal use or structure, and subordinate in area or purpose to a separate principal use or structure; the proposed use also must be located on the same lot as the principal use or structure, and must contribute to the comfort, convenience or necessity of a principal use or structure. The proposed solar array does not meet this definition. Even assuming the other requirements were met, there was no evidence demonstrating that the proposed "accessory", the solar array, is located on land that also contains a separate "principal" use or structure. The testimony establishes, rather, that the Property is unimproved, that no other structure is on the Property, and that there is no other use of the Property, farming or otherwise. The solar panels would be the sole structures on the Property, and the only use of the Property.

In some R.C. zones, the regulations recognize and permit some solar panel use as accessory structures. For instance, BCZR § 1A07.8.C.2.g. states that "[a]ccessory structures, including solar panels, antennas and storage sheds are not permitted in the front yard of any principal use. Section 400.1 is not applicable in an R.C.6 Zone." The regulations are virtually

identical for the R.C. 7 zone. *See* BCZR §§ 1A08.6.C.2.f. As for the R.C. 8 zone, BCZR § 1A09.7.C.2.e provides similarly that “[s]tructures accessory to residential use, excluding agricultural buildings, but including solar panels, antenna and storage shed, are not permitted in the front yard of any principal use. Section 400.1 is not applicable in an R.C. 8 Zone.” These regulations, like the definition in Section 101 above, contemplate a solar panel as an use or structure incidental to another, principal structure or use. That is not the situation in this matter. Moreover, no similar regulation exists for the R.C. 2 zone, the location of the Property. The Board therefore denies the Petition for Special Hearing.

II. The Petition for Special Exception for the Solar Array as a Public Utility.

By their Petition for Special Exception, Petitioners seek relief for the solar panel array as a “public utility use” under BCZR § 1A01.2.C.18. That regulation states as follows:

The following uses, only, may be permitted by special exception in any R.C.2 Zone, provided that in each case the hearing authority empowered to hear the petition finds that the use would not be detrimental to the primary agricultural uses in its vicinity. . . .

18. Public utility uses not permitted as of right.²

As all parties recognize, BCZR does not define the term “public utility.” In such a circumstance, the term is to be defined as in *Webster's Third New International Dictionary of the English Language, Unabridged*. BCZR § 101.1. That dictionary, first published in 1961, defines “public utility” as a “[b]usiness organization deemed by law to be vested with public interest

² Utility uses permitted in this zone as of right include “[t]elephone, telegraph, electrical-power or other lines or cables, provided that any such line or cable is underground. . . .” BCZR § 1A01.2.A.6.

usually because of monopoly privileges and so subject to public regulation such as fixing of rates, standards of service, and provision of facilities.” Petitioner’s solar array does not appear to meet this particular definition. There was no evidence that its owner or operating organization was vested with a public interest and granted monopoly privileges. Moreover, the testimony was also insufficient as to whether the proposed entity was subject to public regulation, with respect to such items as the fixing of rates, standards of service, or provision of facilities.

At the same time, given the advances of technology and time since the publication of that definition, it is not clear that the 1961 Webster’s definition, particularly the monopoly aspect of an organization, remains the sole or appropriate method to determine what constitutes a “public utility” in 2017. *See Delmarva Power & Light Co. v. PSC*, 370 Md. 1, 15 (2002) (more recent legislation “provided a basis for shifting away from the 90-year-old guarded monopoly regime back to a competitive approach.”); *AT&T v. State Dept. of Assessments & Taxation*, 1995 Md. Tax LEXIS 2, at *8-9 (Md. T.C. Jan. 26, 1995) (“technological evolution and Court intervention have altered the long distance industry to an extent certainly well beyond the comprehension of the original drafters of the statute Their perception of “public utilities” may have also altered over the years.”).

Under the circumstances, the Board finds the term ‘public utility,’ and the provisions of BCZR § 1A01.2.C.18 relatively ambiguous. “An ambiguity exists ‘when the language of the statute is subject to more than one interpretation.’ Further, there are circumstances when ‘an ambiguity may exist even when the words of the statute are crystal clear. That occurs when its application in a given situation is not clear.’” *Neser v. Howard Cty. Pers. Bd.*, No. 0109, 2016 Md. App. LEXIS 730, at *13 (Feb. 4, 2016) (citations omitted). A reviewing body is “justified

in looking beyond the text of the statute when ‘its application in a given situation is not clear.’” *Id.* at *15. Such a broader examination is warranted here to settle on an appropriate definition of “public utility” in the current matter.

Ironically, like the BCZR, the Public Utilities article of the Maryland Code also does not define “public utility.” However, § 1-101(x) of the article does provide a definition for a “public service company.” That is defined as “a common carrier company, electric company, gas company. . . or any combination of public service companies.” Related state regulations also lack a definition of ‘public utility,’ but do define the word ‘utility.’ Similar to the article above, it means an “‘electric company’ as defined in Public Utilities Article, § 1-101, Annotated Code of Maryland.” *See, e.g.*, COMAR 20.50.01.03(50); 20.62.01.02 (22). Section 1-101(h)(1) of the Public Utilities Article in turn defines an ‘electric company’ as “a person who physically transmits or distributes electricity in the State to a retail electric customer.” A “retail electric customer” is itself defined as “a purchaser of electricity for end use in the State.” Public Utilities Article, §1-101(cc)(3).

Taken together, for purposes of this discussion, these statutes and regulations indicate that a public utility or public service company means an entity that physically transmits or distributes electricity in Maryland to retail purchasers of electricity for end use in the state. Petitioners have not proffered any evidence to suggest they meet that definition. Rather, the testimony indicates that Petitioners convert and transmit solar energy to the BGE utility grid, but that BGE is the entity which transmits and distributes electricity to the retail electric customer.

Petitioners also point to their anticipated participation in the state’s Community Solar Energy Generating Systems Pilot Program (the “Solar Program”) as evidence that they are a

public utility. The legislature established the pilot Solar Program for a period of three years to promote the use of renewable energy resources and provide greater access to solar-generated electricity. The Solar Program allows customers to buy, through their electricity company, electricity generated by the solar facility, known as the “community solar energy generating system.”³ It does this through a network of electric companies, “subscriber organizations,” and “subscribers.” A ‘subscriber organization’ includes entities such as Earth and Air that install and operate solar generating systems. *See* Md. Code Ann., Pub. Util §7-306.2(a). “Subscribers” are the retail customers that purchase electricity from the subscriber organization. *Id.*

A solar energy company seeking to participate in the Solar Program as a subscriber organization first applies to the PSC for admission to the program. *See* COMAR 20.62.03.02. Next, as Mr. Donithan noted, upon PSC approval, the subscriber organization must then apply to the electric company serving the system location (here, BGE) for interconnection. *Id.* at 20.62.03.03. The electric company processes any applications submitted and administers the program. Of critical importance is the fact that unlike public utilities such as BGE, the supplier organization’s price is not regulated by the PSC. *See* COMAR 20.62.05.03B.2.(b). *See Spintman v. Chesapeake & Potomac Tel. Co.*, 254 Md. 423, 428 (1969) (“the legislature intended that the Public Service Commission should have authority to regulate the rates of a *public utility*. . . .”) (emphasis supplied).

³ It is more specifically defined as a solar energy system that: (i) is connected to the electric distribution grid serving the State; (ii) is located in the same electric service territory as its subscribers; (iii) is attached to the electric meter of a subscriber or is a separate facility with its own electric meter; (iv) credits its generated electricity, or the value of its generated electricity, to the bills of the subscribers to that system through virtual net energy metering; (v) has at least two subscribers; (vi) does not have subscriptions larger than 200 kilowatts constituting more than 60% of its subscriptions; (vii) has a generating capacity that does not exceed 2 megawatts as measured by the alternating current rating of the system’s inverter; and (viii) may be owned by any person. Md. Code Ann., Pub. Util. at §7-306.2(a)(3).

Earth and Air's potential status as a supplier organization for the limited purpose of the Solar Program does not change the conclusion that the company, the supplier organization, itself is not a public service company or public utility such as BGE. In fact, the Solar Program law draws a specific distinction between the different types of entities, stating that "[a] community solar energy generating system, including a subscriber or subscriber organization associated with the community solar energy generating system, is not: (1) an electric company; (2) an electricity supplier." Md. Code Ann., Pub. Util. at §7-306.2(c).⁴ Moreover, while a subscriber organization such as Earth and Air may operate under BGE's control for purposes of the Solar Program, the fact remains that it is treated differently under the law than an electric company, and is not physically transmitting the electricity to a retail customer. Neither are its rates regulated by the PSC. Without these attributes, it should not be considered a public utility.

The conclusion that Petitioners are not a public utility leads to the corollary finding that their proposed use of the Property does not constitute a "public utility use" as set forth in BCZR § 1A01.2.C.18. There was no evidence suggesting that Petitioner's proposed solar field is a direct use by BGE, one that is necessary for the rendering of BGE's public utility service.⁵ Allowing every entity with a connection to BGE to piggy-back upon this special exception by claiming it is a BGE use, would likely expand the scope of the special exception far beyond its apparent intended boundaries. See *Chesapeake & Potomac Tel. Co. v. Md./Del. Cable Television Asso.*, 310 Md. 553, 562 (1987) ("public utility services" are limited to those services

⁴ Similarly, the Application for Authorization to Participate in the Solar Program also distinguishes between the applicant subscriber organization and "utilities" and "electric companies."

⁵ This conclusion is strengthened by the fact that only 40% of the energy generated by the solar array will be converted for use by BGE; the majority is to be used privately by the Lippys.

that a utility company provides under "the privileges granted to it by the State."); BCZR 411.1 ("For public utility uses permitted only by special exception in addition to the provisions of Section 502, the following regulations shall apply. . . .The use must be needed for the proper rendition of the public utility's service")

The increased use of solar energy is an important and laudable goal. It is hoped the County Council will promptly address any zoning ambiguities to facilitate this goal and maintain the character of the R.C. 2 zone. Currently, however, as in *People's Counsel for Balt. Cty. v. Surina*, 400 Md. 662, 688 (2007), and *Kowalski v. Lamar*, 25 Md. App. 493, 498 (1975), the only uses in this R.C. 2 zone are those permitted as of right, and those permitted by special exception. "Any use other than those permitted and being carried on as of right or by special exception is prohibited." *Id.* The use proposed by Petitioners currently is not permitted as of right, nor by special exception. The Petition for Special Exception is denied.

ORDER

THEREFORE, FOR THE REASONS STATED ABOVE, IT IS THIS 28th

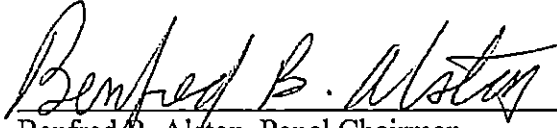
day of April 2017 by the Board of Appeals of Baltimore County

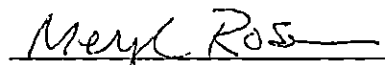
ORDERED that the Petition for Special Hearing to approve the proposed solar panel array field as a permitted accessory use or structure, be and the same is hereby DENIED; and it is further

ORDERED that the Petition for Special Exception to approve the proposed solar panel array field as a "public utility use," be and the same is hereby DENIED.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

BOARD OF APPEALS
OF BALTIMORE COUNTY


Benfred B. Alston, Panel Chairman


Meryl W. Rosen

IN THE MATTER OF:
DONALD AND KATHLEEN LIPPY – LEGAL
OWNERS – PETITIONS FOR SPECIAL
HEARING AND SPECIAL EXCEPTION
FOR THE PROPERTY LOCATED AT
15700 HANOVER PIKE

4th Election District
3rd Councilmanic District

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 16-335-SPHX

* * * * *

CONCURRING/DISSENTING OPINION

First, the undersigned concurs with the majority in its opinion regarding the Petition for Special Hearing for the Solar Array as an Accessory Structure. A use or structure cannot be considered accessory in the absence of a primary use or structure on the same site to which the proposed accessory use or structure must be incidental and subordinate (among other requirements in BCZR §101). The record reflects unanimity among the parties --- the proposed solar array will be the sole, and therefore, primary use/structure on this property.

However, as to the Petition for Special Exception, the undersigned dissents from the majority's decision that the proposed solar array fails to qualify as a "public utility use not permitted by right," pursuant to Baltimore County Zoning Regulation ("BCZR") §1A01.2.C.18.

By way of background, BCZR §1A01.2 governs the RC-2 Zone, in which the property at issue falls. The proposal seeks to establish a solar array, consisting of 6,000 or so solar panels, over the property (6.5 acres). That use will be the primary and sole use for that property. Unquestionably, BCZR §1A01.2B fails to identify the proposed use as one permitted by right within the RC-2 Zone, whether expressly, implicitly or by common sense (e.g. as noted above, because the solar array is the primary and solitary use, it cannot qualify as an accessory use to be permitted by right). As such, Petitioners seek to have the solar array permitted by special

exception as a “public utility.” With that, an exercise in technological taxonomy commenced to figure out how to classify this animal --- a privately-owned and operated energy capture and distribution business that had its own energy customers, but the operation of which required BGE, clearly a public utility, and its transmission lines and meters.

Once again, the parties (and the Board) unanimously agree that the absence of a definition of “public utility” compels the Board to rely upon the definition provided by *Webster’s Third New International Dictionary of the English Language, Unabridged*. See, BCZR §101.1. That version defines “public utility” as a “business organization deemed by law to be vested with public interest usually because of monopoly privileges and so subject to public regulation such as fixing of rates, standards of service, and provision of facilities.”

Without question, Petitioners are not a public utility. It appears that determination is the dispositive factor for the Board’s majority. The undersigned concludes, however, Petitioners need not be a public utility to qualify under BCZR §1A01.2.C.18.

BCZR §1A01.2.C.18 does not end with the word “utility;” rather, BCZR identifies “Public utility uses not permitted as of right.” For this Board member, the phrase “public utility” describes the word “uses,” as opposed to identifying those that may avail itself of special exception relief for such uses. Utilizing this framework, the focus is properly upon the use, as opposed to the identification of the user.

If the County Council intended to limit application to existing public utilities, the phrase “public utility” would be expressed in the possessive, e.g. “public utility’s,” “public utilities’,” or be phrased in manner conveying the same, as in “Uses by a public utility not permitted by right.” In the absence of language, punctuation, or an indication that “public utility” was intended as a term of art to limit the applicability of §1A01.2.C.18 to a public utility, the

undersigned interprets the regulation in a more expansive manner than the majority. This approach also echoes the drive for renewable and alternative energy sources and reflects the advances in the technology permitting commercial production of the same.¹

Moreover, the Board needs to consider how the phrase “not permitted by right” fits into this analysis. Notably, BCZR § 1A01.2.B, permitting uses by right, does not limit the reach of any enumerated use to public utilities. The phrase “public utility,” in fact, does not appear in BCZR § 1A01.2.B. Instead, the regulation identifies certain uses, while customarily associated with public utilities, e.g. “[t]elephone, telegraph, electrical-power or other lines or cables, provided that any such line or cable is underground; underground gas, water or sewer mains or storm drains; or other underground conduits, except interstate or international pipelines,” are not exclusive to public utilities. See BCZR § 1A01.2.B.6.

Even if, arguably, the phrase “public utility” should be read in a more narrow way than the undersigned suggests, the undersigned would still find that the proposed use qualifies for a special exception under BCZR §1A01.2.C.18. The use at issue concerns the production of electricity for distribution is a use, as noted above, historically associated with a “public utility.” The subsequent distribution of the captured energy into the electrical grid require BGE meters and BGE transmission lines. Merely because a private entity originates the capture and distribution does not change the use. BGE, of course, is a public utility.

Because the regulations at issue were written while the Colts still played in Baltimore, questions arise in identifying how and where this proposal, a privately-owned energy capture and distribution operation that requires a public utility’s transmission lines to reach customers,

¹ Particularly, the proposed solar array is intended to be part of the Community Solar Energy Generating Systems Pilot Program. See Public Util Art. §7-306.2, and related COMAR regulations.

fits within the zoning regulations. The County Council recently has attempted to craft legislation that specifically governs solar arrays, conditions, and placement throughout Baltimore County. While those attempts continue, and are encouraged, the absence of more specific regulations is not dispositive.

The criteria for approval of a petition for special exception requires more. BCZR §1A01.2.C also requires that “in each case the hearing authority empowered to hear the petition finds that the use would not be detrimental to the primary agricultural uses in its vicinity.” With that in mind, the undersigned concludes that the presence of a solar array on these 6.5 acres in particular are not detrimental in this manner. First, the immediate adjacent properties primarily used for agriculture are owned by the Lippys and in fact, approximately 2,200 acres of the Lippys’ land have been placed into land preservation programs and easements to preserve their agricultural use. Second, Public Util. Art. § 7-306.2(d)(13) precludes equipment for a community solar energy generating system from being built on contiguous parcels of land unless the equipment is installed only on building rooftops. Because any neighboring system would be required to be limited to rooftops, the ground is preserved for agricultural use. On this point, the undersigned would encourage the County Council, when considering these issues in more specific legislation, to also fully embrace the intent to protect primary agricultural uses within the RC and other zones that prioritize it and to make sure that Baltimore County’s agricultural history and future are preserved.

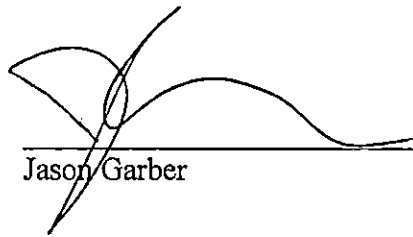
The undersigned further concludes that the proposal satisfies the criteria under BCZR § 502.1 to grant the Petition for a Special Exception. The Board is also required to consider BCZR § 411.1 and find that the location of the use will not seriously impair the use of the neighboring property. On this point, the proposal presents a concern in one identifiable respect --- noise ---

as testified to by Mr. Calao, an adjacent neighbor. While certain impacts may be generally accounted for by being a use permitted by special exception in a RC-2 Zone, the question of noise here is not one where there is sufficient evidence to determine if the noise would have an adverse effect above and beyond those inherently associated with special exception uses.

Mr. Calao testified that the system will be “buzzing like cicadas.” Mr. Donithan, for Earth and Air Technologies, testified that the inverter gives off 60 decibels, but the panels give off “minimal noise.” There is nothing in the record as to what would be audible at the property line separating the subject parcel with Mr. Calao’s. The record is silent as to the distance the 60 decibels would carry and the frequency, regularity, hours, and duration for such sounds. To the undersigned, this is different than other public utility uses as contemplated, including, by way of example, overhead power lines.

For these reasons and to ensure that the Calaos and other neighbors can have the quiet enjoyment of their property, the undersigned, recognizing the limited record on the issue, would condition approval upon dampening the sound so that the noise from the system, whether inverter, panels or anything else, does not exceed 40 decibels within 50 feet of the neighboring houses during the daytime and 30 decibels at night time. It is expected that the screening required to be planted may assist in this regard. If additional measures are needed, however, to preserve the Calaos and other neighbors quiet enjoyment of their respective properties, then Petitioners shall be responsible for such measures. The undersigned would also impose the other conditions ordered by the Administrative Law Judge in the hearing below on this matter and as otherwise required by any County agency or department and otherwise by law.

April 28, 2017
Date


Jason Garber

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Donald and Kathleen Lippy

16-335-SPHX

DATE: April 19, 2017

BOARD/PANEL: Benfred B. Alston, Panel Chairman
Meryl W. Rosen
Jason S. Garber

RECORDED BY: Tammy A. McDiarmid, Legal Secretary

PURPOSE: To deliberate the following:

- 1) Petition for Special Exception pursuant to BCZR § 502, to grant Special Exception relief for a solar panel array field as a "public utility use" under BCZR § 1A01.2.C.18; and
- 2) Petition for Special Hearing pursuant to BCZR § 500.7, if necessary and in the alternative, to approve the proposed solar panel array field as a permitted accessory use or structure to the farm.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

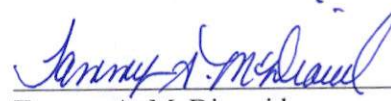
STANDING

- The Board discussed the request for a solar panel array field. The property is located in a R2 zone and the proposal is not allowed as a matter of right. Accordingly a special exception is needed for the use.
- The Board discussed the question of whether or not the solar panel array field is a public utility? Neither the Lippy's or the Company is a public utility, and the price for the utilities will not be regulated by the Public Service Commission. The majority of the Board found that Kowalski v. Lamar is the controlling case. The majority of the Board found to deny the Petition for Special Exception.
- One member dissented finding that although the Lippy's and the Company are not public utilities, the use is. The dissenting member would Grant the Petition for Special Exception, with conditions.
- The Board discussed the Petition for Special Hearing to approve the proposed solar panel array fields as a permitted accessory use or structure to the farm. The Board Members found that the primary use of the property is a solar farm, and accordingly an accessory use cannot be found.
- The Board believes it would be beneficial for all parties if the County Council would enact legislation on this issue.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Majority Board agreed to DENY the Petition for Special Exception, with one member dissenting; and the Board unanimously agreed to DENY the Petition for Special Hearing.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place on the above date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by the Board.

Respectfully Submitted,


Tammy A. McDiarmid



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

March 21, 2017

NOTICE OF DELIBERATION

IN THE MATTER OF: Donald and Kathleen Lippy
15700 Hanover Pike
16-335-SPHX 4th Election District; 3rd Councilmanic District

Re: Petition for Special Exception pursuant to BCZR § 502, to grant Special Exception relief for a solar panel array field as a "public utility use" under BCZR § 1A01.2.C.18; and

Petition for Special Hearing pursuant to BCZR § 500.7, if necessary and in the alternative, to approve the proposed solar panel array field as a permitted accessory use or structure to the farm.

10/18/16 Opinion and Order issued by the Administrative Law Judge wherein the requested Special Hearing relief was DENIED; and the requested Special Exception relief was GRANTED.

This matter having been heard on February 7, 2017 and concluded on March 16, 2017, a public deliberation has been scheduled for the following:

DATE AND TIME: WEDNESDAY, APRIL 19, 2017 at 9:30 a.m.

LOCATION: Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

**NOTE: Closing briefs are due on Wednesday, April 12, 2017 no later than 3:00 p.m.
(Original and three [3] copies)**

NOTE: PUBLIC DELIBERATIONS ARE OPEN WORK SESSIONS WHICH ALLOW THE PUBLIC TO WITNESS THE DECISION-MAKING PROCESS. ATTENDANCE IS NOT REQUIRED AND PARTICIPATION IS NOT ALLOWED. A WRITTEN OPINION AND/OR ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington
Administrator

Notice of Public Deliberation
In the matter of: Donald and Kathleen Lippy
Case No: 16-335-SPHX
March 21, 2017
Page 2

c:	Counsel for Petitioner	: Lawrence E. Schmidt, Esquire
	Petitioner/Legal Owner	: Donald and Kathleen Lippy
	Counsel for Protestants	: Michael R. McCann, Esquire
	Protestants/Appellants	: Hanover Road Association c/o Santo Mirabili

John Lemmerman/RTF Associates, Inc.
Ken Donithan/Earth & Air Technologies, LLC

Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney
Michael Field, County Attorney, Office of Law

IN RE: PETITION FOR SPECIAL HEARING AND
SPECIAL EXCEPTION
(15700 Hanover Pike)

4th Election District
3rd Council District
Donald E. & Kathleen F. Lippy
(Legal Owners)

* BEFORE THE
* BOARD OF APPEALS
* FOR BALTIMORE COUNTY
* Case No.: 2016-0335-SPHX
*



* * * * *
PROTESTANTS' POST-HEARING MEMORANDUM

Protestants, Santo Mirabile, Chris Caloa, and the Hanover Road Association, submit this post-hearing memorandum in support of their opposition to the relief requested by Petitioners.

I. BACKGROUND

A. The Subject Property and Proposed Solar Farm

The subject property is a single parcel, approximately 6.5 acres in size, zoned RC2 (Resource Conservation- Agricultural). The property fronts, in part, on Hanover Pike, which is a County-designated scenic route. Immediately adjacent to and surrounded on two sides of the parcel is property owned by Protestant Chris Calao who has lived there for many years with his family. With the exception of Mr. Calao's property, the subject property is surrounded by land held in permanent agricultural preservation easement.

Petitioners propose to use the property for a solar panel array. Nearly the entirety of the property would be covered by the panels, approximately 6500 of them. In recognition of the impact of the array, Petitioners propose to provide landscaping in a 30-60 foot wide strip around the solar panels. Petitioners filed two petitions: (i) a Petition for Special Exception for approval of a "solar panel array field" as a "public utility use", and (ii) a Petition for Special Hearing to approve the proposed solar array panel as a permitted accessory use or structure to Petitioners' farm.

II. ARGUMENT

A. The Petition For Special Exception Should Be Denied Because Solar Panels Are Allowed As “Accessory Structures” In Other Zones, But Not The RC2 Zone

Importantly, and contrary to the theme of Petitioners’ entire case, there *are* zones in the County’s zoning regulations that expressly allow solar panels. Specially, solar panels are allowed in the RC6, RC7 and RC8 zones, as well as H and H1 overlay districts, as “accessory structures.” See §§ 1A07.8.C.2.f (RC6); 1A08.6.C.2.g (RC7); 1A09.7.C.2.e (RC8); 259.9.A.4 (H and H1 overlay). The fact that solar panel structures are a recognized use in the BCZR and that such structures are allowed in the zones mentioned, but not in the RC2 zone, is determinative of the issue before the Board. For this reason alone, the Petition for Special Exception should be denied.

Petitioners’ identification of the proposed use as a “solar panel *array*” (or even “solar farm”¹) is clever but does not change the analysis. There is no difference, *for purposes of determining the type of use and whether it is permitted*, between “solar panels” (a collection of panels), a “solar panel array” (also, a collection of panels), and a “solar farm” (panels that happen to be located on a farm). Simply because Petitioners is proposing a large number of panels, or is proposing to install them on a farm, does not change the type of use. If this were true, then “convenience stores” would be a different use than a “convenience store,” and a “boatyard farm” would constitute a different use than a “boatyard,” etc. A property owner could create or avoid use restrictions in the zoning regulations by simply proposing *more* of the same use or proposing that use on a farm. The term “solar farm” is a fiction, a misnomer, because solar panels located on a farm have nothing to do with farming *per se*.

¹ The term “solar farm,” which counsel for Petitioners sometimes used to describe the proposed use during the hearing, is not mentioned in the petitions filed by Petitioners.

To this point, it is important that, in the RC6, RC7, RC8 and the H and H1 Overlay Districts, the County Council characterized “solar panels” as a “structure,” which eliminates any contention that the Council was merely addressing small arrays of panels, such as those on a roof of a house. Moreover, by allowing solar panels only when they are “accessory” structures, the Council placed inherent limitations on their size and scope relative to the size and scope of the principle use involved. (See 101.1 (defining “accessory structure” as one “subordinate in area, extent or purpose to the principal use or structure,” etc.)). In doing so, the Council recognized that there may be a broad range in the size of a solar panel array and, more importantly, that there is not a second use category for those arrays that are larger.²

In sum, solar panels are permitted accessory structures in other zones. The fact that such a use is recognized in the Zoning Regulations, and that it is not permitted in the RC2 zone, compels the conclusion that the relief requested by Petitioners must be denied. There is no such thing as a “solar panel array” or “solar farm,” at least not one that is any different in kind from “solar panels.”

Even if we assume that there is a difference between solar panels (*i.e.*, the accessory structures allowed in other zones) and a solar panel array or solar farm, the latter uses are nowhere enumerated in the Zoning Regulations. As Protestants’ expert Chris Jakubiak explained, zoning regulations enumerate the uses that are permitted; if a use not enumerated, then it is not permitted. See BCZR, § 102.1 (“No land shall be used or occupied and no building or structure shall be erected, altered, located or used except in conformity with these regulations”). This does not mean that Petitioners would be denied all reasonable use of its property, as counsel suggested.

² It could be argued that Petitioners’ solar panels are indeed allowed as accessory structures in the RC2 zone by virtue of the fact that section 1A01.2.B9 allows “accessory uses or structures, including, *but not limited to*....” (Emphasis added). Even assuming that were correct, the solar panels proposed by Petitioners are clearly not accessory, for the reasons stated *infra* below.

B. Solar Companies Such As Earth & Air Technologies Are Not “Public Utilities” And Are Not Regulated As Such By The Public Service Commission, Either Generally Or Under The Pilot Program

Petitioners ignore that solar panels are allowed in other zones and instead seeks approval of the solar panels as a “public utility use.” Petitioners presented no evidence supporting that the panels are a “public utility use” other than the testimony of its consultant, Mr. Donithan, from Earth and Air Technologies, who merely stated in conclusory fashion that “this project would be regulated by the Public Service Commission.” Assuming for the moment that Petitioners’ “solar panel array” is a different use than the “solar panel” use identified in the zoning regulations (as discussed above), a more thorough understanding of this issue than was provided by Mr. Donithan is necessary.

“Public Utilities” - Generally

Public utilities are governed by the Public Utility Article of the Annotated Code. A public utility or “public service company” is defined in the Article as:

a common carrier company, *electric company*, gas company, sewage company, telegraph company, telephone company, water company, or any combination of public service companies.

Public Utility Art., § 1-101(x) (emphasis added).

An “electric company” is, in turn, defined as:

a person who *physically transmits or distributes* electricity in the State to a retail electric customer.

1-101(h)(1) (emphasis added).

The Public Service Commission is the state agency that has supervisory and regulatory authority over electric companies and other public service companies. *Id.*, § 2-113(a)(1). The Public Utilities Article and Title 20 of COMAR impose numerous requirements on public service companies regarding rates, standards of service, financial condition, capitalization, and manner of

operation. *Id.*, § 2-113(a)(1); *see also e.g.*, § 5-101 (standards of service); § 5-302(a) (record-keeping requirements), §6-203 (filing of annual reports); COMAR. Importantly, businesses such as Earth and Air Technologies that install solar panels for residential or commercial purposes are *not* regulated under these provisions of the Public Utilities Article and COMAR.

The Community Solar Energy Pilot Program

The Community Solar Pilot Program (the “Pilot Program”) is a program adopted by the Public Service Commission for the purpose of making renewable energy available to low and moderate income consumers.³ The statutory and regulatory scheme for the Pilot Program are set forth in Section 7-306.2 of the Public Utilities Article and in Subtitle 62 of Title 20 of COMAR.

Under the Pilot Program, electric companies are required to establish a plan to administer “community solar energy generating system projects” within their service areas. COMAR 20.62.02.01A, and 20.62.01.03.A.⁴ Electric companies submit their plan for approval to the PSC and, once approved, are responsible for administering the Pilot Program, including establishing the application process for solar companies to participate, developing the tariffs and other terms and conditions of the program, monitoring and reviewing the program to determine the adverse

³ Importantly, the intention of the Program to make use of *existing* solar facilities in rural areas and to encourage new systems in the urban and suburban areas of Maryland. (See PSC Press Release at <http://www.psc.state.md.us/wp-content/uploads/PSC-Advances-Community-Solar.pdf>).

⁴ Section 7-306.2 defines “Community solar energy generating system” as a solar energy system that:

- (i) is connected to the electric distribution grid serving the State;
- (ii) is located in the same electric service territory as its subscribers;
- (iii) is attached to the electric meter of a subscriber or is a separate facility with its own electric meter;
- (iv) credits its generated electricity, or the value of its generated electricity, to the bills of the subscribers to that system through virtual net energy metering;
- (v) has at least two subscribers;
- (vi) does not have subscriptions larger than 200 kilowatts constituting more than 60% of its subscriptions;
- (vii) has a generating capacity that does not exceed 2 megawatts as measured by the alternating current rating of the system's inverter; and
- (viii) may be owned by any person.

and beneficial effects resulting from each solar energy generating system, and maintaining the data and records necessary for PSC to monitor the program. 20.62.02.01.A-D (“Pilot Program Structure”); 20.62.03.03 (“Pilot Program Application Process”); 20.62.04.02 (“Utility Data”); 20.62.04.01 (“CSEGS Study”); 20.62.04.03 (“Subscriber Organization Data”).⁵ Companies such as Earth & Air Technologies that install, own and/or operate the solar energy generating system are called “subscriber organizations.” The retail customers who purchase electricity from the subscriber organization are called “subscribers.” See Public Utility Art., § 7-306.2(5), (6) (defining “subscribers” and “subscribing organization”); see also COMAR 20.62.01.01 (“subscriber” and “subscriber organization” have the meanings stated in Public Utilities, 7-306.2).

A solar company that wishes to participate in the Pilot Program as a subscriber organization must apply to the Public Service Commission and, if approved, must then apply to the electric company providing service in the area (here, BGE). See COMAR 20.62.03.02., 20.62.03.03. Other than submitting the initial application to the PSC and maintaining data about its subscribers, there are no other requirements or direct oversight of subscriber organizations by the PSC. See 20.62.03.02 (“Subscriber Organization Requirements”). As mentioned, the electric company creates and administers the program.

Petitioners and Earth & Air Technologies

The solar panel array described by Mr. Donithan will consist of the panels themselves, a converter, and transmission lines from the converter to the meter owned by BGE. The panels, converter and transmission lines will be owned by Petitioners, but operated and maintained by Earth & Air Technologies.

⁵ Protestants’ Ex. 10 is the “Tariff” that BGE filed for approval with the PSC containing the rates and other details of its Program. (See Protestants’ Ex. 10).

It is abundantly clear that neither Earth & Air Technologies nor Petitioners is an electric company or other public service company and, thus, not a “public utility” regulated by the PSC. As Mr. Donithan admitted at the hearing, his company does not “physically transmit or distribute” electricity to retail electric customers in Maryland. Public Utility Art., §1-101(e). Earth & Air is not a listed utility company on the PSC’s website (Protestants’ Ex. 4) and is not in the PSC’s directory of electricity suppliers (Protestants’ Ex. 2). Earth & Air is simply a private company, an LLC in fact, that installs solar panels and equipment for residential and commercial customers, one among many in Maryland. The company’s principal place of business is Mr. Donithan’s home. (Protestants’ Ex. 1).⁶

With respect to the Pilot Program, it is true that solar companies such as Earth & Air are “subscriber organizations” and, as such, are *participants* in that program. However, it is simply not true that subscriber organizations, by virtue of participating in the Program, become “public utilities” or become regulated by the PSC in any meaningful way. Indeed, section 7-306.2 makes explicitly clear that subscribers and subscriber organizations are *not* electric companies or suppliers under the Pilot Program:

(c) Status of community solar energy generating system. -- A community solar energy generating system, including a subscriber or subscriber organization associated with the community solar energy generating system, is not:

- (1) an electric company;
- (2) an electricity supplier; or
- (3) a generating station.

Public Utility, Art., § 7-306.2(c).⁷

⁶ Construction of the panels, converter and transmission lines on Petitioners’ property will not require a “certificate of public convenience and necessity” from the PSC because the electricity will not be sold on the wholesale market and more than 10% of the electricity will be consumed on site. *See* Public Utility Art., § 7-207.1(a)(1), (2).

⁷ Electric companies such as BGE, and not solar companies such as Earth & Air, are the entities responsible for meeting the Renewable Energy Portfolio Standard (REPS), which is the State mandate requiring such companies to meet a prescribed minimum portion of their electricity sales with renewable energy sources. (*See* Protestants’ Ex. 3).

Finally, it should be noted that Earth & Air, at the time of the hearing, had not yet applied to participate in the Pilot Program or been approved to do so. Moreover, the Pilot Program is only a three year program. Assuming there is any “regulation” of Earth & Air as a “participant” in the program, that regulation will end in three years.

In sum, neither Petitioners nor Earth & Air Technologies is a “public utility” regulated under the Public Article by the PSC. Moreover, they do not become public utilities by virtue of their participation in the Pilot Program. They are merely participants in that program, which is created and administered by BGE.⁸

C. Neither Petitioners Nor Earth & Air Technologies Meets The Definition Of “Public Utility” In Webster’s Dictionary

Webster’s Third New International Dictionary⁹ defines “public utility” as a business organization “deemed by law to be vested with public interest usu. because of monopoly privileges and so subject to public regulation such as fixing of rates, standards of service and provision of facilities.” (Protestants’ Ex. 7). As discussed above, Petitioners and Earth & Air are not “deemed by law” to be vested with the public interest and are not subject to public regulation in any meaningful way. To the extent that resort to the dictionary definition of “public utility” is even

⁸ During the hearing, Protestants sought to introduce a January 24, 2017 letter from Assistant Attorney General David Stamper to Delegate Chris West. The Board indicated that it would accept the letter in evidence if was included with Protestants’ memorandum in the form of a formal Attorney General Opinion. Counsel has since learned that letters from the Attorney General’s Office to members of the General Assembly are *not* formal Attorney General Opinions but rather are written in that Office’s capacity as counsel to the General Assembly. They are publicly available documents, but again not formal Attorney General Opinions. If the Board is nevertheless inclined to accept the letter, it is attached for its reference. If it is not accepted into evidence, then Protestants ask that it be marked for identification.

⁹ As the Board is aware, the zoning regulations provide that “[a]ny word or term not defined in [section 101.1] shall have the ordinarily accepted definition as set forth in the most recent edition of Webster’s Third New International Dictionary of the English Language, Unabridged.” BCZR, §101.1.

necessary, that definition fully supports that neither Petitioners nor Earth & Air Technologies is a public utility.

Further, it cannot reasonably be argued under any definition of “public utility” that the proposed solar panels, themselves, are the “public utility” or “public utility use.” The component parts of the system that will be installed by Earth & Air – specifically, the panels, the converter box, and the transmission line – will be owned by Petitioners and located on their private property. Petitioners will not own the meter to which the transmission lines will be connected. The meter is owned by BGE and located in the public right of way. Neither Petitioners nor Earth & Air will have any interest in or connection with the electricity once it leaves Petitioners’ property.

D. Other Reasons Why The Proposed Use Is Not A “Public Utility Use”

1. Public Utility Uses “Not Permitted As Of Right”

The public utility uses allowed under the special exception in RC2 are those that are “not permitted as of right.” § 1A01.2.C18. The types of uses that are permitted as of right in the RC2 zone include “public schools,” “transit facilities” (defined in §101.1 as facilities “necessary to support public mass transportation operations owned or operated by or on behalf of the Mass Transit Administration”), and “[t]elephone, telegraph, electrical-power or other lines or cables,...underground gas, water or sewer mains or storm drains; or other underground conduits.” This further supports that the public utility uses allowed by special exception in RC2 are either publicly owned or owned and operated by a public utility.

2. Section 411

Section 411 of the Zoning Regulations is entitled “Public Utility Uses.” Subsection 411.1 of that section, entitled “Conditions for use,” provides:

The use must be needed for the proper rendition of the public utility's service, and location thereof shall not seriously impair the use of the neighboring property.

(Emphasis added).

This language makes clear that the “public utility uses” subject to the provisions of section 411 are those undertaken by a public utility. This is borne out by subsequent subsections in 411 which identify public utility uses as including “electric light and power transmission lines.” *Id.* at § 411.3.

E. Even Assuming That The Proposed Use Is A “Public Utility Use” And That Petitioners And Earth & Air Technologies Are “Public Utilities,” Petitioners Failed To Make The Showing Required By Section 411

Section 411 (discussed above) states that, “[f]or public utility uses permitted only by special exception in addition to the provisions of Section 502, the following regulations shall apply.” The regulations that follow section 411 include:

§ 411. Conditions for use.

The use must be needed for the proper rendition of the public utility's service, and the location thereof shall not seriously impair the use of neighboring property.

§411.2. Exterior appearance.

In any residential zone in the Metropolitan District of Baltimore County, public utility buildings and structures, to the extent practicable, shall have an exterior appearance harmonious with the general character of the neighborhood, including architectural treatment, landscaping, screen planting and/or fencing, and plans therefor shall be approved by the Zoning Commissioner.

Assuming that the proposed use is a “public utility use,” since “public utility uses” are allowed in the RC2 zone only by special exception, Petitioners was required to make the showings in sections 411.1 and 411.2. Petitioners, however, made no explicit effort to prove that its solar panels are “needed for the proper rendition of the public utility's service,” that the location of its solar panels “shall not seriously impair the use of the neighboring property,” or that they will “have

an exterior appearance harmonious with the general character of the neighborhood, including architectural treatment, landscaping, screen planting and/or fencing....” For this additional reason, the Petition for Special Exception should be denied.

**F. The ALJ’s Decision In *In re: 11121 Pfeffers, LLC* Is Not Controlling
And, In Any Event, Inapposite**

Petitioners offered into evidence the decision of the Administrative Law Judge in *In Re: 11121 Pfeffers, LLC*. (Petitioners’ Ex. 3). In that decision, the ALJ concluded that the proposed solar panel array constituted a “public utility use” because an industry organization, Solar Energy Industries Association, recognizes “utility scale” solar (in contrast to residential-scale systems) as greater than 1 megawatt and the solar panels in that case were projected to generate 2.2 megawatts. (Petitioners’ Ex. 3, p. 2). Even if the Board were bound by the decision, the ALJ’s reasoning is hardly sound. “Utility scale” is not a term used in the Zoning Regulations and the 1 megawatt threshold is certainly not a technical or definitive threshold. A simple Google search of “utility-scale solar” reveals that the term is not all that common and has been defined in different ways. For example, Wiki-Solar, the self-described “authority on utility-scale power,” states that utility-scale solar are projects with a rated output capacity of 4 megawatts, not 1 megawatt. <http://wiki-solar.org/data/glossary/utility-scale.html>. Another source, GreenTech Media, notes that “the definition has changed considerably over the years” and that its own Google search “reveal[ed] a staggeringly wide range of definitions, from greater than 25 kilowatts to greater than 50 megawatts, a difference of several orders of magnitude.” <http://wiki-solar.org/data/glossary/utility-scale.html>.

In any event, the fact that Petitioners propose solar panels that may be “utility scale” (*i.e.*, they will be more of them in comparison to a rooftop panels on a house) begs the question of

whether the solar panels constitute a “public utility use” under Baltimore County’s zoning regulations. For the reasons discussed above, the solar panels are not a public utility use.

G. Other Reasons Why A Special Exception Should Not Be Granted

1. Section 502.1G

Subsection G of 502.1 provides that a special exception may not be granted if it would be “inconsistent with the purposes of the property’s zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations.” The proposed use in this case would be inconsistent with the legislative findings and purposes of the RC2 zone, namely:

The R.C.2 zoning classification is established ... in order to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses. §1A01.1.B.

[C]ontinued urban intrusion into productive agricultural areas not only destroys the specific area upon which the development occurs but is incompatible with the agricultural use of the surrounding area. §1A01.1A1(d).

Agricultural operations, when conducted in accordance with good and reasonable husbandry practices, shall be afforded preferential treatment over and above all other permitted uses in R.C.2 Zones. §1A01.2.A

2. Schultz v. Pritz

The adverse impacts of the proposed use at this location would be greater than those inherently associated with a solar panel array. *Shultz v. Pritz*, 291 Md. 1 (1981). Although Petitioners own hundreds, if not thousands, of acres adjoining or nearby the subject property, they’ve located the proposed solar panels on a parcel that surrounds the property of Mr. Calao. At the hearing, Mr. Calao spoke compelling about the impact of the solar panels on his use and enjoyment of his property, the viewshed he presently enjoys, and the value of his property. Other witnesses echoed Mr. Calao’s sentiment about the impact of the solar farms on the aesthetics and rural nature of this particular location. Moreover, the subject property is located on a County-

designated scenic route. The County's Master Plan states that special exceptions for properties located on a scenic route should be granted "sparingly."

H. The Proposed Solar Panel Array Is Not An Accessory Use

Petitioners seek, alternatively, a determination that the proposed solar panel array is a permissible accessory use to a farm. Section 101.1 defines "accessory use or structure" as:

A use or structure which: (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principal use or structure served....

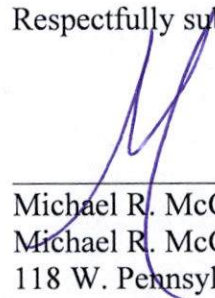
(Emphasis added).

Because this definition is stated in the conjunctive, all of its elements must be met. Here, the evidence does not support at least two of the four elements. There was no evidence supporting that a solar panel array is customarily incident and subordinate to a farm or serves a farm. And the evidence is undisputed that solar panel array is *not* located on the same lot as the farm it allegedly supports, *i.e.*, there is no use on this lot whose purpose the panels serve and to which the panels are subordinate. For this reason, the Petition for Special Hearing should be denied.

III. CONCLUSION

For the reasons stated, Protestants respectfully request that the Board deny the relief requested.

Respectfully submitted,

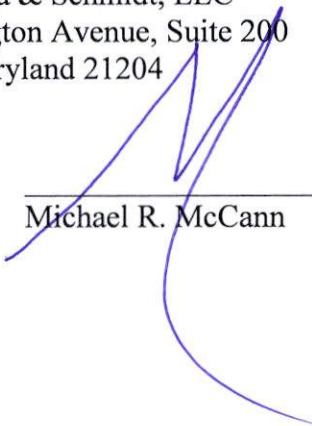


Michael R. McCann
Michael R. McCann, PA
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT, on the 12th day of April, 2017, a copy of the foregoing
Post-Hearing Memorandum was mailed via first-class mail, postage prepaid, to:

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204



Michael R. McCann

RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
AND SPECIAL EXCEPTION	*	
15700 Hanover Pike; W/S Hanover Pike,	*	BOARD OF
200' N of c/line Fringer Road	*	
4 th Election & 3 rd Councilmanic Districts	*	APPEALS FOR
Legal Owner(s): Donald & Kathleen Lippy	*	
Contract Purchaser(s): New Source	*	BALTIMORE COUNTY
Generation, LLC	*	
Petitioner(s)	*	2016-335-SPHX



* * * * *

**POST-HEARING MEMORANDUM OF PEOPLE'S COUNSEL
FOR BALTIMORE COUNTY**

This Memorandum will address the Petition for Special Exception for a solar panel array on a 6 acre R.C. 2 zoned lot. Petitioner claims the use is a public utility. In the alternative, Petitioner filed a Petition for Special Hearing for a solar panel array as an accessory use or structure. By its own admission, Petitioner admits the solar array is the only use on the site. An accessory use that is not subordinate to a principal use on the same site is not permitted. BCZR §101 requires, among other standards, that an accessory use or structure “. . . (c) is located on the same lot as the principal use or structure served;”. For this reason, the Petition for Special Hearing must be denied.

Solar Panel Array as an Accessory Use or Structure

A solar panel use is not listed as a permitted principal use or a special exception principal use in the R.C. 2 zone. Solar panels are referenced as an accessory structures in determining the performance standards in the R.C. 6, R.C. 7 zones enacted in 2000 and the R.C. 8 zone enacted in 2004. (§1A07.8.C. 2.g., §1A08.6.C.2.f., and §1A09.7.C.2.e, respectively):

BCZR § 1A07.8.C. 2.g.

“Accessory structures, including solar panels, antennas and storage sheds are not permitted in the front yard of any principal use. Section 400.1 is not applicable in an R.C.6 Zone; however, the height of accessory structures is subject to the provisions of Section 400.”

BCZR § 1A08.6.C.2.f.

“Accessory structures, including solar panels, antennas and storage sheds, are not permitted in the front yard of any principal use. Section 400.1 is not applicable in an

R.C.7 Zone; however, the height of accessory structures is subject to the provisions of Section 400.”

BCZR § 1A09.7.C.2.e.

“Structures accessory to residential use, excluding agricultural buildings, but including solar panels, antennas and storage sheds, are not permitted in the front yard of any principal use. Section 400.1 is not applicable in an R.C. 8 Zone; however, the height of accessory structures is subject to the provisions of Section 400.”

Accessory uses are not specifically listed in the R.C. and D.R. residential zones, but permitted if the use complies with the definition in BCZR §101 “Accessory Use or Structure” and BCZR §400. Accessory uses are specifically listed in business, office, manufacturing, and apartment building zones (See as examples 201.2.A.5, 205.3.A.3,4, in apartment buildings, §209.3.B. in office buildings, §230.1.A.11 in the B.L. zone and §253.1.F in the M.L. zone). Presumably, accessory uses that comply with BCZR §101 are also permitted in these zones.

Contrary to Petitioner’s assertion that solar panel uses are prohibited in Baltimore County unless approved as a public utility, the County Council obviously considered solar panels as accessory uses in 2000 and 2004 when they were included in the performance standards in the R.C. 6, 7, and 8 zones. An accessory solar panel use or structure that complies with BCZR 101 and is subordinate to the principal use on the site is arguably permitted in all zones. For this reason, we see solar panels installed on roofs of residential homes, or accessory to Mr. Lippy’s chicken house. No one suggests that such accessory uses are in violation of BCZR *per se*.

Comprehensive zoning which permits certain uses in certain zones has long been upheld as a legitimate police power in order to protect the general welfare. A property owner is certainly entitled to a reasonable use of his property, but not every use. Here it is undisputed that Mr. Lippy has at both a principal agricultural use and two density units for a principal residential use, in addition to other uses permitted by right and special exception in the zone.

Public Utilities

The term public utility is not defined in BCZR. The words are used singularly or in conjunction with such terms as “uses” “service centers” “storage yards” “facilities” in BCZR.

The key point under the Webster’s Dictionary definition is that a “public utility” usually has monopoly privileges, and so is subject to comprehensive rate regulation. The concept of “public utility” developed in a few industries where the provision of services essential to the public were deemed best provided with a “natural monopoly” structure. There has been a sea change in this industry. The Maryland Court of Appeals and Court of Special Appeals have recognized this sea change. A full review of Delmarva Power & Light Co. v. Public Service Commission 370 Md. 1 (2002) and Mid-Atlantic Power Supply Association v. Public Service Commission 143 Md. App. 419 (2002) demonstrate this change. The Courts no longer regard power producers as public utilities because the law no longer gives them that status.

There is no specific reference to the state pilot program known as the Community Solar Energy Program in BCZR. The idea for the Program is an individual can erect a solar panel structure and invite users in the area to purchase their electricity from this source. The purpose is to promote renewable energy use but no onus is placed on the individual property owners to establish a solar array or participate. Any government renewable energy requirement falls on BGE’s source of energy. All electricity from the Program is distributed from the BGE grid. The solar companies who construct the solar array under the Program must register with the Public Service Commission for approval of the design. After this initial contact, the PSC’s connection ends, unlike the PSC’s permanent control over BGE’s rates and other matters.

The Petitioner’s witness, Mr. Ken Donithan, who proposes the design and construction, described at length how the panels are installed and operate. But his testimony on how the system operates provided no relevance to a public utility use. For instance, he did not differentiate the mechanics of the solar use here and an accessory solar panel structure such as the array used to generate electricity for Mr. Lippy’s chicken

house, or panels installed on a homeowner's roof. Presumably there is no operational difference. And no one contends an accessory solar panel structure is a public utility use. Moreover, the witness appeared unsure and vague about the rates and billing for the electricity generated on the site. In fact, unlike BGE, the participants in the Program do not appear before the PSC for approval. The public factor does not occur until the electricity enters the BGE grid. And BGE, not the Program participant, determines how to connect from the participant's site. Even Mr. Donithan testified that once the energy goes to the meter on the site "BGE takes it from there."

The witness, whose company is also listed as a party on the Petition, stands to gain financially if the solar array is approved here so he obviously is not an independent witness. Nor is he even a qualified expert hired by a party who at least is subject to ethical and professional standards. While he may have expertise regarding the technical aspects of solar power which allow him to testify in this limited area, his "opinions" on whether the solar array is a public utility are not based on any expertise. In fact, as a party invested in the project, his testimony that the project is a special exception use is not only devoid of a foundation but arguably, falls within the highest level of bias. This is not to cast dispersions on Mr. Donithan, but it affects the credibility of his testimony on the legal interpretation of a public utility use under BCZR, as well as his opinion on the special exception standards under BCZR §502.1.

Petitioners also presented Mr. Lippy and Mr. Batten, a landscape architect, neither of whom addressed or were qualified to address, the threshold question whether the solar array is a public utility. Mr. Lemmerman, a professional land surveyor, has no experience in solar array projects in Baltimore County. The Lippy project is the first and his testimony focused on the site plan and the land features. His conclusion that the use is a public utility lacked the substantiation required for an expert opinion. In People's Counsel v. Beachwood 107 Md. App. 627, 650-651 (1995), the Court discussed the importance of the quality of the expert's testimony and disregarded " . . . naked declarations, unsubstantiated by facts . . ."

We submit that Petitioners, who have the burden of proof in a *de novo* zoning hearing, offered no persuasive testimony to support their position that the solar array is permitted as a public utility special exception use.

The CBA must decide the special exception request by reviewing the language in BCZR in the context of the long-standing principles of statutory construction. The CBA cannot be drawn into an unwarranted expansive and strained interpretation of the public utility use. While it may be tempting to accommodate solar and wind renewable energy sources, their operation and appearance differ extensively from the concept of a public utility when the use was approved in the R.C. 2 zone nearly forty years ago. Rather these new uses, like wireless telecommunications facilities, require separate zoning regulations. A use not specifically permitted is prohibited and the administrative agency must rule accordingly. The application of Kowalski v. Lamar 25 Md. App. 493, 498 (1975) is not sporadic or situational. **"Any use other than those permitted and being carried on as of right or by special exception is prohibited."**

Then it falls on the Baltimore County Council to enact legislation or address the issue in some manner.

It's no secret that the Council has introduced several bills on the solar energy use. (Bills 68-16, 89-16, 9-17, 13-17 and Resolution 101-16). Clearly the Council recognizes it is within its province to address the issue. And as Protestants' Counsel stated, all the Bills 68-16, 89-16 and 9-17 clearly contain the language that a solar facility is NOT a public utility. The most recent Bill, 13-17 contains the same prohibition. See attached. Unfortunately, the Council has not yet agreed on how to implement and regulate the use. But clearly the Council agrees (i) it must address solar array within the context of BCZR and (ii) the use is not a public utility, otherwise there is no need for these bills or it would not be addressing the issue under the bills in the first place. We recognize authority that if the legislative body is aware of an agency decision and does not subsequently act to reverse it, the legislature stands in tacit approval. But here we have the Council both rejecting the use as a public utility and working to implement new law.

The CBA should not be forced into a misguided decision just because the Petitioners here chose to proceed without waiting for Council action. It is public record that four other Petitions for approval of a solar panel array as a public utility were filed but are on hold at the Petitioners' requests, presumably awaiting Council action. If the Petitions here are denied, and the Council passes legislation establishing a solar panel array use, the Petitioners are well within legal authority to file a new Petition. *Res judicata* and *collateral estoppel* do not bar a subsequent action under legislation not enacted at the time the original petition was filed. A denial is not prejudicial to the Petitioners under this scenario.

We believe solar array as a principal use should be addressed by the Council as it has done for other new types of uses such as Wireless Communications Facilities (BCZR § 426), and Satellite Receiving Dishes (BCZR §429). Tattoo establishments (BCZR §4B-102) and Accessory Apartments in Residence Zones (BCZR § 400.4) were subsequently permitted and regulated by Council action after agency decisions determined the use was prohibited because not specifically permitted in BCZR.

Mr. Chris Jikubiak, an urban planner with 25 years of experience in zoning, planning and development, qualified as an expert in zoning. His experience is widespread in Baltimore County and elsewhere in Maryland. His opinion on the zoning regulations was direct and succinct – BCZR §1A01.2.C. states “The following uses, only, may be permitted by special exception in any R.C. 2 zone . . .” (emphasis added). A solar panel array is not listed among the 39 stated uses and subsections. He pointed out the special exception Public utility use was modified by the phrase “not permitted as of right”. BCZR §1A01.2.B.6. permits by right “Telephone, telegraph, electrical-power or other lines or cables, provided that any such line or cable is underground; underground gas, water or sewer mains or storm drains; or other underground conduits, except interstate or international pipelines.” Both sections were established in Bill No. 178-1979 and never modified. Mr. Jikubiak concluded the public utility uses contemplated by special exception are limited to the types permitted by right – primarily gas telephone, electric, cable lines, water and sewer mains, and storm drains. It does not include a solar panel

array. All the permitted uses are underground, except, understandably, interstate pipelines.

Mr. Jikubiak was challenged as an “expert” in solar energy. He did not need to be an expert in solar energy. He testified that nothing in Mr. Donithan’s testimony supported a solar panel array as a public utility as defined in Webster’s Third International Dictionary or as used in BCZR, the threshold issue in this case. We reiterate that knowing how solar energy is generated does not translate to an expertise in public utility zoning law. Mr. Donithan is not an expert in zoning and land use. Mr. Jikubiak’s opinion is based on the appropriate experience, education and expertise to assist the CBA in interpreting and applying BCZR.

Moreover, Mr. Jikubiak’s position is supported by the formal Opinion of the Maryland Attorney General that stated unequivocally a solar panel array use is not a public utility. According to its webpage, the Office of the Attorney General offers tips on choosing an electricity supplier and references the Public Service Commissions. Clearly, in the opinion of the AG’s office, registering with the PSC does not make Mr. Donithan’s company a public utility as he alleges.

Petitioners mentioned a constitutional right to operate a “solar farm” but have not substantiated the bald allegation. For this reason, it is not ripe for the CBA’s consideration. Even if the claim were properly presented, it is axiomatic that a property owner is entitled to a reasonable use but not all uses. Zoning laws establish standards that may directly or indirectly restrict the uses permitted on the site. For instance, the appellate courts have applied this principle in denying variance relief for failure to prove practical difficulty. In Montgomery County v. Rotwein 169 Md. App. 716, 733 (2004), Judge Krauser wrote:

“But Rotwein has not demonstrated that, unless her application is granted it will be ‘impossible [for her] to make reasonable use of the property.’ *Id.* Indeed, she has made more reasonable use of the property, as it houses not only her residence, but, among other things, a swimming pool and a tennis court.”

In the same light, the Rotwein Court at 732-733 rejected economic gain as a right to secure a variance:

“Economic loss alone does not necessarily satisfy the ‘practical difficulties’ test because, as we have previously observed, ‘every person requesting a variance can indicate some economic loss.’ Cromwell, 102 Md. App. at 715 ... Indeed, to grant an application for a variance any time economic loss is asserted, we have warned, ‘ would make a mockery of the zoning program. Cromwell, 102 Md. App. at 715.”

“Financial concerns are not entirely irrelevant, however. The pertinent inquiry with respect to economic loss is whether ‘it is impossible to secure a reasonable return from or to make a reasonable use of such property.’”

While we recognize the petitioner in Rotwein and Cromwell sought variances, the point is zoning laws regarding size and setbacks have the effect of prohibiting a proposed use as well. If no use is possible without a variance, then the property owner likely met the standards for uniqueness and practical difficulty. But the property owner is not entitled to a preferred use requiring a variance when these standards are not met.

Obviously if the special exception standards under BCZR § 502.1 are not met, the use in the context presented is prohibited.

The essence of comprehensive zoning is the division of land by zones with its concomitant permitted and conditional uses. (See BCZR § 100.1.A.1 “For the purpose of promoting the health, security, comfort, convenience, prosperity, orderly development and other aspects of the general welfare of the community, zones are intended to provide broad regulation of the use and manner of use of land, in accordance with comprehensive plans”).

So it may be that a proposed use is prohibited altogether in a zone, is permitted if conditions are met, or must comply with area regulations.

Mr. Lippy has operated a farm on the site continuously for many years. In addition he kept this site out of conservation in order to preserve two density units, which are not contested. No one suggested other permitted and special exception uses are not available. There is no hardship, particularly since solar energy for his agricultural use only already exists without objection, and presumably could be expanded on other areas as accessory to his farm.

Petitioners made no substantial claim of a legal right to a solar panel array. Their indignation that it may be prohibited under current regulations is not a basis to grant the Petitions, and is premature. The Council clearly wants to address the issue, as it should. In the meantime, Kowalski and its progeny is the law in Baltimore County. The CBA cannot ignore the prevailing case law. It cannot legislate directly by enacting a new law or indirectly by approving a use not among the uses permitted by right or special exception. Distorting the language and plain meaning of the statute is not permitted under the rules of statutory construction. **“Courts have duty when construing a statute to restrict meaning of general words, whenever it is found necessary to do so, in order to carry out legislative intention.”** State v. Gharji, 346 Md. 101 (1997). Property owners may not override boundaries or blur distinctions in use delineations in order to impose their own desires. The legislature’s setting of boundaries by regulations and maps, by uses and territories, is the essential function of zoning. See Smith v. Miller, 249 Md. 390 (1968); St. Clair v. Colonial Pipeline Co., 235 Md. 578 (1964); Arundel Supply Co. v. Cason, 265 Md. 371 (1972); Maurer v. Snyder, 199 Md. 551 (1952).

Petitioners have thrust an unorthodox interpretation on the CBA. The CBA should not be forced into an erroneous approval because Mr. Lippy is a respected and dedicated farmer, or because the use presents a reliable resource for his farming operation, or because renewable energy is a noble endeavor and is coming into favor as an alternative energy source. Our office acknowledges these factors have merit – and they should be made by the interested parties to urge legislation from the County Council to address solar energy as a principal use. The citizens of Baltimore County, including landowners, as well as solar energy companies, deserve the attention of the elected officials, as delegated in the Charter, to authorize, regulate and restrict a solar panel array as a principal use. Solar arrays in the R.C. 2 zone, where agriculture is the preferred use, requires particular scrutiny. (See “R.C. 2 (Agricultural) Zone” § 1A01.1.B. “Purposes.”). But what we do not advocate is distorting the zoning regulations or, with all due respect, the CBA “legislating” in a “hurry-up” decision for these Petitioners. There is no evidence of immediacy. As with other uses like tattoo parlors, the County Council may be spurred

to act if the CBA denies the Petition and rules that authorization of a solar farm as a principal use is within the sole province of the County Council. The CBA can then assume its judicial role – interpreting the laws enacted by the legislative branch.

Peter Max Zimmerman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of April 2017, a copy of the foregoing Post-Hearing Memorandum of People's Counsel for Baltimore County was mailed to Michael McCann, 118 West Pennsylvania Avenue, Towson, Maryland 21204 and Lawrence Schmidt, Esquire, 600 Washington Avenue, Suite 200, Towson, Maryland 21204, Attorney for Petitioner(s).

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel for Baltimore County

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2017, Legislative Day No. 6

Bill No. 13-17

Mr. Wade Kach, Councilman

By the County Council, March 20, 2017

A BILL
ENTITLED

AN ACT concerning

Solar Facilities

FOR the purpose of permitting a Solar Facility to be located in certain zones of the County by special exception; defining terms; providing for the requirements for a facility; providing for a required security; providing for the maintenance, abandonment, and removal of a facility; authorizing the Code Official to enforce the provisions of this Act; providing exceptions; providing for the application of the Act; and generally relating to Solar Facilities.

BY adding
Article 4E – Solar Facilities
Sections 4E-101 to 4E-107
Baltimore County Zoning Regulations, as amended

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
Strike-out indicates matter stricken from bill.
Underlining indicates amendments to bill.

BY repealing and re-enacting, with amendments
Article 5 – Administration and Enforcement
Section 502.1.I.
Baltimore County Zoning Regulations, as amended

WHEREAS, solar energy is recognized as an abundant, renewable, and environmentally sustainable source of electricity generation that will lead to greater local grid resiliency and security, as well as produce clean, renewable energy and reduce air and water pollution caused by the burning of traditional fossil fuels, and will thereby reduce greenhouse gases that cause climate change; and

WHEREAS, Baltimore County law does not currently regulate solar facilities or any form of commercial enterprise that places solar energy systems or solar collector panels on a parcel of land for the purpose of generating photovoltaic power; and

WHEREAS, the Baltimore County Master Plan 2020 recognizes that the rural portion of the County provides high quality drinking water, agricultural products, timber, scenic open space, wildlife habitat, fisheries, recreation, water sports, and cultural and historic resources; and

WHEREAS, Baltimore County's Rural Land Management Areas are designed to protect resources and rural economies while permitting limited development; and

WHEREAS, the benefits of solar energy production and location must be balanced with the potential impact of solar energy-producing facilities upon the County's land use policies, particularly in resource conservation zones, as well as in business and manufacturing zones; and

WHEREAS, the County Council believes that Solar Facilities should be permitted in some parts of the County's rural and commercial areas so long as sufficient safeguards are provided to protect the County's communities and its agricultural land, forests, waterways and other natural resources; now, therefore

1 SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE
2 COUNTY, MARYLAND, that the Baltimore County Zoning Regulations read as follows:

3
4 ARTICLE 4E
5 SOLAR FACILITIES

6 §4E-101. DEFINITION.

7 (A) AS USED IN THIS ARTICLE, THE FOLLOWING TERMS HAVE THE
8 MEANINGS INDICATED.

9 (B) "SOLAR FACILITY" MEANS A FACILITY THAT INCLUDES A SERIES OF
10 ONE OR MORE SOLAR COLLECTOR PANELS OR SOLAR ENERGY SYSTEMS THAT
11 ARE PLACED IN AN AREA ON A TRACT OF LAND FOR THE PURPOSE OF
12 GENERATING PHOTOVOLTAIC POWER FOR COMMERCIAL USE. THE TERM
13 INCLUDES A SOLAR POWER PLANT OR SOLAR PHOTOVOLTAIC FARM.
14 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A SOLAR FACILITY MAY
15 NOT BE CONSIDERED A PUBLIC UTILITY UNDER THE BALTIMORE COUNTY CODE
16 OR THE BALTIMORE COUNTY ZONING REGULATIONS.

17 (C) "COMMERCIAL USE" MEANS THE TRANSFER TO THE ELECTRICAL
18 POWER GRID OF ENERGY PRODUCED BY A SOLAR FACILITY FOR ENERGY CREDITS
19 TO CONSUMERS.

20
21 §4E-102. LOCATION OF SOLAR FACILITIES.

22 A SOLAR FACILITY IS PERMITTED ONLY BY SPECIAL EXCEPTION IN THE

1 R.C.2, R.C.3, R.C.4, R.C.5, R.C.6, B.L., B.M., M.R., M.L.R., AND M.H. ZONES OF THE
2 COUNTY.

3
4 §4E-103. EXCEPTION.

5 THIS ARTICLE DOES NOT APPLY TO:

- 6 1. A SOLAR FACILITY LOCATED IN A YARD AREA, BUILDING, OR
7 STRUCTURE THAT IS ACCESSORY TO A PRINCIPAL RESIDENTIAL,
8 AGRICULTURAL, COMMERCIAL OR INSTITUTIONAL USE; OR
9 2. A SOLAR FACILITY ON FEDERAL, STATE OR LOCAL
10 GOVERNMENT-OWNED OR LEASED LAND THAT PRODUCES ENERGY FOR
11 GOVERNMENT USE.

12
13 §4E-104. REQUIREMENTS.

14 A. A SOLAR FACILITY LOCATED IN AN R.C. ZONE IS SUBJECT TO THE
15 FOLLOWING REQUIREMENTS:

16 1. ON LAND ZONED R.C.2:

17 A. THE MAXIMUM SIZE OF A SOLAR FACILITY IS 25% OF THE TOTAL
18 PARCEL ON WHICH A SOLAR FACILITY IS PROPOSED TO BE LOCATED; AND

19 B. A PROPOSED SOLAR FACILITY MAY PRODUCE UP TO 200% OF
20 THE AVERAGE YEARLY ENERGY REQUIRED FOR THE LAST THREE YEARS FOR A
21 COMMERCIAL AGRICULTURAL OPERATION.

22 2. ON LAND ZONED R.C.3, R.C.4, R.C.5, AND R.C.6:

23 A. A PROPOSED SOLAR FACILITY SHALL COUNT AS ONE EASEMENT

1 AND BE PART OF THE MARYLAND COMMUNITY SOLAR PROGRAM AND PRODUCE
2 NO MORE THAN 2 MW; AND

3 B. BEFORE A PROPOSED SOLAR FACILITY CAN BE APPROVED, EACH
4 RESIDENTIALLY USED PROPERTY WITHIN 1,000 FEET AND WITH A VIEW OF THE
5 PROPOSED SOLAR FACILITY SHALL GIVE WRITTEN APPROVAL.

6 3. THE PORTION OF LAND ON WHICH A SOLAR FACILITY IS PROPOSED
7 SHALL NOT BE ENCUMBERED BY AN AGRICULTURAL PRESERVATION EASEMENT
8 OR AN ENVIRONMENTAL PRESERVATION EASEMENT.

9 4. THE LAND ON WHICH A SOLAR FACILITY IS PROPOSED SHALL NOT BE
10 LOCATED IN A BALTIMORE COUNTY HISTORIC DISTRICT OR ON A PROPERTY
11 THAT IS LISTED ON THE BALTIMORE COUNTY FINAL LANDMARKS LIST.

12 5. THE PORTION OF LAND ON WHICH A SOLAR FACILITY IS PROPOSED
13 SHALL NOT BE LOCATED IN A FOREST CONSERVATION EASEMENT, A FOREST AS
14 DEFINED IN SECTION 33-6-101(O) OF THE COUNTY CODE, OR A DESIGNATED
15 CONSERVANCY AREA IN AN R.C.4 OR R.C.6 ZONE.

16 6. THE LAND ON WHICH A SOLAR FACILITY IS PROPOSED SHALL NOT BE
17 LOCATED IN THE DESIGNATED COUNTY RURAL LEGACY AREAS.

18 7. ON LAND ZONED R.C.2 AND R.C.6, THE PORTION OF LAND ON WHICH A
19 SOLAR FACILITY IS PROPOSED SHALL NOT BE PRIME AND PRODUCTIVE
20 AGRICULTURAL LAND, AS CONTAINED IN THE BALTIMORE COUNTY SOIL
21 SURVEY.

22 8. ABOVEGROUND COMPONENTS OF THE SOLAR FACILITY, INCLUDING
23 SOLAR COLLECTOR PANELS, INVERTERS, AND SIMILAR EQUIPMENT, MUST BE

1 SET BACK A MINIMUM OF 50 FEET FROM THE TRACT BOUNDARY, SUBJECT TO
2 THE FOLLOWING:

3 A. THIS SETBACK DOES NOT APPLY TO THE INSTALLATION OF THE
4 ASSOCIATED LANDSCAPING, SECURITY FENCING, WIRING, OR POWER LINES;
5 AND

6 B. THE ADMINISTRATIVE LAW JUDGE, OR BOARD OF APPEALS ON
7 APPEAL, MAY INCREASE THE SETBACK BASED ON THE IMPACT OF THE
8 STRUCTURES ON ADJACENT OR SURROUNDING RESIDENTIALLY USED
9 PROPERTIES, AND MAY DECREASE THE SETBACK IF LOCATED NEAR A FOREST
10 OR OTHER SUFFICIENT BUFFER.

11 9. A STRUCTURE SHALL NOT EXCEED 16 FEET IN HEIGHT.

12 10. A LANDSCAPING BUFFER SHALL BE PROVIDED AROUND THE
13 PERIMETER OF ANY PORTION OF A SOLAR FACILITY THAT IS VISABLE FROM AN
14 ADJACENT RESIDENTIALLY USED PROPERTY OR A PUBLIC STREET. SCREENING
15 OF STATE AND LOCAL SCENIC ROUTES AND SCENIC VIEWS IS REQUIRED IN
16 ACCORDANCE WITH THE BALTIMORE COUNTY LANDSCAPE MANUAL.

17 11. SECURITY FENCING SHALL BE PROVIDED BETWEEN THE
18 LANDSCAPING BUFFER AND THE SOLAR FACILITY.

19 12. A SOLAR COLLECTOR PANEL OR COMBINATION OF SOLAR
20 COLLECTOR PANELS SHALL BE LANDSCAPED TO MINIMIZE THE GLARE OR
21 REFLECTION ONTO ADJACENT PROPERTIES AND ADJACENT ROADWAYS, AND TO
22 NOT INTERFERE WITH TRAFFIC OR CREATE A SAFETY HAZARD.

23 13. A PETITIONER SHALL COMPLY WITH THE PLAN REQUIREMENTS OF

1 SECTION 33-3-108 OF THE COUNTY CODE.

2 14. AT LEAST 60 DAYS PRIOR TO THE PUBLIC HEARING ON THE SPECIAL
3 EXCEPTION, THE PETITIONER SHALL SEND NOTICE VIA CERTIFIED MAIL, RETURN
4 RECEIPT REQUESTED, TO ADJOINING PROPERTY OWNERS AND COMMUNITY
5 ASSOCIATIONS OF THE ADDRESS OF THE PROPERTY UNDER PETITION OR, IF NOT
6 AVAILABLE, A DESCRIPTION OF THE PROPERTY, THE ACTION REQUESTED BY
7 THE PETITION, AND THE DATE, TIME, AND PLACE OF THE PUBLIC HEARING.

8 15. IN GRANTING A SPECIAL EXCEPTION, THE ADMINISTRATIVE LAW
9 JUDGE, OR BOARD OF APPEALS ON APPEAL, MAY IMPOSE CONDITIONS OR
10 RESTRICTIONS ON THE SOLAR FACILITY USE AS NECESSARY TO PROTECT THE
11 ENVIRONMENT AND SCENIC VIEWS, AND TO LESSEN THE POTENTIAL IMPACT OF
12 THE FACILITY ON THE HEALTH, SAFETY, AND GENERAL WELFARE OF
13 SURROUNDING RESIDENTIALLY USED PROPERTIES AND COMMUNITIES.

14 B. THE REQUIREMENTS OF SUBPARAGRAPHS A.8, A.9, A.10, A.11, AND A.12. OF
15 THIS SECTION SHALL APPLY TO A SOLAR FACILITY LOCATED IN A BUSINESS OR
16 MANUFACTURING ZONE.

17

18 § 4E-105. SECURITY BOND.

19 A. AN APPLICANT FOR A BUILDING PERMIT FOR A SOLAR FACILITY SHALL
20 PROVIDE A SECURITY BOND IN THE FORM AND AMOUNT DETERMINED BY THE
21 COUNTY ADMINISTRATIVE OFFICER.

22 B. THE CODE OFFICIAL MAY USE THE BOND TO PROCURE THE REPAIR OF ANY
23 UNSAFE OR HAZARDOUS CONDITIONS UNDER SECTION 4E-106 OR REMOVAL OF A

1 SOLAR FACILITY UNDER SECTION 4E-107, IN ACCORDANCE WITH SECTION 3-6-402
2 OF THE COUNTY CODE.

3

4 §4E-106. MAINTENANCE.

5 A. ALL PARTIES HAVING A LEASE OR OWNERSHIP INTEREST IN A SOLAR
6 FACILITY ARE RESPONSIBLE FOR THE MAINTENANCE OF THE FACILITY.

7 B. MAINTENANCE SHALL INCLUDE PAINTING, STRUCTURAL REPAIRS,
8 LANDSCAPE BUFFERS AND VEGETATION UNDER AND AROUND SOLAR PANEL
9 STRUCTURES, AND INTEGRITY OF SECURITY MEASURES. ACCESS TO THE
10 FACILITY SHALL BE MAINTAINED IN A MANNER ACCEPTABLE TO THE FIRE
11 DEPARTMENT. THE OWNER, OPERATOR, OR LESSEE ARE RESPONSIBLE FOR THE
12 COST OF MAINTAINING THE FACILITY AND ANY ACCESS ROADS.

13 C. A LAND MAINTENANCE PLAN SHALL BE PROVIDED BY AN APPLICANT FOR A
14 BUILDING PERMIT OR PROPERTY OWNER USING BEST LONG-TERM SITE
15 MANAGEMENT PRACTICES, AND SHALL BE IMPLEMENTED UPON ACCEPTANCE.

16 D. THE TRACT ON WHICH A SOLAR FACILITY IS LOCATED MAY BE USED FOR
17 ACCESSORY AGRICULTURAL PURPOSES, INCLUDING GRAZING OF LIVESTOCK,
18 APICULTURE, AND SIMILAR USES.

19 E. THE PROVISIONS ON THIS SECTION SHALL BE ENFORCED IN ACCORDANCE
20 WITH ARTICLE 3, TITLE 6 OF THE COUNTY CODE.

21

22 §4E-107. ABANDONMENT; REMOVAL.

23 A. A SOLAR FACILITY THAT HAS REACHED THE END OF ITS USEFUL LIFE OR HAS

1 BEEN ABANDONED SHALL BE REMOVED. THE PROPERTY OWNER OR OPERATOR
2 OF THE FACILITY SHALL PHYSICALLY REMOVE THE INSTALLATION NO MORE
3 THAN 150 DAYS AFTER THE DATE OF DISCONTINUED OPERATIONS. THE OWNER
4 OR OPERATOR SHALL NOTIFY THE COUNTY BY CERTIFIED MAIL OF THE
5 PROPOSED DATE OF DISCONTINUED OPERATIONS AND PLANS FOR REMOVAL.

6 B. REMOVAL SHALL CONSIST OF THE:

7 1. PHYSICAL REMOVAL OF ALL SOLAR ENERGY SYSTEMS, STRUCTURES,
8 EQUIPMENT, SECURITY BARRIERS AND TRANSMISSION LINES FROM THE SITE;
9 2. DISPOSAL OF ALL SOLID AND HAZARDOUS WASTE IN ACCORDANCE
10 WITH LOCAL, STATE, AND FEDERAL WASTE DISPOSAL REGULATIONS; AND
11 3. STABILIZATION OR RE-VEGETATION OF THE SITE AS NECESSARY TO
12 MINIMIZE EROSION.

13 C. IF THE OWNER OR OPERATOR FAIL TO REMOVE THE FACILITY WITHIN 150
14 DAYS OF ABANDONMENT, THE COUNTY RETAINS THE RIGHT TO ENTER AND
15 REMOVE THE FACILITY. AS A CONDITION OF SPECIAL EXCEPTION APPROVAL,
16 THE PETITIONER AND LANDOWNER AGREE TO ALLOW ENTRY TO REMOVE AN
17 ABANDONED FACILITY.

18 D. THE CODE OFFICIAL MAY ISSUE A CITATION TO THE OWNER OR OPERATOR
19 FOR REMOVAL OF A SOLAR FACILITY IF:

20 1. THE CODE OFFICIAL DETERMINES THAT THE SOLAR FACILITY HAS NOT
21 BEEN IN ACTUAL AND CONTINUOUS USE FOR 12 CONSECUTIVE MONTHS;
22 2. THE OWNER OR OPERATOR FAILED TO CORRECT AN UNSAFE OR
23 HAZARDOUS CONDITION OR FAILED TO MAINTAIN THE SOLAR FACILITY UNDER

1 SECTION 4E-106 WITHIN THE TIME PRESCRIBED IN A CORRECTION NOTICE
2 ISSUED BY THE CODE OFFICIAL; OR

3 3. THE OWNER OR OPERATOR HAS FAILED TO REMOVE THE SOLAR
4 FACILITY IN ACCORDANCE WITH PARAGRAPH C.

5 §502.1. Conditions Determining Granting of Special Exception.

6 Before any special exception may be granted, it must appear that the use for which the special
7 exception is requested will not:

8 I. Be detrimental to the environment and natural resources of the site and vicinity including
9 forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5, or R.C.7 Zone,
10 AND FOR CONSIDERATION OF A SOLAR FACILITY USE UNDER ARTICLE 4E, THE
11 INCLUSION OF THE R.C.3 AND R.C.6 ZONE.

12
13
14 SECTION 2. AND BE IT FURTHER ENACTED, that the Maryland General Assembly
15 is urged to consider legislation to authorize Baltimore County to exempt solar facility equipment
16 located as an accessory use on buildings or parking facilities from personal property taxation.

17
18 SECTION 3. AND BE IT FURTHER ENACTED, that the Departments of Planning and
19 Environmental Protection and Sustainability, with participation of the Baltimore County Farm
20 Bureau, the solar industry, and the Sierra Club's Greater Baltimore Group, shall by July 1, 2018
21 submit recommendations regarding changes to current laws, incentives for solar development
22 under transmission lines before croplable farmland, an allocation regarding a percentage of the
23 solar energy generated on each large-scale solar project to go to community solar use for the benefit

1 of low income residents, and an examination of the economic and environmental best practices
2 from other states as to balancing agricultural land use with solar facilities.

3

4 SECTION 4. AND BE IT FURTHER ENACTED, that this Act, having been passed by
5 the affirmative vote of five members of the County Council, shall take effect on _____,
6 2017 and shall apply retroactively to any zoning petition filed after October 18, 2016, except that
7 the requirements of subparagraphs A.1, A.2, A.3, A.6, A.8, A.9, A.10, A.11, A.12, and A.13 of
8 Section 4E-104 shall apply retroactively to any zoning petition filed after July 1, 2016.



**RE: PETITION FOR SPECIAL
HEARING AND SPECIAL EXCEPTION**

Donald E. Lippy & Kathleen F. Lippy
New Source Generation LLC
Petitioners

15700 Hanover Pike

4th Election District
3rd Councilmanic District

* BEFORE THE BOARD
* OF APPEALS
* OF
* BALTIMORE COUNTY
* **Case No.: 16-335-SPHX**

* * * * *

WRITTEN MEMORANDUM IN LIEU OF CLOSING ARGUMENT

Petitioners, Donald E. Lippy, Kathleen F. Lippy and New Source Generation LLC (hereinafter “**Petitioner**” or “**Property Owner**”), by and through their attorneys, Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC, submit this Written Memorandum in Lieu of Closing Argument and respectfully state:

I. STATEMENT OF THE CASE

This matter comes before the Board of Appeals (hereinafter “Board”) on Petitions for Special Exception and Special Hearing for the property located at 15700 Hanover Pike/Md. Route 30 (the “**Property**”) in northwestern Baltimore County. The Petitions were filed by Donald E. Lippy and Kathleen F. Lippy, Property owners and New Source Generation, LLC, an entity engaged in the business of operating solar energy facilities. New Source Generation, LLC is an entity created by Mr. & Mrs. Lippy to own/operate the use proposed in this matter. The Petition for Special Exception is filed pursuant to Baltimore County Zoning Regulations (hereinafter “BCZR”) § 1A01.2.C.18, to permit a public utility use in the RC 2 zone. Special Hearing relief is filed in the alternative to the special exception, to allow a proposed solar panel array field as a permitted accessory use or structure to a farm. The Petition for Special hearing is

filed pursuant to BCZR § 500.7, which allows the Board to render interpretations which relate to provisions of the BCZR for properties in Baltimore County. A petition for special hearing has been likened to a declaratory judgment by the appellate courts of this State. *Antwerpen v. Baltimore County*, 163 Md. App. 194, 209 (2005).

This matter was previously considered by the Office of Administrative Hearings of Baltimore County. By written Opinion and Order dated October 18, 2016, Administrative Law Judge (“ALJ”) John E. Beverungen granted the Petition for Special Exception. Further, he denied the Special Hearing as unnecessary. An appeal of the ALJ’s decision to the Board was filed by Hanover Road Community Association and Santo Mirabili. The public hearing before the Board consumed two non-consecutive days, February 7, 2017 and March 16, 2017. The relevant testimony and evidence will be recounted as appropriate herein. In lieu of oral closing argument, this written memorandum is submitted to the Board to summarize the Petitioners’ arguments.

II. STATEMENT OF FACTS

The collective evidence offered in this case established the following. The Property encompasses approximately 6.5 acres of RC 2 zoned land. The Property is an unimproved irregularly shaped parcel near the intersection of Hanover Pike and Fringer Road, in northwestern Baltimore County, not far from the Carroll County line. Hanover Pike is a major highway which extends from Baltimore County into Carroll County and is the main thoroughfare in this part of the County. The portion of Hanover Pike adjacent to the Property is classified as a scenic byway under the Baltimore County Master Plan 2020.¹ Although zoned with a resource conservation classification (RC 2, agricultural), the Property is in a locale which features

¹ The classification of Hanover Pike as a scenic byway triggers considerations contained in the Comprehensive Manual of Development Policies (“CMDP”) and the Baltimore County Landscape Manual. These considerations were addressed by the Petitioners on the site plan and landscape plan submitted at the hearing.

somewhat diverse land uses. Given the character of Hanover Pike as the main thoroughfare in the area, there are a number of dwellings on relatively small lots immediately across from the Property. (See Petitioner's Ex. 4 A-C). There are also businesses up and down (north and south) along Hanover Pike. The Carroll County/Baltimore County boundary and the town of Hampstead are a short distance away.

As reflected by the zoning of the Property and notwithstanding the diversity of land uses on Hanover Pike, the primary land uses in the immediate vicinity are agricultural (farming) in character. The property owners (Mr. & Mrs. Lippy) are part of a family which conducts one of the largest (if not the largest) farming operations in the central Maryland area. As was indicated at the hearing, the Lippy family (either as individual owners directly or through the Lippy Brothers family consortium) own and/or farm nearly 8,500 acres of land in this area of Baltimore County and in Carroll County immediately to the west. This farming family owns nearly 2,400 acres and leases nearly 6,000 additional acres which they farm. Approximately 2,200 acres (Petitioner's Ex. 5) of the Lippy family holdings are in land preservation programs/easements. The Lippys are crop farmers, growing corn, hay, soy beans, string beans, wheat, barley, etc.

It is undisputed that the Lippy brothers are respected stewards of the land. As noted above, they have placed a large majority of their lands in preservation and are dedicated to preserving the agricultural industry of Baltimore County. It is ironic that the Protestants who oppose the Petitioners (purportedly wanting to "protect agriculture") would oppose this farming family and a proposal which will assist them in staying in the "farming business" for the foreseeable future.

Although the Lippy family owns and farms a number of properties, the subject property is a separate "lot of record" (as defined in BCZR § 101.1). As noted above, it is unimproved and

currently is actively farmed. Unlike many of the other Lippy properties, the subject lot is not encumbered by a conservation easement and thus (from that perspective) can be utilized for the proposed purpose.²

The Lippys have contracted with Earth and Air Technologies, LLC (hereinafter “Earth & Air”) to install a “solar farm” on the subject property.³ Earth & Air is the designer/developer/installer of the proposed solar farm. After installation, the solar farm will be owned by the Petitioners. Although the Lippys presently have solar panels on many of their farm buildings to provide power to the specific properties and/or buildings on which those panels are located, the proposal here is for a solar farm that will function as a public utility.

The solar farm will actually be comprised of nearly 6,000 solar arrays (commonly referred to as “solar panels”) which are glass encased structures (see Petitioner’s Ex. 8A-B). They are ground mounted and are approximately three feet by six feet in dimension. The arrays track the sun to capture solar energy. At their maximum height while tracking the sun, they reach approximately 6-7 feet from the ground. As explained by Ken Donithan (a principle of Earth & Air, the company which will maintain the facility), the solar farm will produce energy that will tie into the public grid (operated and maintained by BGE) and will produce power that will be used both by the Lippys and others. It was indicated that approximately 60% of the power

² As Mr. Lippy testified to at the hearing on this matter, lands in the State’s preservation program cannot be used for the proposed use as participation in the program imposes significant restrictions on the property. However, because it is not so encumbered, the subject property could be subdivided into 2 building lots.

³ The term “solar farm” is a phrase which has entered the nomenclature as descriptive of these types of operations. A series of panels/arrays are “planted” (i.e. erected) in a field to capture energy from the sun to convert the same into energy/electricity. The operation is scientifically known as a solar photovoltaic system, but will be referred to herein by its more common name, as a “solar farm.”

generated will be used by the properties owned and farmed by the Lippys as described herein above; and that the remaining power will be used by homes (approximately 100 in number) and/or businesses in the area.

As shown in a series of exhibits presented at the hearing, the solar farm will be surrounded by a fenced and landscaped buffer. A landscape plan has been approved by the County's Landscape Architect, James Hermann (Petitioner's Ex. 7A & 7B). The landscape plan was designed with the purpose of buffering the solar farm from surrounding properties and to meet the provisions of County law regarding development on a scenic byway. This will be an unmanned facility. There is a single equipment structure proposed on the Property (an inverter) that will contain the equipment required to convert the energy into electricity. Through an underground transmission line, the power obtained will then be directed into the public transmission lines that abut Hanover Pike, which are owned by BGE.

Mr. Donithan explained, in detail, how the process works from a scientific standpoint. The sun's energy is absorbed by the arrays which then, through underground wires, transmit the energy captured to the inverter. There, the energy is converted from Direct Current ("DC") to Alternating Current ("AC"), which is the electric current which powers our homes, businesses, etc. This AC current is then transmitted to a meter (also via underground wires) and then onto the electric transmission wires maintained by BGE, which run up and down Md. Route 30 (Hanover Pike). Those transmission wires comprise the public grid which provides electricity to the homes and businesses in this area.

The solar farm will cause no effective impact to the surrounding locale. The panels do not need maintenance, they do not generate noise or odors, they cause no environmental impact, they produce no traffic, they cast no shadow or glare, etc. As importantly, they will be virtually

invisible to the surrounding locale given the extensive landscape plan (fencing and planting) that has been reviewed and approved by Baltimore County. (Petitioner's Ex. 7A-C).

III. THE PARTIES

The Appeal filed in this case was instituted by the Hanover Road Community Association and Santo Mirabili. There are no other Appellants. Based upon the record presented, neither of these Appellants have standing to participate in the case and/or institute the appeal. No representative from Hanover Road Community Association testified. There were no "Board Rule 8" documents presented. There is no evidence establishing the boundaries of the Hanover Road Community Association and whether this property falls within that area. As to Mr. Mirabili, he lives in Randallstown which is many miles from the subject property. His testimony belied credibility. Although he owns unimproved property closer to the Property, it is 2.2 miles away. Under the recently published opinion of the Court of Special Appeals in *Valleys Planning Council v. St. Paul's* (No. 2654, September Term, 2014) these parties have no standing. People's Counsel did not appeal and is present only because it has piggybacked on a flawed appeal.⁴

IV. ARGUMENT

A. The Proposed Solar Farm is a public utility.

The first task for the Board in this matter is to determine how to classify this solar farm use under the BCZR and set out how it is regulated. That is, is this proposal a use permitted by right in the RC 2 zone, prohibited in the zone, or permitted by special exception? Obviously, although the sun has provided energy to planet Earth since the Creation, the capture and use of solar energy by individuals (as opposed to large scale monopoly utility companies and

⁴ A copy of the Court's decision in *Valleys Planning Council v. St. Paul's* (No. 2654, September Term, 2014) is attached hereto as Appendix A.

governments) is a more recent development. It has only been over the past five years or so, that the appearance of solar farms has become common place in Maryland. Just as cell phone towers caused unwarranted fear in communities a generation ago, solar farms are one of the latest developments in the evolution of technology. Quite possibly, in twenty years hence, the presence of solar arrays on buildings and throughout properties will become as common as the current presence of cell towers/antennae. Certainly, this is the hope of many, who desire that the United States utilize renewable energy (solar included) and lessen its reliance on non-renewable energy produced by fossil fuels and the carbon footprint and other associated adverse effects caused by the same.

As is often the case with new land uses, Baltimore County has been “behind the curve” in amending its zoning regulations to specifically identify this land use as a Solar Farm. Indeed, the term “solar farm” is nowhere found in the BCZR. Since it is not listed, this omission will (no doubt) lead to the assertion by the Protestants that the use is not allowed. The Protestants will no doubt cite to Kowalski v. Lamar 25 Md. App. 493 (1975) and its progeny for the proposition that the BCZR are written in the inclusive and thus any use allowed in the zone must be specifically identified as permitted therein. Indeed, as stated in BCZR § 1A01.2.A, “the following uses *only* are permitted . . . in the RC 2 zone.” (emphasis added). But the absence of the term “solar farm” in the RC 2 regulations does not equate to a conclusion that the regulations do not govern solar farms and that the use is not permitted. As will be explained hereinafter, the County currently identifies and regulates Solar Farms as a “public utility use”.

As a relevant aside, the undersigned recalls his tenure as Zoning Commissioner for Baltimore County when the first tattoo parlors came to the County. Prior to that time, tattoos were the sole province of soldiers and sailors deployed overseas and were typically obtained

during periods of liberty and shore leave; no doubt fueled by the consumption of alcohol. But, as the Board can take judicial notice, tattoos have become “main stream” and perhaps even a member of the Board’s panel deciding this case has one. When tattoo parlors first were proposed in Baltimore County, the County’s then zoning authorities (including the undersigned) recognized that they were not criminal or illegal behavior. Thus, a blanket prohibition of the use (through a claim that “tattoo parlors” were not specifically identified in the BCZR and thus no where allowed) was inappropriate.⁵

An examination of land uses specifically listed in the BCZR was undertaken to determine how tattoo parlors were to be regulated. Were they considered to be “beauty shops”; a use that is specifically identified and permitted in the BL zone? (BCZR § 230.1.A.9). Clearly, at least in the eyes of some; tattoo parlors (like beauty shops) are places of business which individuals patronize to improve their physical appearance. In one memorable case (*In Re: Elton B. Ensor*, Case No. 93-260), a tattoo parlor was proposed on the first floor of a building that contained apartments on the higher floors. The tattooist/proprietor testified that he displayed his original designs and renderings on walls in the parlor, and that customers would often choose one for duplication on their epidermis. Thus, the proposal was considered a “residential art salon”, which at the time, was defined by BCZR § 101.1 as, “a portion of a dwelling unit, used for the exhibition and sale of original works of art.” In that case, the building was no doubt used for dwelling purposes and the tattooist’s displays were his own “original works of art.” Later, the County Council adopted specific provisions regarding “tattoo parlors” (see BCZR Article 4B) and amended the BCZR to specifically prohibit tattoo parlors from the “residential art salon” definition. The point being that the County did not prohibit all tattoo parlors until the Council

⁵ Such a claim then that tattoo parlors were prohibited was just as wrong as the Protestants’ claim now that solar farms are not allowed now because the term is not expressly stated in the BCZR.

adopted specific regulation of the term “tattoo parlor” and instead recognized that as a lawful and legitimate business enterprises, tattoo parlors should (and must) be permitted to operate under the Code. Such an approach is consistent with the fundamental principles of zoning law and American jurisprudence.

In considering “solar farms”, this is the second case in which the County Administrative Law Judge has determined that such a use is a “public utility use”. (Petitioner’s Ex. 3). In Case No. 2016-0086-X, ALJ John E. Beverungen determined that a proposed solar farm was a “public utility use” and permitted in an RC 5 zone by special exception. In his well reasoned opinion, he stated:

“Industry literature and the Solar Energy Industries Association, the leading trade group for solar developers, recognize that ‘utility scale’ solar (in contrast to residential-scale (rooftop) systems) is defined as greater than 1 megawatt. In this case the solar panels are projected to generate 2.2 megawatts, which under the prevailing industry standards would constitute ‘utility-scale’ solar. For similar reasons, I believe that the proposed use is properly characterized under the regulations as a “public utility.” (Petitioner’s Ex. 3, pg. 2).

The proposal in the instant case will produce 2 megawatts of power and thus, under the test enunciated by ALJ Beverungen, the Lippy proposal is likewise a public utility use. As noted above, the ALJ followed the same logic in approving the Lippy proposal.

The fact that solar farms have been considered (and that zoning applications therefore have been processed) as a public utility use exposes the flaws in the testimony of Protestants’ expert witness, Christopher Jakubiak. He opined that solar farms are not permitted in Baltimore County because the phrase “solar farm” does not appear in the BCZR. Thus, he concluded that the proposed use does not comply with BCZR § 102.1, which requires that all uses must be in conformity with those regulations. But this literal application of the BCZR results in a conclusion that is nonsensical and ignores the actual issue presented. Specifically, it ignores the

fact that, by being considered a public utility, solar farms must undergo scrutiny as a special exception in order to be allowed in the RC 2 zone. The Petitioners do not claim that the use is permitted by right. It is allowed in the RC 2 zone only by special exception. The question is not (as phrased by Mr. Jakubiak) whether the drafters of the law that was created in 1975 contemplated solar farms as a land use, but whether the public utility use in BCZR § 1A01.2.C(18) encompasses solar farms. There cannot be a serious doubt that it does. Therefore, since solar farms are a public utility use, they are allowed as a public utility and regulated by the special exception requirement. To claim that solar farms are not regulated by the BCZR is wrong.

Public utilities are regulated in two places in the RC 2 zoning regulations. Underground telephone, telegraph, electrical-power, gas, sewer mains and storm drains are all permitted by right in the RC 2 zone pursuant to § 1A01.2B.6. There can not be any dispute that these types of underground conduits are part of a public utility infrastructure/system. Secondly, “public utility uses not permitted as of right” in § 1A01.2.B.6 are allowed in the RC 2 zone by special exception. (BCZR § 1A01.2.C.18). Certainly, above ground utility lines, sewage pumping stations, electrical substations, and similar buildings and structures are the types of public utility uses encompassed within BCZR § 1A01.2.C.18. It is manifest that “solar farms” (and specifically the solar arrays and infrastructure proposed in this case) are likewise included in that designation. Thus, the proposal may be approved as a special exception use in the RC 2 zone.

Regrettably, “public utility” is not a defined term in the BCZR. BCZR § 101.1 advises that in the absence of an express definition, words and phrases used in the BCZR “shall have the ordinarily accepted definition as set forth in the most recent edition of Webster’s Third New International Dictionary of the English Language, Unabridged.” (BCZR § 101.1). In the

Webster's Dictionary published online the term "public utility" is defined as "a business organization (as an electric company) performing a public service and subject to special governmental regulation." In the authoritative 1961 print version, Webster's defines public utility as "a business organization deemed by law to be vested with public interest usually because of monopoly privileges and so subject to public regulation such as fixing of rates, standards of service and provision of facilities." Under these definitions, the proposed solar farm easily qualifies as a public utility.

Although Baltimore County may not yet have adopted the term "solar farm" in its zoning regulations, the State of Maryland has moved expeditiously to adopt regulations both promoting and governing such facilities. It is first to be noted that the Annotated Code of Maryland contains a separate volume which embodies the laws of this State regarding public utilities. That volume is entitled (obviously enough) "Public Utilities" and it is within this volume that's the State's regulations as to solar farms are found. In fact, this fundamental fact itself is sufficient to justify the conclusion that a solar farm is a "public utility." That is, the fact that the State of Maryland's laws governing solar farms are located in the Public Utility volume of the Annotated Code is dispositive and compels the conclusion that the proposed use is a public utility."⁶

Division I, Title 7, Subtitle 7 of the Public Utilities volume of the Annotated Code establishes Maryland's "Renewable Energy Portfolio Standard". Certain provisions of this law are of note. First, Section 7-701 defines a "Tier I renewable source" as including "solar energy", including photovoltaic technologies.⁷ It is the expressed intent of the General Assembly of Maryland to "recognize the economic, environmental fuel diversity and security benefits" of

⁶ Sections of the "Public Utilities" volume of the Annotated Code of Maryland which are referenced herein are attached hereto collectively as Appendix B.

⁷ "Photovoltaic technologies" are more commonly called the "solar cells" or "solar panels" which comprise the "solar farm."

renewable energy sources (including solar) and therefore the State desires to “establish a market” for such electricity to “lower the cost to consumers”. (Sec. 7-702). In order to achieve this goal, the State has mandated that increasing percentages of energy produced and consumed in the State be provided by renewable energy sources, specifically including solar. (Sec. 7-703).

More importantly, within Division I (Public Services and Utilities), Title 7 (Gas, Electric and Water Companies), Subtitle 3 (Consumer Relations) of the Public Utilities volume of the Annotated Code, regulations have recently been enacted to establish a “Community Solar Energy Generating Systems Pilot Program”. (CSEGSP) (Sec. 7-306.2). As Mr. Donithan testified, the proposed solar farm here is in the process of applying to become part of that program. The CSEGSP was enacted by the General Assembly via a finding that community solar energy generating systems “provide residents and businesses . . . increased access to local solar electricity”. Further, such systems enhance the State’s diversification of its “energy resource mix” and provide an economic benefit. Thus, the General Assembly found it in “the public interest” to encourage development of such community solar generating systems. More importantly, the State’s regulation and mandate for such solar farms are set forth in this section of the Public Utilities Volume.

Pursuant to Section 7-306.2, the Maryland Public Service Commission (hereinafter “PSC”) was directed to establish a pilot program for community solar systems. This pilot program was to provide a framework for solar farms insofar as issues related to consumer protection and to provide regulation for these systems to connect into the grid maintained by monopoly electric companies (e.g. BGE). Section 7-306.2 also requires the PSC to adopt specific regulations to carry out this program. Such regulations have been adopted in COMAR. (See COMAR Title 20, Subtitle 62).

Although solar farms are not what comes to mind when one thinks of a traditional “power company” (i.e. BGE), it is clear that solar farms (i.e. community solar energy generation systems) fall within the public utility use contemplated in the BCZR. As noted, such systems are regulated under the Public Utility volume of the Annotated Code and their function and operation is likewise regulated by the PSC. Additionally, they serve the public, that is, the energy produced does not solely serve the property on which the system is located, but is fed into the public grid for the benefit of the public. During the hearing, Protestant’s counsel endeavored to distinguish the solar farm operation from BGE’s operation by arguing that the energy did not go to the public directly, but instead into the BGE infrastructure. Counsel endeavored to distinguish a utility that provides electricity directly to the consumer versus one that provides electricity into the grid and then onto the consumer. But this is a distinction without a difference! Solar Farms are public utilities because they serve the public (i.e. provide energy) and are regulated by government (i.e. the PSC). The undersigned acknowledges that the Lippys’ operation is not BGE (nor any utility monopoly). But it is a public utility use nonetheless, because of the nature of what it provides, that its product is provided to the public (not just used on site) and is regulated by the PSC. Moreover, the State’s Pilot Program is established and designed to expressly encourage and permit solar farms (as is proposed here) and also to allow the energy produced to go into the public grid. BGE is not the consumer, it is solely the conduit by which energy reaches the ultimate consumer. Protestant Council’s argument is simply illogical. Would he expect this solar farm to install its’ own power lines so that energy went directly from the farm to a user at another property? Should we have competing transmission lines throughout the County, one for energy produced at Calvert Cliffs, another for energy produced at the Conowingo Dam; as well as separate lines for each solar farm and wind turbine? Such a scenario defies any common

sense, as it would result in each utility dotting the landscape with its own set of wires and transmission poles/towers. The purpose of the solar farm is to produce power for integration into the conduits of the established grid and to permit it to be used by others.

The function and jurisdiction of Maryland's Public Service Commission ("PSC") is set forth in the Public Utilities volume. The PSC has "jurisdiction over each public service company that engages in or operates a *utility business* in the State. . ." 2-112 (a). Moreover, the PSC shall "supervise and regulate the public service companies subject to the jurisdiction of the Commission to: 1. Ensure their operation in the interest of the public; and 2. Promote adequate, economical, and efficient delivery of utility services in the State without unjust discrimination..." Simply stated, the PSC regulates public utilities, including solar farms.

Although the BCZR does not identify the words "solar farm," County government itself recognizes the importance of this alternative energy resource. By Executive Order issued on August 29, 2016 by the County Executive, the County committed itself to a goal of increasing its utilization of renewable energy sources, including solar. Although some of the neighbors of the Lippy property oppose the project, many no doubt endorse the sentiment of Josh Tulkin, the Director of Maryland's Sierra Club, who applauded the Executive Order and stated, "It's great to see County Executive Kamenetz take a leadership role in developing clean, renewable energy." Can the Protestants seriously contend that the absence of the phrase "solar farm" in the BCZR reflects the intent of County government to prohibit (by use of its Zoning Code) solar farms in Baltimore County? To the contrary, the County is encouraging such uses.

Just like when tattoo parlors first came to the County, and were permitted and controlled under existing regulation, solar farms are treated the same. Moreover, like the County Executive's Order, the State of Maryland has mandated the use of solar farms through the

adoption of law. That is, both State and Local government not only do not prohibit this technology, but support and require it. The BCZR cannot be read to either “permit acts or occupations which the State statutes prohibit, *or to prohibit acts permitted by statute or Constitution*”. (emphasis added). Mayor and City Council v. Sitrnick 254 Md. 303, 313 (1968).

Finally, as discussed by the parties before the Board as a preliminary matter, the County Council has had before it (on multiple occasions) proposed legislation proposing to amend the BCZR and specifically identify solar farms (ie. Bills 68-16, 95-16 and 9-17). One of these Bills was passed by the Council then vetoed by the County Executive and the others were withdrawn before vote. It is anticipated that the Protestants will argue that this failure to enact legislation somehow translates into a claim that the County opposes solar farms. Such a supposition is entirely inappropriate and factually erroneous. As the Bills were never enacted, they are meaningless to the question presented. The fact that the Bills were never enacted could lead to the conclusion that the County supports the continued processing of solar farm applications as a public utility use. The preamble to those Bills was also incorrect wherein it stated that the County doesn’t regulate “solar farms”. As noted above, they are regulated as public utility uses (per ALJ Beverungen’s decision). Moreover if any of the Bills had been adopted then they would have required only what the applicant is doing here, insofar as review, that is they permitted solar farms in the RC 2 by special exception. Finally, as stated in all the Bills, this matter would have been grandfathered from the new law, as it was filed before July 1, 2016.

A Bill has recently been introduced before the County Council (Bill 13-17) which adds “solar farms” to the BCZR. Like its predecessors, the Bill specifically provides that it does not apply to any application for a solar farm filed before July 1, 2016. The Petitions in this case were

filed on June 25, 2016 and therefore, even if enacted, the provisions of the Bill are irrelevant to the consideration of this case.

B. Standard of Review for Special Exceptions

a) Special Exceptions Are Adjudged Pursuant to BCZR § 502.1

The BCZR specifically states that a public utility is permitted in the RC 2 zone as a special exception. BCZR § 1A01. The granting of a special exception is guided under the regulations provided in BCZR § 502 entitled “Special Exceptions.” BCZR § 502.1 states:

“Before any special exception may be granted, it must appear that the use for which the Special Exception is requested will not:

- (a) be detrimental to the health, safety or general welfare of the locality involved;
- (b) tend to create congestion in the roads, streets or alleys therein;
- (c) create a potential hazard from fire, panic, or other danger;
- (d) tend to overcrowd land and cause undue concentration of population;
- (e) interfere with adequate provisions for schools, parks, water, sewage, transportation or other public requirements, conveniences or improvements;
- (f) interfere with adequate light and air;
- (g) be inconsistent with the purposes of the property’s zoning classification nor in any other way inconsistent with the spirit and intent of these zoning regulations;
- (h) be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations, nor
- (i) be detrimental to the environmental and natural resources of the site and the vicinity, including forests, streams, wetlands, aquifers and floodplains in an RC-2, RC-4, RC-5, and RC-7 zones.”

The law of special exceptions in Maryland has been comprehensively addressed by the appellate courts of this state. As is well settled, the criteria stated in BCZR § 502.1 is to be applied to each petition in the manner as outlined in the seminal case of *Schultz v. Pritts*, 291 Md. 1 (1981).

b) The *Schultz v. Pritts* (and its progeny) Standard.

In *Schultz*, the court discussed the role of special exceptions in the comprehensive zoning scheme enacted by the local jurisdiction and opined, “[t]he special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid.” *Id.* at 11. Thus, a special exception use is not an exception to the zoning ordinance at all, rather, it is a conditional use that shares the legal presumption of validity, absent a showing that it should be denied because of particular egregious impacts at the locale considered. As stated by the Court in *Shultz*, “[t]he appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that a particular use proposed at the particular location proposed would have an adverse effect above and beyond those inherently associated with such special exception use irrespective of its location within the zone.” *Id.* at 15.

In *Mossburg v. Montgomery Co.*, 107 Md. App. 1 (1995), the Court of Special Appeals further clarified this standard and stated that impacts from special exception uses are not, in and of themselves, a basis by which the special exception can be denied. *Id.* 8-9. As held by the court, it is the existence of these impacts in the first instance that justify the use being a special exception use (rather than allowed by right). *Id.*

The holding that detrimental impacts from a proposed special exception must be greater than those normally associated with impacts in similarly zoned areas is premised upon the concept that a special exceptions are part of the contemplated zoning process established by the County Council. As such, all special exceptions are presumptively permissible and, therefore, in the interest of the general welfare of the public. See *Schultz*, 291 Md. at 11.

As such, the *Schultz* Court found:

“The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption.” *Id.*

Therefore, the Board is guided by the special exception factors listed in § 502 of the BCZR with special attention placed upon whether these detrimental effects would be any greater at the subject location, compared with other locations generally in the zone. The test is not whether the proposed use provides a benefit to the community. Likewise, the question here is not to compare one permitted use to another. Whether the community is better served if the Property is farmed is not the issue. Additionally, the Schultz standard shoulders no evidentiary burden on the applicant (nor analysis by the zoning decision maker) to consider other sites in the zone for comparison. See *People’s Counsel v. Loyola College*, 406 MD 54, 103-104 (2008).

c) BCZR § 502.1

As noted above, BCZR § 502.1 contains the criteria which must be specifically applied to any requested special exception. Moreover, as previously noted, it is not merely the existence of impacts in these subject areas which is to be considered, it is whether the effects are more egregious here than elsewhere in the zone. Significantly, the inherent impact of the proposed solar farm here is minimal. More importantly, the impacts (to whatever degree they even exist) are no worse here than elsewhere in the zone.

1. § 502.1 (a) - Be detrimental to the health, safety or general welfare of the locality involved.

BCZR § 502.1 (a) is broadly written and is a general catch all provision. That is, although BCZR § 502.1 specifically identifies criteria such as road congestion, overcrowding of the land, potential for panic, etc. as issues which must be considered by the Board in deciding whether to

grant the special exception, no where in BCZR § 502.1 are the impacts upon a scenic view identified as part of the special exception standard. Thus, if appropriate for the Board's consideration at all, these potential impacts would be at issue under the general umbrella of considerations contemplated by BCZR § 502.1.

Insofar as the scenic view issue, Hanover Pike at this location is a scenic route and is designated as such in the Master Plan. This designation is not part of the BCZR or the special exception criteria in Section 502.1. The mere fact that Hanover Pike is a scenic route does not impose any additional limitations on the granting of a special exception.

Scenic Views are addressed in the CMDP (Attached hereto as Appendix C). Therein, scenic views are defined as either enclosed views, expansive views or focused views. The CMDP sets out a number of "guidelines" which "pertain to the development of any area within or adjacent to a designated scenic route." Through the testimony of its expert landscape architect (Chris Batton), Petitioner presented the manner by which the development guidelines set forth in the CMDP were incorporated in the landscape plan that has been approved for this project by the County. As both the County's Landscape Architect and Department of Planning have reviewed and approved the plan/proposal, clearly there is no adverse "scenic view" impact. Moreover, there is nothing in the CMDP which prohibits a public utility use adjacent to a scenic byway.

2. § 502.1 (b) - Tend to create congestion in the roads, streets or alleys therein.

Based on the uncontroverted evidence, the proposed solar farm will generate no traffic. There is no "adverse impact" in this regard.

3. § 502.1 (c) – Create a potential hazard from fire, panic or other danger.

The solar farm will not create any adverse condition as it relates to these factors. The arrays do not "catch fire" and they are setback a significant distance from the property line and

any buildings on nearby properties. The proposed Solar Farm meets all area requirements and needs no setback variances. The activity on the property is such that it will not create a panic or public nuisance.

4. § 502.1 (d) – Tend to overcrowd land and cause undue concentration of population.

The solar panels will not over crowd the land or inappropriately concentrate population. There are no area or bulk standard variances requested and thus all setback and size restrictions in the zone are observed.

5. § 502.1 (e) - Interfere with adequate provisions for schools, parks, water, sewage, transportation and other public requirements, conveniences or improvements.

Surely the Solar Farm will not impact schools or parks. The use does not increase the enrollment in local schools or generate use of public parks and open space.

6. § 502.1 (f) - Interfere with adequate light and air.

The proposed solar farm will not interfere with adequate light and air. It will not cast a shadow on adjacent properties. There are no smells to be generated. The only noise (from the inverter building and the motors which rotate the arrays) was described as conversational and will be overwhelmed by the sounds of traffic on Hanover Pike.

7. § 502.1 (g) - Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these zoning regulations.

Simply stated, there is no adverse impact here. The solar farm is not “inconsistent with the spirit and intent of these zoning regulations.” Public utility uses are permitted both as of right and by special exception in the RC 2 zone.

As an enumerated special exception use, the proposal is part of the zoning scheme legislatively adopted by Baltimore County and is thus presumptively valid (See *Schultz v. Pritts*).

Protestants contend that the impacts of the proposal are disproportionate because the site is in a “rural legacy” area. The Rural Legacy Areas are identified in the Master Plan. But the Protestants cannot point to any standard, requirement or regulation which prohibits or limits the proposed use because of its location. This is because there are none.

8. § 502.1 (h) – Be inconsistent with the impermeable surface and vegetative retention provisions of these zoning regulations.

There is no impact under this criteria. The arrays are ground mounted. They sit on a pole on the ground. There will be grass underneath to absorb rain/snow.

9. § 502.1 (i) – Be detrimental to the environmental and natural resources of the site and the vicinity, including forests, streams, wetlands, aquifers and floodplains in an RC-2, RC-4, RC-5 and RC-7 zones.

There is no environmental impact caused by the arrays. They produce no chemicals, toxins or other impacts that might produce environmental degradation.

d. Criteria to be Considered other than that in BCZR § 502.1:

Although the primary special exception criteria applicable to this case are found in BCZR § 502.1, there are two other provisions of the BCZR that are relevant. First, BCZR § 1A01.2C provides that uses permitted by special exception in the RC 2 zone are allowed upon a finding that they will not be detrimental to agricultural uses in the vicinity. Here, it is obvious that the proposed use will not be detrimental to adjacent agricultural uses. As noted above, the Lippys own and/or farm significant acreage in the immediate area. As Mr. Lippy testified, they will continue to do so. This solar farm will in no manner detrimentally impact the Lippys’ ability to continue to farm their other properties. Mr. Jakubiak’s assertion that the use of this 6.5 acres lot for a solar farm will “break up” the 8,500 acres farmed by the Lippys in this vicinity is simply not credible. To the contrary, the economic benefit of the solar farm will assist in keeping this

family farming operation viable. As importantly, the impact of the use and the resulting loss of this property to agriculture is not a proper consideration. As was held in *Hayfields, Inv. V. Valley Planning Council* 122 Md. App. 616 (1998), the proper test for adjudging a special exception is not the proposed use's impact on the subject property, but on the surrounding locale. Thus, the Protestants' lament about the loss of this field to agriculture (minimal as it is, considering the amount of land farmed by the Lippys) is not a germane consideration.

Secondly, BCZR Section 411.1 provides that for any special exception public utility use, it must be demonstrated that the "location thereof shall not *seriously* impair the use of neighboring property." (emphasis added) As noted above, this solar farm will not impair neighboring properties. BCZR § 411.2 does not apply as the Property is not in the Metropolitan District. (See Master Plan, p. 47).

IV. CONCLUSION

Notwithstanding the lengthy hearing on this matter and the objections raised, the granting of the requested approval is warranted. For the foregoing reasons and based upon the record of evidence offered in this case, the Petitioner requests that the Board grant the relief requested within its Petitions for Special Exception and Special Hearing filed herein.

Respectfully submitted,



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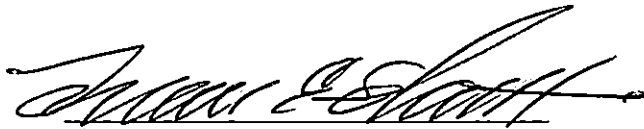
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of April, 2017, a copy of the foregoing
Written Memorandum in Lieu of Closing Argument was mailed first-class pre-paid postage to:

Michael R. McCann, Esquire
Michael McCann, P.A.
118 West Pennsylvania Avenue
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And

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LAWRENCE E. SCHMIDT



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VALLEYS PLANNING COUNCIL, INC. et al. v. BOYS' SCHOOL OF ST. PAUL'S
PARISH, INC.

No. 2654, September Term, 2014

COURT OF SPECIAL APPEALS OF MARYLAND

2017 Md. App. LEXIS 7

January 3, 2017, Filed

NOTICE: This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. *Md. Rule 1-104.*

DISPOSITION: JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY VACATED. CASE REMANDED TO THE CIRCUIT COURT, WITH DIRECTIONS TO DISMISS APPELLANTS' PETITION FOR JUDICIAL REVIEW WITH PREJUDICE. COSTS TO BE PAID BY APPELLANTS.

JUDGES: [*1] Woodward, Kehoe, Leahy, JJ. Opinion by Leahy, J. Concurring Opinion by Kehoe, J.

OPINION BY: Leahy

OPINION

Opinion by Leahy, J.

Appellee/Cross-Appellant, the Boys' School of St. Paul's Parish, Inc., ("St. Paul's"), located in the Green Spring Valley of Baltimore County, has an historic pedigree of educating boys, dating back to 1853. The school property is located in the Resource Conservation 2 (Agricultural) Zone, ("RC2"), which permits private schools only by special exception.¹ In 2013, St. Paul's sought approval from the County to construct a new maintenance building on recently acquired land ("Tract

A"), in an area where the school already kept maintenance vehicles and supplies. The Valleys Planning Council ("VPC") appeared at the zoning hearing in opposition, arguing that the proposed construction was outside a previously established maximum building envelope ("MBE") and, therefore, could not be approved. Nevertheless, the zoning commissioner approved the plans for the construction of the maintenance building, and the county Board of Appeals upheld that decision on July 16, 2014.

1 As established by Baltimore County Zoning Regulations, Article 1A § 1A01.1, the purpose of an RC2 zone is "to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses."

The VPC, and local property owners Douglas Carroll and Justin Batoff, (collectively "Appellants"), filed a petition for judicial [*2] review in the Circuit Court for Baltimore County. St. Paul's promptly filed a motion to dismiss, arguing that neither VPC nor Messrs. Carroll or Batoff had standing to petition for judicial review. The circuit court found that St. Paul's had waived the standing argument by not raising it before the Board, but determined that there was substantial evidence to uphold the Board's decision.

The Appellants noted an appeal to this Court, raising

the following issues for review:

I. "Does the proposed maintenance building violate the Zoning Commissioner's 1989 order because it is outside the Maximum Building Envelope and thus barred by principles of *res judicata*?"

II. "Does the proposed maintenance building violate the agreement between St. Paul's and the VPC incorporated into the Zoning Commissioner's 1989 order?"

III. "Is Tract A, although acquired after the 1989 order, nevertheless subject to the limitations and conditions imposed in the 1989 order, including the Maximum Building Envelope?"

St. Paul's noted a cross-appeal, adding the following issues for this Court's review:

I. "Did the Circuit Court err by holding that St. Paul's waived the issue of Appellants' standing to seek judicial review [*3] because that issue had not been raised before the Board?"

II. "Did the Circuit Court err by holding that Appellants have standing to seek judicial review of the Board's decision?"

We hold that St. Paul's did not waive their challenge to Appellants' standing by raising the issue for the first time in the circuit court. We also conclude that Appellants did not have standing to file for judicial review of the Board's decision, because they are not aggrieved property owners as required under Maryland decisional law insofar as their properties are not close enough to Tract A to be considered *prima facie* aggrieved or almost *prima facie* aggrieved. Therefore, we vacate the judgment of the circuit court.

BACKGROUND

The Boys' School of St. Paul's Parish provides private education for boys in the Green Spring Valley

area. The school sits on a 125-acre campus west of Falls Road and north of Greenspring Valley Road. The campus includes the St. Paul's School for Girls ("Girls' School"), located on a parcel of land south of the main campus and north of Tract A--the parcel that is the subject of this case.

St. Paul's is located within an RC2 zone, which permits private schools only by special exception. [*4] The property, including Tract A, is also located within the Greenspring Valley National Historic District. Before 1989, St. Paul's operated as a nonconforming use.

In 1988, during the County's quadrennial Comprehensive Zoning Map Process, the two schools filed requests for rezoning from RC2 to RC5. In the RC5 zone, private schools are a permitted use, and St. Paul's sought the zoning change to provide flexibility with the "siting and design" of the schools. However, the community and county planning staff expressed concern that such a reclassification might serve as precedent for other rezoning requests in the Green Spring Valley, and opposed the rezoning. By way of compromise, St. Paul's agreed, instead, to seek a special exception under Section 502.1 of the Baltimore County Zoning Regulations (BCZR), and the community and staff agreed not to oppose.

1989 Special Exception Case (89-101-SPHX)

On July 12, 1988, the Boys' School of St. Paul's Parish, Inc., and the Girls' School² filed petitions for special exceptions to use their property for a private preparatory school and to expand the facilities of the school. On July 19, 1988, counsel for the Schools wrote to the zoning commissioner in furtherance [*5] of the petitions:

The St. Paul's petitions have been submitted as a compromise alternative to the Schools' Request for Change as a part of the 1988 Comprehensive Zoning Map process. Indeed, the Schools have worked diligently with the Valleys Planning Council and other neighborhood groups to successfully fashion a land use approach that everyone can and does support. While the Schools feel confident that they can achieve an acceptable degree of flexibility to accommodate their future development plans through the requested new special

exception for the Boys' School and the requested modifications to the existing Girls' School special exception, they do not feel that they can abandon their map request until they are assured of favorable action on their petitions and that there will be no appeal from such action.

2 The Girls School received a special exception for a private school in 1983, and joined in the 1988 petition to seek approval of an amended site plan for expansion of its facilities. According to SDAT, the Girls School was incorporated on September 23, 1958. <http://sdat.dat.maryland.gov/ucc-charter/Pages/CharterSearch/default.aspx> (last visited March 9, 2016).

The Zoning Commissioner held a hearing on September 12, 1988. Lisa Keir, the executive director of the VPC spoke in favor of St. Paul's special exception request on behalf of VPC and Falls Road Community Association. After finding that the proposed plans were "in the public interest and [would] not create any of the adverse conditions" set forth in the BZCR, the Zoning Commissioner [*6] ordered, on September 14, 1988, that

the use of the property involved in this case for private boys' and girls' schools, and the modification and expansion of the Schools' facilities in conformity with the concept plan introduced as Petitioners' Exhibit 1, as modified to show more general building envelopes, are hereby approved for the buildings shown and, as such, the Petition for Special Hearing for an amendment of the site plan approved in case numbers 84-139-X and 87-347-SPH, as more particularly described on Petitioner's Exhibit 1, is hereby granted; additionally, the Petition for Special Exception for a private preparatory school is hereby granted from and after the date of this order, subject however to the following restrictions which are conditions precedent to the relief herein granted:

1. In implementing the

modified concept plan, the Schools shall have *flexibility to make changes in the designs and/or locations of the facilities depicted on the site plan, Petitioners' Exhibit 1, without the need for further hearings before the Zoning Commissioner*, as long as the development remains within the indicated building envelopes and complies with all applicable requirements of the [*7] Building Code, Development Regulations, and other portions of the Baltimore County Code.

(Emphasis added).

Exhibit 1 was the site plan for the Boys' and Girls' Schools that showed 17 potential future improvements to the campus delineated in cross-hatching within the MBE. The Zoning Commissioner approved St. Paul's petition to build the 17 potential future improvements without the need for further hearings before the Zoning Commissioner.

1993 Modification of the Special Exception Granted in 89-101-SPHX

In 1992, St. Paul's filed a petition for a modification to the special exception and site plan approved in 1989, "to allow a revised [MBE] to reflect final location and building footprint of proposed chapel" The VPC appeared through representatives as an interested party at the hearing, in support of the petition. The Zoning Commissioner provided background to the request, stating in his written opinion:

As to the present case, an understanding of the special exception approved in case No. 89-101-SPHX is appropriate. That special exception approved use of the property for a boy's school for so long as any building was confined within a clearly

delineated building envelope area.

The [*8] 1992 plans proposed construction of a chapel—one of the 17 delineated potential future improvements contained in the approved site plans in case No. 89-101-SPHX—and proposed locating a portion of the chapel outside of the MBE established in 1989. However, the Zoning Commissioner, noting that the revised MBE would actually be smaller than the original, approved the modification of the special exception:

It is clear that the special hearing should be granted. The alteration to the site plan proposed is minor both in scope and effect. Indeed, it is unfortunate that the Petitioner is even required to expend the necessary sums and make the necessary efforts to have this minor amendment approved. Although I cannot adjudge future modifications, the Petitioner should be given flexibility to make certain changes in design or locations of the facilities within the building envelope for so long as that development remains within the spirit and intent of the plan and is in compliance with the appropriate County regulations.

2004 Addition of Tracts A and B to the Special Exception Area (Case No. 04-553-X)

Around 2003, Tract A—a property contiguous to St. Paul's, located south of Seminary Avenue, west [*9] of Falls Road and Tony Drive, and bordered by Greenspring Valley Road to the south—was donated to the school. In May 2004, St. Paul's filed a petition for a special exception to use Tract A and 7.753 acres of Tract B (another property acquired by the school) for school purposes. Both tracts were zoned RC2 and required a special exception for St. Paul's to use them as a school. St. Paul's submitted a site plan depicting Tracts A and B, both south of St. Paul's original campus, with future ball fields and parking lots on Tract B and no changes to Tract A. Tract A contained existing historical buildings that the school intended to continue using as residential dwellings. Notably, the site plan did not denote the MBE established in 1989, and both Tracts A and B sit outside that MBE.

Mr. Jack Dillon testified at the hearing before the

Zoning Commissioner on behalf of VPC, stating that VPC approved the use restrictions delineated in the site plan and had no objection to the requested special exception relief. The nine use restrictions included a prohibition against using amplifying equipment for the ball fields on Tract B, discussed maintaining a stone wall along Greenspring Valley Road, [*10] and required that *"any future use of the common area located north of the existing historic structures on Tract A . . . shall require a Petition for Special Hearing."* (Emphasis added). The Zoning Commissioner approved the petition "for Special Exception for 'a school in the R.C.2 zone for Tract A and 7.753 acres of Tract B,' in accordance with Petitioner's Exhibit 1." (Some internal quotation marks omitted). The site plan included construction of new sports fields and parking lots that were never within the MBE. Additionally, a notification on the site plan, under the list of use restrictions, stated:

With regard to "Tract A," there are no plans to utilize this property other than for the current residential and maintenance/storage use. Should any future use be considered for the area north of the existing buildings, a petition for special hearing must be filed. Any future use may also be subject to review by the Baltimore County Landmarks Commission.

The Underlying Petition for Special Hearing

On August 1, 2013, St. Paul's filed a petition for a special hearing under section 500.7 of the BZCR, requesting an amendment to the Special Exception and accompanying site plan approved in 2004 and amended in 2008. St. [*11] Paul's sought an amendment to construct an 8,000 square foot maintenance building on Tract A. The proposed building was designed to look like a barn and was set off from Greenspring Valley Road, behind a number of trees and bushes. At the same time, St. Paul's filed a request with the Development Review Committee ("DRC") for a "limited exception under Baltimore County Code § 32-4-106(A)(1)(6) from the development review and approval process for a 'minor commercial structure.'"

The Office of Administrative Hearings ("OAH") held a hearing on September 26, 2013. On October 1,

2013, the OAH issued an order granting St. Paul's petition for a special hearing to amend the site plan. VPC was represented at the hearing, and although it did not "take[] a formal position on the case," it identified four concerns: (1) change in the building envelope, (2) changes proposed in a historic setting, (3) the size of the proposed building and need for office facilities, and (4) the extension of public water and sewer to site.

In granting the special hearing, the ALJ noted that the MBE could be amended through a special hearing procedure as it was in 1993, but determined that the MBE did not apply to Tract A because Tract [*12] A was acquired after the MBE was established in 1989. Because St. Paul's did not seek to make changes to the historic residential buildings on Tract A, the ALJ held that review and approval by the Landmarks Preservation Commission was not required. Furthermore, the ALJ found that the size of the maintenance building was appropriate for its function and would not at all overcrowd Tract A, which is seven acres. Additionally, the ALJ noted that the building, designed by an architect, will be attractive and "not be visible in any event from the adjoining roadway." The ALJ concluded that the issue of access to the public sewer was for the County Council and the State of Maryland to decide, not the OAH.

On November 4, 2013, the DRC issued an administrative order approving St. Paul's request for a limited exception for construction of the maintenance building as a "minor commercial structure."

VPC appealed the final decision of the ALJ and the grant by DRC of a limited exception for the construction of the maintenance building.

The Hearing Before the Board of Appeals of Baltimore County

On March 6, 2014, a *de novo* public hearing was held before the Board of Appeals of Baltimore County (the "Board") [*13] to address both the final decision on the special exception by the ALJ and the grant of the limited exception by the DRC. During the hearing, Mr. Francis Smyth, a board member of St. Paul's, testified on behalf of the school. Mr. Smyth was the C.E.O. and President of Century Engineering and prepared the site plans at issue. He testified that the current maintenance building was in a congested area of the main campus, and the reason for relocating the building was two-fold:

Number one, safety. We have kids that are around - - and in and around all those trucks and, and activities that are happening. It just does not make sense to keep that - - those trucks backing in and aggregating where all - - every car that comes through the campus during the day is here. The second reason is simply for efficiency. There's no room up here for us to operate and, and so, there's an area down here that was, that was given to the school many years after the upper campus had its, you know, operations going on. And that's the [Tract A] property down here. As [] from the very beginnings of when this property was owned, there was maintenance use down here, storage, outside storage and so forth to support [*14] the upper campus, and so it made sense to kind of combine the two activities into one location.

Mr. Smyth also testified that the maintenance building would have a barn façade, "to give it greater appeal . . . if it was seen by anybody." However, Mr. Smyth testified that they had conducted several surveys of the area, and the building would be invisible to almost everyone. Mr. Smyth stated, "you cannot see [the building], whether it's summertime or wintertime, due to both, the deciduous foliage in the summer and the evergreen foliage throughout the year. . . . [I]t's virtually impossible to see this building." Even if someone could see the area where St. Paul's planned to construct the building, Mr. Smyth testified that he thought "if anyone [did] have sight of the area, it [would] clean up the area because many of the outside storage items will go inside and it won't be a [] bunch of [] mower equipment and [] snow plows out in the yard."

When asked about the traffic around the maintenance building, Mr. Smyth testified that the traffic would be confined to interior roads, and, therefore, moving the building to Tract A would not add any traffic to the surrounding neighborhood. Additionally, [*15] St. Paul's expert witness, Mr. Michael Pieranunzi--admitted as an expert in interpretation and application of the BCZR and development regulations, and as a registered landscaper--also testified that he did not believe that the proposed maintenance building would create congestion

on the roads, because it would not front on a public road and the most efficient route for getting to campus is through a private drive located within the campus.

Mr. Pieranunzi also testified as to the visibility of the proposed building, stating that, as shown in photos contained in Petitioner's Exhibit #7, "it's very evident that . . . this site is basically 90 to 95% screened by evergreen vegetation." Mr. Pieranunzi explained that Petitioner's Exhibits #8A-8C, are cross-section diagrams of the sight lines from the same angles as the photos in Exhibit #7, which also show that an individual would not be able to see the building from Greenspring Valley Road.

In Mr. Pieranunzi's opinion, the maintenance building would meet all of the required factors listed in Section 502.1 of the BCZR for a special exception, including that it would not be detrimental to the public health, nor to the environment and natural resources of the site. Furthermore, [*16] Mr. Pieranunzi testified that the maintenance building would meet the additional use requirements of Section 1A01.2.C., as required for a special exceptions in an RC2 zone.

Teresa Moore, Director of the VPC, testified on behalf of the Council. Over objection, Ms. Moore testified as to her understanding of the alleged agreement that existed between St. Paul's and VPC at the time of the 1988 special exception hearing. She stated that St. Paul's should be held to the agreement reached by the parties back in 1988 when VPC supported St. Paul's special exception based on certain limitations, namely, the MBE that appears on the site plan in the 1988 case, with the 17 delineated items within the MBE.

The Opinion of the Board of Appeals

On July 16, 2014, the Board issued its opinion, granting both the amendment to the Special Exception and accompanying site plan approved in Case No. 04-553-X for the construction of the maintenance building,³ and the request for a limited exception from the development regulations under BCC 32-4-106. In coming to this decision, the Board found, preliminarily, that there was an agreement between VPC and St. Paul's "as to the extent of the [MBE] on 17 facilities and buildings shown [*17] and listed on the site plan." However, based on the plain language of the 1989 opinion, the Board determined that the MBE applies only to the buildings shown on that 1989 plan. The Board quoted the following from the 1989 Order:

Therefore, IT IS ORDERED by the zoning Commissioner of Baltimore County, this 13th day of September, 1988, that the use of the property involved in this case for private boys' and girls' schools, and the modification and expansion of the Schools' facilities in conformity with the concept plan introduced as Petitioners' Exhibit 1, as modified to show more general building envelopes, are hereby approved *for the buildings shown* and, as such, the Petition for Special Hearing for an amendment of the site plan approved in case numbers 84-139-X and 87-347-SPH, as more particularly described on Petitioners' Exhibit 1, is hereby granted; additionally, the Petition for Special Exception for a private preparatory school is hereby granted from and after the date of this order, subject however to the following restrictions which are conditions precedent to the relief herein granted:

1. In implementing the modified concept plan, the Schools shall have flexibility to make [*18] changes in the designs and/or locations *of the facilities depicted on the site plan*, Petitioners' Exhibit 1, without the need for further hearings before the Zoning Commissioner, as long as the development remains within the indicated building envelopes and complies with all applicable requirements of the Building Code, Development Regulations, and other portions of the Baltimore County Code.

(Emphasis in original).

3 Pursuant to BCZR § 500.7, a hearing to request special zoning relief is proper as follows:

The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

The Board pointed out that the VPC and St. Paul's *could have* agreed to apply the MBE to all future acquired property, [*19] based on the fact that the agreement applied to proposed buildings, and, therefore, the lack of such agreement was "indicative that parcels later acquired or donated to the school . . . were not intended to be restricted by the [MBE]." Moreover, the Board noted that the "1989 Opinion indicated that the site plan represented 'the School's best current thinking as to what they may want to accomplish in the near-to-intermediate-range future.'"

Furthermore, the Board rejected VPC's argument that St. Paul's should have sought to amend the special exception granted in the 1989 case, not the 2004 case. The Board found that the 2004 case, the first to mention Tract A and B, sought a *new* special exception for those tracts, and, therefore, it was appropriate to seek an amendment from that order in this case. Additionally, the Board pointed out that the site plan in the 2004 case did not contain the MBE and that VPC agreed to nine "use restrictions" and express language regarding the future use of Tract A, none of which mention the restriction of the MBE.

The Board disagreed with VPC's argument that, because the 2004 case added Tracts A and B to the Special Exception Area, those tracts were subject [*20] to the MBE. The Board found that the Special Exception Area granted in the 1989 case applied to the entire property owned by St. Paul's, "while the [MBE] was a smaller area contained within the Special Exception Area." The Board determined that the MBE applied only to the buildings and facilities on the 1989 site plan, located on the main campus, not to Tracts A and B.

After determining that the MBE did not apply to limit construction on Tract A, the Board examined whether St. Paul's met its burden of proof regarding the factors set forth in BCZR § 502.1 to obtain a special exception.⁴ The Board concluded that St. Paul's met its burden as to all of the factors in § 502.1. The Board found, *inter alia*, that the proposed construction would not be detrimental to the health, safety, or general welfare of the locality and would actually reduce safety concerns for students by moving the maintenance building off of the main campus. Furthermore, the Board noted that there would not be any increase in traffic because the proposed maintenance building can be accessed by an interior road. The Board noted that the proposed building will not be visible from Greenspring Valley Road because it will be "in a secluded area, [*21] surrounded by trees on all sides."

4 The regulation states:

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved;

B. Tend to create congestion in roads, streets or alleys therein;

C. Create a potential hazard from fire, panic or other danger;

D. Tend to overcrowd land and cause undue concentration of population;

E. Interfere with adequate

provisions for schools, parks, water, sewerage, transportation or other public requirements; conveniences or improvements;

F. Interfere with adequate light and air;

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;

H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.

BCZR § 502.1.

Petition for Judicial Review in the Circuit Court for Baltimore County

On August 14, 2014, the VPC, [*22] joined by Douglas Carroll and Justin Batoff—property owners in the Green Spring Valley—filed a petition for judicial review in the Circuit Court for Baltimore County. On December 19, 2014, St. Paul's filed a motion to dismiss, arguing that neither VPC nor Messrs. Carroll or Batoff had standing to petition for judicial review. In response, VPC argued that there was no requirement that VPC, Mr. Carroll, or Mr. Batoff prove they have standing in their petition for judicial review and, additionally, that St. Paul's misconstrued property owner standing as having a requirement of being within 1,000 ft. of the subject property. VPC additionally submitted affidavits from Mr. Carroll and Mr. Batoff to support their contention that they are aggrieved as property owners.

Mr. Carroll averred, in relevant part:

5. Given the importance and sensitivity

of the property, and the location and proximity of my property to the site, I will be specially and adversely affected by the Board of Appeals' decision in this case.

6. I travel the scenic roads along the property on a daily basis, more than members of the public who do not reside in proximity to the property, and will be specially and adversely affected [*23] by the siting of this building and other buildings. As a nearby resident and frequent and regular traveler of Greenspring Valley Road, I can see the existing maintenance building that is being used in the vicinity of the proposed building and the operations at the building, including the numerous trucks and equipment. I see and hear the existing structure and the operations and activities that take place at that building on a nearly daily basis. I anticipate seeing and hearing the proposed maintenance building, which will be larger and whose operations will be more intense and more frequent.

7. I will also be specially and adversely [effected] because the proposed development of the site and the extension of water to the maintenance building will potentially impact the groundwater and water supply to my property as well as surrounding properties. The extension of the sewer to the site will likewise potentially impact my property and surrounding properties, and the ability of these properties to adequately handle and treat sewerage.

Mr. Batoff affirmed in his affidavit:

5. Given the importance and sensitivity of the property, and the location and proximity of my property to the site, I [*24] will be specially and adversely affected by the Board of Appeals' decision in this case.

6. I travel the scenic roads along the property on a daily basis, more often than

members of the public who do not reside in proximity to the property, and will be specially and adversely affected by proposed building and its operations. As a nearby resident and frequent and regular traveler of Greenspring Valley Road, I can see the existing maintenance building that is being used in the vicinity of the proposed building and the operations at the building, including the numerous trucks and equipment kept there. I see and hear the existing structure and the operations and activities that take place at that building on nearly a daily basis. I anticipate seeing and hearing the proposed maintenance building, which will be larger and whose operations will be more intense and more frequent.

7. My farm is a licensed stable with approximately ten horses. My family and I regularly ride in the fields that border Greenspring Valley Road and in the fields across the road that are owned by our neighbors. The proposed building, its operations, and the additional traffic that will be generated, will specially [*25] and adversely impact our ability to ride horses in these fields and our enjoyment in doing so.

8. I will also be specially and adversely [affected] because the proposed development of the site and the extension of water to the maintenance building will potentially impact the groundwater and water supply to my property as well as surrounding properties. The extension of the sewer to the site will likewise potentially impact my property and surrounding properties, and the ability of these properties to adequately handle and treat sewerage.

On January 20, 2015, the circuit court held a hearing on St. Paul's motion to dismiss and VPC's petition for judicial review. After hearing argument, the court orally found that St. Paul's had waived its standing argument by not raising it before the Board. The court went on to say

that, even if it were wrong about the waiver, Mr. Carroll and Mr. Batoff had standing, stating:

I will find that they did have standing due to their proximity. I agree with [VPC's Counsel] that the thousand feet is not set in stone. It is an individual case-by-case basis. Obviously rural jurisdictions, rural areas are much different than highly populated, metropolitan or urban [*26] areas. Each case will stand and fall.

I think the Court of Appeals is trying to give us some direction, but in this case I think their proximity to the location would give them standing. So I am going to deny the Motion to Dismiss.

The circuit court went on to address the merits and denied VPC's petition and affirmed the Board's decision. The court found that there was substantial evidence to support the decision of the Board, specifically that Tract A was not acquired until sometime after the 1988-89 case that implemented the MBE and, therefore, was not bound by the MBE restriction.

On February 19, 2015, the VPC, Mr. Carroll and Mr. Batoff noted an appeal in this Court. On February 24, 2015, St. Paul's noted a cross-appeal.

DISCUSSION

Appellants present a number of questions, but the dispositive issues in this appeal are raised in St. Paul's cross-appeal, which is where we begin our analysis.

I. Motion to Dismiss for Lack of Standing

A. Standing in Zoning Challenges

We review the legal question of whether a party has standing in this Court or had standing to appeal to a circuit court from the decision of a zoning board *de novo*. *Superior Outdoor Signs, Inc. v. Eller Media Co.*, 150 Md. App. 479, 494, 822 A.2d 478 (2003) (citing *Lucas v. People's Counsel*, 147 Md. App. 209, 224-25, 807 A.2d 1176(2002); *Eller Media Co. v. Mayor of Baltimore*, 141 Md. App. 76, 83, 784 A.2d 614 (2001); *E. Outdoor Adver. Co. v. Mayor & City Council*, 128 Md. App. 494, 514, 739 A.2d 854 (1999)).

In *Bryniarski v. Montgomery County*, the Court of [*27] Appeals set out the two conditions precedent that a person must meet to establish standing in land use appeals: "(1) [s/]he must have been a party to the proceeding before the Board; (2)[s/]he must be aggrieved by the decision of the Board." 247 Md. 137, 143, 230 A.2d 289 (1967). As Judge Kehoe pointed out in *Chesapeake Bay Foundation v. Clickner*, "*Bryniarski* is the landmark case in Maryland on 'aggrievement' as a requirement for standing in land use appeals." 192 Md. App. 172, 185, 993 A.2d 1163 (2010). The Court of Appeals in *Bryniarski* explained:

The requirement that a person must be 'aggrieved' in order to appeal to the Board and from the Board to a court of record was originally included in the Standard State Zoning Enabling Statute and generally appears in State Zoning Enabling Acts and in municipal zoning ordinances throughout the United States. . . . This requirement is contained in the Maryland Zoning Enabling Act, Code (1957), Article 66B, sections 7(d) and 7(j).

Bryniarski, 247 Md. at 143 (internal citations omitted). Article 66B has been recodified to what is now Title 4 (Zoning) of Md. Code Ann. (2012), Land Use Article ("LU"). Section 4-401(a) and (b) provide:⁵

(a) Who may file. -- Any of the following persons may file a request for judicial review of a decision of a board of appeals or a zoning action of a legislative body by the circuit court of the [*28] county:

- (1) a person aggrieved by the decision or action;
- (2) a taxpayer; or
- (3) an officer or unit of the local jurisdiction.

(b) Manner. -- The judicial review shall be in accordance with Title 7, Chapter 200 of the Maryland.

5 Appeal to this Court from a judgment of the circuit court under Title 4 is authorized pursuant to § 4-405(b).

In *Sugarloaf Citizen's Association v. Department of Environment*, the Court of Appeals addressed the issue of administrative standing as compared to standing to maintain judicial review, and the "appropriate roles of an administrative agency and a reviewing court with regard to each type of standing." 344 Md. 271, 285, 686 A.2d 605 (1996) (superseded by statute on other grounds, as recognized by *Patuxent Riverkeeper v. Maryland Dept. of Env't*, 422 Md. 294, 29 A.3d 584 (2011)). The Court recognized that, because of the distinction in standing made in Maryland case law and under the Administrative Procedure Act, SG § 10-222(a)(1), "a person may properly be a party at an agency hearing under Maryland's 'relatively lenient standards' for administrative standing but may not have standing in court to challenge an adverse agency decision." *Id.* at 285-86 (citing *Maryland-Nat'l Capital Park & Planning Comm'n v. Smith*, 333 Md. 3, 11, 633 A.2d 855 (1993)).

In the absence of a statute stating otherwise, standing in the administrative arena is easily obtained. *Id.* at 286. In *Morris v. Howard Research and Development Corporation*, the Court of Appeals held that an individual had standing who was "present at the hearing . . . testified [*29] as a witness and made statements or arguments as to why the amendments to the zoning regulations should not be approved." 278 Md. 417, 423, 365 A.2d 34 (1976). The Court noted that "[t]his [was] far greater participation than that previously determined sufficient to establish one as a party before an administrative agency." *Id.* (citations omitted). The Court went on to say, "anyone clearly identifying himself to the agency for the record as having an interest in the outcome of the matter being considered by that agency, thereby becomes a party to the proceeding." *Id.*; see also *Maryland-Nat'l v. Smith*, 333 Md. at 10 (stating that "personal appearance and testimony at the hearing are not required" for administrative standing, and that it is sufficient that the hearing examiner considered the person to be a party or the person's name was submitted to the agency as an aggrieved party).

In contrast, as explained above, to obtain judicial review of an agency decision, a party must have been a party to the administrative decision and be aggrieved by the final decision of the agency. SG § 10-222(a)(1);

Bryniarski, 247 Md. at 143; see also *Sugarloaf Citizens' Ass'n*, 344 Md. at 287-88 (citations omitted). The Court of Appeals in *Sugarloaf Citizen's Ass'n* explained that to be "aggrieved" for the purposes of judicial review, "a person ordinarily must have an [*30] interest such that he is personally and specifically affected in a way different from . . . the public generally." 344 Md. at 288 (internal quotations and citations omitted). This mirrors "general common law standing principles." *Id.* (citations omitted).

Determining whether a party to an administrative proceeding is aggrieved as to properly seek judicial review of an agency decision is a determination held exclusively by the courts. *Id.* at 289-90. In *Sugarloaf*, the Court of Appeals stated:

If . . . the ALJ was rendering findings and conclusions on the plaintiff's entitlement to maintain a judicial review action . . . , then the ALJ went beyond her proper role

[I]t is not the proper function of an administrative official or agency in the executive branch of government to decide whether a plaintiff or potential plaintiff has standing to maintain an action in court.

* * *

[T]he determination of whether a person has standing to maintain an action in court is exclusively a judicial function.

Id. at 289-90.

B. Waiver

On cross-appeal, St. Paul's challenges the circuit court's ruling that St. Paul's waived its standing argument because St. Paul's did not raise the issue of standing before the Board. St. Paul's maintains that, under Maryland [*31] law, the question of standing is properly determined by the courts, not an administrative agency. Furthermore, because of the "relatively lenient standards" for administrative standing, an individual may have standing before an agency, but not in the courts. Therefore, St. Paul's argues that the issue of standing was not ripe before Appellants filed their petition for judicial

review.⁶

6 The Appellants did not offer an argument in their briefing on appeal on the issue of waiver.

We think it is clear that, under prevailing Maryland law, St. Paul's did not waive its argument that the Appellants do not have standing to request judicial review of the Board's decision by not raising this issue before the Board. Standing for judicial review is not an issue that can be properly resolved by the Board, and a challenge to the Appellants' administrative standing was "simply a non-issue" based on the low standard required to be a party to an administrative proceeding. *Sugarloaf Citizens' Ass'n*, 344 Md. at 289. Standing for judicial review is properly determined by the circuit court, "through a motion or other pleading filed by [an adverse party] to dismiss [the appellant] as a party." *Morris*, 278 Md. at 424.

C. Aggrieved Party

Each Appellant in this case was a party to the administrative proceeding before the Board. [*32] Having established the first condition precedent that must be met for standing, we turn to the central concern in this case—whether Appellants were "aggrieved" by the decision of the Board. *SG § 10-222(a)(1)*; *Bryniarski*, 247 Md. at 143.

St. Paul's argues on appeal that the Appellants lack standing to seek judicial review because they do not own property "close enough to Tract A to be aggrieved, and they have not otherwise proven that they will be specially harmed by the Maintenance Building." St. Paul's asserts that, under Maryland law, for a property owner to have standing, the owner must be "*prima facie* aggrieved," or "almost *prima facie* aggrieved" and specially harmed by the agency decision. St. Paul's relies on the fact that the distance between the proposed maintenance building and the properties owned by VPC, Mr. Carroll, and Mr. Batoff, is over 1,000 feet, which it argues is the cut-off point for even almost *prima facie* aggrievement. Furthermore, St. Paul's contends that the Appellants failed to establish that they would be specially harmed in a way distinct from the general public.

The Appellants urge that nothing in Maryland law has established an inflexible 1,000 foot cut-off for "almost *prima facie*" aggrievement and [*33] the fact that the lots at issue are large rural lots should be taken

into consideration. They point out that at least one of the Appellants, Batoff, is specially harmed by the agency decision because he rides his horses on a neighbor's property that is adjacent to Tract A. And, they argue, that both Mr. Carroll and Mr. Batoff will be specially harmed by the "impact of the groundwater and water supply to their properties as a result of the proposed development and the extension of water to the maintenance building." In their final argument, presented in a footnote, Appellants contend that the VPC, as an organization, is also specially harmed as VPC "is dedicated to protecting the valleys of northern Baltimore County, including the area in which the subject property is located," and that the VPC and its members, including Mr. Carroll and Mr. Batoff, also have standing by virtue of the agreement reached with St. Paul's.

St. Paul's relies heavily on *Ray v. Mayor & City Council of Baltimore*, 430 Md. 74, 59 A.3d 545 (2013) ("*Ray II*") and *State Center, LLC v. Lexington Charles Ltd. Partnership*, 438 Md. 451, 92 A.3d 400 (2014). In *Ray II*, the Court of Appeals affirmed this Court's holding that the petitioners did not have standing where their properties, 2,212.39 and 2,002.18 feet away from the Planned Unit Development, were not in close proximity [*34] to the subject property of the rezoning and where petitioners failed to demonstrate that they were harmed in a way distinct from the general public. 430 Md. at 78-80. In reaching its decision, the Court of Appeals reviewed Maryland case law discussing a property owner has standing to challenge a rezoning decision by a county board of zoning.

The *Ray II* Court instructed that proximity is the most important factor in determining standing to challenge a zoning decision:

A review of our cases, where standing to challenge a rezoning action was at issue, reveals one critical point: proximity is the most important factor to be considered. The relevance and import of other facts tending to show aggrievement depends on how close the affected property is to the re-zoned property. There is, however, no bright-line rule for exactly how close a property must be in order to show special aggrievement. Instead, this Court has maintained a flexible standard, finding standing in cases that do not quite satisfy

the "adjoining, confronting or nearby" standard of *prima facie* aggrievement, but are nudging up against that line. Protestants in such cases will be considered to pass the standing threshold if they allege specific [*35] facts of their injury. In other words, once sufficient proximity is shown, some typical allegations of harm acquire legal significance that would otherwise be discounted. **But in the absence of proximity, much more is needed.**

Id. at 82-83 (emphasis added) (footnote omitted). The Court determined that there are three ways a property owner can achieve standing sufficient to seek judicial review of a board's zoning decision. *Id.* at 82-86.

First, a property owner may be *prima facie* aggrieved where s/he owns property adjoining, confronting, or nearby the property subject to the zoning change. *Id.* at 85. Second, a property owner may be specially aggrieved where the property owner is further away than an adjoining, confronting or nearby property owner so that they are almost *prima facie* aggrieved, if, they meet the burden of alleging and proving a "plus factor"—that their personal or property rights are specially and adversely affected by the Board's decision. *Id.* at 81, 85; *accord Bryniarski*, 247 Md. at 145. "Plus factors" sufficient to find standing have included "an owner's lay opinion of decreasing property values and increasing traffic" *Ray II*, 430 Md. at 83-84 (citations omitted). Third, "a . . . poorly-defined category" might provide standing to protestants who, "despite [*36] being 'far removed from the subject property,' may nevertheless be able to establish 'the fact that his personal or property rights are specially and adversely affected by the board's action.'" *Id.* at 85-86.

i. *Prima Facie* Aggrieved

In determining whether a party is *prima facie* aggrieved, proximity of the protestant's property to the rezoned property is the "only relevant factor." *Id.* at 83 n.6 (quoting *Bryniarski*, 247 Md. at 145). And, although proximity is the determinative factor, the Court of Appeals has found *prima facie* aggrievement in a number of cases in which the property was not contiguous, but near enough to be within 'sight or sound' range. *See, e.g., Cassel v. Mayor and City Council of Baltimore*, 195 Md.

348, 353, 73 A.2d 486 (1950) (petitioners had standing where their property was less than 100 feet from the subject property and "within the residential use district in which the property in dispute was originally classified."); *Bryniarski*, 247 Md. at 146-48 (petitioners were *prima facie* aggrieved where they owned property immediately contiguous or in close proximity to the subject property, and were required to receive, by statute, notice of the proposed development); *Sugarloaf*, *supra*, 344 Md. at 297-301 (petitioners were *prima facie* aggrieved where they owned property "adjacent" and "nearby" to the subject property, and the Court noted that evidence showed that higher [*37] levels of toxic substances would fall on petitioner's farm than properties farther from the site). However, "[g]enerally, to be considered an aggrieved party, the complaining property owner must be in 'sight or sound' range of the property that is the subject of his complaint." *Committee for Responsible Development on 25th Street v. Mayor and City Council of Baltimore*, 137 Md. App. 60, 86, 767 A.2d 906 (2001) (citations omitted).

The Appellants argue that the properties owned by Mr. Carroll and Mr. Batoff are sufficiently "nearby" Tract A to entitle them to *prima facie* aggrievement status.⁷ St. Paul's disputes Appellants' claim that their properties are "nearby," citing *Ray v. Mayor of Balt.* 203 Md. App. 15, 34-36, 36 A.3d 521 (2012) ("*Ray I*"),⁸ in which this Court held that the property owners were not *prima facie* aggrieved because the closest property was .40 miles (2,112 feet) away from the rezoned property. Also, St. Paul's points to the Court of Appeals's observation in *Ray II*, that "protestants who lived more than 1000 feet from the rezoning site have repeatedly been denied standing." *Ray II*, 430 Md. at 92.

7 The property owned by VPC is 20,472 feet (or 3.88 miles) from Tract A, which is clearly not close enough to Tract A to be *prima facie* aggrieved. Appropriately, the Appellants offer no argument that VPC has standing as a *prima facie* aggrieved property owner in this case.

8 On appeal from this Court, in *Ray II* the petitioners conceded that they were not *prima facie* aggrieved.

Mr. Carroll's property is 2,327 feet (or .44 miles) from Tract A, and Mr. Batoff's property is 1,873 feet (or .35 miles) from Tract A. Although it is clear from the maps provided that Mr. Carroll and Mr. Batoff's

properties are not "adjoining" or "confronting" Tract A,⁹ whether their properties are close enough to be considered "nearby" for the purposes of *prima facie* aggrievement is not as easily determined. In *Ray I*, Judge Moylan writing for this Court explained:

The wild card in the [] deck of "adjoining, confronting, or nearby property owner[s]" is the tetherless adjective "nearby." In terms of entitlement to "prima facie" aggrievement, notions like "touching," "contiguous," "adjoining," "bounding," "confronting," and "abutting" are warm and comforting geometric certainties. The status of being "nearby," by unnerving contrast, is a will o' the wisp. Nearbyness, like beauty, is in the eye of the beholder. It frustratingly eludes the butterfly net of rectilinear thinking. By zoning developers, it is something conceded only grudgingly by inches. By would-be protestants, it is something dispensed bounteously by furlongs. By what folly did a word so evanescent ever make it into the caselaw? It is more than a word; it is a minefield

Being "nearby" is a notion that shares the basic concerns of proximity with the "contiguous," the "confronting," the "bounding" and the "abutting." It cannot be reduced to mathematical measurement, but it is a "close-in" [*39] thing and not a "distant" thing. It is a neighborly thing and not a mere technical qualification. One can sense it even when one cannot define it. In this case, one does not sense that either [of the Appellants] are truly "nearby."

Ray I, 203 Md. App. at 33-34 (footnote omitted). For reasons explained below, the record clearly establishes that none of the Appellants in this case are "truly 'nearby.'"

9 A map provided in the record shows that Mr. Batoff's property is on the opposite side of Greenspring Valley Road and three lots down from Tract A and that Mr. Carroll's property is on the opposite side of Greenspring Valley Road and down four lots from Tract A. Neither of these

properties are confronting or adjoining Tract A.

The Appellants urge this Court to consider the rural nature of the properties at issue when determining the "nearby" of Mr. Carroll and Mr. Batoff's properties to Tract A. They argue that the properties are "nearby" Tract A because "this area of Baltimore County is characterized by large rural lots. Indeed, Mr. Carroll's and Mr. Batoff's lots are large and separated from the subject property by only 2 or 3 lots." Although this Court has acknowledged, in dicta, that the topography of the subject property may influence whether the property is "nearby," *Holland v. Woodhaven Bldg. & Dev., Inc.*, 113 Md. App. 274, 281 n.3, 687 A.2d 699 (1996) abrogated on other grounds by *Layton v. Howard Cnty Board of Appeals*, 399 Md. 36, 922 A.2d 576 (2007), we reject Appellants' argument that the rural nature of the property should weigh in their favor in this case. Unlike flat, open, rural land where properties farther from the subject property may be affected by zoning changes, the record [*40] shows that the properties at issue in this case, while large rural lots, are also verdant and sylvan, which prevents the Appellants from viewing Tract A from their properties. Among the many maps, drawings, testimony and affidavits in the voluminous record on appeal, there is nothing that demonstrates why the impact of the proposed maintenance building would be "wider reaching" because of the rural nature of these particular properties. *Committee for Responsible Dev.*, 137 Md. App. at 87 n.11, (recognizing that "neighborhoods in rural areas may extend farther, because the damage from a particular decision may be much wider reaching, than in an urban or suburban setting" (citing *Pattey v. Bd. of County Comm'rs for Worcester Cnty.*, 271 Md. 352, 363, 317 A.2d 142 (1974)).¹⁰

10 The petitioners in *Ray II*, made an argument similar to the one the Appellants make here, that the nature of the urban property should be taken into consideration when determining whether petitioners are almost *prima facie* aggrieved. 430 Md. at 92. In *Ray II*, the Court of Appeals dismissed such a consideration, stating:

[N]owhere in any of Petitioners' briefs do they explain the significance, for standing purposes, of the urban PUD, as compared with suburban or rural locales. We can only suppose that Petitioners

posit that an urban PUD expands the proximity factor so that individuals challenging a large urban development are permitted to reside farther away from the PUD than non-urban protestants. We find no support in our earlier decisions, and Petitioners have offered none, for the proposition that the urban nature of the PUD affects the proximity analysis for special [*41] aggrievement purposes. Nor do we see how the size of the PUD renders standing requirements more lenient in analyzing proximity.

Id. Similarly, here, the Appellants do not explain why this Court should consider the fact that Baltimore County is "characterized by large rural lots," when determining if Mr. Carroll and Mr. Batoff's lots, which are "large and separated from the subject property by only 2 or 3 lots," are close enough to the subject property to be considered almost *prima facie* aggrieved.

Furthermore, an additional consideration to determine *prima facie* as well as "almost *prima facie*" aggrievement is whether the protestants can view the subject property from their property. See *Ray I*, 203 Md. App. at 36. In *Ray I*, this Court stated:

Superimposed upon linear distance, however, there is also visibility, as a modifying factor. If the project being developed is in the clear sight of the property owner, that visual factor enhances nearness. If, on the other hand, the project cannot be seen from the would-be protestant's property, that visual shielding diminishes the impact of nearness. As the Court of Appeals noted in *Wilkinson v. Atkinson*, 242 Md. [231, 235, 218 A.2d 503 (1966)], "Visibility is one of the elements of proximity."

Id. In the instant case, it is clear that neither Mr. Carroll nor Mr. Batoff can see Tract A from their respective properties. Mr. Pieranunzi, a registered landscape architect and St. Paul's expert witness, submitted an

affidavit to the circuit court with pictures taken from the Cross-Appellee's property. The pictures show a roadway, surrounded by trees, and no evidence of Tract A or the current [*42] maintenance storage on that land. Mr. Pieranunzi submitted an affidavit containing his opinion that neither Mr. Carroll nor Mr. Batoff can view Tract A from their properties. Neither Mr. Carroll nor Mr. Batoff dispute this fact in their affidavits.

Although the record demonstrated that Tract A is not readily visible from their properties, both Mr. Carroll and Mr. Batoff claim in their affidavits that while traveling down Greenspring Valley Road, they can "see the existing maintenance building" and "anticipate seeing and hearing the proposed maintenance building. . . ." However, even if it were true that the Appellants can see the building from Greenspring Valley Road, which is not supported by the record,¹¹ this Court addressed and rejected a similar contention in *Ray I*, stating:

We hold that, as a factor in the nearness equation, the ability to view the site of the zoning project must be measured from one's property. It is not measured from one's place of employment. It is not measured from the route one regularly travels to work. It is not measured from the evening itinerary in walking the dog. It is not measured from the restaurant where one regularly has lunch.

Id. at 39. We similarly determine [*43] here that nearness is not measured by one's ability to view the construction when driving by the subject property on a public road.

11 At the hearing before the Board, Mr. Pieranunzi testified as to the visibility of the proposed building, stating that, as shown in photos contained in Petitioner's Exhibit #7, "it's very evident that you can see that this site is basically 90 to 95% screened by evergreen vegetation." Mr. Pieranunzi explained that Petitioner's Exhibits #8A-8C, are cross-section diagrams of the sight lines from the same angles as the photos in Exhibit #7, which also show that an individual would not be able to see the building from Greenspring Valley Road. The Appellants have not offered any evidence to contradict this fact other than statements in Mr.

Carroll and Mr. Bantoff's affidavits.

We hold that the record demonstrates that none of the Appellants are *prima facie* aggrieved because none of the properties owned by the Appellants is "adjacent, confronting, or nearby" Tract A.

ii. Almost *Prima Facie* Aggrieved

"Almost *prima facie*" aggrievement is reserved for "those who are 'farther away than an adjoining, confronting, or nearby property owner, but still close enough to the site of the rezoning action to be considered almost *prima facie* aggrieved, and [who also offer] 'plus factors' supporting injury.'" *State Center, supra*, 438 Md. at 533 (emphasis supplied) (citing *Ray II*, 430 Md. at 85). Although we agree with the Appellants that there is no bright-line rule for almost *prima facie* aggrievement, the record demonstrates that neither Mr. Carroll or Mr. Batoff are in close enough proximity to Tract A to qualify as almost *prima facie* aggrieved.

In *Ray II*, the Court of Appeals, while acknowledging that there was no bright-line rule for finding that a property owner is almost *prima facie* aggrieved, stated, "we have found no cases, in which a person living over 2000 feet away, has been considered specially [*44] aggrieved. Rather, as we discussed above, this category has been found applicable only with respect to protestants who lived 200 to 1000 feet away from the subject property." 430 Md. at 91 (emphasis added) (citing *Habliston*, 258 Md. at 352; *Chatham*, 252 Md. at 579-80).

For example, in *Marcus v. Montgomery County Council*, the Court of Appeals concluded that appellants who owned property three-quarters of a mile and one-quarter of a mile from the subject property were not aggrieved where the record lacked evidence that those properties were within sight of the subject property. 235 Md. 535, 538, 201 A.2d 777 (1964). In coming to this conclusion, the Court of Appeals relied on *Pattison v. Corby*, 226 Md. 97, 103, 172 A.2d 490 (1961), which stated:

[W]e think that the position of his property in a residentially zoned area[---]remotely located as it is at a considerable distance from and out of sight of the area rezoned for apartment use[---]was not enough to show that the

appellant had such an interest in the subject matter as bestowed on him standing to attack the validity of the decision of the council.

(Emphasis added). In contrast, the Court in *Marcus* determined that the third appellant, a property owner within one block of the subject property, was aggrieved and had standing to challenge the rezoning. 235 Md. at 538-39.

In *DuBay v. Crane*, the Court of Appeals held [*45] that three appellant property owners, the closest of whom owned property 1,500 feet from the subject property, were not aggrieved for standing purposes. 240 Md. 180, 183-86, 213 A.2d 487 (1965). The Court stated:

The appellant DuBay is the nearest (a distance of 1500 feet) to the reclassified property, but his property is on the opposite side of the Beltway, which, if not a complete shield against the apartments to be constructed, will serve as an adequate barrier. The appellants Aiken and Rice both reside a considerable distance (more than four-tenths of a mile) and possibly out of sight of the proposed apartments.

Id. at 185-86. See also *White v. Major Realty, Inc.*, 251 Md. 63, 64, 246 A.2d 249 (1968) (appellants, who owned property one-half mile from the subject property were not aggrieved); *Committee for Responsible Dev.*, 137 Md. App. at 86-87 (appellant was not aggrieved where he lived five blocks from the subject property and could not see or hear the activity from his house).

Here, the closest property owner, Mr. Batoff, is 1,873 feet from Tract A, almost double the greatest distance Maryland courts have found property owner standing. See *Ray II*, 430 Md. at 91. Much like the appellants in the cases discussed *supra*, neither Mr. Batoff nor Mr. Carroll can see Tract A from their properties.

Appellants are not, based on the record and using applicable case law as a guide, [*46] close enough to Tract A to be considered *prima facie* or almost *prima facie* aggrieved. Nevertheless, recognizing that there is "no bright-line rule for exactly how close a property must be in order to show special aggrievement," we turn to the

"plus factors" alleged by Appellants. *Id.* 430 Md. at 83.

Mr. Batoff's contention that he is specially aggrieved simply because he rides his horses on his neighbor's "fields across the road" from his own property is insufficient under applicable law. As this Court stated in *Ray I*, aggrievement is not "measured from the evening itinerary in walking the dog." 203 Md. App. at 39. Similarly, it is not measured from one horseback riding on a neighbor's property.¹²

12 Notably, the affidavit does not indicate which neighbor's property Batoff rides on, or if that property is actually adjoining or confronting Tract A.

Mr. Batoff and Mr. Carroll together contend that the extension of water and sewer to the proposed maintenance building on Tract A would adversely affect the groundwater available to their properties and sewers on their properties and surrounding properties. However, the Appellants admit in their brief that, "during the course of this case, an extension of the public water supply was approved for Tract A," and that "the properties of Messrs. Batoff and Carroll are not served by public water." Furthermore, at the hearing before this [*47] Court, counsel for St. Paul's informed the Court that public sewer had also been approved for Tract A. Consequently, Mr. Batoff and Mr. Carroll's contention that their properties be adversely affected by Tract A has become moot.¹³ And, VPC did not submit an affidavit or other evidence to attempt to demonstrate standing for their property located more than 3 miles away from the proposed maintenance building. And finally, VPC's argument that it would be specially aggrieved because of its role in "protecting the valleys of northern Baltimore County" and because the alleged breach of the 1988 agreement finds no support in the law. Appellants have cited no authority for these arguments, and we need not address contentions in a party's brief that are "completely devoid of legal authority." See *Anderson v. Litzenberg*, 115 Md. App. 549, 578, 694 A.2d 150 (1997) (footnote omitted). "It is not our function to seek out the law in support of a party's appellate contentions." *Id.* (citation omitted).

13 Additionally, the Board found that the proposed construction will not interfere with adequate provisions for water and sewage. The Appellants have not challenged this finding on appeal and do not offer evidence or argument

other than speculation to contradict this finding.

For the reasons stated above, we hold that the circuit court erred in finding that St. Paul's had waived its standing argument, and in not granting St. Paul's motion to dismiss.

Conclusion

Because we conclude that the Appellants are not aggrieved and, therefore, did not [*48] have standing to file a petition for judicial review of the Board's opinion, we need not reach the merits of the Appellants' argument. However, we feel compelled to note that the Appellants' argument on the merits is not persuasive. The Appellants argue that, in 2004, Tract A was *added* to the special exception area granted in 1989 and, therefore, is subject to the MBE contained in the 1989 site plan. However, the Board found that Tract A was granted a *new* special exception in 2004, evidenced by the fact that St. Paul's filed for a new special exception for Tract A and the site plan provided use restrictions for the new special exception area.

Even if Tract A was added to the original special exception area granted in 1989, the Board found that the special exception area encompassed all of St. Paul's property, while the MBE covered a much smaller area within the special exception and did not extend to Tract A, which was not owned by St. Paul's at the time of the 1989 Order. We agree with the Board. In *Bernui v. Tantallon Control Committee*, this Court determined that after-acquired property was not subject to the restrictions placed on a subdivision where there was no evidence that the [*49] developer intended to restrict after-acquired property. *62 Md. App. 9, 17-18, 488 A.2d 186 (1985)*. There is no evidence in the 1989 Order that the parties intended to bind future acquired property to the

restrictions of the MBE. Therefore, were the issue before us, we would conclude that Tract A is not bound by the MBE.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY VACATED. CASE REMANDED TO THE CIRCUIT COURT, WITH DIRECTIONS TO DISMISS APPELLANTS' PETITION FOR JUDICIAL REVIEW WITH PREJUDICE. COSTS TO BE PAID BY APPELLANTS.

CONCUR BY: Kehoe

CONCUR

Concurring Opinion by Kehoe, J.

I respectfully disagree with part of the Majority's reasoning.

Maryland's law of aggrievement and standing in land use cases has developed, no pun intended, largely through appeals arising out of urban and suburban settings. However, as Judge Kenney noted for this Court in *25th Street v. Baltimore*, *137 Md. App. 60, 87 n.11, 767 A.2d 906 (2001)*, "The Court of Appeals has long recognized the impact of zoning decisions in rural and semi-rural areas can be different than in urban and suburban areas."

St. Paul's School is located in a semi-rural area. Mr. Batoff's claim of aggrievement presents a very close question under the test for aggrievement as I believe that test should be applied in rural and semi-rural areas. I would give him the benefit [*50] of the doubt. However, because I wholeheartedly agree with the Majority's conclusion that "Tract A is not bound by the MBE," I believe that the Majority has reached the correct result.



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PUBLIC UTILITIES
DIVISION I. PUBLIC SERVICES AND UTILITIES
TITLE 2. PUBLIC SERVICE COMMISSION AND PEOPLE'S COUNSEL
SUBTITLE 1. PUBLIC SERVICE COMMISSION

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. PUBLIC UTILITIES Code Ann. § 2-112 (2017)

§ 2-112. Jurisdiction; general powers

(a) Jurisdiction. -- To the full extent that the Constitution and laws of the United States allow, the Commission has jurisdiction over each public service company that engages in or operates a utility business in the State and over motor carrier companies as provided in Title 9 of this article.

(b) General powers. --

(1) The Commission has the powers specifically conferred by law.

(2) The Commission has the implied and incidental powers needed or proper to carry out its functions under this division.

(c) Liberal construction. -- The powers of the Commission shall be construed liberally.

HISTORY: An. Code 1957, art. 78, § 1; 1998, ch. 8, § 2; 2010, ch. 52.

NOTES: EFFECT OF AMENDMENTS. --Ch. 52, Acts 2010, effective October 1, 2010, substituted "this division" for "this article" in (b)(2)

UNIVERSITY OF BALTIMORE LAW FORUM. --For a comment, "Getting the Lights Back On: An Analysis of the Maryland Energy Service Quality and Reliability Act's Impact on Utility Liability and Consumer Rights," see 43 *U. Balt. L. F.* 133 (2013).

ADMINISTRATIVE REMEDY PROVIDED BY THIS ARTICLE IS PRIMARY, NOT EXCLUSIVE. --The circuit

Md. PUBLIC UTILITIES Code Ann. § 2-112

court erred in dismissing a complaint because the administrative remedy provided by this article before the Commission is primary, not exclusive, and plaintiff's request that the proceedings before that court be stayed, and not dismissed, pending plaintiff's exhaustion of the Commission's administrative remedy, should have been granted. *Intercom Sys. Corp. v. Bell Atl. of Md., Inc.*, 135 Md. App. 624, 763 A.2d 1196 (2000), *aff'd*, 366 Md. 1, 782 A.2d 791 (2001).

PUBLIC SERVICE COMMISSION'S AUTHORITY. --Subsection (b)(2) did not authorize the Public Service Commission's actions in capping the standard offer of service rates an electric utility could charge a certain group of customers or in approving a utility's plan to recoup a resulting revenue loss by charging another group of customers higher rates because (1) the section provided that the PSC had the implied and incidental powers needed or proper to carry out the PSC's functions, and (2) it would be contrary to the spirit of statutory interpretation to read such a "gap-filling" provision as granting powers otherwise not granted in the governing statutes. *Severstal Sparrows Point, LLC v. PSC of Md.*, 194 Md. App. 601, -- A.2d --, 5 A.3d 713, 2010 Md. App. LEXIS 135 (2010).

POWERS COVER THE EXERCISE, ETC., OF FRANCHISES. --The powers of the Commission cover the exercise, abandonment or transfer of franchises. *Kelly v. Consolidated Gas, Elec. Light & Power Co.*, 153 Md. 523, 138 A. 487 (1927); *Commissioners of Cambridge v. Eastern Shore Pub. Serv. Co.*, 192 Md. 333, 64 A.2d 151 (1949).

COUNTY ORDINANCE PREEMPTED BY STATE LAWS. --County ordinance which declared that no person could construct, operate, replace, reconstruct or maintain a telecommunications system on, over, or under any public rights-of-way in the county without a franchise granted by the county, was an impermissible attempt to regulate because the State had demonstrated a clear intent to occupy that entire field, and the ordinance was impliedly preempted. *Bell Atlantic-Maryland, Inc. v. Prince George's County*, 155 F. Supp. 2d 465 (D. Md. 2001).

GRID RESILIENCY CHARGE. --Approval of an Grid Resiliency Charge was proper as: (1) the Grid Resiliency Task Force (GRTF) recommended a tracker cost recovery mechanism for accelerated and incremental investments; (2) the Maryland Public Service Commission explained why it departed from its prior practice of denying recovery of estimated costs that were not known and measurable; (3) there was a need for accelerated reliability work; (4) a mechanism to monitor the cost-effectiveness of the tracker was approved; and (5) the finding that it was just and reasonable to compensate the electric company for the financial burden of accelerating reliability projects in accordance with the GRTF's recommendations was supported by substantial evidence. *Md. Office of People's Counsel v. Md. PSC*, 226 Md. App. 176, 127 A.3d 582 (2015).

SURCHARGE PLAN APPROVAL UPHeld. --Maryland Public Service Commission (Commission) properly approved a gas company's plan to accelerate the replacement of outdated gas distribution infrastructure and impose a surcharge during the initial implementation of the plan because the Commission's decision was not unlawful under Md. Code Ann., Pub. Util. Cos. § 4-210. *Md. Office of People's Counsel v. Md. PSC*, 226 Md. App. 483, 130 A.3d 1061 (2016).

CONDITIONS DID NOT CONSTITUTE TAXES. --Public Service Commission's imposition of conditions upon approval of an electric generating station was within its statutory authority in order to benefit both the environmental and economic interests of the State, as the conditions were not taxes and revenue was not the primary purpose of the conditions. *Accokeek, Mattawoman, Piscataway Creeks Cmty. Council, Inc. v. Md. PSC*, 227 Md. App. 265, 133 A.3d 1228 (2016).

RAILROAD CROSSINGS. --If the Commission authorizes the construction of a railroad, such authorization includes the right to cross tracks along the route. The Commission may determine whether a crossing shall be at, under or above grade; such determination may be made after the passage of an order approving construction of road. *City & Sub. R.R. v. Washington, W. & G.R.R.*, 122 Md. 655, 90 A. 521 (1914).

QUOTED IN *Bell Atl. of Md., Inc. v. Intercom Sys. Corp.*, 366 Md. 1, 782 A.2d 791 (2001); *PSC v. Wilson*, 389 Md. 27,

882 A.2d 849 (2005); Carter v. Huntington Title & Escrow, LLC, 420 Md. 605, 24 A.3d 722 (2011).

CITED IN Schisler v. State, 177 Md. App. 731, 938 A.2d 57 (2007); Severstal Sparrows Point, LLC v. PSC of Md., 194 Md. App. 601, -- A.2d --, 5 A.3d 713, 2010 Md. App. LEXIS 135 (2010).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.



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PUBLIC UTILITIES
DIVISION I. PUBLIC SERVICES AND UTILITIES
TITLE 7. GAS, ELECTRIC, AND WATER COMPANIES
SUBTITLE 7. RENEWABLE ENERGY PORTFOLIO STANDARD

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. PUBLIC UTILITIES Code Ann. § 7-701 (2017)

§ 7-701. Definitions.

(a) In general. -- In this subtitle the following words have the meanings indicated.

(b) Administration. -- "Administration" means the Maryland Energy Administration.

(c) Fund. -- "Fund" means the Maryland Strategic Energy Investment Fund established under § 9-20B-05 of the *State Government Article*.

(d) Geothermal heating and cooling system. -- "Geothermal heating and cooling system" means a system that:

(1) exchanges thermal energy from groundwater or a shallow ground source to generate thermal energy through a geothermal heat pump or a system of geothermal heat pumps interconnected with any geothermal extraction facility that is:

(i) a closed loop or a series of closed loop systems in which fluid is permanently confined within a pipe or tubing and does not come in contact with the outside environment; or

(ii) an open loop system in which ground or surface water is circulated in an environmentally safe manner directly into the facility and returned to the same aquifer or surface water source;

(2) meets or exceeds the current federal Energy Star product specification standards;

(3) replaces or displaces inefficient space or water heating systems whose primary fuel is electricity or a nonnatural gas fuel source;

Md. PUBLIC UTILITIES Code Ann. § 7-701

(4) replaces or displaces inefficient space cooling systems that do not meet federal Energy Star product specification standards;

(5) is manufactured, installed, and operated in accordance with applicable government and industry standards; and

(6) does not feed electricity back to the grid.

(e) Industrial process load. -- "Industrial process load" means the consumption of electricity by a manufacturing process at an establishment classified in the manufacturing sector under the North American Industry Classification System, Codes 31 through 33.

(f) Offshore wind energy. -- "Offshore wind energy" means energy generated by a qualified offshore wind project.

(g) Old growth timber. -- "Old growth timber" means timber from a forest:

(1) at least 5 acres in size with a preponderance of old trees, of which the oldest exceed at least half the projected maximum attainable age for the species; and

(2) that exhibits several of the following characteristics:

(i) shade-tolerant species are present in all age and size classes;

(ii) randomly distributed canopy gaps are present;

(iii) a high degree of structural diversity characterized by multiple growth layers reflecting a broad spectrum of ages is present;

(iv) an accumulation of dead wood of varying sizes and stages of decomposition accompanied by decadence in live dominant trees is present; and

(v) pit and mound topography can be observed.

(h) Offshore wind renewable energy credit or OREC. -- "Offshore wind renewable energy credit" or "OREC" means a renewable energy credit equal to the generation attributes of 1 megawatt-hour of electricity that is derived from offshore wind energy.

(i) PJM region. -- "PJM region" means the control area administered by the PJM Interconnection, as the area may change from time to time.

(j) Poultry litter. -- "Poultry litter" means the fecal and urinary excretions of poultry, including wood shavings, sawdust, straw, rice hulls, and other bedding material for the disposition of manure.

(k) Qualified offshore wind project. -- "Qualified offshore wind project" means a wind turbine electricity generation facility, including the associated transmission-related interconnection facilities and equipment, that:

(1) is located on the outer continental shelf of the Atlantic Ocean in an area that:

(i) the United States Department of the Interior designates for leasing after coordination and consultation with the State in accordance with § 388(a) of the Energy Policy Act of 2005; and

(ii) is between 10 and 30 miles off the coast of the State;

(2) interconnects to the PJM Interconnection grid at a point located on the Delmarva Peninsula; and

(3) the Commission approves under § 7-704.1 of this subtitle.

(l) Qualifying biomass. --

(1) "Qualifying biomass" means a nonhazardous, organic material that is available on a renewable or recurring basis, and is:

(i) waste material that is segregated from inorganic waste material and is derived from sources including:

1. except for old growth timber, any of the following forest-related resources:

A. mill residue, except sawdust and wood shavings;

B. precommercial soft wood thinning;

C. slash;

D. brush; or

E. yard waste;

2. a pallet, crate, or dunnage;

3. agricultural and silvicultural sources, including tree crops, vineyard materials, grain, legumes, sugar, and other crop by-products or residues; or

4. gas produced from the anaerobic decomposition of animal waste or poultry waste; or

(ii) a plant that is cultivated exclusively for purposes of being used at a Tier 1 renewable source or a Tier 2 renewable source to produce electricity.

(2) "Qualifying biomass" includes biomass listed in paragraph (1) of this subsection that is used for co-firing, subject to § 7-704(d) of this subtitle.

(3) "Qualifying biomass" does not include:

(i) unsegregated solid waste or postconsumer wastepaper; or

(ii) an invasive exotic plant species.

(m) Thermal biomass system. -- "Thermal biomass system" means a system that:

(1) uses:

(i) primarily animal manure, including poultry litter, and associated bedding to generate thermal energy; and

(ii) food waste or qualifying biomass for the remainder of the feedstock;

(2) is used in the State; and

(3) complies with all applicable State and federal statutes and regulations, as determined by the appropriate regulatory authority.

(n) Renewable energy credit. -- "Renewable energy credit" or "credit" means a credit equal to the generation attributes of 1 megawatt-hour of electricity that is derived from a Tier 1 renewable source or a Tier 2 renewable source

that is located:

(1) in the PJM region;

(2) outside the area described in item (1) of this subsection but in a control area that is adjacent to the PJM region, if the electricity is delivered into the PJM region; or

(3) on the outer continental shelf of the Atlantic Ocean in an area that:

(i) the United States Department of the Interior designates for leasing after coordination and consultation with the State in accordance with § 388(a) of the Energy Policy Act of 2005; and

(ii) is between 10 and 30 miles off the coast of the State.

(o) Renewable energy portfolio standard. -- "Renewable energy portfolio standard" or "standard" means the percentage of electricity sales at retail in the State that is to be derived from Tier 1 renewable sources and Tier 2 renewable sources in accordance with § 7-703(b) of this subtitle.

(p) Renewable on-site generator. -- "Renewable on-site generator" means a person who generates electricity on site from a Tier 1 renewable source or a Tier 2 renewable source for the person's own use.

(q) Solar water heating system. --

(1) "Solar water heating system" means a system that:

(i) consists of glazed liquid-type flat-plate or tubular solar collectors or concentrating solar thermal collectors as defined and certified to the OG-100 standard of the Solar Ratings and Certification Corporation;

(ii) generates energy using solar radiation for the purpose of heating water; and

(iii) does not feed electricity back to the electric grid.

(2) "Solar water heating system" does not include a system that generates energy using solar radiation for the sole purpose of heating a hot tub or swimming pool.

(r) Tier 1 renewable source. -- "Tier 1 renewable source" means one or more of the following types of energy sources:

(1) solar energy, including energy from photovoltaic technologies and solar water heating systems;

(2) wind;

(3) qualifying biomass;

(4) methane from the anaerobic decomposition of organic materials in a landfill or wastewater treatment plant;

(5) geothermal, including energy generated through geothermal exchange from or thermal energy avoided by, groundwater or a shallow ground source;

(6) ocean, including energy from waves, tides, currents, and thermal differences;

(7) a fuel cell that produces electricity from a Tier 1 renewable source under item (3) or (4) of this subsection;

(8) a small hydroelectric power plant of less than 30 megawatts in capacity that is licensed or exempt from

licensing by the Federal Energy Regulatory Commission;

(9) poultry litter-to-energy;

(10) waste-to-energy;

(11) refuse-derived fuel; and

(12) thermal energy from a thermal biomass system.

(s) Tier 2 renewable source. — "Tier 2 renewable source" means hydroelectric power other than pump storage generation.

HISTORY: 2004, ch. 487, § 1; ch. 488, § 1; 2005, ch. 266; 2007, chs. 119, 120; 2008, ch. 125, § 2; ch. 126, § 2; chs. 127, 128, 135, 136; 2011, chs. 65, 407, 408, 519; 2012, chs. 556, 557, 635; 2013, ch. 3, § 1; chs. 341, 342.

NOTES: EFFECT OF AMENDMENTS. —Chapters 127 and 128, Acts 2008, effective June 1, 2008, made identical changes. Each reenacted (a) without change and rewrote (c).

Chapters 135 and 136, Acts 2008, effective October 1, 2008, made identical changes. Each reenacted (g) without change; added (l)(9) and made related changes; and deleted former (m)(2).

Section 2, chs. 125 and 126, Acts 2008, effective January 1, 2011, made identical changes. Each reenacted (a) without change; and deleted "or in a state that is adjacent to the PJM region" at the end of (i)(1).

Chapter 65, Acts 2011, enacted April 12, 2011, and effective from date of enactment, substituted "subsection" for "section" in (h)(2).

Chapter 519, Acts 2011, effective October 1, 2011, added (l)(10) and (l)(11); rewrote (m); and made related changes.

Chapters 407 and 408, Acts 2011, effective January 1, 2012, made identical changes. Each reenacted (a) without change; added (k-1); and in (l)(1) added "energy, including energy from photovoltaic technologies and solar water heating systems."

Chapters 556 and 557, Acts 2012, effective October 1, 2012, made identical changes. Each reenacted (a) without change; added (c-1); and in (l)(5) added "including energy generated through geothermal exchange from or thermal energy avoided by, groundwater or a shallow ground source."

Chapter 635, Acts 2012, effective January 1, 2013, reenacted (a) without change; added (h-1) and (l)(12); and made related changes.

Section 1, ch. 3, Acts 2013, effective June 1, 2013, redesignated (c-1) as (d), (h-1) as (m), and (k-1) as (q), added (f), (h), (k), and (n)(3), and redesignated accordingly; in (i) deleted "Inc." after "the PJM Interconnection"; and made related changes.

Chapters 341 and 342, Acts 2013, effective May 12 2013, made identical changes. Each rewrote (k-1)(1)(i) [(q)].

EDITOR'S NOTE. —For provisions concerning advisory group recommendations related to avian and bat issues resulting from wind-power generators; regulations; and utilization of poultry litter in alternative and beneficial ways, see §§ 3, 4, and 7, chs. 487 and 488, Acts 2004.

Section 8, chs. 487 and 488, Acts 2004, provides that "on or before December 1, 2009, the Public Service Commission shall provide a status report to the Governor and the General Assembly, subject to § 2-1246 of the *State Government Article*, which includes a review of the implementation of this Act, the availability and development of each type of Tier 1 renewable energy source, the impact on the price of Tier 1 renewable energy sources, the amount of compliance fees paid by electricity suppliers each year for noncompliance with Tier 1 and Tier 2 renewable energy sources, and the use of these compliance fees to support the creation of new Tier 1 renewable energy sources."

Section 9, chs. 487 and 488, Acts 2004, provides that "the Public Service Commission shall:

"(1) on or before January 1, 2016, commence a review of the implementation and the environmental and economic impacts of the renewable portfolio standard enacted by this Act, including the impacts of Tier 2 renewable sources;

"(2) in the course of its review, consult with appropriate scientific, economic, and environmental resources, and with

affected communities of interest;

"(3) develop recommendations concerning the continuation of the renewable portfolio standard for Tier 1 and Tier 2 renewable sources, including the classification of sources in distinct tiers, any recommended alteration to the tier system, and whether the tiers should be continued and, if so, at what percentages; and

"(4) on or before January 1, 2017, report its recommendations to the Governor and the General Assembly, subject to § 2-1246 of the State Government Article."

Section 4, ch. 65, Acts 2011, provides that "the provisions of this Act are intended solely to correct technical errors in the law and there is no intent to revive or otherwise affect law that is the subject of other acts, whether those acts were signed by the Governor prior to or after the signing of this Act."

Section 2, chs. 407 and 408, Acts 2011, provides that "this Act shall apply only to solar water heating systems that are commissioned on or after June 1, 2011."

Section 3, chs. 407 and 408, Acts 2011, provides that the acts shall take effect January 1, 2012.

Chapters 407, 408, and 519, Acts 2011, all amended (l). None of the chapters referred to the others, and effect has been given to all, as they amended different portions of (l).

Section 2, chs. 556 and 557, Acts 2012, provides that "this Act shall apply only to geothermal heating and cooling systems that are commissioned on or after January 1, 2013."

Chapters 556, 557, and 635, Acts 2012, all amended (a) and (l). None of the chapters referred to the others, and the amendments have been reconciled to give effect to all, as they reenacted (a) without change and amended different portions of (l).

Chapters 3, 341, and 342, Acts 2013, amended this section. None of the chapters referred to the others, and effect has been given to all. The amendment by chs. 341 and 342 appears in (q) as redesignated by ch. 3.

BILL REVIEW LETTER. --Chapters 125 and 126, Acts 2008, (House Bill 375, Senate Bill 209) were approved for constitutionality and legal sufficiency, and increased the standard for non-solar Tier 1 renewable resources, raised compliance fees for credit shortfalls beginning in 2011, and allowed for the Public Service Commission to grant a delay. Further, they revised the geographical area that qualified for the RPS credit and eliminated credit for electricity supplied by states and control areas adjacent to PJM. The provisions did not prevent suppliers from purchasing electricity for any source in the country and treated out-of-state and in-state sources the same. The actual impact on interstate commerce would be incidental; therefore the changes to the RPS program did not violate the Commerce Clause. (Letter of the Attorney General dated April 22, 2008.)

Chapters 556 and 557, Acts 2012 (S.B. 652 and H.B. 1186), effective October 1, 2012, was approved for constitutionality and legal sufficiency, even though a severable portion may violate the Commerce Clause of the United States Constitution. The bills add geothermal heating and cooling pumps that must be connected to the distribution grid serving Maryland as RPS resources that qualify for REC credits. A Commerce Clause issue is raised because the bills appear to prohibit certain types of out-of-state geothermal heating and cooling systems that are not connected to the distribution grid serving Maryland from qualifying for REC credits. Even though the size of the impact of this limitation upon interstate commerce could be minimal, it is possible a court would find that the bills, in part, violate the Commerce Clause. (Letter of Attorney General dated May 10, 2012.)

Chapter 635, Acts 2012 (S.B. 1004), effective January 1, 2013, was approved for constitutionality and legal sufficiency, even though a severable portion may violate the Commerce Clause of the United States Constitution. The bills add thermal biomass systems located in Maryland as RPS resources that qualify for REC credits. The geographic restriction in this bill could be found to violate the Commerce Clause as it arguably discriminates against both on its face and in practical effect thermal biomass systems located and used in other states. (Letter of Attorney General dated May 10, 2012.)

Chapter 3, Acts 2013, (House Bill 226) was approved for constitutional and legal sufficiency as its provisions regarding that an applicant comply with the State's Minority Business Enterprise Program satisfies the appropriate levels of constitutional scrutiny. The provisions are narrowly tailored and impose little or no burdens on innocent third parties in the fact that minority investors be only solicited and interviewed. To limit the possibility of constitutional problems, the State should not unilaterally assign any numerical goals or requirements and should ensure that non-minorities are not excluded from the efforts of applicants to seek out investors. (Letter of the Attorney General

dated April 8, 2013.)

UNIVERSITY OF BALTIMORE LAW REVIEW. --For a symposium issue, "LEED-Ing the Way: Policy and Legal Issues with Green Building and Design: Article: Legal Implications for Green Buildings Within Condominium and Homeowners Association Regimes in Maryland: Striking a Balance Between the Promotion of Green Retrofits to Existing Housing Stock and Maintaining Aesthetics by Homeowners Associations and Condominium Associations," see *38 U. Balt. L. Rev.* 411 (2009).

UNIVERSITY OF BALTIMORE LAW FORUM. --For an article, "Protecting Maryland's Environment: A Holistic Solution," see *40 U. Balt. L. F.* 205 (2010).

NOTES APPLICABLE TO ENTIRE ARTICLE

EDITOR'S NOTE. --Section 7, ch. 37, Acts 2010, provides that "Article -- Public Utility Companies of the Annotated Code of Maryland be renamed to be Article -- Public Utilities."

NOTES APPLICABLE TO ENTIRE DIVISION

EDITOR'S NOTE. --Section 5, ch. 37, Acts 2010, provides that "the new division designation "Division I. Public Services and Utilities" of Article -- Public Utility Companies of the Annotated Code of Maryland be added to immediately precede Section 1-101."

Section 7, ch. 37, Acts 2010, provides that "Article - Public Utility Companies of the Annotated Code of Maryland be renamed to be Article - Public Utilities."



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PUBLIC UTILITIES
DIVISION I. PUBLIC SERVICES AND UTILITIES
TITLE 7. GAS, ELECTRIC, AND WATER COMPANIES
SUBTITLE 7. RENEWABLE ENERGY PORTFOLIO STANDARD

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. PUBLIC UTILITIES Code Ann. § 7-702 (2017)

§ 7-702. Intent and findings

(a) Intent. -- It is the intent of the General Assembly to:

- (1) recognize the economic, environmental, fuel diversity, and security benefits of renewable energy resources;
- (2) establish a market for electricity from these resources in Maryland; and
- (3) lower the cost to consumers of electricity produced from these resources.

(b) Findings. -- The General Assembly finds that:

(1) the benefits of electricity from renewable energy resources, including long-term decreased emissions, a healthier environment, increased energy security, and decreased reliance on and vulnerability from imported energy sources, accrue to the public at large; and

(2) electricity suppliers and consumers share an obligation to develop a minimum level of these resources in the electricity supply portfolio of the State.

HISTORY: 2004, ch. 487, § 1; ch. 488, § 1; 2017, chs. 1, 2.

NOTES: EFFECT OF AMENDMENTS. --Chapters 1 and 2, Acts 2017, effective March 4, 2017 and March 9, 2017, respectively, made identical changes. Each, enacted pursuant to *Article III, § 17, of the Maryland Constitution* pursuant to veto override, reenacted the section without change.

EDITOR'S NOTE. --Chapters 1 and 2, Acts 2017, were enacted pursuant to *Article II, § 17 of the Maryland*

Md. PUBLIC UTILITIES Code Ann. § 7-702

Constitution without the Governor's signature, to become effective 30 days after the Governor's veto of 2016 act was overridden, superseding the effective dates drafted in the bills.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.



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PUBLIC UTILITIES
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SUBTITLE 7. RENEWABLE ENERGY PORTFOLIO STANDARD

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. PUBLIC UTILITIES Code Ann. § 7-703 (2017)

§ 7-703. Renewable energy portfolio standard.

(a) In general. --

(1) (i) The Commission shall implement a renewable energy portfolio standard that, except as provided under paragraphs (2) and (3) of this subsection, applies to all retail electricity sales in the State by electricity suppliers.

(ii) If the standard becomes applicable to electricity sold to a customer after the start of a calendar year, the standard does not apply to electricity sold to the customer during that portion of the year before the standard became applicable.

(2) A renewable energy portfolio standard may not apply to electricity sales at retail by any electricity supplier:

(i) in excess of 300,000,000 kilowatt-hours of industrial process load to a single customer in a year;

(ii) to residential customers in a region of the State in which electricity prices for residential customers are subject to a freeze or cap contained in a settlement agreement entered into under § 7-505 of this title until the freeze or cap has expired; or

(iii) to a customer served by an electric cooperative under an electricity supplier purchase agreement that existed on October 1, 2004, until the expiration of the agreement, as the agreement may be renewed or amended.

(3) The portion of a renewable energy portfolio standard that represents offshore wind energy may not apply to electricity sales at retail by any electricity supplier in excess of:

(i) 75,000,000 kilowatt-hours of industrial process load to a single customer in a year; and

Md. PUBLIC UTILITIES Code Ann. § 7-703

(ii) 3,000 kilowatt-hours of electricity in a month to a customer who is an owner of agricultural land and files an Internal Revenue Service form 1040, schedule F.

(b) Standards. -- The renewable energy portfolio standard shall be as follows:

- (1) in 2006, 1% from Tier 1 renewable sources and 2.5% from Tier 2 renewable sources;
- (2) in 2007, 1% from Tier 1 renewable sources and 2.5% from Tier 2 renewable sources;
- (3) in 2008, 2.005% from Tier 1 renewable sources, including at least 0.005% derived from solar energy, and 2.5% from Tier 2 renewable sources;
- (4) in 2009, 2.01% from Tier 1 renewable sources, including at least 0.01% derived from solar energy, and 2.5% from Tier 2 renewable sources;
- (5) in 2010, 3.025% from Tier 1 renewable sources, including at least 0.025% derived from solar energy, and 2.5% from Tier 2 renewable sources;
- (6) in 2011, 5.0% from Tier 1 renewable sources, including at least 0.05% derived from solar energy, and 2.5% from Tier 2 renewable sources;
- (7) in 2012, 6.5% from Tier 1 renewable sources, including at least 0.1% derived from solar energy, and 2.5% from Tier 2 renewable sources;
- (8) in 2013, 8.2% from Tier 1 renewable sources, including at least 0.25% derived from solar energy, and 2.5% from Tier 2 renewable sources;
- (9) in 2014, 10.3% from Tier 1 renewable sources, including at least 0.35% derived from solar energy, and 2.5% from Tier 2 renewable sources;
- (10) in 2015, 10.5% from Tier 1 renewable sources, including at least 0.5% derived from solar energy, and 2.5% from Tier 2 renewable sources;
- (11) in 2016, 12.7% from Tier 1 renewable sources, including at least 0.7% derived from solar energy, and 2.5% from Tier 2 renewable sources;
- (12) in 2017:
 - (i) 13.1% from Tier 1 renewable sources, including:
 1. at least 1.15% derived from solar energy; and
 2. an amount set by the Commission under § 7-704.2(a) of this subtitle, not to exceed 2.5%, derived from offshore wind energy; and
 - (ii) 2.5% from Tier 2 renewable sources;
- (13) in 2018:
 - (i) 15.8% from Tier 1 renewable sources, including:
 1. at least 1.5% derived from solar energy; and
 2. an amount set by the Commission under § 7-704.2(a) of this subtitle, not to exceed 2.5%, derived from

offshore wind energy; and

(ii) 2.5% from Tier 2 renewable sources;

(14) in 2019, 20.4% from Tier 1 renewable sources, including:

(i) at least 1.95% derived from solar energy; and

(ii) an amount set by the Commission under § 7-704.2(a) of this subtitle, not to exceed 2.5%, derived from offshore wind energy; and

(15) in 2020 and later, 25% from Tier 1 renewable sources, including:

(i) at least 2.5% derived from solar energy; and

(ii) an amount set by the Commission under § 7-704.2(a) of this subtitle, not to exceed 2.5%, derived from offshore wind energy.

(c) Exclusions. -- Before calculating the number of credits required to meet the percentages established under subsection (b) of this section, an electricity supplier shall exclude from its total retail electricity sales all retail electricity sales described in subsection (a)(2) and (3) of this section.

(d) Supplier to accumulate required credits. -- Subject to subsections (a) and (c) of this section and in accordance with § 7-704.2 of this subtitle, an electricity supplier shall meet the renewable energy portfolio standard by accumulating the equivalent amount of renewable energy credits that equal the percentages required under this section.

HISTORY: 2004, ch. 487, § 1; ch. 488, § 1; 2007, chs. 119, 120; 2008, ch. 125, § 1; ch. 126, § 1; 2010, ch. 494; 2011, ch. 519; 2012, chs. 583, 584; 2013, ch. 3, § 1; 2017, chs. 1, 2.

NOTES: EFFECT OF AMENDMENTS. --Section 1, chs. 125 and 126, Acts 2008, effective January 1, 2009, made identical changes. Each reenacted (a) without change; in (b) substituted "5.0%" for "3.04%" in (b)(6), "6.5%" for "4.06%" in (b)(7), "8.2%" for "4.1%" in (b)(8), "10.3%" for "5.15%" in (b)(9), "10.5%" for "5.25%" in (b)(10), "12.7%" for "6.35%" in (b)(11), "13.1%" for "6.55%" in (b)(12), "15.8%" for "7.9%" in (b)(13), "17.4%" for "8.7%" in (b)(14), "18%" for "9%" in (b)(15), "18.7%" for "9.35%" in (b)(16), and "20%" for "9.5%" in (b)(17).

Chapter 494, Acts 2010, effective January 1, 2011, substituted "0.05%" for "0.04%" in (b)(6); in (b)(7) substituted "0.1%" for "0.06%"; in (b)(8) substituted "0.2%" for "0.1%"; in (b)(9) substituted "0.3%" for "0.15%"; in (b)(10) substituted "0.4%" for "0.25%"; and in (b)(11) substituted "0.5%" for "0.35%."

Chapter 519, Acts 2011, effective October 1, 2011, reenacted (b)(6) through (b)(17) without change.

Chapters 583 and 584, Acts 2012, effective October 1, 2012, made identical changes. Each substituted "0.25%" for "0.2%" in (b)(8), "0.35%" for "0.3%" in (b)(9), "0.5%" for "0.4%" in (b)(10), "0.7%" for "0.5%" in (b)(11), "0.95%" for "0.55%" in (b)(12), "1.4%" for "0.9%" in (b)(13), "1.75%" for "1.2%" in (b)(14), "2.0%" for "1.5%" in (b)(15), and "2.0%" for "1.85%" in (b)(16).

Section 1, ch. 3, Acts 2013, effective June 1, 2013, substituted "paragraphs (2) and (3)" for "paragraph (2)" in (a)(1)(i); added (a)(3), (b)(12)(i)2, (b)(13)(i)2, (b)(14)(ii); (b)(15)(ii); (b)(16)(ii); and (b)(17)(ii); added the (b)(12)(i), (b)(12)(i)1, (b)(12)(ii), (b)(13)(i), (b)(13)(i)1, (b)(13)(ii), (b)(14)(i), (b)(15)(i), (b)(16)(i), and (b)(17)(i) designations; in (b)(14)(i), (b)(15)(i), (b)(16)(i), and (b)(17)(i), substituted "and" for "and 0% from Tier 2 renewable sources"; in (c) substituted "subsection (a)(2) and (3)" for "subsection (a)(2)"; in (d) added "and in accordance with § 7-704.2 of this subtitle"; and made related changes.

Chapters 1 and 2, Acts 2017, effective March 4, 2017 and March 9, 2017, respectively, made identical changes. Each, enacted pursuant to *Article III, § 17, of the Maryland Constitution* pursuant to veto override, added "as the agreement may be renewed or amended" in (a)(2)(iii); in (b)(12)(i)1, (b)(13)(i)1, (b)(14) in the introductory language and (b)(14)(i), and (b)(15) in the introductory language and (b)(15)(i), increased the percentages; in (b)(15) in the

Md. PUBLIC UTILITIES Code Ann. § 7-703

introductory language added "and later"; and deleted (b)(16) and (b)(17) and made related changes.

EDITOR'S NOTE. —Section 5, chs. 119 and 120, Acts 2007, provides that "as part of its annual report due February 1, 2014 under § 7-712 of the *Public Utility Companies* Article, the Public Service Commission shall report its findings and recommendations for modification, if any, to the renewable energy portfolio standard provisions under Title 7, Subtitle 7 of the *Public Utility Companies* Article based on a thorough study of the implementation of the renewable energy portfolio standard requirements since 2006. The study conducted by the Commission shall:

- "(1) be based on the results of the renewable energy portfolio standard requirements effective through 2013;
- "(2) determine whether the intended goals of the renewable energy portfolio standard are being met and are anticipated to be met in the future;
- "(3) consider the impact of the renewable energy portfolio standard requirements in developing renewable energy in the State;
- "(4) consider the cost implications to residential consumers of continuing the renewable energy portfolio standard requirements beyond 2014;
- "(5) determine the realized and projected availability of solar renewable energy credits in Maryland;
- "(6) consider the ability of a regional market to lower the cost impact of the solar requirements of the renewable energy portfolio standard on customers;
- "(7) consider the ability of a regional market, in complying with the solar requirements, to develop solar energy in Maryland; and
- "(8) determine the appropriate use of the funds that are paid into the Maryland Renewable Energy Fund from compliance fees, including specific criteria for making loans and grants, to achieve the intended goals of the renewable energy portfolio standard."

Section 2, ch. 494, Acts 2010, provides that: "(a) The Public Service Commission shall include, in the report required under § 7-211(k) of the *Public Utility Companies* Article due on March 1, 2012, and March 1, 2015, the effect of this Act on the State's anticipated compliance with per capita peak demand and per capita electricity consumption targets under § 7-211 of the *Public Utility Companies* Article.

"(b) The Commission also shall include in those reports:

- "(1) the effects, if any, of deploying of solar electricity generating equipment in compliance with the solar Tier 1 renewable energy portfolio standard and the use of alternative compliance fees to support Tier 1 projects in the State; and
- "(2) recommendations for alterations, if any, that the Commission and the Maryland Energy Administration consider desirable to the solar Tier 1 percentage requirements of the renewable energy portfolio standard in § 7-703(b) of the *Public Utility Companies* Article, as enacted by Section 1 of this Act."

Section 3, ch. 494, Acts 2010, provides that "this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any contract existing before the effective date of this Act."

Section 2, chs. 583 and 584, Acts 2012, provides that "this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any contract existing before the effective date of this Act."

Section 5, ch. 3, Acts 2013, provides that:

"(a) Notwithstanding any other law, for any fiscal year during which an OREC obligation exists to meet a renewable portfolio standard derived from offshore wind energy set by the Public Service Commission under § 7-703(b)(12) through (17) of the *Public Utilities* Article, as enacted by Section 1 of this Act, the Commission may implement a special assessment using the assessment process authorized under § 2-110 of the *Public Utilities* Article in order to employ staff and recover administrative costs necessary to carry out this Act.

"(b) (1) The cumulative special assessment under this section shall be imposed only on those electric companies and electricity suppliers otherwise subject to the assessment under § 2-110 of the *Public Utilities* Article.

"(2) The limit imposed under § 2-110(c)(12) of the *Public Utilities* Article does not apply to any assessment made under this section."

Chapters 1 and 2, Acts 2017, were enacted pursuant to Article II, § 17 of the *Maryland Constitution* without the Governor's signature, to become effective 30 days after the Governor's veto of 2016 act was overridden, superseding the

effective dates drafted in the bills.

Section 3, chs. 1 and 2, Acts 2017, provides that "this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any contract existing before the effective date of this Act [March 4, 2017; March 9, 2017]."

BILL REVIEW LETTER. --Chapters 125 and 126, Acts 2008, (House Bill 375, Senate Bill 209) were approved for constitutionality and legal sufficiency, and increased the standard for non-solar Tier 1 renewable resources, raised compliance fees for credit shortfalls beginning in 2011, and allowed for the Public Service Commission to grant a delay. Further, they revised the geographical area that qualified for the RPS credit and eliminated credit for electricity supplied by states and control areas adjacent to PJM. The provisions did not prevent suppliers from purchasing electricity for any source in the country and treated out-of-state and in-State sources the same. The actual impact on interstate commerce would be incidental; therefore the changes to the RPS program did not violate the Commerce Clause. (Letter of the Attorney General dated April 22, 2008.)

Chapter 3, Acts 2013, (House Bill 226) was approved for constitutional and legal sufficiency as its provisions regarding that an applicant comply with the State's Minority Business Enterprise Program satisfies the appropriate levels of constitutional scrutiny. The provisions are narrowly tailored and impose little or no burdens on innocent third parties in the fact that minority investors be only solicited and interviewed. To limit the possibility of constitutional problems, the State should not unilaterally assign any numerical goals or requirements and should ensure that non-minorities are not excluded from the efforts of applicants to seek out investors. (Letter of the Attorney General dated April 8, 2013.)

UNIVERSITY OF BALTIMORE LAW FORUM. --For an article, "Protecting Maryland's Environment: A Holistic Solution," see *40 U. Balt. L. F.* 205 (2010).

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.



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*** Statutes current through Chapters 1 and 2, Acts 2017, and all chapters of the 2016 Regular Session of the Maryland General Assembly. ***

PUBLIC UTILITIES
DIVISION I. PUBLIC SERVICES AND UTILITIES
TITLE 7. GAS, ELECTRIC, AND WATER COMPANIES
SUBTITLE 7. RENEWABLE ENERGY PORTFOLIO STANDARD

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Md. PUBLIC UTILITIES Code Ann. § 7-704 (2017)

§ 7-704. Renewable energy portfolio standard -- Eligibility for inclusion in meeting standards.

(a) Sources. --

(1) Energy from a Tier 1 renewable source:

(i) is eligible for inclusion in meeting the renewable energy portfolio standard regardless of when the generating system or facility was placed in service; and

(ii) may be applied to the percentage requirements of the standard for either Tier 1 renewable sources or Tier 2 renewable sources.

(2) (i) Energy from a Tier 1 renewable source under § 7-701(r)(1), (5), (9), (10), or (11) of this subtitle is eligible for inclusion in meeting the renewable energy portfolio standard only if the source is connected with the electric distribution grid serving Maryland.

(ii) If the owner of a solar generating system in this State chooses to sell solar renewable energy credits from that system, the owner must first offer the credits for sale to an electricity supplier or electric company that shall apply them toward compliance with the renewable energy portfolio standard under § 7-703 of this subtitle.

(3) Energy from a Tier 1 renewable source under § 7-701(r)(8) of this subtitle is eligible for inclusion in meeting the renewable energy portfolio standard if it is generated at a dam that existed as of January 1, 2004, even if a system or facility that is capable of generating electricity did not exist on that date.

(4) Energy from a Tier 2 renewable source under § 7-701(s) of this subtitle is eligible for inclusion in meeting the renewable energy portfolio standard through 2018 if it is generated at a system or facility that existed and was

operational as of January 1, 2004, even if the facility or system was not capable of generating electricity on that date.

(b) Renewable energy credits. -- On or after January 1, 2004, an electricity supplier may:

- (1) receive renewable energy credits; and
- (2) accumulate renewable energy credits under this subtitle.

(c) Renewable energy credits -- Wind and methane. --

(1) This subsection applies only to a generating facility that is placed in service on or after January 1, 2004.

(2) (i) On or before December 31, 2005, an electricity supplier shall receive 120% credit toward meeting the renewable energy portfolio standard for energy derived from wind.

(ii) After December 31, 2005, and on or before December 31, 2008, an electricity supplier shall receive 110% credit toward meeting the renewable energy portfolio standard for energy derived from wind.

(3) On or before December 31, 2008, an electricity supplier shall receive 110% credit toward meeting the renewable energy portfolio standard for energy derived from methane under § 7-701(r)(4) of this subtitle.

(d) Renewable energy credits -- Biomass fraction of biomass co-fired with other fuels. -- An electricity supplier shall receive credit toward meeting the renewable energy portfolio standard for electricity derived from the biomass fraction of biomass co-fired with other fuels.

(e) Renewable energy credits -- Independent acquisition of credits by customer; renewable on-site generators; regulations. --

(1) In this subsection, "customer" means:

- (i) an industrial electric customer that is not on standard offer service; or
- (ii) a renewable on-site generator.

(2) This subsection does not apply to offshore wind renewable energy credits.

(3) (i) A customer may independently acquire renewable energy credits to satisfy the standards applicable to the customer's load, including credits created by a renewable on-site generator.

(ii) Credits that a customer transfers to its electricity supplier to meet the standard and that the electricity supplier relies on in submitting its compliance report may not be resold or retransferred by the customer or by the electricity supplier.

(4) A renewable on-site generator may retain or transfer at its sole option any credits created by the renewable on-site generator, including credits for the portion of its on-site generation from a Tier 1 renewable source or a Tier 2 renewable source that displaces the purchase of electricity by the renewable on-site generator from the grid.

(5) A customer that satisfies the standard applicable to the customer's load under this subsection may not be required to contribute to a compliance fee recovered under § 7-706 of this subtitle.

(6) The Commission shall adopt regulations governing the application and transfer of credits under this subsection consistent with federal law.

(f) Renewable energy credits -- Creation. --

(1) In order to create a renewable energy credit, a Tier 1 renewable source or Tier 2 renewable source must substantially comply with all applicable environmental and administrative requirements, including air quality, water quality, solid waste, and right-to-know provisions, permit conditions, and administrative orders.

(2) (i) This paragraph applies to Tier 1 renewable sources that incinerate solid waste.

(ii) At least 80% of the solid waste incinerated at a Tier 1 renewable source facility shall be collected from:

1. for areas in Maryland, jurisdictions that achieve the recycling rates required under § 9-505 of the *Environment Article*; and

2. for other states, jurisdictions for which the electricity supplier demonstrates recycling substantially comparable to that required under § 9-505 of the *Environment Article*, in accordance with regulations of the Commission.

(iii) An electricity supplier may report credits received under this paragraph based on compliance by the facility with the percentage requirement of subparagraph (ii) of this paragraph during the year immediately preceding the year in which the electricity supplier receives the credit to apply to the standard.

(g) Solar water heating system. --

(1) Energy from a solar water heating system is eligible for inclusion in meeting the renewable energy portfolio standard.

(2) A person that owns and operates a solar water heating system shall receive a renewable energy credit equal to the amount of energy, converted from BTUs to kilowatt-hours, that is generated by the system that is used by the person for water heating.

(3) The total amount of energy generated and consumed for a nonresidential or commercial solar water heating system shall be measured by an on-site meter that meets the required performance standards of the International Organization of Legal Metrology.

(4) The total amount of energy generated and consumed by a residential solar water heating system shall be:

(i) measured by a meter that meets the required standards of the International Organization of Legal Metrology;

or

(ii) 1. measured by the Solar Ratings and Certification Corporation's OG-300 thermal performance rating for the system or an equivalent certification that the Commission approves in consultation with the Administration; and

2. certified to the OG-300 standard of the Solar Ratings and Certification Corporation or an equivalent certification body that the Commission approves in consultation with the Administration.

(5) A residential solar water heating system shall be installed in accordance with applicable State and local plumbing codes.

(6) A residential solar water heating system may not produce more than five solar renewable energy credits in any 1 year.

(h) Geothermal heating and cooling system. --

(1) Energy from a geothermal heating and cooling system is eligible for inclusion in meeting the renewable energy portfolio standard.

(2) A person shall receive a renewable energy credit equal to the amount of energy, converted from BTUs to kilowatt-hours, that is generated by a geothermal heating and cooling system for space heating and cooling or water heating if the person:

- (i) owns and operates the system;
- (ii) leases and operates the system; or
- (iii) contracts with a third party who owns and operates the system.

(3) To determine the energy savings of a geothermal heating and cooling system for a residence, the Commission shall:

(i) identify available Internet-based energy consumption calculators developed by the geothermal heating and cooling industry;

(ii) collect the following data provided in the renewable energy credit application that:

1. describes the name of the applicant and the address at which the geothermal heating and cooling system is installed; and

2. provides the annual BTU energy savings attributable to home heating, cooling, and water heating; and

(iii) in determining the annual amount of renewable energy credits awarded for the geothermal heating and cooling system, convert the annual BTUs into annual megawatt hours.

(4) To determine the energy savings of a nonresidential geothermal heating and cooling system, the Commission shall:

(i) use the geothermal heating and cooling engineering technical system designs provided with the renewable energy credit application; and

(ii) in determining the annual amount of renewable energy credits awarded for the geothermal heating and cooling system, convert the annual BTUs into annual megawatt hours.

(5) A geothermal heating and cooling system shall be installed in accordance with applicable State well construction and local building code standards.

(i) Thermal biomass system. --

(1) Energy from a thermal biomass system is eligible for inclusion in meeting the renewable energy portfolio standard.

(2) (i) A person that owns and operates a thermal biomass system that uses anaerobic digestion is eligible to receive a renewable energy credit.

(ii) A person that owns and operates a thermal biomass system that uses a thermochemical process is eligible to receive a renewable energy credit if the person demonstrates to the Maryland Department of the Environment that the operation of the thermal biomass system:

1. is not significantly contributing to local or regional air quality impairments; and

2. will substantially decrease emissions of oxides of nitrogen beyond that achieved by a direct burn combustion unit through the use of precombustion techniques, combustion techniques, or postcombustion techniques.

(3) A person that is eligible to receive a renewable energy credit under paragraph (2) of this subsection shall receive a renewable energy credit equal to the amount of energy, converted from BTUs to kilowatt-hours, that is generated by the thermal biomass system and used on site.

(4) The total amount of energy generated and consumed for a residential, nonresidential, or commercial thermal biomass system shall be measured by an on-site meter that meets the required performance standards established by the Commission.

(5) The Commission shall adopt regulations for the metering, verification, and reporting of the output of thermal biomass systems.

HISTORY: 2004, ch. 487, § 1; ch. 488, § 1; 2007, chs. 119, 120; 2008, chs. 135, 136; 2011, chs. 407, 408, 519; 2012, chs. 556, 557, 583, 584, 635; 2013, ch. 3, § 1.

NOTES: EFFECT OF AMENDMENTS. --Chapters 135 and 136, Acts 2008, effective October 1, 2008, made identical changes. Each added "or (9)" in (a)(2)(i)1; and, in (a)(4), deleted former (a)(4)(ii), made related changes, and substituted "or (2)" for "or (3)".

Chapter 519, Acts 2011, effective October 1, 2011, substituted "§ 7-701(l)(1), (9), (10), or (11)" for "§ 7-701(l)(1) or (9)" in (a)(2)(i)1; substituted "§ 7-701(m)" for "§ 7-701(m)(1) or (2)" in (a)(4); and substituted "Tier 1" for "Tier 2" in (f)(2)(i) and (f)(2)(ii).

Chapters 407 and 408, Acts 2011, effective January 1, 2012, made identical changes. Each added (g).

Chapters 556 and 557, Acts 2012, effective October 1, 2012, made identical changes. Each substituted "§ 7-701(l)(1), (5), (9), (10), or (11)" for "§ 7-701(l)(1), (9), (10), or (11)" in (a)(2)(i)1 and added (h).

Chapters 583 and 584, Acts 2012, effective October 1, 2012, made identical changes. Each added "or an equivalent certification that the Commission approves in consultation with the Administration" or variant in (g)(4)(ii)1 and (g)(4)(ii)2.

Chapter 635, Acts 2012, effective January 1, 2013, added (h) [(i)].

Section 1, ch. 3, Acts 2013, effective June 1, 2013, deleted the (a)(2)(i)1 designation; in (a)(2)(i) deleted "Except as provided in subsubparagraph 2 of this subparagraph" at the beginning and substituted "§ 7-701(r)(1)" for "§ 7-701(l)(1)"; deleted (a)(2)(i)2; in (a)(3) substituted "§ 7-701(r)(8)" for "§ 7-701(l)(8)"; in (a)(4) substituted "§ 7-701(s)" for "§ 7-701(m)"; in (c)(3) substituted "§ 7-701(r)(4)" for "§ 7-701(l)(4)"; added (e)(2) and redesignated accordingly; and made related changes.

EDITOR'S NOTE. --Section 2, chs. 407 and 408, Acts 2011, provides that "this Act shall apply only to solar water heating systems that are commissioned on or after June 1, 2011."

Chapters 556, 557, and 635, Acts 2012, all added (h). None of the chapters referred to the others. Subsection (h) as added by ch. 635, Acts 2012, has been redesignated as (i).

Section 2, chs. 556 and 557, Acts 2012, provides that "this Act shall apply only to geothermal heating and cooling systems that are commissioned on or after January 1, 2013."

Section 2, chs. 583 and 584, Acts 2012, provides that "this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any contract existing before the effective date of this Act."

BILL REVIEW LETTER. --Chapters 556 and 557, Acts 2012 (S.B. 652 and H.B. 1186), effective October 1, 2012, was approved for constitutionality and legal sufficiency, even though a severable portion may violate the Commerce Clause of the United States Constitution. The bills add geothermal heating and cooling pumps that must be connected to the distribution grid serving Maryland as RPS resources that qualify for REC credits. A Commerce Clause issue is raised because the bills appear to prohibit certain types of out-of-state geothermal heating and cooling systems that are not connected to the distribution grid serving Maryland from qualifying for REC credits. Even though the size of the impact of this limitation upon interstate commerce could be minimal, it is possible a court would find that the bills, in part,

violate the Commerce Clause. (Letter of Attorney General dated May 10, 2012.)

Chapter 635, Acts 2012 (S.B. 1004), effective January 1, 2013, was approved for constitutionality and legal sufficiency, even though a severable portion may violate the Commerce Clause of the United States Constitution. The bills add thermal biomass systems located in Maryland as RPS resources that qualify for REC credits. The geographic restriction in this bill could be found to violate the Commerce Clause as it arguably discriminates against both on its face and in practical effect thermal biomass systems located and used in other states. (Letter of Attorney General dated May 10, 2012.)

Chapter 3, Acts 2013, (House Bill 226) was approved for constitutional and legal sufficiency as its provisions regarding that an applicant comply with the State's Minority Business Enterprise Program satisfies the appropriate levels of constitutional scrutiny. The provisions are narrowly tailored and impose little or no burdens on innocent third parties in the fact that minority investors be only solicited and interviewed. To limit the possibility of constitutional problems, the State should not unilaterally assign any numerical goals or requirements and should ensure that non-minorities are not excluded from the efforts of applicants to seek out investors. (Letter of the Attorney General dated April 8, 2013.)

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.



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*** Statutes current through Chapters 1 and 2, Acts 2017, and all chapters of the 2016 Regular Session of the Maryland General Assembly. ***

PUBLIC UTILITIES
DIVISION I. PUBLIC SERVICES AND UTILITIES
TITLE 7. GAS, ELECTRIC, AND WATER COMPANIES
SUBTITLE 3. CONSUMER RELATIONS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. PUBLIC UTILITIES Code Ann. § 7-306.2 (2017)

§ 7-306.2. Community Solar Energy Generating Systems Pilot Program

(a) Definitions. --

(1) In this section the following words have the meanings indicated.

(2) "Baseline annual usage" means:

(i) a subscriber's accumulated electricity use in kilowatt-hours for the 12 months before the subscriber's most recent subscription; or

(ii) for a subscriber that does not have a record of 12 months of electricity use at the time of the subscriber's most recent subscription, an estimate of the subscriber's accumulated 12 months of electricity use in kilowatt-hours, determined in a manner the Commission approves.

(3) "Community solar energy generating system" means a solar energy system that:

(i) is connected to the electric distribution grid serving the State;

(ii) is located in the same electric service territory as its subscribers;

(iii) is attached to the electric meter of a subscriber or is a separate facility with its own electric meter;

(iv) credits its generated electricity, or the value of its generated electricity, to the bills of the subscribers to that system through virtual net energy metering;

- (v) has at least two subscribers;
- (vi) does not have subscriptions larger than 200 kilowatts constituting more than 60% of its subscriptions;
- (vii) has a generating capacity that does not exceed 2 megawatts as measured by the alternating current rating of the system's inverter; and
- (viii) may be owned by any person.

(4) "Program" means the Community Solar Energy Generating Systems Pilot Program.

(5) "Subscriber" means a retail customer of an electric company that:

- (i) holds a subscription to a community solar energy generating system; and
- (ii) has identified one or more individual meters or accounts to which the subscription shall be attributed.

(6) "Subscriber organization" means:

- (i) a person that owns or operates a community solar energy generating system; or
- (ii) the collective group of subscribers of a community solar energy generating system.

(7) "Subscription" means the portion of the electricity generated by a community solar energy generating system that is credited to a subscriber.

(8) "Unsubscribed energy" means any community solar energy generating system output in kilowatt-hours that is not allocated to any subscriber.

(9) "Virtual net energy metering" means measurement of the difference between the kilowatt-hours or value of electricity that is supplied by an electric company and the kilowatt-hours or value of electricity attributable to a subscription to a community solar energy generating system and fed back to the electric grid over the subscriber's billing period, as calculated under the tariffs established under subsection (e)(2) of this section.

(b) Legislative findings. -- The General Assembly finds that:

(1) community solar energy generating systems:

- (i) provide residents and businesses, including those that lease property, increased access to local solar electricity while encouraging private investment in solar resources;
- (ii) enhance continued diversification of the State's energy resource mix to achieve the State's renewable energy portfolio standard and Greenhouse Gas Emissions Reduction Act goals; and
- (iii) provide electric companies and ratepayers the opportunity to realize the many benefits associated with distributed energy; and

(2) it is in the public interest that the State enable the development and deployment of energy generation from community solar energy generating systems in order to:

- (i) allow renters and low-income and moderate-income retail electric customers to own an interest in a community solar energy generating system;
- (ii) facilitate market entry for all potential subscribers while giving priority to subscribers who are the most

sensitive to market barriers; and

(iii) encourage developers to promote participation by renters and low-income and moderate-income retail electric customers.

(c) Status of community solar energy generating system. -- A community solar energy generating system, including a subscriber or subscriber organization associated with the community solar energy generating system, is not:

(1) an electric company;

(2) an electricity supplier; or

(3) a generating station.

(d) Commission to establish pilot program. --

(1) (i) The Commission shall establish a pilot program for a Community Solar Energy Generating System Program.

(ii) The structure of the pilot program is as provided in this subsection.

(2) All rate classes may participate in the pilot program.

(3) Subscribers served by electric standard offer service and electricity suppliers may hold subscriptions to the same community solar energy generating system.

(4) A subscriber organization shall:

(i) determine how to allocate subscriptions to subscribers; and

(ii) notify an electric company and, if applicable, a relevant electricity supplier about the regulations the Commission adopts under subsection (e) of this section.

(5) An electric company shall use the tariff structure under subsection (e)(2) of this section to provide each subscriber with the credits.

(6) A subscriber may not receive credit for virtual net excess generation that exceeds 200% of the subscriber's baseline annual usage.

(7) Any unsubscribed energy generated by a community solar energy generating system that is not owned by an electric company shall be purchased under the electric company's process for purchasing the output from qualifying facilities at the amount it would have cost the electric company to procure the energy.

(8) An electric company shall use energy generated from a community solar energy generating system to offset purchases from wholesale electricity suppliers for standard offer service.

(9) All costs associated with small generator interconnection standards under *COMAR 20.50.09* are the responsibility of the subscriber organization.

(10) A subscriber organization may petition an electric company to coordinate the interconnection and commencement of operations of a community solar energy generating system after the Commission adopts regulations required under subsection (e) of this section.

(11) A subscriber organization may contract with a third party for the third party to finance, build, own, or

operate a community solar energy generating system.

(12) A municipal utility or cooperative utility may participate in the pilot program.

(13) Equipment for a community solar energy generating system may not be built on contiguous parcels of land unless the equipment is installed only on building rooftops.

(14) The pilot program shall:

(i) begin on the earlier of:

1. the date of submission of the first petition of a subscriber organization under paragraph (10) of this subsection after the Commission adopts the regulations required under subsection (e) of this section; or

2. 6 months after the Commission adopts those regulations; and

(ii) end 3 years after the beginning date.

(15) The Commission shall limit the pilot program in such a way that the Commission may conduct a meaningful study of the pilot program and its results, including:

(i) the appropriate number of community solar energy generating systems to be included in the pilot program;

(ii) the appropriate amount of generating capacity of the community solar energy generating systems to be included in the pilot program; and

(iii) a variety of appropriate geographical areas in the State for locating community solar energy generating systems to be included in the pilot program.

(e) Regulations. -- On or before May 15, 2016, the Commission shall adopt regulations to implement this section, including regulations for:

(1) consumer protection;

(2) a tariff structure for an electric company to provide a subscriber with the kilowatt-hours or value of the subscriber's subscription, as the Commission determines;

(3) a calculation for virtual net energy metering as the Commission determines;

(4) a protocol for electric companies, electricity suppliers, and subscriber organizations to communicate the information necessary to calculate and provide the monthly electric bill credits and yearly net excess generation payments required by this section; and

(5) a protocol for a subscriber organization to coordinate with an electric company for the interconnection and commencement of operations of a community solar energy generating system.

(f) Continuation of contracts and systems entered during pilot program. --

(1) Subject to regulations or orders of the Commission, a contract relating to a community solar energy generating system or subscriber organization that is entered into during the pilot program shall remain in effect according to the terms of the contract, including after the termination of the pilot program.

(2) After termination of the pilot program, in accordance with the operational and billing requirements in subsection (d) of this section:

Md. PUBLIC UTILITIES Code Ann. § 7-306.2

(i) a subscriber organization may continue the operation of a community solar energy generating system that began operation during the pilot program, including the creation and trading of subscriptions; and

(ii) in accordance with the tariffs established under subsection (e)(2) of this section, an electric company shall continue to facilitate the operation of a community solar energy generating system that began operation during the pilot program.

(g) Net metering project limitations. — The cumulative installed nameplate capacity under the pilot program shall count toward the overall limitation of 1,500 megawatts for all net metering projects in § 7-306(d) of this subtitle.

HISTORY: 2015, chs. 346, 347.

NOTES: EDITOR'S NOTE. --Section 2, chs. 346 and 347, Acts 2015, provides that:

"(a) The Public Service Commission, in consultation with the Maryland Energy Administration, shall convene a stakeholder workgroup to study the value and costs of the pilot program established under § 7-306.1 of the *Public Utilities Article*, as enacted by Section 1 of this Act and make recommendations to the Commission on the advisability of establishing a permanent program.

"(b) In conducting the study, the workgroup shall identify and examine:

"(1) a framework for valuation of the costs and benefits related to community solar and virtual net energy metering;

"(2) the costs and benefits of community solar energy generating systems to participating subscribers and to nonsubscriber ratepayers;

"(3) an appropriate credit mechanism and operational structure that allows a community renewable solar energy generating system to minimize administrative costs to an electric company, electric supplier, or subscriber organization;

"(4) the benefits to and the technical and cost impacts of community solar programs and virtual net energy metering on an electric company's distribution grid;

"(5) issues, benefits, and concerns related to the participation of electric companies, including investor-owned utilities, in community solar programs and projects, including owners and operators of the projects;

"(6) whether and how community solar projects or virtual net energy metering have a substantially different technical impact on the distribution system than traditional net energy metering;

"(7) identification of any impacts on the standard offer service procurement process;

"(8) a review of community solar programs and cost-benefit studies in other states;

"(9) whether and how community solar programs can help reduce the cost of compliance with the renewable energy portfolio standard;

"(10) how community solar energy generating systems can impact locational marginal prices in Maryland;

"(11) the impacts of the pilot program on energy costs, reliability, and equitable cost allocation for ratepayers;

"(12) how community solar project developers can increase participation by low- and moderate-income retail electric customers in community solar projects;

"(13) the progress of the community solar energy generating pilot program under § 7-306.1 of the *Public Utilities Article*, as enacted by Section 1 of this Act, in attracting low- and moderate-income retail electric customers;

"(14) whether community solar energy generating systems are an overall net benefit in helping Maryland achieve its distributed generation and renewable goals;

"(15) any other matters the workgroup considers relevant; and

"(16) any additional factors the Public Service Commission considers appropriate.

"(c) On or before July 1, 2019, the Public Service Commission shall report its findings and recommendations, based on the study conducted under this section, to the Senate Finance Committee and the House Economic Matters Committee in accordance with § 2-1246 of the *State Government Article*."

Section 3, chs. 346 and 347, Acts 2015, provides that "the Public Service Commission shall notify the General Assembly and Department of Legislative Services when the pilot program begins in accordance with § 7-306.1(d)(14) of the *Public Utilities Article*, as enacted by this Act."

Section 4, chs. 346 and 347, Acts 2015, provides that the acts shall take effect July 1, 2015.

Md. PUBLIC UTILITIES Code Ann. § 7-306.2

Chapters 161, 346, and 347, Acts 2015, added § 7-306.1 of this article. None of the chapters referred to the others, and effect has been given to all. The section added by chs. 346, and 347 was redesignated as § 7-306.2 of this article.

USER NOTE: For more generally applicable notes, see notes under the first section of this part, subtitle, title, division or article.



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COMAR 20.62.01 (2017)

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Authority: *Public Utilities Article, §§ 2-113, 2-121, 7-306, 7-306.1, and 7-306.2, Annotated Code of Maryland*

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.01 Scope.

This subtitle is applicable to electric companies and subscriber organizations in service territories where customers have the ability to subscribe to a community solar energy generation system under a pilot program approved by the Commission.



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.02 Definitions.

A. In this subtitle the following terms have the meanings indicated.

B. Terms Defined.

(1) Agent.

(a) "Agent" means a person who conducts marketing or sales activities, or both, on behalf of a subscriber organization. Agent includes an employee, a representative, an independent contractor and a vendor.

(b) "Agent" includes subcontractors, employees, vendors and representatives not directly under contract with the subscriber organization that conducts marketing or sales activities on behalf of the subscriber organization.

(c) "Agent" does not include a member of a neighborhood association, church, nonprofit organization, or other community organization that is a subscriber organization when the member is conducting marketing or sales activities on behalf of the subscriber organization to fellow members and is not receiving any compensation for those marketing or sales activities.

(2) "Baseline annual usage" has the meaning stated in *Public Utilities Article, § 7-306.2*, Annotated Code of Maryland.

(3) "Brownfield" means one of the following:

(a) A former industrial or commercial site identified by federal or State laws or regulations as contaminated or polluted;

(b) A closed landfill regulated by the Maryland Department of the Environment; or

(c) "Mined lands" as defined in *COMAR 26.21.01.01B*.

- (4) "Commission" means the Public Service Commission of Maryland.
- (5) "Community solar energy generating system" has the meaning stated in *Public Utilities Article, § 7-306.2*, Annotated Code of Maryland.
- (6) "Consent" means an agreement with an action communicated by the following:
- (a) A written document with customer signature; or
 - (b) An electronic document with electronic signature.
- (7) "Consumer" or "customer" means a retail electric customer account holder of a regulated electric company.
- (8) "Contract summary" means a summary of the material terms and conditions of a community solar pilot program subscriber contract on a form provided by the Commission.
- (9) "CSEGS" means a community solar energy generating system.
- (10) "Electric company" has the meaning stated in *Public Utilities Article, § 1-101*, Annotated Code of Maryland.
- (11) "Electronic transaction" means a standardized data protocol or electronic transmission medium that has been accepted by the Commission for use in Maryland.
- (12) "Low income" means a subscriber whose gross annual household income is at or below 175 percent of the federal poverty level for the year of subscription or who is certified as eligible for any federal, state, or local assistance program that limits participation to households whose income is at or below 175 percent of the federal poverty limit.
- (13) "Moderate income" means a subscriber whose gross annual household income is at or below 80 percent of the median income for Maryland for the year of subscription.
- (14) "Personally identifiable information" means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or capable of being linked to a specific individual.
- (15) "Program" has the meaning stated in *Public Utilities Article, § 7-306.2*, Annotated Code of Maryland.
- (16) "Public event" means an event open to the public where subscriptions to a community solar energy generation system are marketed or sold.
- (17) "Security deposit" means any payment of money given to a subscriber organization by a subscriber in order to protect the subscriber organization against nonpayment of future subscription fees, but does not include escrowed prepaid subscription fees.
- (18) "Subscriber" has the meaning stated in *Public Utilities Article, § 7-306.2*, Annotated Code of Maryland.
- (19) "Subscriber organization" has the meaning stated in *Public Utilities Article, § 7-306.2*, Annotated Code of Maryland.
- (20) "Subscription" has the meaning stated in *Public Utilities Article, § 7-306.2*, Annotated Code of Maryland.
- (21) "Unsubscribed energy" has the meaning stated in *Public Utilities Article, § 7-306.2*, Annotated Code of Maryland.
- (22) "Utility" means an electric company as defined in *Public Utilities Article, § 1-101*, Annotated Code of

Maryland.

(23) "Virtual net energy metering" has the meaning stated in *Public Utilities Article, § 7-306.2*, Annotated Code of Maryland.



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.03 Electric Company Compliance Plan.

A. An electric company shall file a plan and relevant tariffs for compliance with this subtitle within 45 days after this regulation becomes effective.

B. A municipal electric company or electric cooperative electing to participate in the pilot program shall file a plan and related tariffs for compliance with this subtitle within 45 days after notifying the Commission of that election.



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.04 Waiver.

The Commission may waive a regulation in this subtitle for good cause shown.



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COMAR 20.62.02.01 (2017)

.01 Pilot Program Structure.

A. Each electric company shall establish a program to accept and administer community solar energy generating system projects for a period of 3 years from the earlier of:

(1) The first date of application of a subscriber organization to operate a community solar energy generating system after the effective date of this subtitle; or

(2) 6 months from the effective date of this subtitle.

B. An electric company shall apply bill credits and excess generation to subscribers bills in accordance with applicable tariffs.

C. An electric company shall pay subscriber organizations for unsubscribed energy in accordance with applicable tariffs.

D. An electric company shall maintain program data and records as directed by the Commission.



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COMAR 20.62.02.02 (2017)

.02 Program Generation Capacity.

A. Capacity Limit.

(1) Statewide Capacity.

(a) Subject to § A(1)(b) of this regulation, an electric company may not accept pilot program project applications after the Statewide capacity of pilot projects has exceeded 1.5 percent of the 2015 Maryland peak demand in MW as measured by the sum of the nameplate capacity of each projects inverter.

(b) An electric company shall accept an additional 0.15 percent of 2015 capacity for projects serving the LMI category if an electric utility has reached full capacity available to projects in the LMI category.

(2) Annual Cap. The following percentages of 2015 Maryland peak demand will set annual program capacity:

(a) First year -- 0.6 percent.

(b) Second year -- 0.6 percent.

(c) Third year -- 0.3 percent.

(3) Program Categories. An electric company shall accept pilot projects in each of the following categories up to the annual and program capacity limits according to the percentages shown in each of the following paragraphs:

(a) Small, Brownfield and Other Category (Small) -- 30 percent.

(i) Projects up to and including 500 kW.

(ii) Projects installed on rooftops, parking lots, roadways or parking structures.

(iii) Projects installed on brownfield locations.

(iv) Projects serving more than 51 percent of kWh output to Low or Moderate income customers.

(b) Open Category (Open) -- 40 percent -- Projects of any size up to 2 MW.

(c) Low and Moderate Income Category (LMI) -- 30 percent -- Projects serving more than 30 percent of kWh output to Low or Moderate income customers of which Low Income subscribers receive a minimum of 10 percent of kWh output.

(d) Projects which qualify for the Small or LMI category may use capacity from the Open category after the electric company has accepted projects up to the limit of its respective categories.

(e) An electric company may accept an LMI project using LMI capacity as described in § A(2) of this regulation from subsequent program years if the capacity in the current year has been fully allocated.

(4) Electric Company Program Capacity Limits.

(a) Subject to the annual and category limits established in this regulation, an electric company shall accept pilot program applications up to 1.5 percent of its 2015 Maryland peak demand.

(b) An electric company may accept project applications after it has accepted 1.5 percent of its 2015 peak demand in MW as measured by the sum of the nameplate capacity of each projects inverter.

(c) An electric company may cease accepting project applications according to the annual percentages listed in Regulation .02A(2) as applied to that company's 2015 peak demand.

(d) An electric company shall allocate annual capacity according to the program category percentages listed in § A(3) of this regulation.

(e) An electric company shall notify the Commission if it intends to accept project applications beyond the level described in § A(4)(a) of this regulation.

(f) An electric company shall combine the capacity of the Small and Open categories if the capacity allocated to the "Open" category is 500 kW or less.

(5) Unused Annual Capacity. Electric company capacity in each year which remains unused by projects shall be added to the capacity of the following year such that the total Statewide capacity does not exceed the limit in § A of this regulation.

(6) Unused Category Capacity. If a category listed in § A(3) of this regulation has unused capacity at the end of the second year of the program, the unused capacity shall be allocated on a pro-rata basis to the other categories for the third year of the program.

B. Each electric company shall maintain a list of accepted projects and total pilot program capacity in its service territory.

C. Each electric company shall provide the list in B of this regulation to the Commission on the first business day after June 30 and December 31 of each year until the pilot is closed.

D. The Commission may direct electric companies to close the program to new applications if the total Statewide net-metered generation exceeds the limit described in *Public Utilities Article, § 7-306(d)*, Annotated Code of Maryland.



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COMAR 20.62.02.03 (2017)

.03 Number of Accounts per Project.

A. A subscriber organization may subscribe up to 350 accounts per CSEGS unless the electric company in the projects service territory has developed an automated billing function for the program.

B. A subscriber organization may subscribe as many accounts as needed to match the CSEGSs capacity if the electric company serving the CSEGS has developed an automated billing function for the program.

C. An electric company may require a subscriber organization to maintain a minimum average subscription size of 2 kW per customer for an individual CSEGS during the pilot program.



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COMAR 20.62.02.04 (2017)

.04 Subscription Credits.

A. Subscriber List.

(1) A subscriber organization shall provide the electric company with a document indicating the proportion of a community solar energy generating systems output that shall be applied to each subscribers bill.

(2) A subscriber organization shall provide at least monthly subscriber list updates to the electric company.

(3) An electric company shall apply credits using the most recently updated subscriber list provided by the subscriber organization.

B. An electric company shall determine the amount of kilowatt hours to be credited to each subscriber by multiplying the subscribers most recent generation proportion from § A of this regulation by the metered output of the community solar energy generating system.

C. Application of Subscription Credits.

(1) Unless otherwise directed by the Commission, an electric company may choose to apply the appropriate kilowatt-hour credit from § B of this regulation to each subscribers bill as either a reduction in metered kilowatt-hour use or a dollar credit to the subscribers billed amount.

(2) An electric company shall choose the same method for all subscribers in a project.

D. If the electric company chooses to apply the credit from § C of this regulation as a dollar amount, the electric company shall apply a credit no less than the value to the subscriber of the credit had it been applied to the subscribers bill as a reduction in metered kilowatt hours.

E. An electric company shall retain a record of a pilot projects kilowatt hours applied to each subscribers account for a period of 3 years.

F. Subscription credits shall carry over to the next months bill until the earlier date on which:

- (1) The subscribers account is closed; or
- (2) The subscribers last meter reading prior to the month of April.

G. Subscriber credits that are not carried over under F of this regulation shall be handled as excess generation.



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COMAR 20.62.02.05 (2017)

.05 Subscription Limitations.

A. A subscriber may not subscribe for an amount of energy that exceeds 200 percent of the value of the subscribers baseline annual usage including all subscriptions and any net metered generation.

B. Multiple Subscriptions.

(1) A customer may purchase multiple subscriptions from one or more CSEGS.

(2) A subscribers total subscribed credits shall comply with § A of this regulation.

C. A subscriber may participate in net metering as described in *Public Utilities Article, § 7-306*, Annotated Code of Maryland, such that the total of all net-metered generation and subscribed energy does not exceed 200 percent of the value of the subscribers baseline annual usage.



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COMAR 20.62.02.06 (2017)

.06 Credit Payments.

An electric company may not refund generation credits to customers except as electric bill credits or as payment for excess generation.



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COMAR 20.62.02.07 (2017)

.07 Excess Generation.

A. An electric company shall pay a subscriber a dollar amount of excess generation as reasonably adjusted to exclude the distribution, transmission, and noncommodity portion of the customers bill unless the electric company records subscriber credits as kilowatt hours.

B. An electric company that serves electric retail choice customers shall pay the subscriber for kilowatt hours of excess generation at the lesser of the subscribers retail supply rate or the Standard Offer Service rate in effect at the time of payment.

C. An electric company that does not provide Standard Offer Service shall pay a subscriber for kilowatt hours of excess generation at the electric companys avoided cost of generation.

D. An electric company may pay a subscriber an amount of excess generation as a bill credit if the amount of payment is less than \$25.

E. An electric company shall make a determination to apply § A, B, or C of this regulation in accordance with the type of subscription credits used for the subscriber according to Regulation .04 of this chapter.



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COMAR 20.62.02.08 (2017)

.08 Unsubscribed Energy.

An electric company shall file tariffs to pay a subscriber organization for unsubscribed energy in accordance with *Public Utilities Article, § 7-306.2(d)(7)*, Annotated Code of Maryland.



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COMAR 20.62.02.09 (2017)

.09 Utility Cost Recovery.

A. An electric company shall receive full and timely cost recovery of program credit costs.

B. An electric company may not establish a separate surcharge, fee, or rate for recovery of any program costs, including credit and administrative costs.

C. An electric company may include program credit costs in existing rate adjustments for distribution rates or as a revenue or cost component for transmission or commodity rates as accepted by the Commission.



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COMAR 20.62.02.10 (2017)

.10 Program Sunset.

A. Electric company tariffs requiring payments or credits from an electric company to subscribers in effect during the program shall remain in effect for subscribers for the earlier of 25 years from the date of the end of the program or until the subscribers contract with its subscriber organization has ended.

B. An electric company shall continue to facilitate the operation of a subscriber organization that was established during the program for a period of 25 years after the program has ended.

C. A subscriber organization may continue to operate a community solar energy generating system that was established during the program for a period of 25 years after the program has ended.

D. A subscriber organization may create, exchange, and trade subscriptions up to the full project capacity for a community solar energy generating system that was established during the program for a period of 25 years after the program has ended



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COMAR 20.62.02.11 (2017)

.11 Billing Accuracy.

A. The Commission may establish standards for billing accuracy to apply to subscriber credits and billing revenue.

B. The Commission may direct an electric company to develop additional automated billing and crediting features in order to improve billing accuracy for the program.



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COMAR 20.62.03.01 (2017)

.01 Customer Eligibility.

A. CSEGS Location.

(1) A customer may subscribe to a community solar energy generating system that is located in the same electric company service territory as the customer.

(2) The location of a CSEGS for the purpose of customer eligibility shall be determined by the physical location of the electric meter of the CSEGS.

B. All rate classes are eligible to subscribe to a community solar energy generating system.

C. Subscribers served by retail electricity suppliers and subscribers served by Standard Offer Service may subscribe to the same community solar energy generating system.



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COMAR 20.62.03.02 (2017)

.02 Subscriber Organization Requirements.

A. A subscriber organization shall apply with the Commission for admission to the program on forms authorized by the Commission.

B. The Commission shall assign each successful applicant a CSEGS identification number.

C. An electric company that participates as a subscriber organization may not recover CSEGS project costs through base distribution rates.



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COMAR 20.62.03.03 (2017)

.03 Pilot Project Application Process.

A. An applicant that has been granted admission to the pilot program by the Commission that wishes to construct and operate a community solar energy generating system under this pilot program shall apply to the electric company serving the location of the system.

B. Project Application Procedure.

(1) An electric company shall establish a project application procedure in compliance with these regulations and Commission Orders.

(2) An electric company shall develop its project application procedure in a manner designed to encourage achievement of program goals, timely project development, and equitable allocation of the electric companys project capacity.

(3) An electric company shall develop tariffed terms and conditions to administer the pilot program queue for filing with the Commission.

C. An electric company shall assign each project an identification number unique to the electric companys service territory for the purpose of identification.

D. Low and Moderate Income Verification.

(1) The Commission may establish alternate means aside from income verification or participation in the Maryland Office of Home Energy Programs assistance programs to verify the status of Low and Moderate Income subscribers.

(2) An operator of a low-income multi-family dwelling unit may apply to the Commission to qualify as a low-income subscriber for the purposes of the pilot program.

(3) A subscriber organization shall certify to the electric company in writing that the subscriber organization has

verified the eligibility of all LMI subscribers needed to qualify for the program prior to receiving permission to operate from the electric company.



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COMAR 20.62.03.04 (2017)

.04 Pilot Program Queue.

A. Electric Company Application Process.

(1) An electric company shall process applications filed under Regulation .03 of this chapter in the order in which the electric company receives the application.

(2) Within 5 business days of receipt, the electric company shall acknowledge receipt of the application and notify the subscriber organization whether the application is complete.

(3) If the application is incomplete, the electric company shall provide a written list detailing all information that must be provided to complete the application.

(4) A subscriber organization receiving notice of an incomplete application as described in § A(3) of this regulation shall revise and submit the required information within 10 business days after receipt of the list of incomplete information.

(5) The electric company shall notify a subscriber organization within 5 business days of receipt of a revised application whether the application is complete or incomplete.

(6) An electric company shall grant an extension of time to provide such information upon reasonable request from the subscriber organization.

(7) The electric company shall reject an application that is not submitted in accordance with this section.

B. Pilot Queue Order.

(1) An electric company shall maintain a pilot program queue consisting of a list of pilot project applications in order of the date of receipt by the electric company of the application unless otherwise modified by § B(2) of this regulation.

(2) An electric company shall file with the Commission, a tariffed procedure to prioritize multiple applications that are received:

- (a) On a single business day; or
- (b) In a manner that exceeds the available program capacity or category capacity in a short period of time.

(3) In order to apply for capacity in an electric company's pilot program queue, a CSEGS shall provide the following to the electric company upon application:

- (a) An executed interconnection agreement;
- (b) Proof of application for all applicable permits; and
- (c) Proof of site control.

(4) An electric company shall accept the following as proof of site control:

- (a) Evidence of property ownership;
- (b) An executed lease agreement; or
- (c) A signed option to purchase or lease.

(5) The Commission may establish additional conditions limiting the number of projects for which any single subscriber organization or its affiliates may apply in:

- (a) The Statewide program; or
- (b) A single utility service territory.

C. Operation Deadline.

(1) If a project fails to begin operating within 12 months of submission of a completed application by the subscriber organization, the electric company shall remove the project from the electric company's pilot program queue unless the subscriber organization of the project provides to the electric company an additional deposit of \$50 per kW to maintain its position within the pilot program queue.

(2) If a project fails to begin operating within 18 months of application, the electric company shall remove the project from the electric company's pilot program queue.

(3) The electric company shall extend the operation deadline on a day-for-day basis for the following reasons:

(a) If the subscriber organization attests and provides evidence to the electric company that a project's readiness to begin operating depends only upon receipt of permission to operate from the electric company; or

(b) If the subscriber organization attests and provides evidence to the electric company that a governmental permit or approval for the project was subject to a legal challenge during the reservation period, and the legal challenge remains pending.

(4) Projects in the LMI category are exempt from queue deposits.

(5) An electric company shall return the CSEGS deposit upon commencement of operation unless the electric company has removed the project from the queue.

(6) If a project has been removed from the queue by the electric company, the queue deposit shall be forfeited.

(7) An electric company shall forward forfeited queue deposits to the Commission.

D. An electric company shall provide daily updated information on its website about the current status of its pilot program queue including the following information:

- (1) Name of the applicant;
- (2) Service address of the project;
- (3) Inverter nameplate capacity of the project;
- (4) Application date;
- (5) Interconnection application status;
- (6) Expected date of first operation;
- (7) Project identification number;
- (8) CSEGS identification number; and
- (9) Remaining available capacity by year in each program category.

E. If the electric company closes its pilot program queue, it shall state the reason for closing in the same location as the information provided in § D of this regulation.

F. An electric company that operates as a subscriber organization shall apply to the Commission for permission to enter each of its own projects into the electric company's pilot program queue.



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COMAR 20.62.03.05 (2017)

.05 Data Communication.

All subscriber organizations and utilities shall use the uniform electronic transaction processes approved by the Commission.



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COMAR 20.62.03.06 (2017)

.06 Renewable Energy Credit Ownership.

A. Subscribers are not customer-generators under *Public Utilities Article, § 7-306(g)(5)*, Annotated Code of Maryland.

B. Subscriber organizations shall own and have title to all renewable energy attributes or renewable credits associated with community energy generating facilities for which they have applied.



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COMAR 20.62.03.07 (2017)

.07 Conversion of Existing Solar Facilities.

A. Eligibility.

(1) For purposes of this regulation, "existing" means a solar generating system that commenced operation prior to May 15, 2016.

(2) Any project that commences operation on or after May 15, 2016, is not considered to be a conversion for purposes of this program.

B. A subscriber organization may apply to convert all or a portion of an existing solar generating system with a total capacity of 500 kilowatts or less to a CSEGS.

C. A subscriber organization may apply to convert all or a portion of an existing solar generating system to a CSEGS up to and including a capacity of 2 megawatts after the first year of the program has ended in a service territory whose CSEGS program capacity is 5 megawatts or less.



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COMAR 20.62.03.08 (2017)

.08 Project Location.

A. Colocation.

(1) An electric company may not accept a CSEGS project of 500 kW or greater that is proposed to be located on the same or adjacent property as an existing or proposed CSEGS project owned by the same subscriber organization or affiliate of 500 kW or greater in its service territory.

(2) Parcels that are subdivided after May 12, 2015, shall be considered as a single parcel for the purposes of these regulations unless a subscriber organization demonstrates to the Commission that the subdivision was not for the purposes of program queue eligibility.

(3) An electric company shall notify the Commission of a CSEGS application that is proposed to be constructed within 1 mile of an existing solar facility in its service territory.

(4) One or more subscriber organizations may not construct multiple facilities on a single parcel of property.

B. Projects that are constructed in the following locations are exempt from § A of this regulation:

(1) On the rooftops of buildings;

(2) In areas that are zoned for industrial use and are covered by a recorded subdivision plat;

(3) Of a combined capacity not exceeding 6 MW on brownfield locations;

(4) Over parking lots or roadways; or,

(5) On multi-level parking structures.

C. A project that is converted from an existing solar facility is not subject to § A of this regulation.



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COMAR 20.62.04 (2017)

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Authority: *Public Utilities Article, §§ 2-113, 2-121, 7-306, 7-306.1, and 7-306.2, Annotated Code of Maryland*

Administrative History

Effective date: July 18, 2016 (43:14 Md. R. 781)



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COMAR 20.62.04.01 (2017)

.01 CSEGS Study.

An electric company shall provide the Commission with data necessary to monitor the program status, impact on operations, and other information upon request.



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COMAR 20.62.04.02 (2017)

.02 Utility Data.

A. An electric company shall make reasonable attempts to assist pilot program applicants with identifying means to locate and operate community energy generation facilities in a manner that minimizes adverse effects or maximizes distribution system benefits at locations identified by applicants.

B. Project Information.

(1) A utility shall designate a contact person, and provide contact information on its website and for the Commissions website for submission of all project application requests, and from whom information on the project application request process and the utility's electric distribution system can be obtained.

(2) The information provided by the utility on its website shall include studies and other materials useful to an understanding of the feasibility of interconnecting a CSEGS on the utility electric distribution system, except to the extent providing the materials would violate security requirements or confidentiality agreements or be contrary to law.

(3) In appropriate circumstances, the utility may require an applicant to execute an appropriate confidentiality agreement prior to release or access to confidential or restricted information.

C. An electric company shall monitor and review its distribution system to determine any adverse or beneficial effects resulting from each installed community solar energy generating system.

D. An electric company shall maintain for the duration of the pilot, the following customer information for each project operating during the pilot subscriber data, including:

- (1) Customer class;
- (2) Annual usage;
- (3) Average bill; and

(4) Peak demand.

E. Commission Staff shall report annually on electric companies billing accuracy, interconnection complaints, and consumer complaints related to the program.



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.03 Subscriber Organization Data.

A. A subscriber organization shall maintain for the duration of the pilot program, the following information for each project operating during the pilot program:

- (1) Ownership information;
- (2) Technical and managerial expertise;
- (3) Business address;
- (4) Project design details, including:
 - (a) Project location/service territory;
 - (b) A/C output capacity;
 - (c) Equipment list; and
 - (d) Interconnection requirements;
- (5) Subscriber data as directed by the Commission, including:
 - (a) Household income;
 - (b) Credit rating; and
 - (c) Other data; and
- (6) Subscription information, including:

(a) Rates;

(b) Fees; and

(c) Terms and conditions.

B. A subscriber organization shall provide the information in § A of this regulation to the Commission upon request.

C. A subscriber organization shall provide to the Commission, in a timely manner, information requested by the Commission concerning the operation of a community solar energy generating system.



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COMAR 20.62.05.01 (2017)

.01 Scope.

A. This chapter applies to transactions between CSEGS subscriber organizations and customers that are subscribing to a community solar energy generation system under a pilot program approved by the Commission.

B. Regulations .08, .09, .14, .16, .17, .18, and .20 of this chapter do not apply to nonresidential customers.



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COMAR 20.62.05.02 (2017)

.02 Unauthorized Subscriptions.

A. No person shall subscribe a customer to a community solar energy generation system without the customers consent.

B. A subscriber organization may not add a new charge for a new service, existing service, or service option without first obtaining consent from the customer, verifiable to the same extent and using the same methods specified under Regulation .08 of this chapter.



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COMAR 20.62.05.03 (2017)

.03 Advertising and Solicitations.

A. Advertising Permitted.

(1) A subscriber organization may advertise its services.

(2) A subscriber organization may not engage in a marketing or trade practice that is unfair, false, misleading, or deceptive.

B. Marketing Disclosures.

(1) A subscriber organizations marketing or solicitation information shall include the subscriber organizations Maryland approval number in a clear and conspicuous manner.

(2) If a subscription price is quoted, the following are required:

(a) A statement that the subscription price quoted is only for the specified product or services provided by the subscriber organization, and the subscription price quoted does not include any tax, commodity, utility distribution or transmission charge, or other utility fee or charge;

(b) A statement that the subscriber organizations price is not regulated by the Commission; and

(c) Any projected savings presented to a potential subscriber shall include a comparison that projects future electricity rates increasing at not more than 1 percent per year.

C. Internet Advertising. If a subscriber organization maintains a website, the subscriber organization shall post on the Internet readily understandable information about its services, prices, and any other mandated disclosures.

D. Telephone Solicitation.

(1) A subscriber organization soliciting customers by telephone shall comply with all applicable State and federal law, including the Maryland Telephone Solicitations Act, *Commercial Law Article, §§ 14-2201--14-2205*, Annotated Code of Maryland.

(2) A subscriber organization may not conduct a residential customer telephone solicitation before 8 a.m. or after 9 p.m.



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COMAR 20.62.05.04 (2017)

.04 Creditworthiness.

A subscriber organization shall apply uniform income, security deposit, and credit standards for the purpose of making a decision as to whether to offer a subscription to customers within a given class, provided that the subscriber organization may apply separate sets of uniform standards for the purpose of promoting participation by low-income and moderate income retail electric customers.



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COMAR 20.62.05.05 (2017)

.05 Geographic Marketing.

- A. A subscriber organization may market services on a geographic basis.
- B. A subscriber organization is not required to offer services throughout an electric companys entire service territory.
- C. A subscriber organization may not refuse to provide service to a customer based on the economic character of a geographic area or the collective credit reputation of the area.



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COMAR 20.62.05.06 (2017)

.06 Discrimination Prohibited.

A. A subscriber organization may not discriminate against any customer, based wholly or partly, on race, color, creed, national origin, or gender of an applicant for service or for any arbitrary, capricious, or unfairly discriminatory reason.

B. A subscriber organization may not refuse to provide service to a customer except by the application of standards that are reasonably related to the subscriber organizations economic and business purposes.



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COMAR 20.62.05.07 (2017)

.07 Required Disclosures.

A. Contract Summary.

(1) Either prior to or at the same time as a contract for a subscription to a CSEGS is executed, a subscriber organization shall present the customer with a completed Contract Summary Disclosure using a form that is approved by the Commission.

(2) The customer shall initial a copy of the Contract Summary Disclosure to acknowledge receipt of the Contract Summary, and:

(a) If a subscription contract is completed through the Internet, the completed Contract Summary shall be:

(i) Available online and made available for download by the customer at the time of contracting; and

(ii) Transmitted to the customer by the subscriber organization by mail or by email if the customer consents to receipt of email disclosures; and

(b) Whether a subscription contract is completed in person or electronically, a subscriber organization shall allow the subscriber to retain a signed version of the executed contract and an initialed version of the Contract Summary Disclosure form.

B. Notice of Subscription.

(1) A subscriber organization shall provide notice of subscription of a customer to a utility in a format consistent with Commission Orders.

(2) A customer entering into an agreement with a subscriber organization shall receive written notice of enrollment from the subscriber organization and the electric company.

(3) Notice of enrollment under § B(1) of this regulation shall include the following:

- (a) Customer name;
- (b) Customer service address;
- (c) Billing name;
- (d) Billing address;
- (e) Utility name;
- (f) Utility account number;
- (g) Subscriber organization name;
- (h) Subscriber organization account number; and
- (i) Effective date of the enrollment.



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COMAR 20.62.05.08 (2017)

.08 Contracts for Customer Subscription in a Community Solar Energy Generation System.

A. Minimum Contract Requirements.

(1) A subscribing organizations subscription contract shall contain all material terms and conditions, including:

(a) A plain language disclosure of the subscription, including:

(i) The terms under which the pricing will be calculated over the life of the contract and a good faith estimate of the subscription price expressed as a flat monthly rate or on a per-kilowatt-hour basis; and

(ii) Whether any charges may increase during the course of service, and, if so, how much advance notice is provided to the subscriber;

(b) Contract provisions regulating the disposition or transfer of a subscription to the CSEGS, as well as the costs or potential costs associated with such a disposition or transfer;

(c) All nonrecurring (one-time) charges;

(d) All recurring (monthly, yearly) charges;

(e) A statement of contract duration, including the initial time period and any rollover provision;

(f) Terms and conditions for early termination, including:

(i) Any penalties that the subscriber organization may charge to the subscriber; and

(ii) The process for unsubscribing and any associated costs;

(g) If a security deposit is required:

- (i) The amount of the security deposit;
- (ii) A description of when and under what circumstances the security deposit will be returned;
- (iii) A description of how the security deposit may be used; and
- (iv) A description of how the security deposit will be protected;
- (h) A description of any fee or charge and the circumstances under which a customer may incur a fee or charge;
- (i) A statement that the subscriber organization may terminate the contract early, including:
 - (i) Circumstances under which early cancellation by the subscriber organization may occur;
 - (ii) Manner in which the subscriber organization shall notify the customer of the early cancellation of the contract;
 - (iii) Duration of the notice period before early cancellation; and
 - (iv) Remedies available to the customer if early cancellation occurs;
- (j) A statement that the customer may terminate the contract early, including:
 - (i) Circumstances under which early cancellation by the customer may occur;
 - (ii) Manner in which the customer shall notify the subscriber organization of the early cancellation of the contract;
 - (iii) Duration of the notice period before early cancellation;
 - (iv) Remedies available to the subscriber organization if early cancellation occurs; and
- (v) Amount of any early cancellation fee;
- (k) A statement describing contract renewal procedures, if any;
- (l) A dispute procedure;
- (m) The Commissions toll-free number and Internet address;
- (n) A notice that the contract does not include utility charges;
- (o) A billing procedure description;
- (p) The data privacy policies of the subscriber organization;
- (q) A description of any compensation to be paid for underperformance;
- (r) Evidence of insurance;
- (s) A long-term maintenance plan;
- (t) Current production projections and a description of the methodology used to develop production projections;
- (u) Contact information for the subscriber organization for questions and complaints;
- (v) A statement that the subscriber organization and electric company do not make representations or warranties

concerning the tax implications of any bill credits provided to the subscriber;

(w) The method of providing notice to the subscribers when the CSEGS is out of service for more than 3 business days, including notice of:

- (i) The estimated duration of the outage; and
- (ii) The estimated production that will be lost due to the outage;
- (x) An explanation of how unsubscribed production of the CSEGS will be allocated; and
- (y) Any other terms and conditions of service.

(2) A residential customer may downsize the allocation of solar kilowatt hours under an existing CSEGS Subscription.

(3) A subscriber organization may charge or collect no more than a reasonable fee for the downsizing of a subscribers allocation.

B. Methods of Contracting.

(1) A subscriber organization may not subscribe a residential customer using a process that does not require the customers consent.

(2) A subscriber organization that contracts with a customer by means of the Internet shall:

- (a) Confirm the identity of the person making the contract;
- (b) Comply with applicable Maryland and federal law; and
- (c) Take appropriate steps to safeguard customer privacy.

(3) A subscriber organization that sends a contract over the Internet to a valid email address of the contracting customer is considered to have complied with § B(2)(a) of this regulation.

C. Evergreen Contracts.

(1) A subscriber organization shall provide a customer with a notice of the pending renewal of an evergreen contract 30 days before the automatic renewal is scheduled to occur.

(2) The subscriber organization notice required under § C(1) of this regulation shall:

- (a) Provide a clearly stated and highlighted notice to a customer of any changes in the material terms and conditions of the agreement; and
- (b) Inform the customer how to terminate the contract without penalty.



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COMAR 20.62.05.09 (2017)

.09 Share Transfers and Portability.

A. A CSEGS Subscription may be transferred or assigned to a CSEGS subscriber organization or to any person or entity who qualifies to be a subscriber in the CSEGS.

B. A CSEGS subscriber who desires to transfer or assign all or part of his subscription to the CSEGS subscriber organization, in its own name, or to become unsubscribed shall notify the CSEGS subscriber organization and the transfer of the subscription to the CSEGS subscriber organization shall be effective upon such notification, unless the CSEGS subscriber specifies a later effective date.

C. A CSEGS subscriber who desires to transfer or assign all or part of his subscription to another eligible customer desiring to purchase a subscription may do so only in compliance with the terms and conditions of the subscription and will be effective in accordance therewith.

D. The CSEGS subscriber organization and the electric company shall jointly verify that each CSEGS subscriber is eligible to be a subscriber in the CSEGS under *Public Utilities Article, § 7-306.2*, Annotated Code of Maryland. Changes in the subscriber rolls of the CSEGS, including the effective date of changes, shall be communicated by the CSEGS subscriber organization to the electric company, in written or electronic form, as soon as practicable but no less than 30 days.

E. Prices paid for subscriptions in a CSEGS may not be subject to regulation by the Commission.

F. A subscriber that moves to a premise located within the service territory served by the CSEGS may change the premises to which the CSEGS electricity generation shall be attributed to the new premise, and a subscriber organization may not charge an unreasonable transfer fee to such a customer.



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COMAR 20.62.05.10 (2017)

.10 Disclosure of Subscriber Information.

A. Except as provided in *COMAR 20.62.04* and B of this regulation, a subscriber organization may not disclose energy usage or personally identifiable information about a subscriber, or a subscribers billing, payment, and credit information, without the subscribers consent.

B. A subscriber organization may disclose a subscribers billing, payment, and credit information for the sole purpose of facilitating billing, bill collection, and credit reporting.

C. A subscriber organization shall provide a customer with a copy of the subscriber organizations customer information privacy policy.

D. A subscriber organization shall treat information received from prospective customers, including those who do not subscribe, in accordance with §§ A and C of this regulation.



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COMAR 20.62.05.11 (2017)

.11 Escrow of Prepaid Subscription Fees.

Subscriber funds collected by the CSEGS subscriber organization in advance of commercial operation of the CSEGS shall be held in an escrow account in a manner approved by the Commission. The escrow shall be maintained by its terms until such time as the CSEGS commences commercial operation as certified by the electric companys acceptance of energy from the CSEGS.



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COMAR 20.62.05.12 (2017)

.12 Notice of Contract Expiration or Cancellation.

A. A CSEGS subscriber organization shall provide the customer with notice at least 30 days before expiration or cancellation of a subscription contract.

B. Contents of Notice. The subscriber organizations expiration or cancellation notice required under § A of this regulation shall include:

- (1) Final bill payment instructions; and
- (2) The toll-free telephone number and the website address of the subscriber organization and the Commission.

C. Early Cancellation.

(1) Notice of early cancellation by the subscriber organization shall comply with B of this regulation.

(2) Early Cancellation Fee.

(a) A subscriber organization may impose a reasonable early cancellation fee if a customer cancels the contract before the expiration date.

(b) A subscriber organization may deduct a cancellation fee from a customer deposit.

(3) Except as provided in a tariff regarding subscriber organization default, an electric company may remove a customer from subscriber organization services only if directed by a subscriber organization, subject to applicable bankruptcy law.

(4) When a subscriber organization contracts with a customer, the newly contracting subscriber organization shall notify the customer that the customer may incur early cancellation penalties under a current subscriber organization contract.



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COMAR 20.62.05.13 (2017)

.13 Assignment of Subscription Contract.

A. At least 30 days prior to the effective date of any assignment or transfer of a subscription contract from one subscriber organization to another, the subscriber organizations shall jointly provide written notice of the assignment or transfer to the customers of the subscriber organization, the Commission, the electric company, and the Office of Peoples Counsel.

(1) Notice to Customer. The subscriber organizations shall jointly send notice to the customer informing them of the assignment or transfer. The letter shall include:

(a) A description of the transaction in clear and concise language including the effective date of the assignment or transfer;

(b) Customer service contact information for the assignee; and

(c) A statement that the terms and conditions of the customers contract at the time of assignment shall remain the same for the remainder of the contract term.

(2) The subscriber organizations shall file a notice with the Commission, with a copy to the Office of Peoples Counsel and the electric company, of the assignment or transfer of the customer contracts and include a copy of the letter sent to customers.

B. Upon request by the Commission, the assignee shall be responsible for providing documents and records related to the assigned contracts. Records shall be maintained for a period of 3 years or until the contracts are expired, whichever is longer.



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COMAR 20.62.05.14 (2017)

.14 Subscription Disputes.

A. A customer alleging a violation of this subtitle may file a dispute with the Commissions Office of External Relations.

B. Upon proof of the allegations, the customers remedy through the Office of External Relations is limited to a refund of any overcharge and any fees or penalties paid by the customer as a result of the unauthorized subscription or other violation.

C. This subtitle does not limit:

- (1) The authority of the Commission under Public Utilities Article, Annotated Code of Maryland;
- (2) The authority of the Attorney General to investigate violations of consumer protection or other legal requirements; or
- (3) The ability of a customer to pursue other relief against a subscriber organization or other party.



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COMAR 20.62.05.15 (2017)

.15 Subscriber Organizations Responsible for the Actions of Its Agents.

A. A subscriber organization may use an agent to conduct marketing or sales activities.

B. A subscriber organization is responsible for any fraudulent, deceptive, or other unlawful marketing performed by its agent while marketing or selling subscriptions on behalf the subscriber organization.



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COMAR 20.62.05.16 (2017)

.16 Agent Qualifications and Standards.

A. A subscriber organization shall develop standards and qualifications for individuals it chooses to hire as its agents. A subscriber organization may not hire an individual that fails to meet its standards.

B. A subscriber organization may not permit a person to conduct door-to-door activities until it has obtained and reviewed a criminal history record in the same manner as provided in *COMAR 20.53.08*.

C. When a subscriber organization contracts with an independent contractor or vendor to perform door-to-door activities, the subscriber organization shall document that the contractor or vendor has performed criminal background investigations on an agent in accordance with this regulation and with the standards set by the subscriber organization. A subscriber organization may satisfy this requirement by obtaining from the independent contractor or vendor a written statement affirming that the criminal background check was performed by them or under their supervision in accordance with this regulation and with standards set by the subscriber organization and presented in writing.

D. A subscriber organization shall periodically audit whether the background checks completed by its independent contractor or vendor have been completed in accordance with this regulation.



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COMAR 20.62.05.17 (2017)

.17 Agent Training.

A. A subscriber organization shall ensure the training of its agents on the following subjects:

- (1) Local, State and federal laws and regulations that govern marketing, telemarketing, consumer protection, and door-to-door sales as applicable to the types of marketing and jurisdiction in which the agent shall engage or operate;
- (2) Responsible and ethical sales practices;
- (3) The subscriber organizations products and services;
- (4) The subscriber organizations rates, rate structures, and payment options;
- (5) The customers right to rescind and cancel contracts;
- (6) The applicability of an early termination fee for contract cancellation when the subscriber organization has one;
- (7) The necessity of adhering to the script and knowledge of the contents of the script if one is used;
- (8) The proper completion of transaction documents;
- (9) The subscriber organizations Contract Summary Disclosure;
- (10) Information about how customers may contact the subscriber organization to obtain information about billing, disputes, and complaints; and
- (11) The confidentiality and protection of customer information.

B. A subscriber organization shall document the training of an agent and maintain a record of the training for 3 years from the date the training was completed.

COMAR 20.62.05.17

C. A subscriber organization shall make training materials and training records available to the Commission and the Office of Peoples Counsel upon request. Any such material shall be treated as confidential.

D. When a subscriber organization contracts with an independent contractor to perform marketing or sales activities on the subscriber organizations behalf, the subscriber organization shall confirm that the contractor or vendor has provided subscriber organization-approved training to agents and independent contractors in accordance with this section.

E. The subscriber organization shall monitor telephonic and door-to-door marketing and sales calls to:

(1) Evaluate the subscriber organizations training program; and

(2) Ensure that agents are providing accurate and complete information, complying with applicable rules and regulations and providing courteous service to customers.



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COMAR 20.62.05.18 (2017)

.18 Agent Identification and Misrepresentation.

A. A subscriber organization shall issue an identification badge to agents to be worn and prominently displayed when conducting door-to-door activities or appearing at public events on behalf of a subscriber organization. The badge shall:

- (1) Accurately identify the subscriber organization, its trade name, and its logo;
- (2) Display the agents photograph;
- (3) Display the agents full name; and
- (4) Display a customer service phone number for the subscriber organization.

B. Upon first contact with a customer, an agent shall:

- (1) Identify the subscriber organization that he represents; and
- (2) State that he is not working for and is independent of the customers local distribution company or another subscriber organization.

C. When conducting door-to-door activities or appearing at a public event, an agent may not wear apparel or accessories or carry equipment that contains branding elements, including a logo that suggests a relationship that does not exist with a utility, government agency, or another subscriber organization.

D. A subscriber organization may not use the name, bills, marketing materials, or consumer education materials of another.

E. A subscriber organization or subscriber organization agent may not say or suggest to a customer that a utility customer is required to choose a CSEGS subscriber organization.



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COMAR 20.62.05.19 (2017)

.19 Door-to-Door Sales.

A. A subscriber organization and its agents shall comply with the Maryland Door-to-Door Sales Act, local government ordinances regarding door-to-door marketing and sales activities, and any other applicable consumer protection law.

B. A subscriber organizations agent shall:

(1) Prominently display an identification badge; and

(2) Offer a business card or other material that lists:

(a) The subscriber organizations name and contact information, including telephone number;

(b) The Maryland approval number of the subscriber organizations CSEGS project; and

(c) The agents name and any other identification numbers provided to the sales agent by the subscriber organization or agent.

C. A subscriber organization shall establish a policy that requires an agent to terminate contact with a customer if the customer is incapable of understanding and responding to the information being conveyed by the agent.

D. When an agent completes a transaction with a customer, the agent shall provide a copy of each document that the customer signed or initialed relating to the transaction. A copy of these documents shall be provided to the customer before the agent and the customer leave each others presence.

E. An agent shall immediately leave a residence when requested to do so by a customer or the owner or an occupant of the premises, or if the customer does not express an interest in what the agent is attempting to sell.



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COMAR 20.62.05.20 (2017)

.20 Notifications Regarding Door-to-Door Activity.

A. When a subscriber organization engages in door-to-door activity, the subscriber organization shall notify OER no later than the morning of the day that the activity begins. The notification shall include general, nonproprietary information about the activity, the period involved, and a general description of the geographical area.

B. A subscriber organization shall provide the utility with general, nonproprietary information about the door-to-door activity that caused the subscriber organization to provide notice to the Commission. The subscriber organization shall provide this general information to the utility no later than the morning of the day that the sales and marketing activities begin. The utility shall use this information only for acquainting its customer service representatives with sales and marketing activity occurring in its service territory so that they may address customer inquiries knowledgeably. A utility may not use the information for other purposes.

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Division VI
Section A

SCENIC VIEWS

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Appendix C

Introduction

INTRODUCTION

The Baltimore County Master Plan 2010 identifies scenic routes, gateways and views. These scenic areas are important visual amenities worthy of preservation.

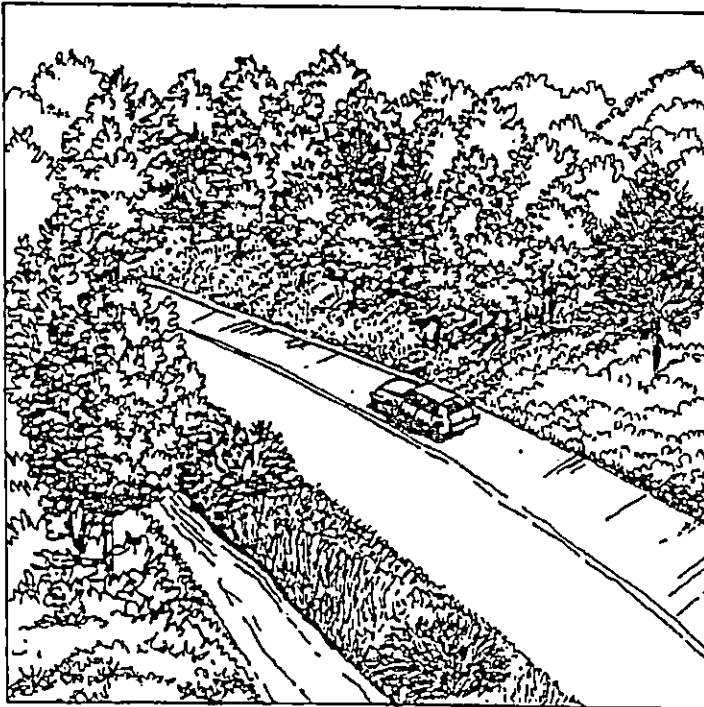
The benefits of a scenic program are many. Foremost is the preservation of the character that makes Baltimore County distinctive. This

contributes to pride of place, a sense of ownership in the community, and an ethic of stewardship of community qualities. All of these are at the heart of stabilization of communities, a critical factor for the future of Baltimore County.

Baltimore County has regulations that provide a nucleus for a scenic routes program. Agricultural zoning, agricultural preservation districts, critical areas legislation, public open space systems, federal and local historic districts, and regulations of the Department of Environmental Protection and Resource Management which protect streams, wetlands, forest and slopes all implicitly preserve scenic qualities.

Designating scenic protection adds aesthetic-based standards to these resource-based ones, and makes the goal of preserving views from scenic routes explicit.

Development can be accommodated in scenic areas, and visual quality maintained, with sensitive site analysis and planning. The guidelines here present ways to achieve this goal through project designs that maintain the visual quality of these areas with no density losses. In addition, CIP projects which affect scenic routes should be evaluated in relation to their impact on the view.



Definitions

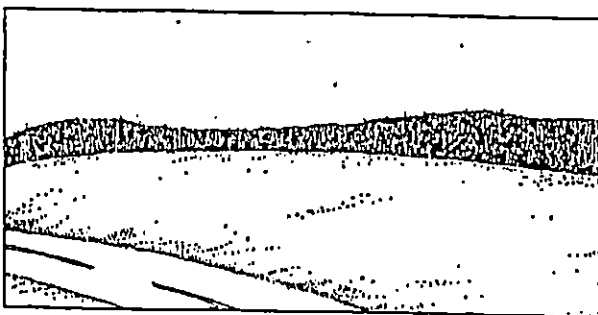
DEFINITIONS

Scenic Route: As adopted as part of the Master Plan, a scenic route is a road bordered, for the most part, by views which are in the public interest to protect.

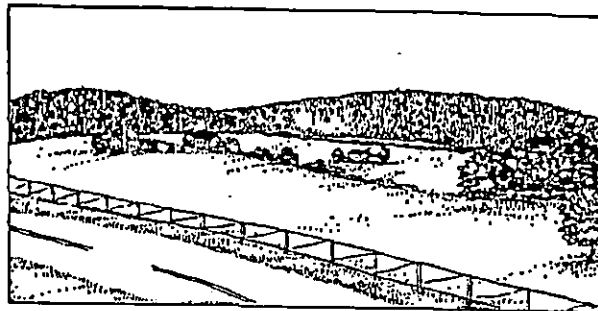
The following factors are considered in the designation of a scenic route:

1. Aesthetic quality:

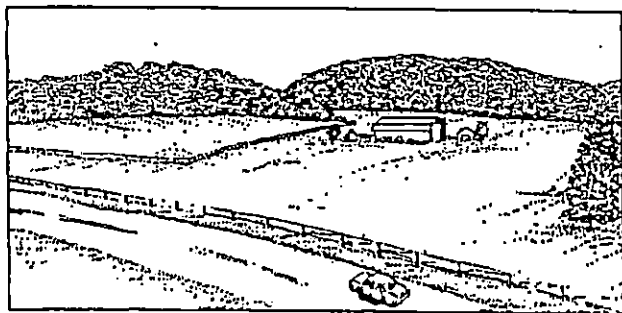
- a) Visual impact or visual memorability;
- b) Unity (the harmonious composition of the visual elements comprising the landscape); and/or
- c) Integrity (absence of visually distracting elements).



Low visual impact



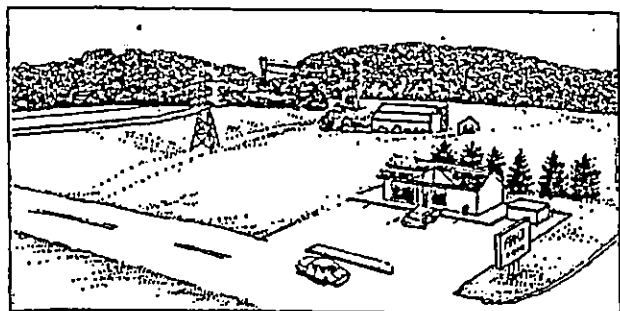
High visual impact



High integrity



Low unity

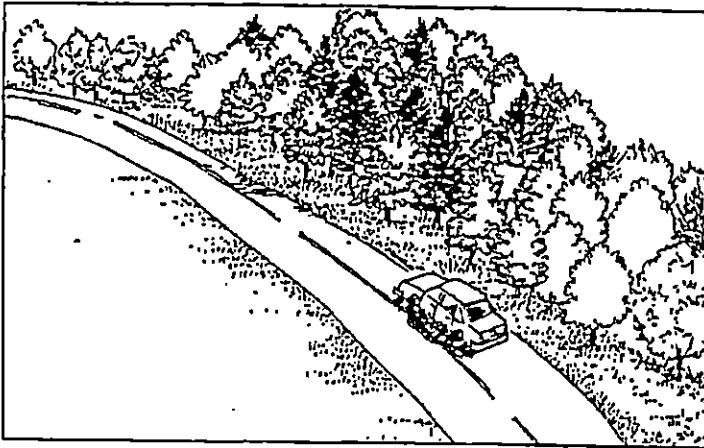


Low integrity

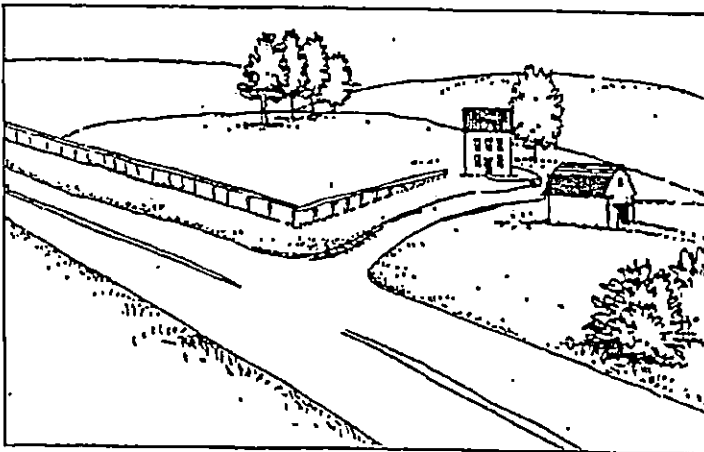


High unity

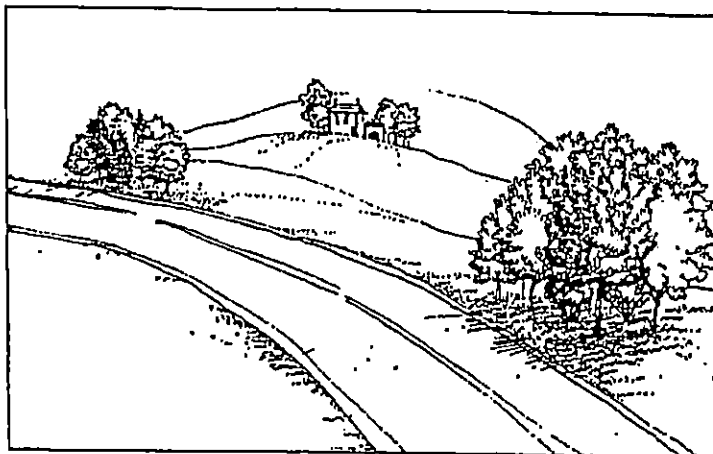
Definitions



Enclosed view



Expansive view



Focused view

2. Community interest in maintaining the visual character of the corridor.

3. Ability to be integrated with other scenic corridors to produce a largely continuous path of high visual quality.

Significant View: Particularly valued vistas along the scenic route, or isolated vistas along undesignated roads, as indicated in the Master Plan.

Enclosed, Expansive and Focused View: Baltimore County's varied landscapes produce different kinds of vistas which may be classified in general as either enclosed, expansive, or focused.

Enclosed view is limited to the road and the road functions as an integral part of the vista. The type of road is therefore an essential element of an enclosed vista. The elements which contain, or enclose, the vista can be vegetation (trees and/or large shrubs), steep slopes, or existing buildings.

Expansive view is a broad vista extending beyond the road edge. It may encompass open pastures or croplands, marshes, a body of water, etc. They may be totally panoramic and unobstructed extending to the horizon.

Focused view is an area where the primary interest is directed to a single feature of the landscape.

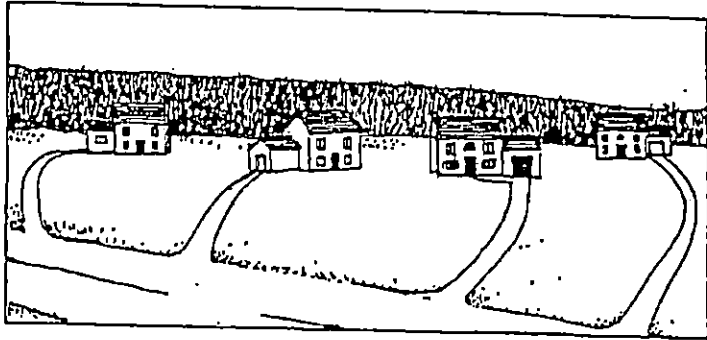
Development Guidelines

DEVELOPMENT GUIDELINES

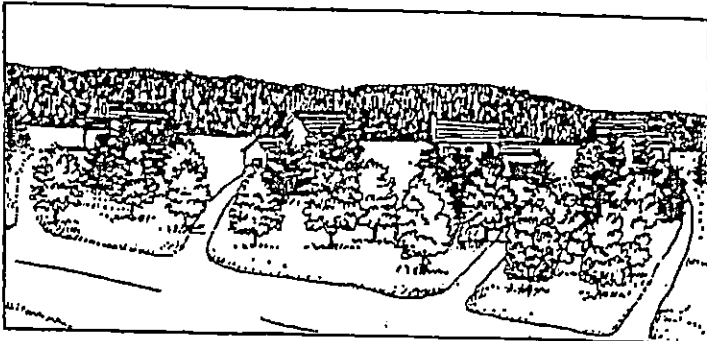
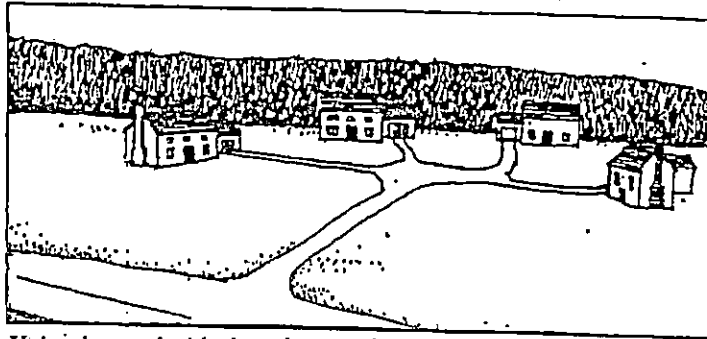
These guidelines pertain to the development of any area within or adjacent to a designated scenic route or significant view. They also pertain to views created by new development.

For all scenic routes and significant views:

1. Minimize tree and vegetation removal. Clear selectively to open up obscured views or create filtered views of compatible development.
2. Minimize grading to preserve the quality of the existing landforms.
3. Minimize the number of access roads and driveways intersecting the scenic road. Where feasible, use shared driveways for individual lots.
4. Use the narrowest road pavement section possible while ensuring adequate public safety. Use shoulders and curbs appropriate to the character of the road. Maintain the existing vertical and horizontal road alignment when compatible with the design and approved by the Department of Public Works.
5. Design and locate utilities, drainage structures, bridges, lighting, signage, fences, walls and street furniture to harmonize with the surroundings and to create the least visual impact.
6. Design new structures to complement the site and surrounding community. This can be accomplished through the repetition of scale, proportion, mass, materials and/or details of the existing buildings on the site or in the community.



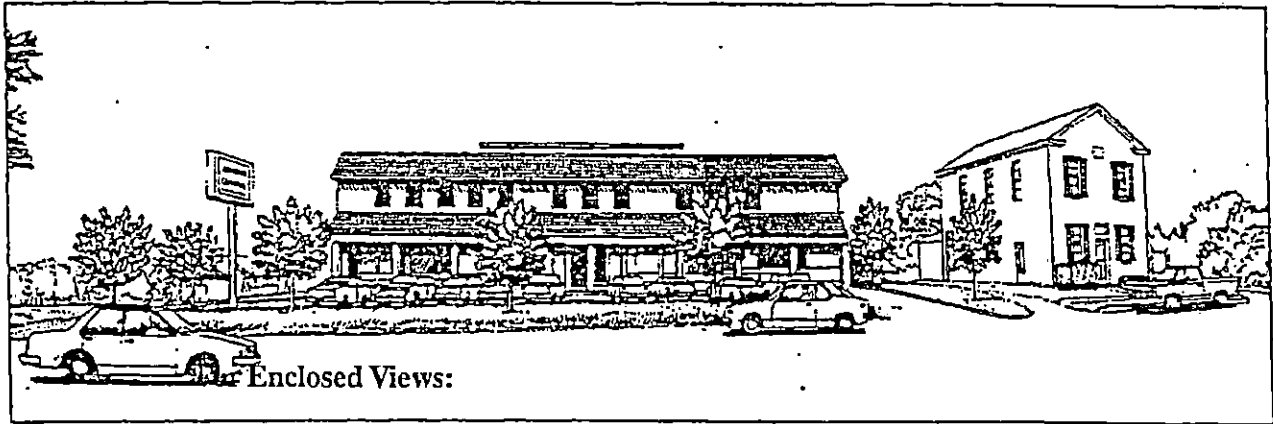
Units clustered with shared access have less visual impact



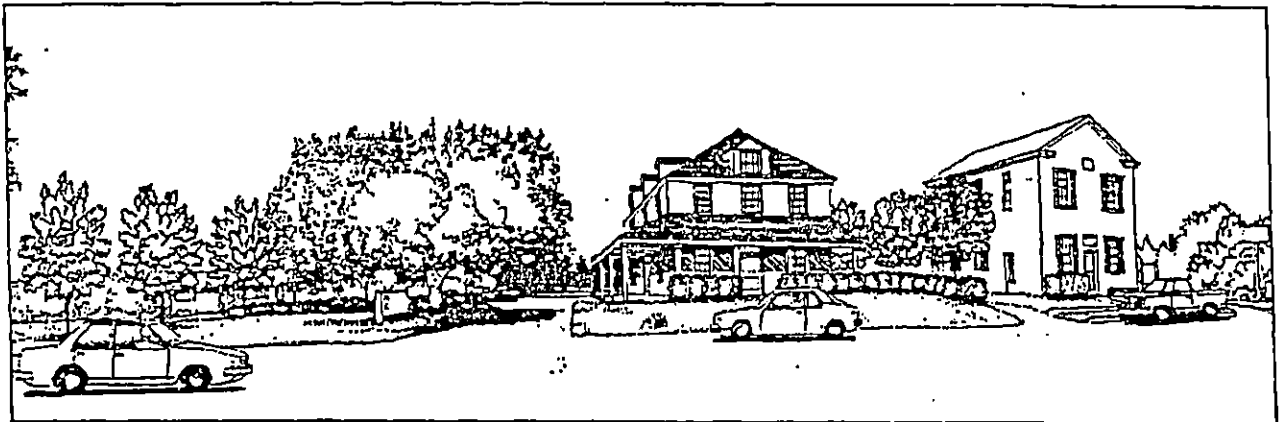
Screen plantings are more effective with limited driveway openings

Development Guidelines

7. Use indigenous species or ones commonly found in the area when landscaping. Planting designs should reinforce the character of the site, its ecologic significance, and its environmental function.
8. Complement existing vegetation with flowering or evergreen trees and shrubs, wildflowers, etc., for seasonal interest.
9. Use plant materials to frame particularly attractive views.
10. Create an interesting sequence of visual experiences with selective clearing and planting.
11. Locate parking, service and storage areas at the side or rear of the building(s), and screen them from the road to reduce their visual impact.
12. Encourage pedestrian or bike paths along scenic corridors.

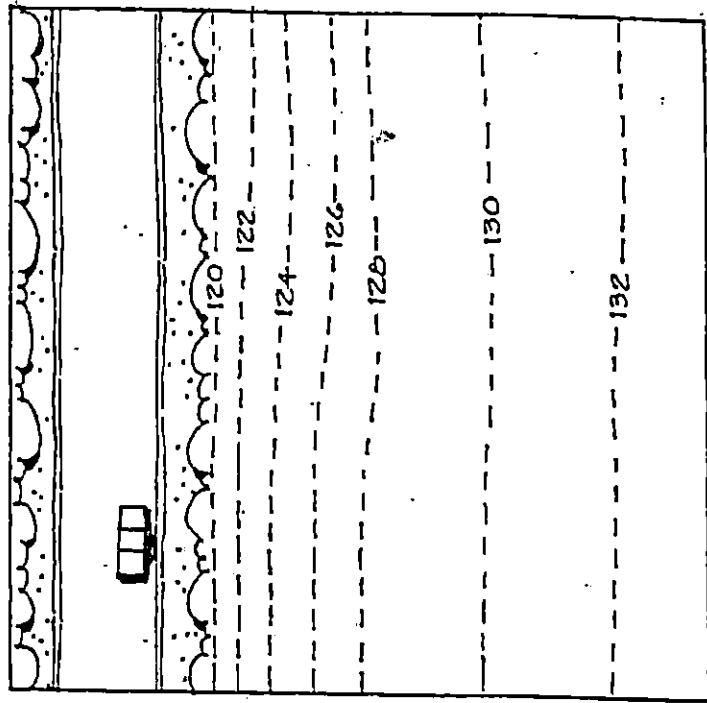


Typical rural office building development

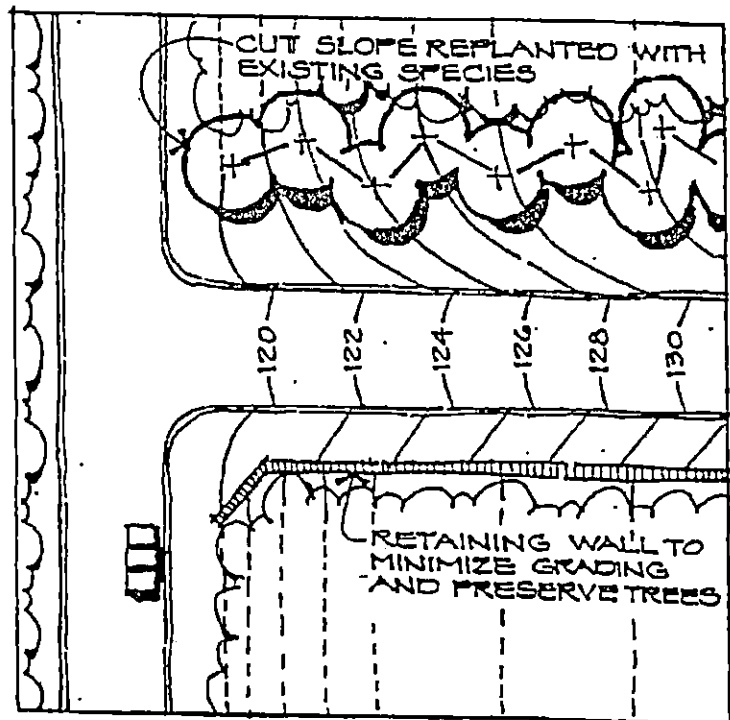


Development Guidelines

1. Maintain a buffer area between the road and the new development. The buffer should be wide enough to maintain the road's visual character, with a minimum width of at least 30 feet from the right-of-way.
2. Supplement a wooded buffer with evergreen trees and shrubs planted on the interior side to screen or partially screen new development.
3. Where the scenic road is bordered by residential or historic buildings, design new development to be compatible with the existing development in respect to building setbacks, height, scale, proportion, materials and design; site materials and design; paving design (vehicular and pedestrian) and landscaping, including street trees.

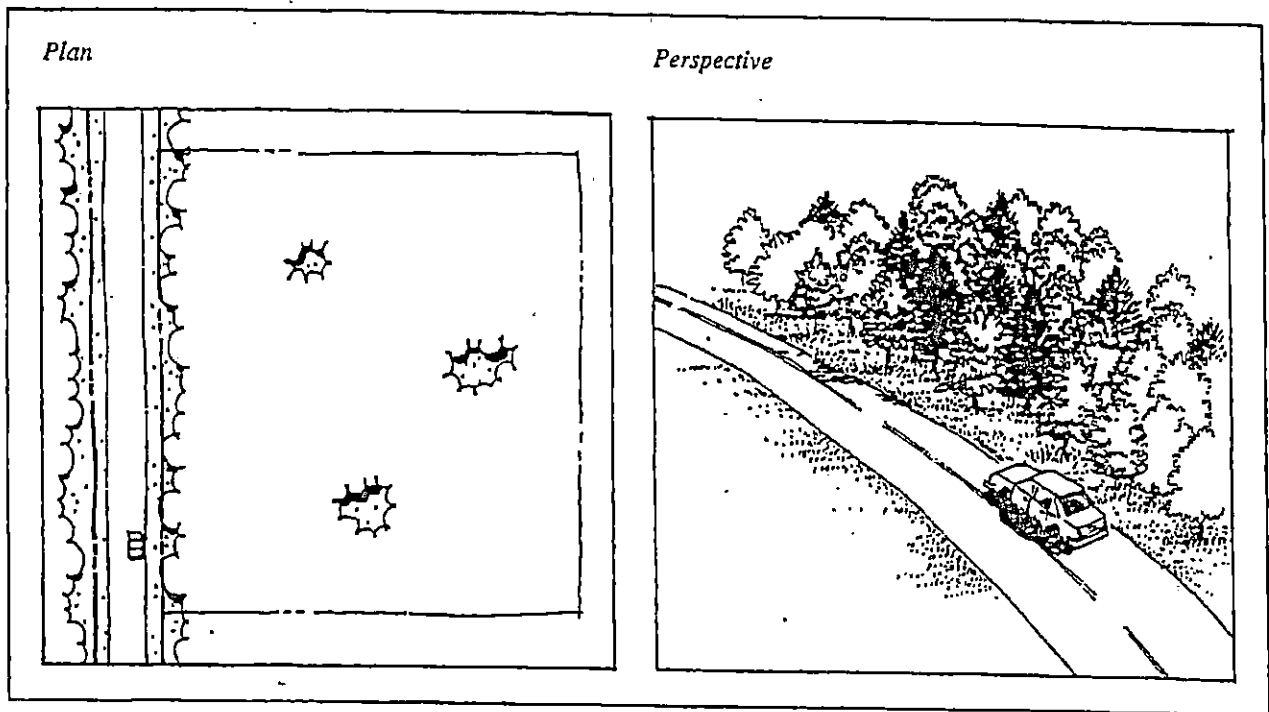


Enclosed view, steep slopes -- Existing condition

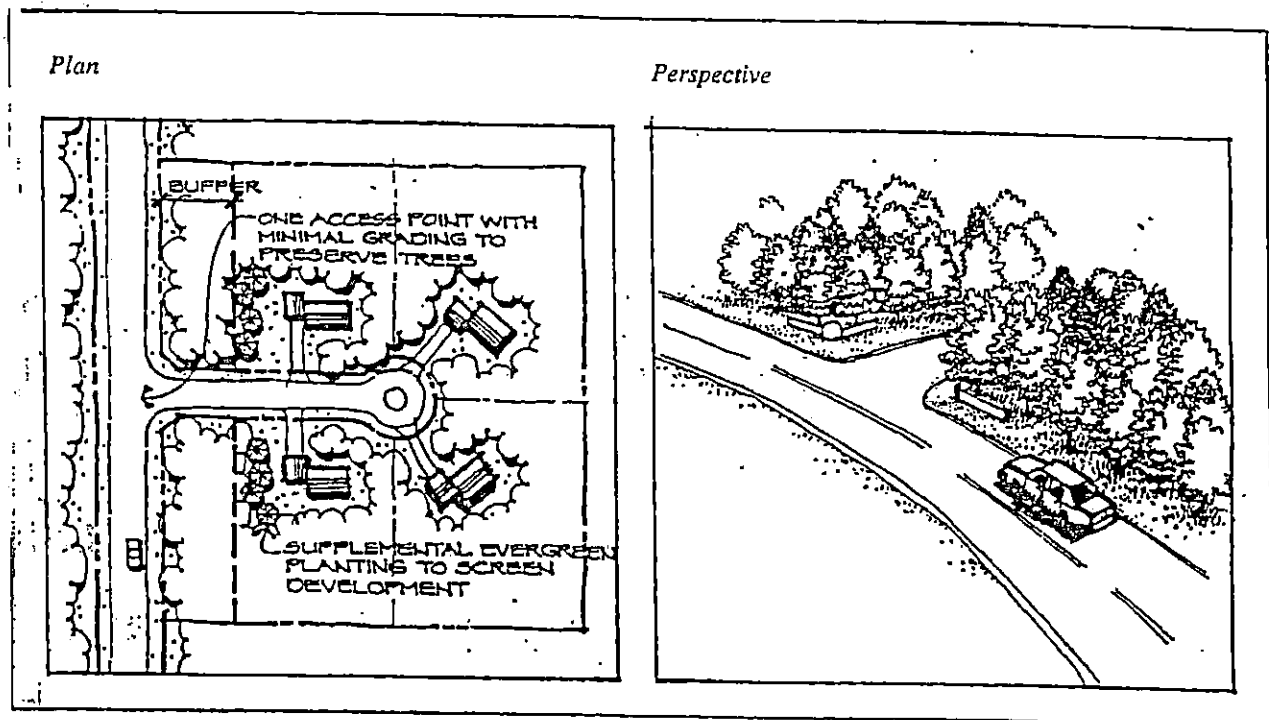


Enclosed view, steep slopes -- Proposed grading alternatives

Development Guidelines



Enclosed view, wooded site -- Existing condition

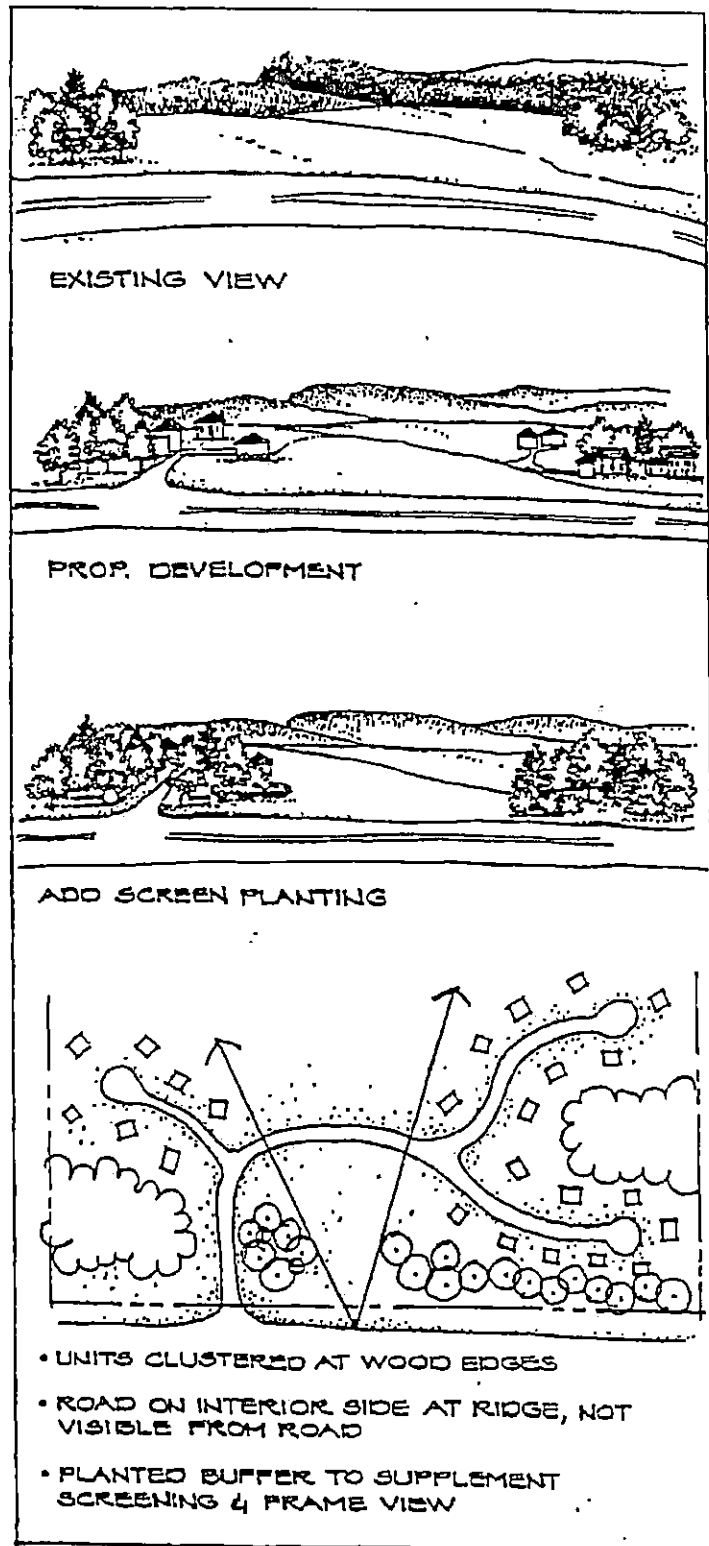


Enclosed view, wooded site -- Proposed development

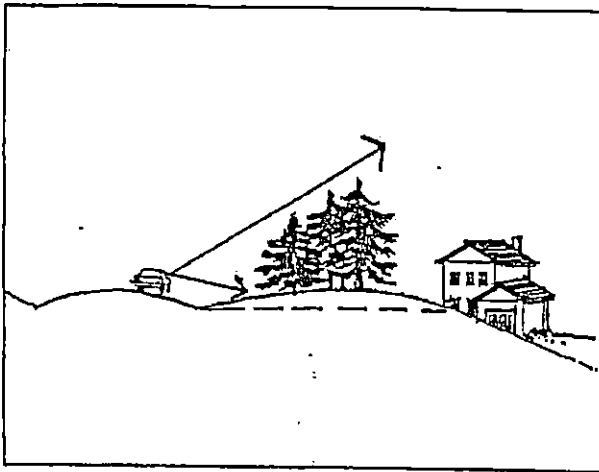
Development Guidelines

For Expansive Views:

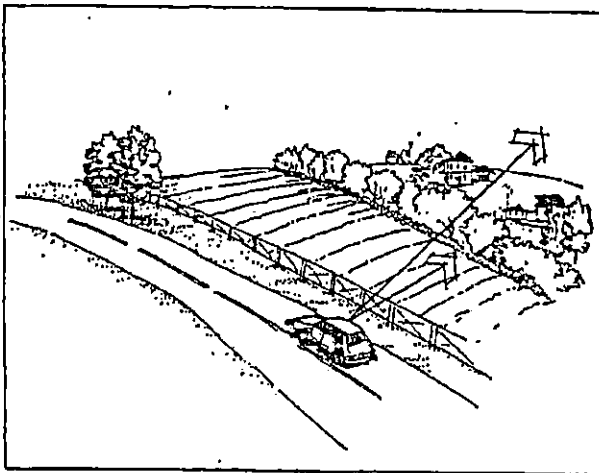
1. Site new buildings behind natural screening or beyond primary views. Cluster development at the edges of fields and hedgerows, or adjacent to existing buildings.
2. Site development in relation to the natural contours. Avoid placing structures on the tops of prominent ridges.
3. Use berms and vegetated buffers to screen distracting development from the scenic road.
4. In some instances, it may be possible to preserve the foreground meadow, pasture, or cropland and nestle development into the background. Maintain the foreground through a homeowner's association for use as an open space or a community garden, or rent it to a neighboring farmer to continue an agricultural use.
5. Where a cluster of farm buildings comprise part of an expansive view, site new buildings in small groups to resemble the existing development. Maintain large open areas between the clusters to preserve the open character of the view.



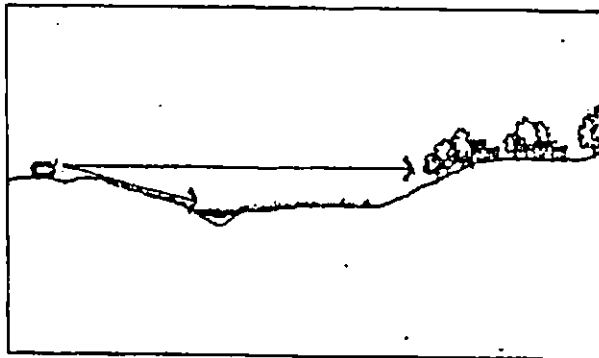
Development Guidelines



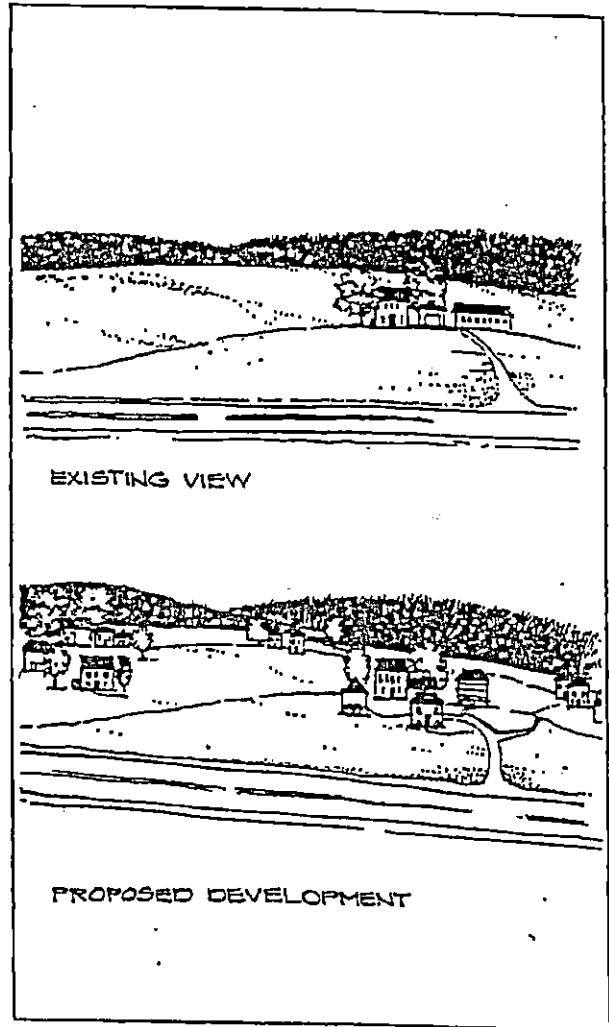
Use berms and planting to screen distracting development



The foreground is maintained by a neighbor as cropland; new development is screened by hedgerow



The stream valley is preserved; new development is nestled into the wooded hillside, where the existing vegetation is largely preserved and provides screening.

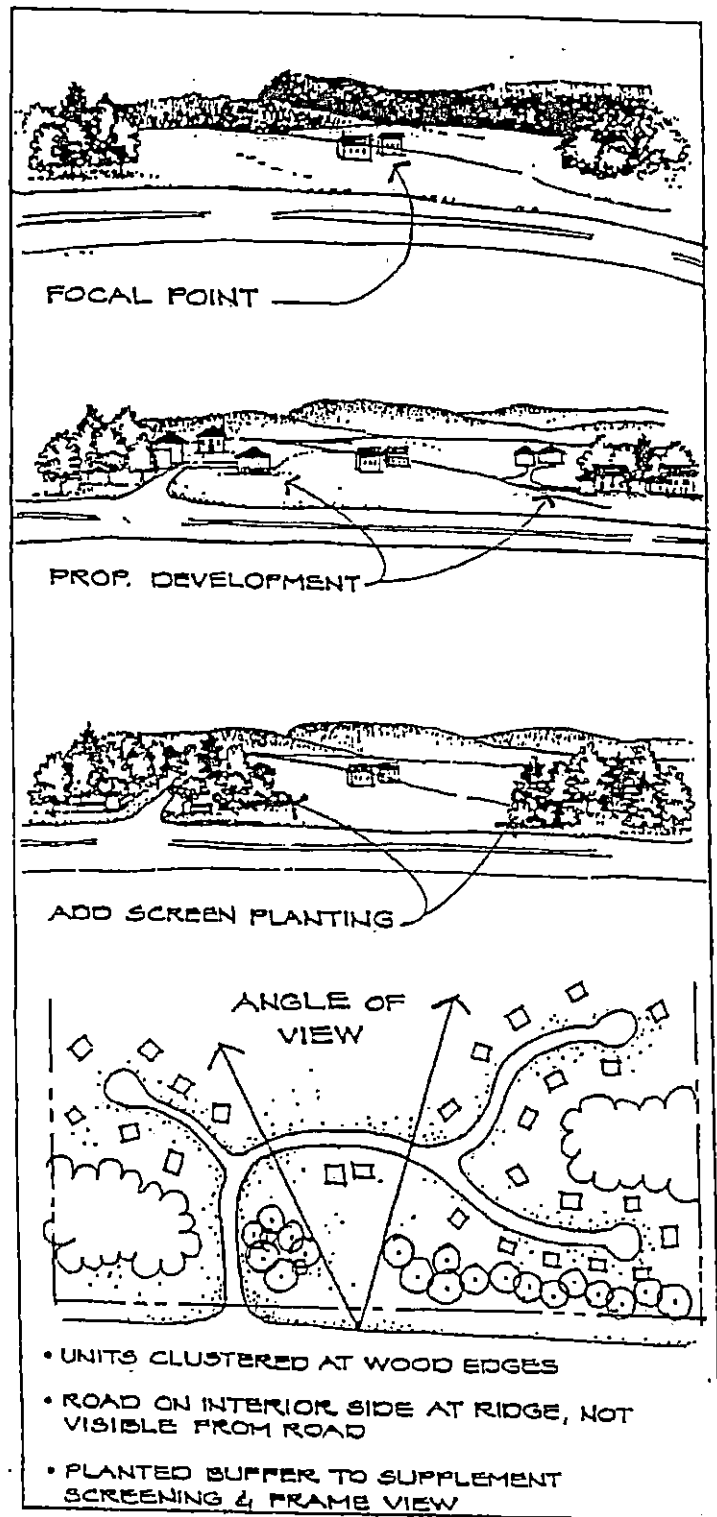


Cluster housing in small groups to resemble farm buildings.

Development Guidelines

For Focused Views:

1. Site new buildings beyond the angle of view.
2. Retain vegetation to frame the focal point.
3. Design new buildings to enhance the focal point.
4. Screen incompatible new development from the primary view.



Approval Process

APPROVAL PROCESS

Submission of public and private development plans for plan review shall contain a note referencing designated scenic routes and significant views as part of the requirements of Section 32-4-224.(d), Baltimore County Development Regulations. The following shall be shown on the plan:

1. Location of all views and viewsheds from the road, indicated on the plan with arrows and verbal descriptions.
2. Photographs, perspective sketches, and/or elevations of the property as necessary to adequately portray the visual quality of the existing site as viewed from the road. For sites within or adjacent to residential or historic development, provide illustrations of the adjacent properties as necessary to portray the community's scenic character.
3. Perspective sketches, elevations and/or cross-sections of the proposed development as viewed from the road which demonstrate:
 - a. In areas of existing development, compatibility of project design with the community.
 - b. In undeveloped areas, the conservation of the existing scenic quality.
4. The location and size of minor deciduous trees over 4 inches in caliper, major deciduous over 12 inches in caliper and conifer trees over 25 feet in height within the net buildable area unless waived by the Hearing Officer.
5. Schematic planting plan.

6. Proposed permanent sign location and elevations, including size, material, color and lighting.

7. Any planned CIP improvements for the scenic route shall be noted on the plan.

MODIFICATION OF STANDARDS

The Director of the Office of Planning and the Director of Public Works may approve modification of existing standards when it can be demonstrated that the action will more fully achieve the objective of preserving visual quality, without impairing public health, safety and welfare.



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

February 15, 2017

NOTICE OF REASSIGNMENT

IN THE MATTER OF: Donald and Kathleen Lippy
15700 Hanover Pike
16-335-SPHX 4th Election District; 3rd Councilmanic District

Re: Petition for Special Exception pursuant to BCZR § 502, to grant Special Exception relief for a solar panel array field as a "public utility use" under BCZR § 1A01.2.C.18; and

Petition for Special Hearing pursuant to BCZR § 500.7, if necessary and in the alternative, to approve the proposed solar panel array field as a permitted accessory use or structure to the farm.

10/18/16 Opinion and Order issued by the Administrative Law Judge wherein the requested Special Hearing relief was DENIED; and the requested Special Exception relief was GRANTED.

These matters, having been heard on February 7, 2017 and not concluded, have been

ASSIGNED FOR: **THURSDAY, MARCH 16, 2017 AT 10:00 A.M.**

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

NEW! Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.

NEW! Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington
Administrator

Notice of Reassignment
In the matter of: Donald and Kathleen Lippy
Case number: 16-335-SPHX
February 15, 2017
Page 2

c:	Counsel for Petitioner	: Lawrence E. Schmidt, Esquire
	Petitioner/Legal Owner	: Donald and Kathleen Lippy
	Counsel for Protestants	: Michael R. McCann, Esquire
	Protestants/Appellants	: Hanover Road Association c/o Santo Mirabili

John Lemmerman/RTF Associates, Inc.
Ken Donithan/Earth & Air Technologies, LLC

Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney
Michael Field, County Attorney, Office of Law

Krysundra Cannington

From: Michael McCann <michael@mmccannlaw.net>
Sent: Tuesday, February 14, 2017 7:58 AM
To: Krysundra Cannington
Cc: Lawrence Schmidt, Esquire; Carole Demilio; Alyssa Fiore; Rebecca Wheatley
Subject: Re: Lippy Day 2

Sunny. March 16 is good for us. Thank you.

Sent from my iPhone

On Feb 13, 2017, at 9:39 AM, Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

Good morning Counsel,

Please be advised the following dates are currently available for Day 2 in the Lippy matter. March 14, 15, or 16.

Please contact me as soon as possible regarding your availability on these dates.

Thank you.

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

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CONNECT WITH BALTIMORE COUNTY



www.baltimorecountymd.gov

Krysundra Cannington

From: Alyssa Fiore <afiore@sgs-law.com>
Sent: Monday, February 13, 2017 9:47 AM
To: Carole Demilio; Krysundra Cannington; Lawrence Schmidt; Michael McCann, Esquire
Subject: RE: Lippy Day 2

Sunny,

The 15th and 16th work for Larry. Based on Rebecca's email below, I will reach out to our team to confirm they do not have a conflict with March 16th. Hopefully the 16th works for Mr. McCann as well.

Alyssa M. Fiore | Paralegal
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
afiore@sgs-law.com | www.sgs-law.com

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From: Carole Demilio [mailto:cdemilio@baltimorecountymd.gov]
Sent: Monday, February 13, 2017 9:45 AM
To: Krysundra Cannington; Lawrence Schmidt; Michael McCann, Esquire
Cc: Alyssa Fiore
Subject: RE: Lippy Day 2

Sunny,

The 14th and 16th work for our schedule.

Thanks.
Rebecca Wheatley, Legal Secretary
People's Counsel for Baltimore County
105 West Chesapeake Avenue, Suite 204
Towson, Maryland 21204
(410) 887-2189 Direct Dial
(410) 887-2188 Office
(410) 823-4236 Fax

From: Krysundra Cannington
Sent: Monday, February 13, 2017 9:39 AM
To: Lawrence Schmidt, Esquire <lschmidt@sgs-law.com>; Michael McCann, Esquire <michael@mmccannlaw.net>; Carole Demilio <cdemilio@baltimorecountymd.gov>
Cc: Alyssa Fiore <afiore@sgs-law.com>; Rebecca Wheatley <rwheatley@baltimorecountymd.gov>
Subject: Lippy Day 2

Good morning Counsel,

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Krysundra Cannington

From: Carole Demilio
Sent: Monday, February 13, 2017 9:45 AM
To: Krysundra Cannington; Lawrence Schmidt, Esquire; Michael McCann, Esquire
Cc: Alyssa Fiore
Subject: RE: Lippy Day 2

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Thanks.

Rebecca Wheatley, Legal Secretary
People's Counsel for Baltimore County
105 West Chesapeake Avenue, Suite 204
Towson, Maryland 21204
(410) 887-2189 Direct Dial
(410) 887-2188 Office
(410) 823-4236 Fax

From: Krysundra Cannington
Sent: Monday, February 13, 2017 9:39 AM
To: Lawrence Schmidt, Esquire <lschmidt@sgs-law.com>; Michael McCann, Esquire <michael@mmccannlaw.net>; Carole Demilio <cdemilio@baltimorecountymd.gov>
Cc: Alyssa Fiore <afiore@sgs-law.com>; Rebecca Wheatley <rwheatley@baltimorecountymd.gov>
Subject: Lippy Day 2

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Please contact me as soon as possible regarding your availability on these dates.

Thank you.

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

Confidentiality Statement

Krysundra Cannington

From: Krysundra Cannington
Sent: Monday, February 13, 2017 9:39 AM
To: Lawrence Schmidt, Esquire; Michael McCann, Esquire; Carole Demilio
Cc: Alyssa Fiore; Wheatley, Rebecca
Subject: Lippy Day 2

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Sunny

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Board of Appeals of Baltimore County

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105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

November 30, 2016

NOTICE OF ASSIGNMENT

IN THE MATTER OF: Donald and Kathleen Lippy
15700 Hanover Pike
16-335-SPHX 4th Election District; 3rd Councilmanic District

Re: Petition for Special Exception pursuant to BCZR § 502, to grant Special Exception relief for a solar panel array field as a "public utility use" under BCZR § 1A01.2.C.18; and

Petition for Special Hearing pursuant to BCZR § 500.7, if necessary and in the alternative, to approve the proposed solar panel array field as a permitted accessory use or structure to the farm.

10/18/16 Opinion and Order issued by the Administrative Law Judge wherein the requested Special Hearing relief was DENIED; and the requested Special Exception relief was GRANTED.

ASSIGNED FOR: TUESDAY, FEBRUARY 7, 2017 AT 10:00 A.M.

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE:

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- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
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Krysundra "Sunny" Cannington
Administrator

Notice of Assignment
In the matter of: Donald and Kathleen Lippy
Case number: 16-335-SPHX
November 30, 2016
Page 2

c: Counsel for Petitioner
Petitioner/Legal Owner

: Lawrence E. Schmidt, Esquire
: Donald and Kathleen Lippy

Counsel for Protestants
Protestants/Appellants

: Michael R. McCann, Esquire
: Hanover Road Association c/o Santo Mirabili

John Lemmerman/RTF Associates, Inc.
Ken Donithan/Earth & Air Technologies, LLC

Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney
Michael Field, County Attorney, Office of Law



KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

November 18, 2016

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue
Suite 200
Towson, Maryland 21204

Michael R. McCann, Esquire
118 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: **APPEAL TO BOARD OF APPEALS**
Case No. 2016-0335-SPHX
Location: 15700 Hanover Pike



Dear Counsel:

Please be advised that an appeal of the above-referenced case was filed in this Office on November 17, 2016. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals ("Board").

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to contact the Board at 410-887-3180.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Stahl", written over a horizontal line.

LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS/sln

c:
Baltimore County Board of Appeals
People's Counsel for Baltimore County

Board of Appeals

Case No: 16-335-SPHX

Case Name: LIPPY

Exhibit List

Party: Petitioner

Date: 2/7/17

Exhibit No:	Description:
✓ 1	Lemmerman Resume
✓ 2A	Aerial Photo & Property Plan prepared by Lemmerman
✓ 2B	Schematic Plan showing solar array diagram + landscaping
✓ 3	ALJ Decision for 11121 Pfeffers Rd
✓ 4 A-C	Aerial Photos of Lippy Property from "my neighborhood"
✓ 5 5	Lippy properties in Ag Easements
✓ 6 6	Batten Resume
✓ 7 A-C	A - Landscape Plan B Aerial view - Large exhibit C Blow-Up Portion of 7A
✓ # 8 A-B	Solar Photos - Panels - a solar array
✓ 9 A-M	Photos of area around Property
	VERIFIED BY <u>XC</u> DATE: <u>2/7/17</u>

XC
2/7/17

Professional Resume

Page 1 of 2

Ref. No
1

John E. Lemmerman, Prof. LS

Maryland Professional Land Surveyor # 21096

Owner, Operator, Principal Surveyor, Planner & Designer

Email – John.RTF@gmail.com

Phone – 443-398-0389

COMPANY

RTF Associates, Inc. *Professional Land Surveyors & Planners (2005-present)*

142 East Main Street, Westminster, MD 21157

410-848-2040, 410-876-1222, fax-443-289-8942, web-RTFsurveying.com

RTF, Inc. Professional Land Surveyors & Planners (1989-2005)

Survey Tech (1989-2001), Licensed Professional Land Surveyor (2001-present)

PROFESSIONAL REGISTRATION/CERTIFICATIONS

Professional Land Surveyor, Maryland #21096

Land Surveyor – Corporation License Maryland # 21250

State of Maryland Erosion & Sediment Control Certification

MDE Sandmound septic system Designer/Installer Certification

MDE BAT Installer/Inspector Certification

PROFESSIONAL ASSOCIATIONS

Maryland Society of Surveyors (MSS), *Past Carroll Chapter Secretary, Past Chapter Chairman*

National Society of Professional Surveyors (NSPS)

Better Business Bureau (BBB)

Maryland Onsite Wastewater Professionals Association (MOWPA)

EDUCATION

A.A.S. Land Surveying & Civil Engineering

Extensive and ongoing Professional Development/Continuing Education

28 years' experience

QUALIFICATIONS

- Have worked in Land Surveying & Planning for 28 years, professionally licensed in Maryland for 16 years, with experience on both private and public projects. Have experience from ALTA/ASCM Land Title Surveys, Residential & Commercial properties in rural and urban settings and have processed hundreds of minor and major sub-divisions as well as Commercial Site Plans.

**Petitioner
CBA Exhibit**

#1

- Have served as expert witness regularly at formal Board of Zoning Hearings, testifying of land uses and ownership.
- Have been accepted as an Expert Witness and testified in Carroll County Circuit Court for a Right of Way case.
- Have been accepted as an Expert Witness and testified in Carroll County District Court for a Right of Way case.
- Have been accepted as an Expert Witness and testified in Baltimore County Office of Administrative Hearings.

SOLAR FIELD ARRAY SPECIFIC PROJECTS

- **Carroll County – Hoods Mill Landfill:** ALTA/NSPS (American Land Title Assoc./National Society of Prof. Surveyors) Survey and Topography for Solar design and layout.
- **Carroll County – Hampstead Waste Water Treatment Plant:** ALTA/NSPS (American Land Title Assoc./National Society of Prof. Surveyors) Survey and Topography for Solar design and layout.
- **Carroll County – Carroll Community College:** ALTA/NSPS (American Land Title Assoc./National Society of Prof. Surveyors) Survey and Topography for Solar design and layout.
- **Baltimore County - Lippy Property,** Surveying, Drafting and Expert Witness Services for a Special Exception Request (and alternative special hearing relief) for The Office of Administrative Hearing with Landscaping Plan.
- **Carroll County – Wakefield Acres, LLC:** Surveying, Topography, Site Plan and presentation to the Planning Commission.
- **Allegany County – Browning Property:** Surveying, Topography, Site Plan and Expert Witness Services for Special Exception use in the Agricultural zoning.

Ref 3

IN RE: PETITION FOR SPECIAL EXCEPTION *
(11121 Pfeffers Road) *
11th Election District *
5th Council District *
11121 Pfeffers LLC *
Legal Owner *
Petitioner *
Case No. 2016-0086-X

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Special Exception filed for property located at 11121 Pfeffers Road. The Petition was filed on behalf of the legal owner of the subject property, 11121 Pfeffers LLC. The Special Exception petition seeks relief pursuant to §1A04.2.B.12 of the Baltimore County Zoning Regulations (B.C.Z.R) to approve a solar panel array field as a “public utility use”. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit No. 1.

Appearing in support of the request was Aaron Menger and Brian Childress, whose firm prepared the site plan. Patricia A. Malone, Esq. represented the Petitioner. The Petition was advertised and posted as required by the B.C.Z.R. Several citizens, whose names are listed on the sign-in sheets, attended the hearing to obtain additional information regarding the requests.

Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). Those agencies did not oppose the request, but provided suggested conditions for inclusion in the final Order.

The subject property is approximately 31.59 acres and is zoned RC-5. The site is improved with a single-family dwelling, and has a large area currently being used for agricultural purposes.

Petitioner's Ex. 1

Petitioner
CBA Exhibit
#3

Petitioner proposes to lease an 11 acre portion of the site to be used for an array of solar panel devices. As shown on the plan, the solar panels will be situated in the southern portion of the site, near to where Interstate 95 adjoins the property. The RC-5 zone permits by special exception a "public utility" use, although that term is not defined in the Regulations.

Aaron Mengle, employed by SGC Power, LLC (the Lessee) described the components which will be used in the project, which he estimated will provide on a yearly basis 2.2 megawatts of electricity; i.e., roughly the amount of energy which is used by about 200 homes every year. The energy produced by the solar panels will be transferred to the electric "grid" and ultimately sold to consumers by energy suppliers, as shown on Petitioner's Exhibit 6. Though his company will lease approximately 11 acres of the site, Mr. Mengle estimated the solar panels and necessary equipment will occupy roughly 6 acres of the property. Mr. Mengle opined that B.C.Z.R. §502.1 (concerning special exceptions) was satisfied, and that the use would have little to no impact upon surrounding properties.

The only interpretive difficulty in the case arises because the B.C.Z.R. does not define what constitutes a "public utility," and by all accounts that term is harder to apply in light of the emergence of wind, solar and other alternative energy sources. Industry literature and the Solar Energy Industries Association, the leading trade group for solar developers, recognize that "utility-scale" solar (in contrast to residential-scale (rooftop) systems) is defined as greater than 1 megawatt. In this case the solar panels are projected to generate 2.2 megawatts, which under prevailing industry standards would constitute "utility-scale solar." For similar reasons, I believe the proposed use is properly characterized under the Regulations as a "public utility."

Special Exception Law in Maryland

Under Maryland law, a special exception use (in this case, a public utility) enjoys a presumption

that it is in the interest of the general welfare, and therefore, valid. Schultz v. Pritts, 291 Md. 1 (1981). The Schultz standard was revisited in People's Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use. No evidence was presented in this case regarding that issue, and the petition will therefore be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 16th day of December, 2015, that the Petition for Special Exception to approve a solar panel array field as a "public utility use" be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. The special exception area shall be restricted to the 11 acre tract shown on the site plan, and all public utility uses must be restricted to that area.
3. Petitioner must comply with the ZAC comments of DOP and DPR, both of which are attached hereto and incorporated herein.
4. No lighting shall be permitted on the special exception area.
5. No signage (other than customary "No Trespassing" signs) shall be permitted in connection with the public utility use.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JEB/sln

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

Concept Plan for Preservation of Shriver Cannery stone building, Westminster MD

Other Pertinent Experience

Assisted in development of landscape manuals for City of Westminster and Carroll County including subsequent revisions to Carroll County Landscape Manual and Ordinance.

Testified as expert witness before Montgomery County Board of Appeals, Anne Arundel County Board of Appeals, Baltimore County Planning Board and City Council of Westminster.

Served on Uniontown Historic District Commission

Owner of 100 acre farm in Carroll County in Maryland Agricultural Easement - includes 28 acres +/- forest bank .

**Lippy Brothers, Inc.
Agricultural Easements**

<u>Farm</u>	<u>County</u>	<u>acres</u>
Hannon(chicken house)	Carroll	214.4
Hering (Keith's house)	Carroll	201.5
Shephard-Myers	Carroll	199.6
W Lippy	Carroll	174.0
Finger/Sater	Carroll	127.1
Hering	Carroll	209.6
Hering	Carroll	119.1
Hannon(Old Bach Vly)	Carroll	216.5
Gross	Carroll	138.3
Basler	Carroll	69.3
Richards - (application submitted)	Carroll	101.2
Fringer/Bortner	Baltimore	134.0
Howard	Baltimore	78.2
W Lippy/Cullison	Baltimore	102.0
Tillinghast	Baltimore	128.0

2212.8

Petitioner's Ex. ~~10~~ 5

**Petitioner
CBA Exhibit
5**

RESUME

January 31, 2017

Feb No 6

John Christopher Batten, Landscape Architect

Years Experience- 40+

Education

West Virginia University, Bachelor of Science – Landscape Architecture, 1974
Continuing education with emphasis in Forest Conservation and Stormwater Management.

Credentials

Maryland Landscape Architect, 1982, Registration No. 521

Experience and Qualifications

2008 to present, Sole proprietor, J. Christopher Batten, Land Planning and Landscape Architectural Design and Consultation
2002-2008, CLSI Director of Land Planning - site plans for commercial and residential projects, site analyses, grading plans, landscape plans, renderings, feasibility studies, park design and construction management.

1982 - 2002 President, J. Christopher Batten, Inc, Land Planning and Landscape Architectural design

1979 – 1982, Owner, Creative Land Design, landscape design and construction

1977 – 1979, Assistant County Engineer, Carroll County Government, project design and management

1975 – 1977, Park Planner, Carroll County Recreation and Parks Department, park design and project management

1974 – 1975, Survey Party Chief, H&B Surveying, Morgantown, WV

Residential Communities and Landscape Design:

Community Plan for Ruxton Riderwood & Lake Roland Area 2001

Carroll Vista Retirement Community, Taneytown, MD – Landscape and site design for clubhouse, golf course, swimming pools, tennis courts, and overall community of 500 units.

Fairhaven Courtyard Apartments, Sykesville, MD – Landscape design for a garage roof-top/courtyard and a meditation courtyard garden.

Heritage Hunt Cloistered Apartments, Gainesville, VA – Landscape buffer and forest understory planting plan.

Meridian Healthcare Nursing Homes – New Jersey, Maryland, Indiana –Landscape and courtyard designs.

Manchester Manor Retirement Community, Manchester, MD - Design and site development plans for a 60-unit retirement community in Manchester, MD – 1998

Stonegate, Westminster, MD – Design for a 215 unit single-family housing development surrounding a forest buffered stream valley.

Parks:

Strawberry Hill Preserve – Fairfield Pennsylvania, Develop Master Plan for facility improvements and expansion, Strawberry Hill Preserve, 2011

Westminster Library Park –Westminster, MD – Project management including solicitation of bids and construction management, Carroll County Public Librarys, 2010

Taneytown Tennis & Basketball Courts Renovation – Evaluation of courts and restoration options, development of plans, specifications and bid documents, construction administration, City of Taneytown, 2007

Bark Hill Park, Union Bridge, MD –Develop Plans for combination soccer-football-baseball fields, and associated site access and parking, Carroll County Recreation and Parks, Department, 2007

Freedom Park Soccer Field, Sykesville, MD – Design and Construction plan for soccer field, Carroll County Recreation & Parks Department, 2005

Alpha Ridge Park, Marriottsville, MD - Site development plans and approvals, including design for wetlands restoration area, construction documents, bid review and construction progress meetings for a 40-acre regional sports park.

Sandy Hill Park, Bowie, MD – Site development plans for two baseball fields, site access, parking and landscaping.

Millard Cooper Park, Sykesville, MD – Master Plan and construction documents, bidding, construction administration for five-acre Town Park with paved and mulch trails, boardwalk, custom designed park shelters, toilet shelter, amphitheater, and custom designed-community built playground.

Historic Preservation:

Concept Plan for Improvements to the Historical Society of Carroll County, Westminster MD

**Petitioner
CBA Exhibit**

#6

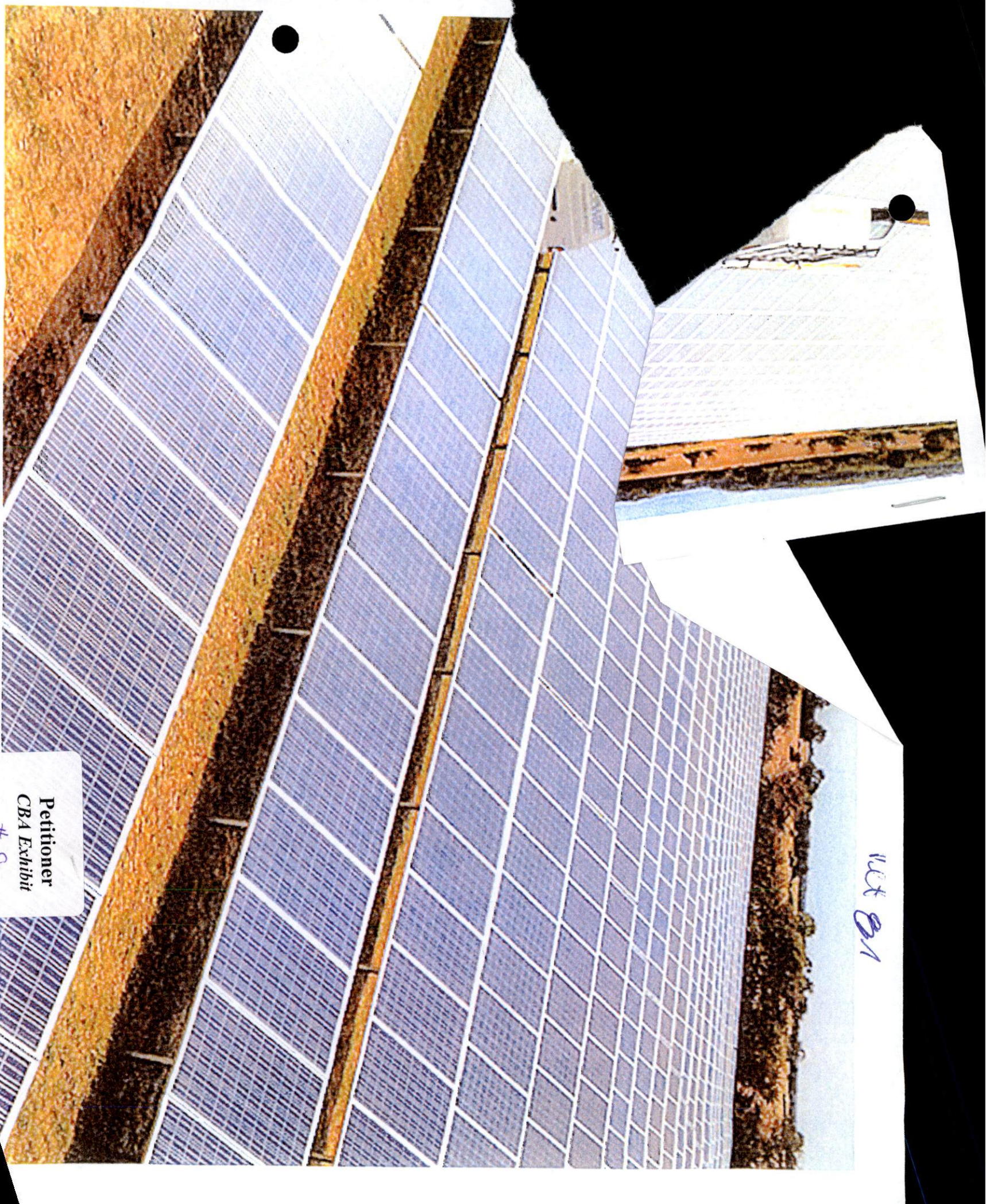
Lippy Brothers Solar Farm

Petitioner
CBA Exhibit

2/6/17

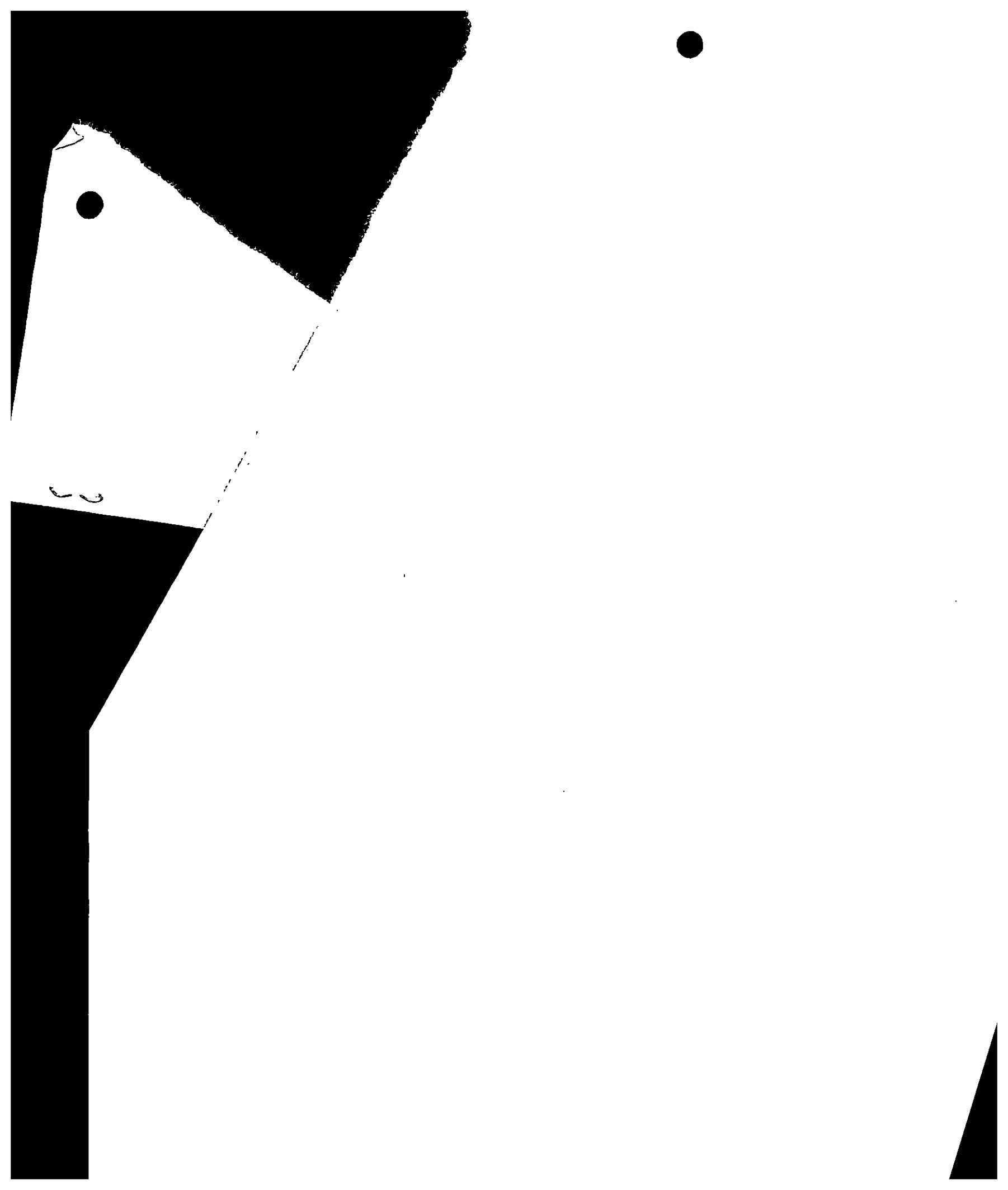
7C

PLANT LIST								Cost Estimate	
ID	QUANT	BOTANIC NAME	COMMON NAME	minimum SIZE	ROOT	SPACING	ultimate size	UNIT COST	TOTAL COST
37	Major deciduous trees						Ht/Width		
A	14	Acer campestre 'Stgrezam'	St. Gregory Hedge Maple	2" cal.	B&B	random (see plan)	30' x 30'	\$300	\$4,200
G	5	Gleditsia triacanthos 'Shademaster'	Shademaster Locust	2" cal.	B&B	random (see plan)	45' x 35'	\$300	\$1,500
Q	18	Quercus palustris	Pin Oak	2" cal.	B&B	random (see plan)	70' x 40'	\$300	\$5,400
115	Evergreen Trees								
INS	27	Ilex x "Nellie R. Stevens"	Nellie Stevens Holly	6'	B&B	random (see plan)	20' x 10'	\$180	\$4,860
Jv	54	Juniperus virginiana	Eastern Red Cedar	6'	B&B	random (see plan)	45' x 14'	\$180	\$9,720
Pf	22	Pinus flexillis 'Vanderwolf'	Limber Pine	6'	B&B	random (see plan)	22' x 12'	\$180	\$3,960
To	12	Thuja occidentalis 'Techny'	Green Giant Arborvitae	6'	B&B	random (see plan)	20' x 6'	\$180	\$2,160
23	Minor Deciduous Trees								
CW	4	Crataegus viridis 'Winter King'	Winter King Hawthorn	1" cal.	B&B	random (see plan)	25' x 25'	\$200	\$800
M	13	Malus "Indian Summer"	Indian Summer Crabapple	1" cal.	B&B	random (see plan)	18' x 24'	\$200	\$2,600
Py	6	Prunus x yedoensis "Akebono"	"Akebono" Yoshino Cherry	1" cal.	B&B	random (see plan)	25' x 25'	\$200	\$1,200
66	Evergreen Shrubs								
PI	38	Prunus laurocerasus "Schipkaensis"	Schip Laurel	24"	#5 cont.	random (see plan)	4' x 8'	\$60	\$2,280
V	28	Viburnum rhytidophyllum	Leatherleaf Viburnum	24"	#5 cont.	random (see plan)	8' x 8'	\$60	\$1,680
total = 241								total =	\$40,360



Net 8.1

Petitioner
CBA Exhibit
8



4/11/14



Petitioner
CBA Exhibit

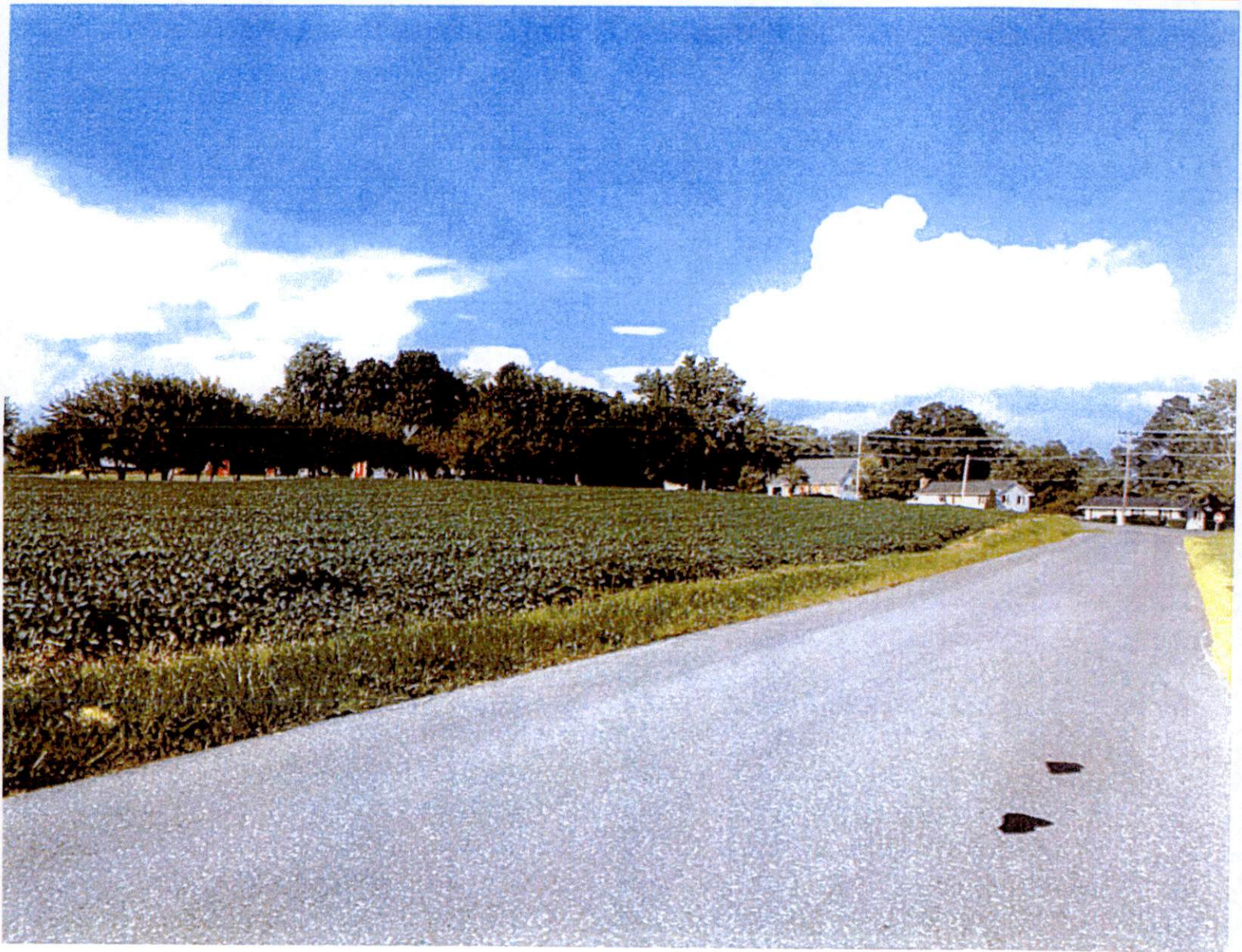
9 A

BB



Petitioner
CBA Exhibit

9 B



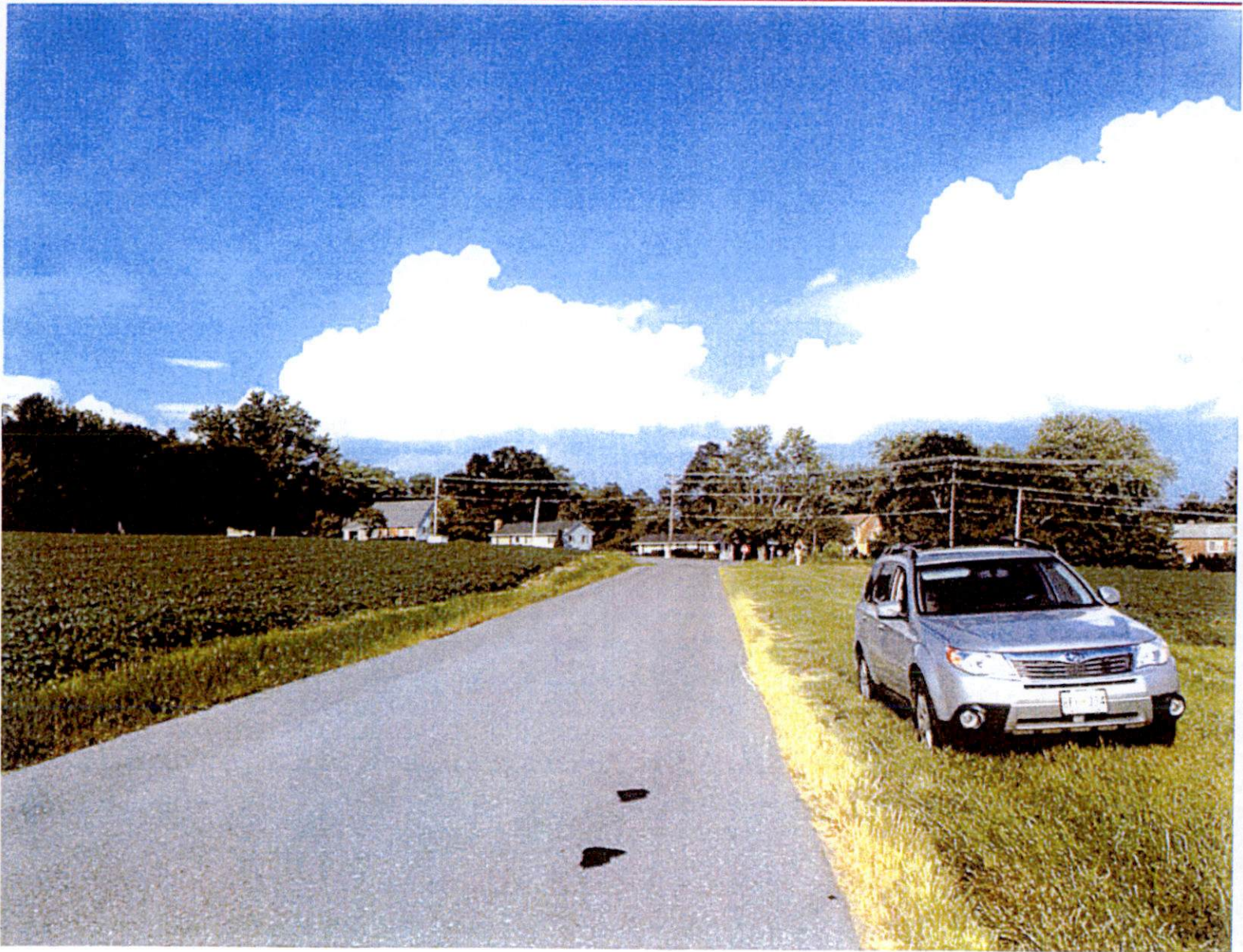
Petitioner
CBA Exhibit

9 C



Petitioner
CBA Exhibit

9 D



Petitioner
CBA Exhibit

9 E



Petitioner
CBA Exhibit

9 F



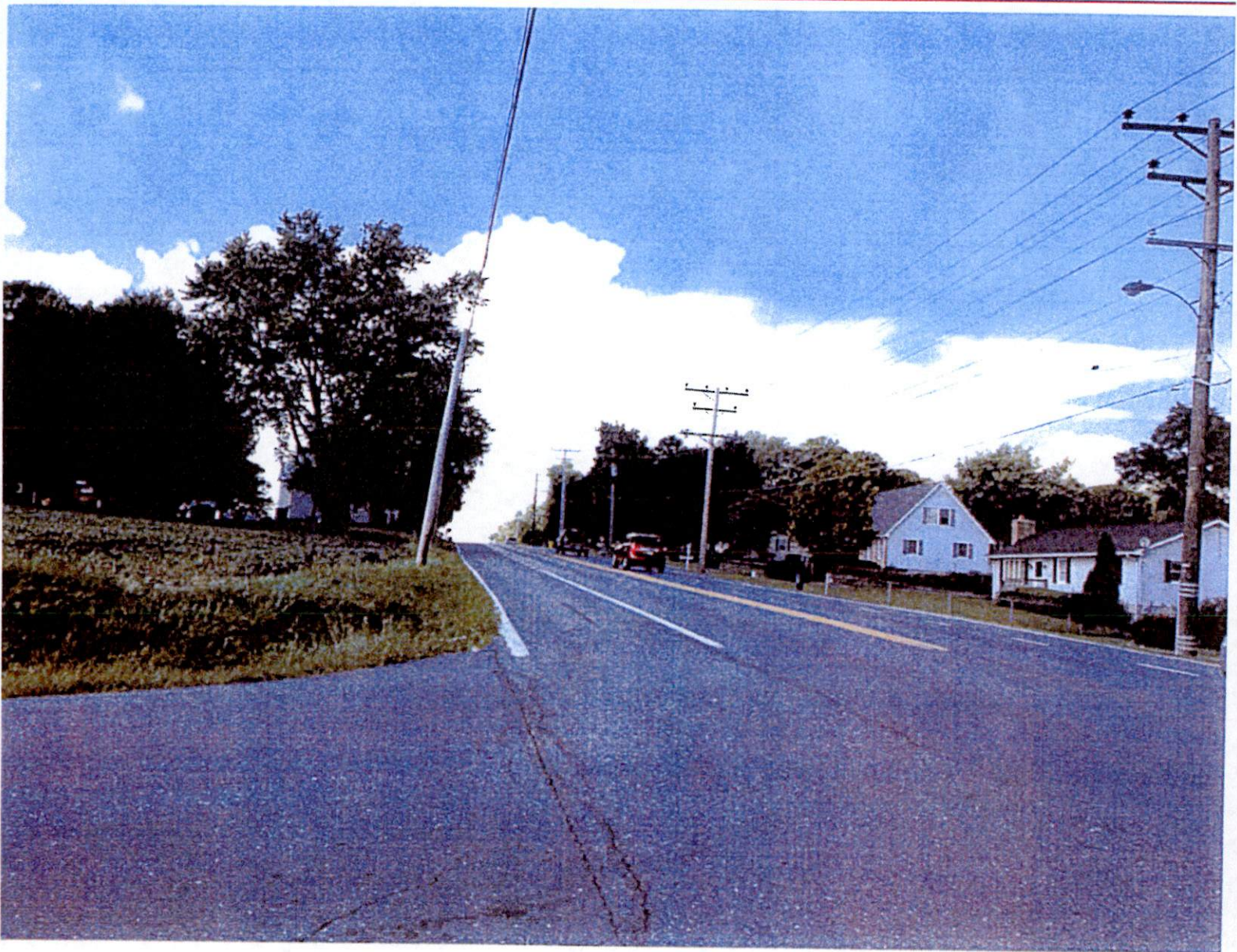
Petitioner
CBA Exhibit

9 G



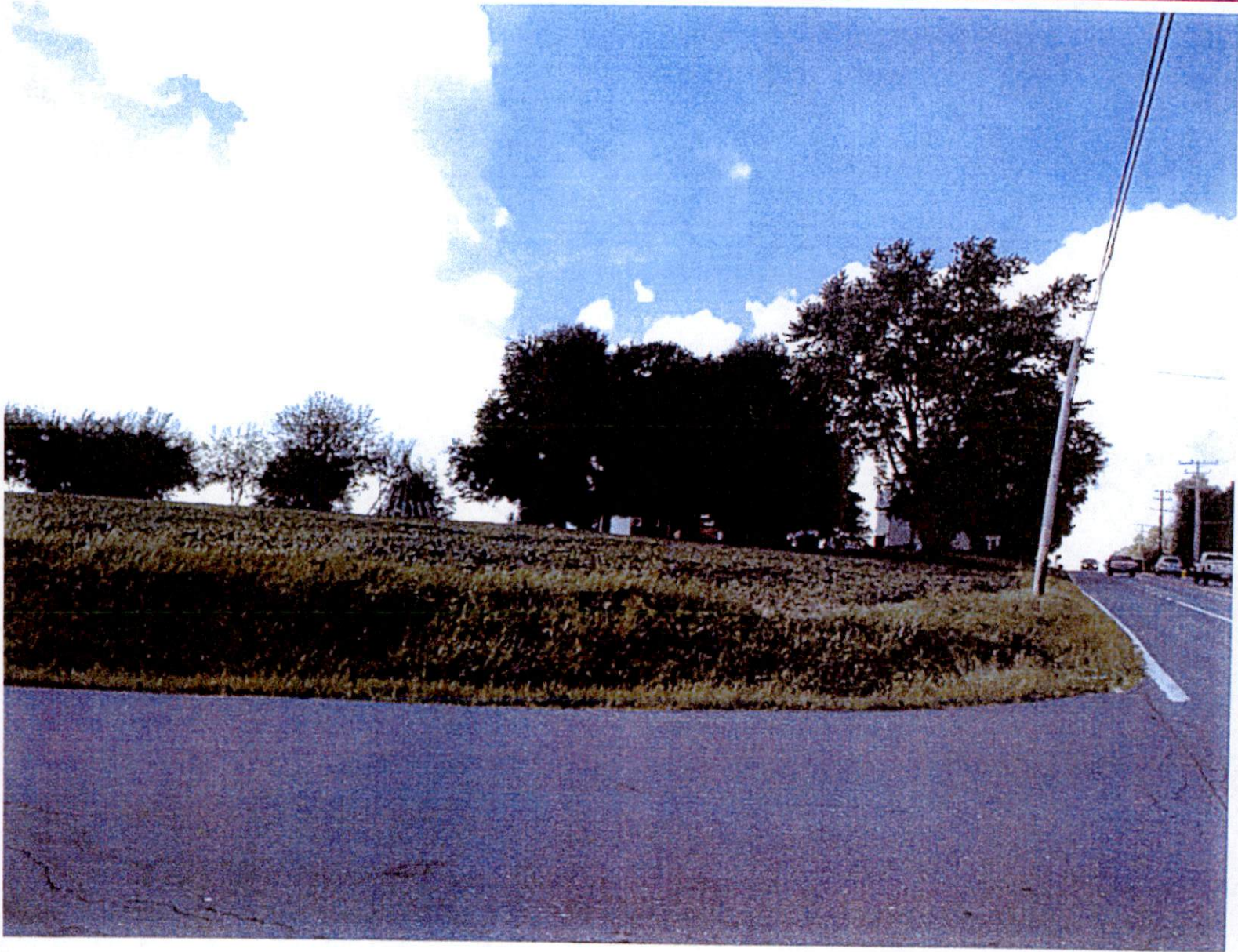
Petitioner
CBA Exhibit

9 H



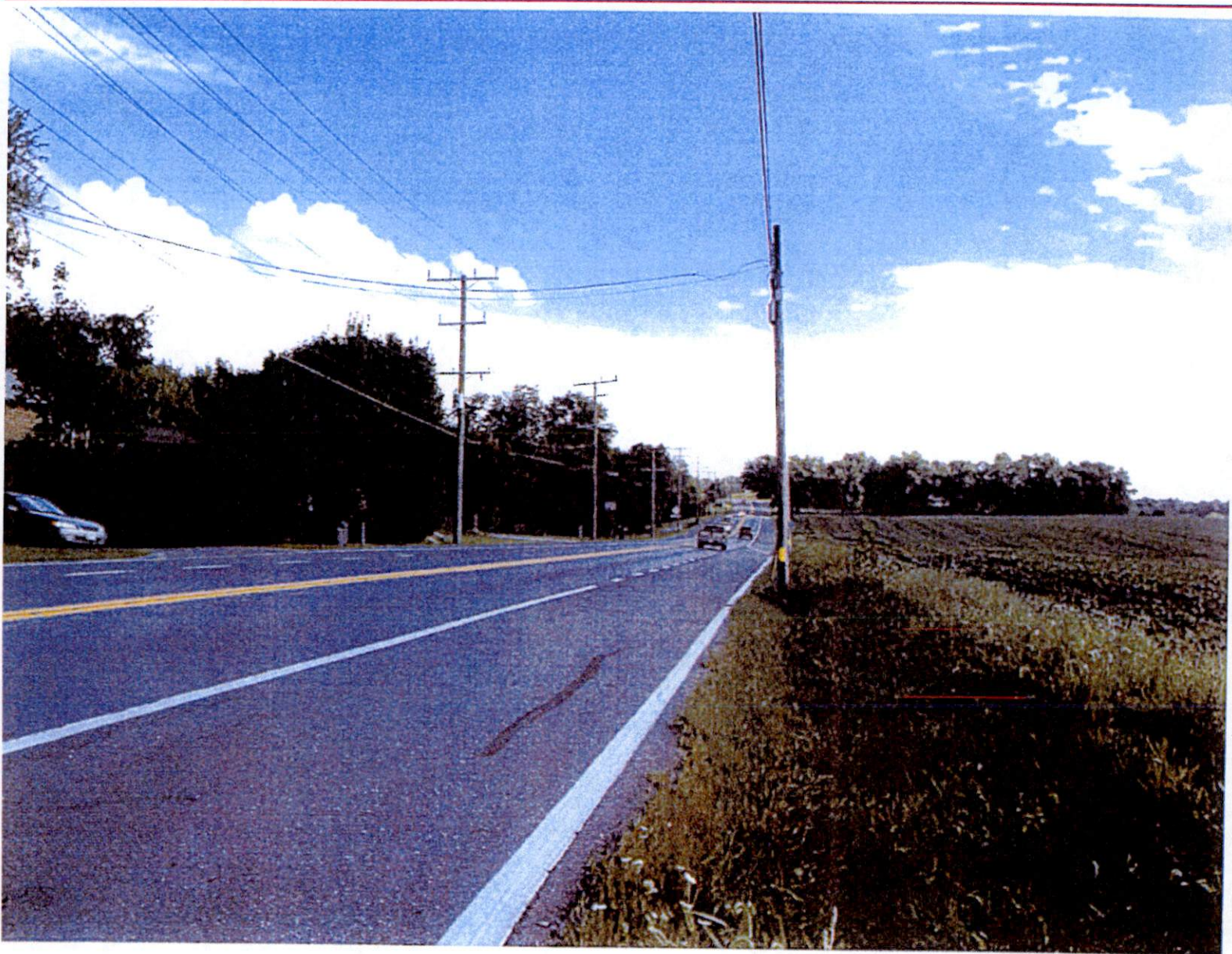
Petitioner
CBA Exhibit

9 I



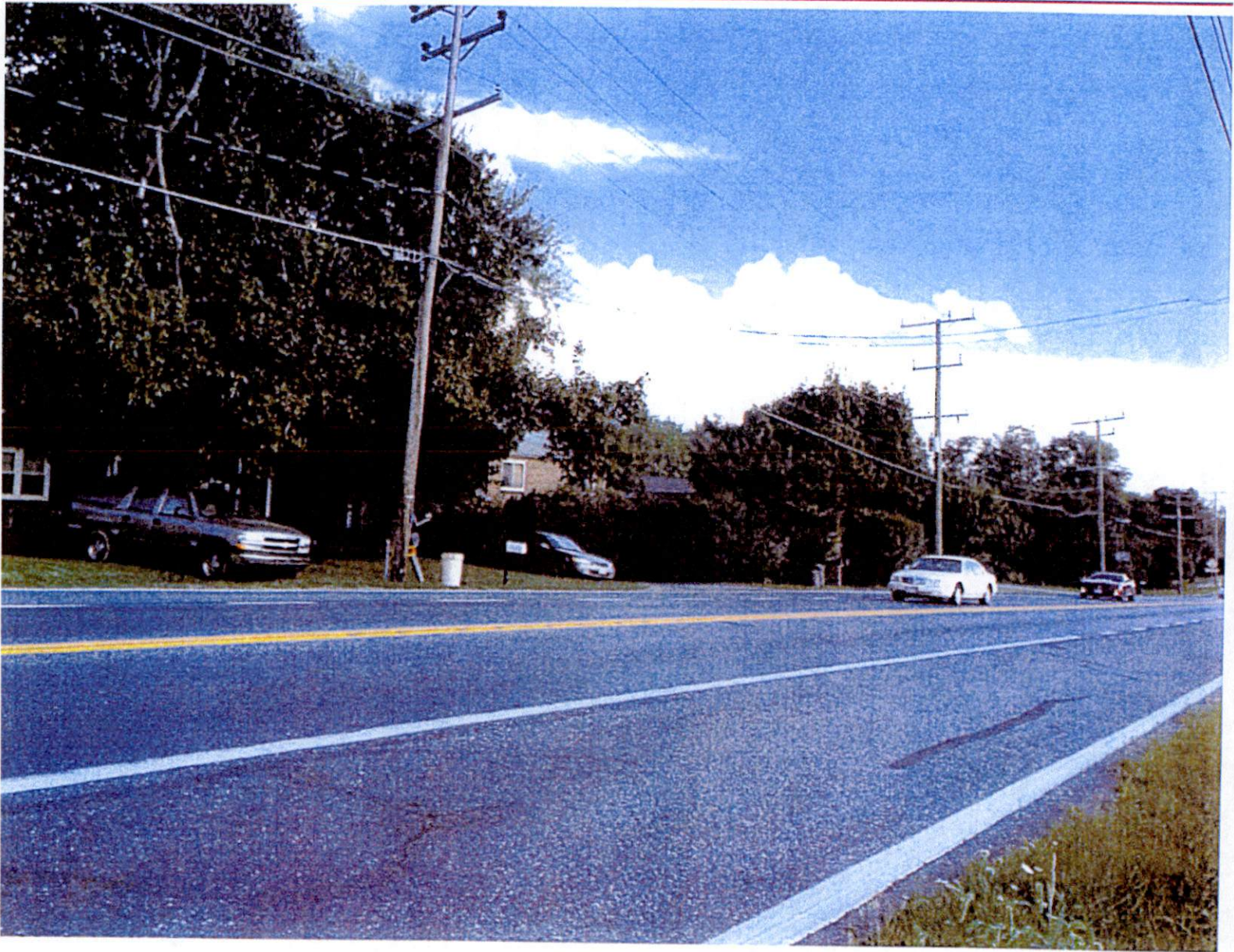
Petitioner
CBA Exhibit

9 J



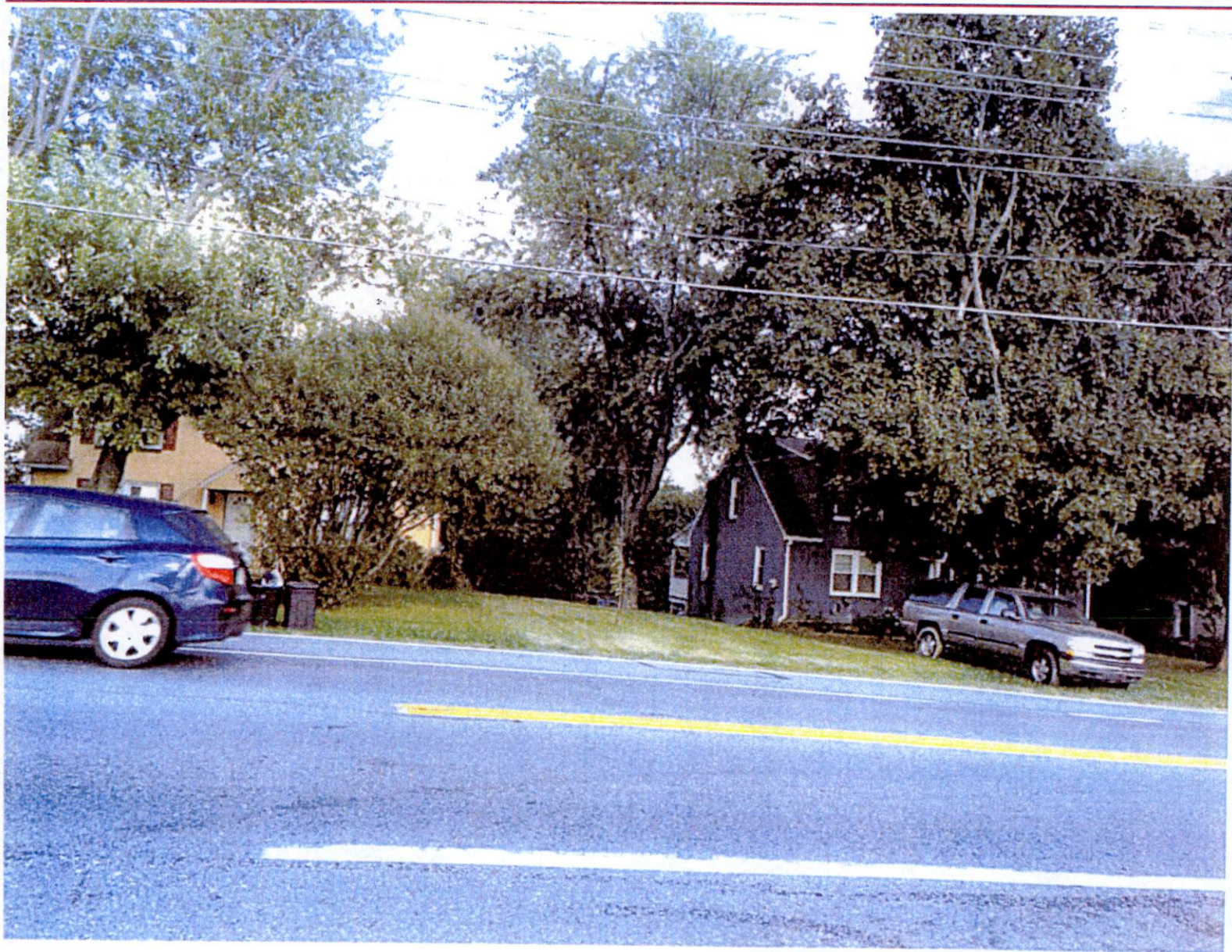
Petitioner
CBA Exhibit

9 K



Petitioner
CBA Exhibit

9 L



Petitioner
CBA Exhibit

9 M



Board of Appeals

Case No: 16-335-SPHX Case Name: LIPPY

Exhibit List

Party: Protestant Date: 2/7/17
3/16/17

Exhibit No:	Description:
✓ 1	SDAT Docs re Earth + Air
✓ 2	PSC Records from Website; electricity supplier
✓ 3	Md. Renewable Energy Portfolio Info from PSC site
✓ 4	Utility Customer Contact Info.
✓ 5	Jakubiak Resume
✓ 6	Bill by Balt. County Council 178-79
✓ 7	Webster Dictionary Section
✓ 8	Pgs from Master Plan - Rural Legacy Prog.
✓ 9	Aerial Photo
✓ 10	3/2/17 Ltr fr BGE to PSC
VERIFIED BY <u>KC</u> DATE: <u>2/7/17</u>	
<u>KC</u> <u>3/20/17</u>	

KC
2/7/17

3/16/17

~~APPEAL~~

KC
3/20/17

Maryland Department of Assessments and Taxation Business Services (w2)

[Search Help](#)

Entity Name: EARTH AND AIR TECHNOLOGIES, LLC

Department ID: W12962023

General Information

Amendments

Personal Property

Certificate of Status

Principal Office (Current): 445 HAND COURT
HAMPSTEAD, MD 21074

Resident Agent (Current): KEN DONITHAN
445 HAND COURT
HAMPSTEAD, MD 21074

Status: ACTIVE

Good Standing: Yes

What does it mean when a business is not in good standing or forfeited?

Business Code: Other

Date of Formation or Registration: 03/13/2009

State of Formation: MD

Stock/Nonstock: N/A

Close/Not Close: Unknown

Protestant
CBA Exhibit

1

CORPORATE CHARTER APPROVAL SHEET

**EXPEDITE

D SERVICE**

** KEEP WITH DOCUMENT **

DOCUMENT CODE

40

BUSINESS CODE

20

#

Close

Stock

Nonstock

P.A.

Religious

Merging (Transferor)

Surviving (Transferee)



100036199773894

ID # W12962023 ACK # 100036199773894

PAGES: 0002

EARTH AND AIR TECHNOLOGIES, LLC

MAIL
BACK

03/13/2009 AT 02:53 P M # 0001697327

New Name

CERTIFIED
COPY MADE

FEES REMITTED

Base Fee:

100

Org. & Cap. Fee:

70

Expedite Fee:

Penalty:

State Recordation Tax:

State Transfer Tax:

Certified Copies

22

Copy Fee:

Certificates

Certificate of Status Fee:

Personal Property Filings:

Mail Processing Fee:

5

Other:

TOTAL FEES:

197

Credit Card

Check

Cash

Documents on

Checks

Approved By:

6

Keyed By:

COMMENT(S):

Code

757

Attention:

E.G.

LEGALZOOM.COM INC.

STE 180

7083 HOLLYWOOD BLVD

LOS ANGELES CA 90028-8901

CUST ID: 0002254289

WORK ORDER: 0001697327

DATE: 03-18-2009 08:22 PM

AMT. PAID: \$1,793.00

ARTICLES OF ORGANIZATION

The undersigned, with the intention of creating a Maryland Limited Liability Company files the following Articles of Organization:

(1) The name of the Limited Liability Company is: Earth and Air Technologies, LLC

(2) The purpose for which the Limited Liability Company is filed is as follows: Engaging in the business of Construction Services

(3) The address of the Limited Liability Company in Maryland is

445 Hand Court, Hampstead, Maryland 21074

(4) The resident agent of the Limited Liability Company in Maryland is

National Registered Agents, Inc. of MD

whose address is 836 Park Avenue, 2nd Floor, Baltimore, MD 21201

(5)

Eileen Gallo

Authorized Person(s)

(6)

Resident Agent
National Registered Agents, Inc. of MD
By: Jacob Varghese, Assistant Secretary

RETURN TO:

Attn: Eileen Gallo
LegalZoom.com, Inc.
7083 Hollywood Blvd., Suite 180
Los Angeles, CA 90028

CUST ID: 0002254289
WORK ORDER: 0001697327
DATE: 03-18-2009 08:22 PM
AMT. PAID: \$1,793.00

2009 MAR 13 P 2:53
RECEIVED
DEPARTMENT OF
TAXATION & REVENUE

CORPORATE CHARTER APPROVAL SHEET

**** KEEP WITH DOCUMENT ****

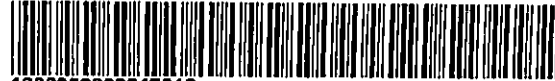
DOCUMENT CODE 80 BUSINESS CODE _____
W12962023

Close _____ Stock _____ Nonstock _____

P.A. _____ Religious _____

Merging (Transferor) _____

Surviving (Transferee) _____



1000362002245019

ID # W12962023 ACK # 1000362002245019
PAGES: 0002
EARTH AND AIR TECHNOLOGIES, LLC

08/05/2011 AT 10:30 A WO # 0003845709

New Name _____

FEES REMITTED

Base Fee: 25
Org. & Cap. Fee: _____
Expedite Fee: _____
Penalty: _____
State Recordation Tax: _____
State Transfer Tax: _____
Certified Copies _____
Copy Fee: _____
Certificates _____
Certificate of Status Fee: _____
Personal Property Filings: _____
Mail Processing Fee: _____
Other: _____

TOTAL FEES: 25

☒ Change of Name
☒ Change of Principal Office
☒ Change of Resident Agent
☒ Change of Resident Agent Address

Resignation of Resident Agent

Designation of Resident Agent
and Resident Agent's Address

Change of Business Code

Adoption of Assumed Name

Other Change(s)

Credit Card _____ Check _____ Cash _____

Documents on _____ Checks

Approved By: 010

Keyed By: _____

COMMENT(S): _____

Code _____

Attention: _____

EARTH AND AIR TECHNOLOGIES, LLC
KEN DONITHAN
445 HAND COURT
HAMPSTEAD MD 21074

Stamp Work Order and Customer Number HERE

CUST ID: 0002629129
WORK ORDER: 0003845709
DATE: 08-10-2011 09:44 AM
AMT. PAID: \$25.00

RESOLUTION TO CHANGE PRINCIPAL OFFICE OR RESIDENT AGENT

The directors/stockholders/general partner/authorized person of _____

Earth and Air Technologies, LLC

(Name of Entity)

organized under the laws of Maryland, passed the following resolution:
(State)

[CHECK APPLICABLE BOX(ES)]

☒ The principal office is changed from: (old address)

836 Park Ave., 2nd Floor
Baltimore, MD 21201

to: (new address)

445 Hand Court
Hampstead, MD 21074

☒ The name and address of the resident agent is changed from:

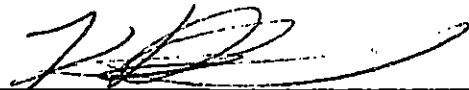
National Registered Agents, Inc. of MD

to:

Ken Donithan

445 Hand Court, Hampstead, MD 21074

I certify under penalties of perjury the foregoing is true.



Secretary or Assistant Secretary
General Partner
Authorized Person

I hereby consent to my designation in this document as resident agent for this entity.

CUST ID: 0002629129
WORK ORDER: 0003845709
DATE: 08-10-2011 09:44 AM
AMT. PAID: \$25.00

SIGNED



Resident Agent

Electricity Suppliers

This directory contains the energy suppliers that have met Public Service Commission requirements to provide service in Maryland.

Select a Customer Type and Utility Service Area:	
☐ Commercial	☐ BGE
☐ Government	☐ Choptank
☐ Industrial	☒ Delmarva
☐ Institutional	☐ Pepco
☐ Other	☐ Potomac Edison
☒ Residential	☐ SMECO
☐ Self-Use	☐ All Service Areas
☒ All Licensed Suppliers ☐ List Suppliers Actively Seeking New Customers ONLY *	
Search Reset	

Suppliers are responsible for informing the Commission of their status, and notifying the Commission of any changes to their status.

Note: When "Other" is selected, list any supplier that has customer type entries beyond "Commercial", "Industrial", and "Residential"
(List "Institutional", "Other", "Government", and "Self-Use" whenever "Other" is chosen)

Disclaimer

The information contained on this website is provided solely for educational and informational purposes and should not be relied upon for any reason without first independently verifying the data. This site, its contents and the contents of materials to which it links are not intended as legal, financial, accounting, investment advisory or other professional advice and should not be construed as such. The Commission is not responsible for any loss, injury, claim, liability, or damage related to your use of the site, whether from errors or omissions in the content of our site or any other linked sites, from the site being down or from any other use of the site.

**Protestant
CBA Exhibit**

2

Electricity Suppliers

This directory contains the energy suppliers that have met Public Service Commission requirements to provide service in Maryland.

Select a Customer Type and Utility Service Area:	
☐ Commercial	☐ BGE
☐ Government	☐ Choptank
☐ Industrial	☐ Delmarva
☐ Institutional	☐ Pepco
☐ Other	☐ Potomac Edison
☒ Residential	☐ SMECO
☐ Self-Use	☒ All Service Areas
☐ All Licensed Suppliers ☒ List Suppliers Actively Seeking New Customers ONLY *	
Search Reset	

Suppliers are responsible for informing the Commission of their status, and notifying the Commission of any changes to their status.

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☐ Other	☐ Potomac Edison
☐ Residential	☐ SMECO
☐ Self-Use	☒ All Service Areas
☐ All Licensed Suppliers ☒ List Suppliers Actively Seeking New Customers ONLY	
Search Reset	

Suppliers are responsible for informing the Commission of their status, and notifying the Commission of any changes to their status.

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(List "Institutional", "Other", "Government", and "Self-Use" whenever "Other" is chosen)

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Verify Electricity Suppliers

Supplier Name		Search
---------------	----------------------	--------

To verify if a supplier is included in this list, please ensure that you are using the correct legal name.
Acronyms will only yield a result if it is part of the company's name

Supplier Earth and Air Technologies is not licensed in the state of Maryland.

[New search](#)

[Electricity](#)[Telecommunications](#)[Gas](#)[Water](#)[Transportation](#)[About Us +](#)[Newsroom+](#)[Agendas & Calendars +](#)[Online Services +](#)[Related Agencies and Organizations](#)[Case Search](#)[Maillog Search](#)[Go](#)

- ☐ Case/Docket No. (e.g. xxxx)
- ☐ Rulemaking No. (e.g. rmx)
- ☐ Public Conference (e.g. pcc)
- ☐ Search All (by Keyword)

[More Search Tools -](#)[Receive Email Updates & News](#)[Watch PSC Proceedings](#)[Current Outage Information](#)[Shop for Electricity](#)[Home » Electricity » Maryland Renewable Energy Portfolio Standard Program – Frequently Asked Questions](#)

Maryland Renewable Energy Portfolio Standard Program – Frequently Asked Questions

The objective of Maryland's Renewable Portfolio Standard (RPS) is to recognize and develop the benefits associated with a diverse collection of renewable energy supplies. The State's RPS Program does this by recognizing the environmental and consumer benefits associated with renewable energy. The RPS Program requires electricity suppliers to meet a prescribed minimum portion of their retail electricity sales with various renewable energy sources, which have been classified within the RPS Statute as Tier 1 and Tier 2 renewable sources. The program is implemented through the creation, sale and transfer of Renewable Energy Credits (RECs). The development of renewable energy sources is further promoted by requiring electricity suppliers to pay a financial penalty for failing to acquire sufficient RECs to satisfy the RPS. The penalty is used to support the creation of new Tier 1 renewable sources in the State.

What does the abbreviation RPS mean?

- RPS is the abbreviation for the Renewable Energy Portfolio Standard.

What is a Maryland-Eligible Renewable Energy Credit?

- A Maryland-Eligible Renewable Energy Credit is equal to the attributes associated with one megawatt-hour of Tier 1 or Tier 2 renewable energy from a certified Renewable Energy Facility.

What states are eligible to participate in the RPS?

- Section 7-701 of the Public Utilities Article of the Annotated Code of Maryland provides the framework by which the states eligible to participate in the Maryland RPS Program may be determined. Renewable energy credits must be derived from a source that is located in the PJM Region. Renewable energy credits may come from outside the area described above if the electricity is delivered into the PJM Region.

What fuel sources are approved for the Maryland RPS Program?

- Fuel sources are divided into two categories, Tier 1 and Tier 2. Tier 1 includes Solar, Wind, Qualifying Biomass, Methane from a landfill or wastewater treatment plant, Geothermal, Ocean, Fuel Cell that produces electricity from a Tier 1 source, Hydroelectric power plants of less than 30 MW capacity, Poultry litter-to-energy, Waste-to-energy, and Refuse-derived fuel. Tier 2 includes hydroelectric power other than pump storage generation.

What does "Qualifying Biomass" include?

- According to Section 7-701 of the Public Utilities Article of the Annotated Code of Maryland, "Qualifying biomass" means a nonhazardous, organic material that is available on a renewable or recurring basis, and is:
 - Waste material that is segregated from inorganic waste material and is derived from sources including,
 - Except for old growth timber, any of the following forest-related resources: A) Mill residue, except sawdust and wood shavings; B) Precommercial soft wood thinning; C) Slash; D) Brush; or E) Yard waste;
 - A pallet, crate, or dunnage;
 - Agricultural and silvicultural sources, including tree crops, vineyard materials, grain, legumes, sugar, and other crop by-products or residues; or
 - Gas produced from the anaerobic decomposition of animal waste or poultry waste; or
 - A plant that is cultivated exclusively for purposes of being used as a Tier 1 renewable source or a Tier 2 renewable source to produce electricity.

What does "Qualifying Biomass" not include?

Alerts

Administrative Meeting
Weds, 2/8 @ 10am

Featured Topics

[Offshore Wind](#)

Quick Links

[Electric Utility Tariffs](#)
[Shop for Electricity](#)
[Save Energy and Money](#)
[Electric Choice FAQ](#)
[Electric Choice Glossary](#)

Protestant
CBA Exhibit

3

- According to Section 7-701 of the Public Utility Companies Article of the Annotated Code of Maryland, "Qualifying biomass" does not include:
 - Unsegregated solid waste or postconsumer wastepaper; or
 - An invasive exotic plant species.

How many copies of the forms do I need to submit?

- For each filing, it is required that one original copy, sixteen additional copies and an electronic copy of the filings be mailed in.

How do I apply for certification as a Renewable Energy Facility?

- The required forms and additional information is available [here](#). The single largest cause of delay in the processing of applications is incomplete applications or attachments. The Commission will not consider incomplete applications.

What forms do I need to participate in the Maryland RPS Program?

- A complete description of the forms for the Maryland RPS Program is listed [here](#).

Who should complete the various affidavits?

- An officer of the applicant should complete the various affidavits.

Do I need to notarize the various affidavits?

- Yes, the affidavits should be notarized.

What documentation of authority to sign is appropriate?

- Whoever signs the application is required to provide authority to sign on behalf of the applicant. A letter from a corporate officer or general counsel granting and/or confirming authority to sign is appropriate. If a corporate officer or general counsel signs the application, a letter of appointment to the position is appropriate documentation of authority to sign on behalf of the applicant.

What is GATS?

- The Generation Attribute Tracking System (GATS) is a system designed by PJM Environmental Information Services, Inc. for the purpose of tracking Renewable Energy Credits. GATS will monitor the generation of participating units and create certificates monthly based on actual output. A GATS certificate from a Commission-certified renewable energy facility will be considered a Maryland-eligible Renewable Energy Credit. Suppliers and load-serving entities are required to maintain a GATS account for compliance purposes. More information is available [here](#).

The Electricity Division CPCN Information

- CPCN Application Form
- CPCN Exemptions

Electric Choice

- Electric Choice: Monthly Enrollment Reports
- Electricity Supplier List
- Electric Supplier Application
- Shop for Electricity
- Verify Electricity Suppliers

Working-Groups Energy Efficiency & EmPOWER Maryland EN-6: Utility Accident Notification & Investigation Form Electric Utility Tariffs Meter and Submeter Shops

- Approved Electric Meter Shops
- Approved Electric Submeters
- Referee Test Request

Renewable Energy

- 2016 RPS Supplier Annual Report
- Maryland Renewable Energy Portfolio Standard Program – Frequently Asked Questions
- RECs for Sale
- REC Supplier Log-in
- Solar Renewable Portfolio Standard Documents (RPS)

Smart Grid and Smart Meters Standard Offer Service Standard Offer Service – Requests for Proposals

Utility Customer Contact Information

Utility Customer Contact Information

Gas and Electric Companies

The Potomac Edison Company

1 (800) 686-0011

Website address: firstenergycorp.com

Baltimore Gas and Electric

1-800-685-0123*

Billing/Collections Press 2, to speak to representative then press #7

Collections 1-800-685-2210

Report an Outage 877-778-2222

Website address: www.bge.com

Chesapeake Utilities

(410) 548-5515

Website address: www.chpk.com

Columbia Gas of Maryland

1 (888) 460-4332

Website address: <http://www.columbiagasmd.com/en/home.aspx>

Delmarva Power *

1 (800) 375-7117

Website address: www.delmarva.com

Elkton Gas

(410) 398-4626

Website address: www.elktongas.com

Washington Gas - Frederick*

1(800) 531-0008

Website address: www.washingtongas.com

Washington Gas *

1 (800) 752-7520

Website address: www.washingtongas.com

Potomac Electric Power Company

1 (202) 833-7500

1 (202) 872-4641 Spanish-Speaking Line

Website address: www.pepco.com

*Spanish-Speaking Option Available through Main Line

Electric Cooperatives

A&N Electric Cooperative

19056 Greenbush Road

P.O. Box 1128

Parksley, VA 23421-1128

Phone: 757-665-5116

Fax: 757-665-5740

**Protestant
CBA Exhibit**

4

Choptank Electric Cooperative

Route 404 & Route 328
Denton, Maryland 21629
Telephone: 410-479-0380
Toll Free from the Eastern Shore: 410-936-0001
email: info@choptankelectric.coop
<http://www.choptankelectric.coop/>

Southern Maryland Electric Cooperative

15035 Burnt Store Road
P. O. Box 1937
Hughesville, Maryland, 20637-1937
Toll Free: 888-440-3311
Fax: 301-274-0086
PR Dept. Fax: 301-274-4455
Email: info@smeco.com
<http://www.smeco.com/>

Telephone Companies

[AT&T](#)
[Southwestern Bell Company](#)
[Sprint](#)
[Verizon Maryland, Inc.](#)
[WorldCom](#)

Water or Sewage Companies

American Water Works

Artesian Water Maryland, Inc.
664 Churchman's Road
Newark, Delaware 19702
Telephone: 443-245-7777
Toll Free: 800-332-5114
Website address:
<http://www.artesianwater.com/customer-service-center/main-contact-us>

Municipal Utilities

Easton Utilities

Christopher N. Jakubiak, AICP

Mr. Jakubiak consults with communities seeking expertise in town planning and zoning. He has 24 years of experience preparing zoning ordinances, comprehensive plans, subarea master plans, land use studies, and economic/market studies, and negotiating development agreements on behalf of Maryland municipalities. He has administered zoning ordinances as the appointed Zoning Administrator and town planner for jurisdictions throughout Maryland including the City of Westminster and the Towns of Centreville, Chesapeake Beach, Church Hill, Emmitsburg, Mount Airy, and Thurmont. He has served as an instructor in the Graduate School of Architecture and Planning at Catholic University in Washington, D.C. in urban design.

Recognized / Accepted as an Expert in Zoning

Administrative Hearing Officer and Board of Appeals, Anne Arundel County
Administrative Law Judge and Board of Appeals, Baltimore County
Board of Zoning and Municipal Appeals, City of Baltimore
Board of Appeals, City of Annapolis

Education

Masters Degree in Urban Planning, University of Illinois, College of Fine and Applied Arts, Urbana-Campaign, IL. Practicum: Comprehensive Neighborhood Revitalization Plan, East St. Louis
Bachelor of Arts in Political Science, University of Maryland, Baltimore County
Executive Certificate Program in Advanced Public Sector Negotiation, Harvard University

Professional Experience

President and Principal, Jakubiak & Associates, Inc. (2000 - present)
Principal Planner, Calvert County Department of Planning and Zoning (1996 – 2000)
Principal Planner, Southeastern Wisconsin Regional Planning Commission (1992 – 1996)
Urban Planning Instructor/Teaching/Research Assistant, University of Illinois (1990 – 1992)

Professional Accreditation and Affiliation

American Institute of Certified Planners (AICP)
Member of the American Planning Association

Recent Speaking Engagements

“Sustainable Urban Planning: Oresund Region, Scandinavia”, U.S. Green Building Council, Baltimore Maryland and Washington, DC. Feb. 2014 and Dec 2013.
“Due Process and Effective Decision Making”, MD Planning Commissioners Association, Nov. 2013
“Climate Change Adaptation in Maryland (Cambridge)”, Gulf of Mexico, COCP, New Orleans, LA, 2012
“Development Proposals: The Role of Negotiation” Maryland Municipal League Conf., 2011
“Protecting the Municipal Tax Base Through Good Planning”, MD Municipal League Fall Conf., 2009
“Approaches to Addressing Compatible Infill” Maryland Municipal League Conf., 2008
“Changing Zoning and Annexation Law in Maryland” Maryland Municipal League Fall Conf., 2006
“Negotiating Design Concepts for New Development”, Maryland Municipal League Conf., 2004
“Toward a Walkable Downtown, Rebuilding La Plata”, International IMCL Conference, Carmel, CA, 2003

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

Legislative Session 1979, Legislative Day No. 20

BILL NO. 178-79

Mr. Norman W. Lauenstein, Councilman

By the County Council, October 15, 1979

A BILL
ENTITLED

AN ACT to implement various elements of the County's Comprehensive Master Plan, and more specifically those objectives, policies and standards relating to the assimilation, location, quantity, quality and timing of growth and development in Baltimore County, the provision of adequate public facilities to support development and the protection of agricultural and environmentally-sensitive land in the resource conservation zoning classifications, and to provide for the establishment of overlay district areas and regulations and requirements pertaining thereto; to provide for a master plan consistency determination; AND TO ADOPT BASIC SERVICES MAPS AND REGULATIONS AND REQUIREMENTS PERTAINING THERETO; and to provide for monitoring of development activity; by adding new Article 4A - GROWTH MANAGEMENT; by repealing Subsections 1A01.2.B., 1A01.2.C., 1A01.3.B., 1A02.1, 1A03.1, 1A03.2, 1A03.4.B.1. and 2., 1A03.4.B.5. and 1A04.3.B.1. of said regulations and enacting new Subsections 1A01.2.B., 1A01.2.C., 1A01.3.B., 1A02.1, 1A03.1, 1A03.2, 1A03.4.B.1. and 2., 1A03.4.B.5. and 1A04.3.B.1. in lieu thereof; by adding Subsections 1A01.4, 1A02.4, 259-3-- and new definitions "Facilities impact use, Class A"; "Facilities impact use, Class B"; "Housing for the elderly"; "Industrial, quasi-industrial, or industry-related use"; and "Nonindustrial use" to Section 101, all of the Baltimore County Zoning Regulations; by repealing and re-enacting with amendments Subsections 100-1-B-2, 100-1-C, 100-4, the definition of "Farm" under Section 101, and Subsection 259-2, all of the Baltimore County Zoning Regulations; by repealing Subsection 1A04.3.B.2 of said regulations; and by repealing Council Bill 177-79.

Protestant
CBA Exhibit

* 6

WHEREAS, by Article XI-A of the Maryland Constitution, the General Assembly is authorized to provide a grant of "express powers" to counties that form a charter government; and

WHEREAS, by Article 25A, Section 5 of the Annotated Code of Maryland, the General Assembly has designated the "express powers" to be granted to charter counties, which powers include the power to enact local laws for the protection and promotion of public health, safety and welfare, relating to planning, zoning and subdivision and to pass all ordinances, resolutions or bylaws that may be necessary and proper to execute and enforce any of the powers expressly enumerated; and

WHEREAS, the people of Baltimore County in accordance with the Constitution and Laws of the State of Maryland have adopted, ordained and established the Baltimore County Charter; and

WHEREAS, pursuant to provisions of the Charter and of the County Code, the County is responsible for planning for the future growth and development of the County, including the preparation of a Master Plan; and

WHEREAS, pursuant to Section 523 of the Baltimore County Charter, the Master Plan shall be a composite of mapped and written proposals setting forth comprehensive objectives, policies and standards to serve as a guide for the development of the County; and

WHEREAS, the County Council has adopted the Master Plan by Resolution No. 71 -79 dated ~~October-15~~ NOVEMBER 19, 1979; and

WHEREAS, pursuant to the Baltimore County Charter and Code, the County Council is responsible for the implementation of the Master Plan through the adoption or amendment of zoning maps and regulations, subdivision regulations, capital improvement programs and such other legislation, regulations, policies and programs which may be necessary; and

WHEREAS, said Master Plan divides the County into areas for the purpose of achieving specific plan objectives related to the location, density, timing and quantity of growth and development in such areas and the appropriate distribution of population, housing units and land uses throughout the County; and

WHEREAS, said Master Plan contains objectives, policies and standards designed to assimilate full population growth by the County representing the County's share of regional growth, to insure orderly growth and development of said population in the County; to protect valuable and irreplaceable natural, agricultural and environmental land and resources; to promote economic growth; to meet the housing needs of present and future anticipated residents; to assure that new development is adequately served by public facilities and services; to correct service and facility deficiencies in existing neighborhoods; and to promote the public health, safety and welfare of all residents of the County; now, therefore

1. SECTION 1. Be it enacted by the County Council of Baltimore County,
2. Maryland, that a new Article 4A - GROWTH MANAGEMENT, be and it is
3. hereby added to the Baltimore County Zoning Regulations, said new article to
4. read as follows:

5. ARTICLE 4A - GROWTH MANAGEMENT

6. Section 4A00 - Purpose and Definitions

7. 4A00.1 - Purpose.

8. The purpose and intent of this Article is to implement the objectives
9. of the County-wide Master Plan and to adopt standards and guidelines relative
10. to new development in all areas of the County which would result in land use
11. patterns, location of new growth and timing of growth and development that
12. is consistent with preservation of the quality of life in existing neighborhoods,
13. with the ability of the County to provide necessary public facilities and services
14. to support new development, with the ability of the County to correct existing
15. service and facility deficiencies, with the preservation of natural, agricultural
16. and environmental resources and with the promotion of new growth and develop-
17. ment in appropriate areas.

1. 4A00.2 - Definitions

2. For the purposes of this Article, certain words and terms are defined as
3. set forth below:

4. 1. Capital Improvements Program. A proposed schedule of all future
5. projects listed in order of construction priority together with cost estimates
6. and the anticipated means of financing each project. All major projects requiring
7. the expenditure of public funds, over and above the annual budget, for the purchase,
8. construction, or replacement of the physical assets of the community are included
9. as set forth in the Baltimore County Charter. Capital Improvements Program shall
10. refer to the existing or any subsequently adopted CIP as defined herein.

11. ~~-----2. Development Applications. Applications to the County for nonindustrial---~~
12. ~~development approval necessary prior to and including building permit applications,-----~~
13. ~~includes applications for special permits, special exceptions, tentative or final----~~
14. ~~subdivision approval (with or without public works agreements) and building permits--~~
15. ~~when no other development approval has been required.-----~~

16. ~~-----3. Director. The Director of the Office of Planning and Zoning of-----~~
17. ~~Baltimore County.---~~

18. -4- 2. Master Plan. The comprehensive plan for orderly development of the
19. County, adopted by the County Council, pursuant to the Baltimore County Charter
20. and Code, and including all parts and elements thereof which shall serve as the
21. basis for land use regulations in the County.

22. Section 4A01 - Monitoring of Development Activity.

23. 4A01.1 - Generally.

24. In order to insure consistency between the operation and effectiveness of
25. the Growth Management process, including but not limited to zoning maps, zoning
26. regulations, subdivision regulations, basic services mapping standards, PUD
27. requirements, community plans, and capital improvement programs and the growth
28. management objectives of the County-wide Master Plan, as adopted, development
29. activity in the County shall be monitored on a semi-annual basis in order to
30. reflect current trends and activities and to provide a basis for amendment
31. to the County's Growth Management process and/or County-wide

1. Master Plan from time to time.
2. A. Monitoring Function.
3. 1. The responsibility for monitoring development activity shall be
4. with the Director of the Office of Planning and Zoning.
5. 2. The Director of the Office of Planning and Zoning shall, semi-
6. annually, request such information as is necessary from any and all departments
7. of the County and State or federal agencies, as needed, in order to prepare and
8. formulate a comprehensive report on development activity having taken place
9. during the preceding six month period in the County and which might be expected
10. to take place during the following six month period.
11. 3. The report on development activity shall be completed not more
12. than one month following the conclusion of the six-month period that is subject
13. of the report.
14. 4. Upon completion of the report, it shall be forwarded to the
15. Administrative Officer, Planning Board and the County Council for review,
16. recommendation and appropriate action, as determined by the County Council.
17. 4A01.2 - Contents of Report.
18. A. The report on development activity shall include, but need not be
19. limited to, consideration of applications for, status and disposition of requests
20. for permit issuance or approval of the following:
21. 1. reclassifications
22. 2. special exceptions
23. 3. tentative subdivisions
24. 4. final subdivisions
25. 5. building permits
26. B. Development activity shall be described by type of development as
27. follows:
28. 1. residential
29. 2. office
30. 3. commercial

1. 4. industrial
2. 5. public
3. 6. other
4. C. Development activity shall be described and located by the growth
5. areas referred to in the land use elements of the County-wide Master Plan.
6. D. Development activity shall be described by the number of acres
7. being developed, the number and type of units being developed, ~~or~~ AND by other
8. appropriate criteria as determined by the Director of the Office of Planning
9. and Zoning.
10. E. The report on development activity shall specify whether or not, and
11. the extent to which, such development activity is consistent with the objectives
12. of the County-wide Master Plan and elements thereof and with other adopted
13. County plans, and the County capital improvements program, with respect to
14. each growth area. As such, the report shall emphasize the degree of conformity
15. between the County capital budget and long-term capital improvements program
16. regarding the timing and sequencing of the provision of public facilities and
17. services necessary to support development and the scope, extent and location of
18. development activity that has actually occurred during the previous monitoring
19. period. To the extent that the County capital budget and capital improvements
20. program is found to be deficient in providing public facilities and services
21. necessary to support development activity consistent with Master Plan projections
22. and recommendations, the Director of the Office of Planning and Zoning, in
23. conjunction with other County staff, departments, agencies and officials shall
24. consider such deficiencies and shall recommend appropriate actions for Planning
25. Board and County Council review and consideration.
26. Section 4A02 - Basic Services Maps.
27. 4A02.1 - Purpose and intent.
28. The County Council finds that important public facilities in certain
29. predominantly urban areas of the County are inadequate to serve all of the
30. development that would be permitted under the regulations of the zones or

1. commercial districts within which those areas lie. Basic service maps are
2. hereby established to regulate residential-and-other-nonindustrial development in
3. those underserved areas to a degree commensurate with the availability of these
4. facilities. Basic service maps are not permanent, and will be reviewed annually
5. with reports to the County Council.

6. 4A02.2 Conflicts.

7. In the event that there is any conflict between the provisions of this subsection-
8. ARTICLE and any other provisions of these zoning regulations, the provisions
9. of this subsection- ARTICLE shall govern.

10. 4A02.3 Adoption of Basic Services Maps.

11. A. The following basic services maps, which shall be in the custody of
12. the zoning commissioner for Baltimore County, are hereby adopted and made a part
13. of this Article:

14. 1. Basic Service Sewerage Map, dated November 19, 1979.
15. 2. Basic Service Water Supply Map, dated November 19, 1979.
16. 3. Basic Service Transportation Map, dated November 19, 1979.

17. B. The three basic services maps shall be prepared annually in accordance
18. with the schedule set forth below, which maps shall incorporate a delineation of
19. adequacy and availability of water supply, sewerage, transportation services and
20. facilities according to the standards and requirements set forth in this section.

21. C. The individual sewer, water supply and transportation basic services
22. maps shall be adopted by the County Council in accordance with the procedures and
23. requirements of this Article contrary provisions of Title 22. of the Baltimore
24. County Code notwithstanding.

25. D. Boundaries as shown on the basic services maps shall be interpreted
26. in accordance with section 100.4 of these zoning regulations.

27. E. 1. Before July 31, 1980, and annually thereafter, the Planning
28. Board shall recommend to the County Council any revisions to the basic services
29. maps. The Planning Board need not adopt a preliminary report or hold a public
30. hearing with respect to its recommendations, although it shall allow the public
31. a reasonable opportunity to comment before adopting the recommendations.

32. 2. Before October 15, 1980 and annually thereafter, the
33. County Council shall take action on said maps-with-respect-to-----
34. AFTER CONSIDERATION OF the recommendations of the Planning

1. Board. The County Council shall hold one public hearing prior to adoption of said
2. maps which hearing shall be advertised and held in accordance with Section 22-22(a)
3. of the Baltimore County Code.

4. 3. The basic services maps may be amended only under the annual-
5. revision procedures set forth above except in the case of error. In such case, the
6. maps may be corrected at any time by legislative act of the County Council, providing
7. that the Planning Board has been given an opportunity, at a regular meeting of the
8. board, to review and issue a report with respect to the amendment under consideration
9. and provided that the County Council has found that an error has, in fact, been made,
10. after consideration of the purposes of the zoning regulations and map, including the
11. factors set forth in subsection 2-40.1(j) (Council Bill 46-79). Contrary provisions
12. of Section 22-22 of the Code notwithstanding, only one hearing under the procedures
13. of subsection 22-22(a) need be held before the County Council adopts a corrective
14. amendment pursuant to this subsection, and the report of the Planning Board and any
15. accompanying materials need not be displayed in each councilmanic district..

16. F. Basic services maps are not intended to permanently establish either
17. areas of service deficiencies or areas of service availability and adequacy. Such
18. maps will be reviewed annually, as it is the intent of the County Council that existing
19. service deficiencies will be corrected in accordance with the Master Plan and capital
20. improvements program. It is also recognized by the County Council that continuing
21. development in certain areas may create service deficiencies in areas that presently
22. have adequate levels of service. In some cases, changes in underlying zoning classi-
23. fications may have to be made to better correlate development potential.

24.-----G.---1.---Except as otherwise provided in this Article, no building permit,-----
25.---pursuant to subsection 500.1 of Article 5 of these Zoning Regulations, or final sub-----
26.---division approval shall be granted after the effective date of this Article within a-----
27.---basic sewerage or basic transportation mapped area, unless the Director of the Office-----
28.---of Planning and Zoning has issued, upon appropriate application on forms issued by the-----
29.---Director, a reserve capacity use certificate for that development as follows:-----
30.-----a.---With respect to all subdivisions recorded prior to the effective--
31.---date of this Article, no building permit shall be issued which allows an extent of-----
32.---development exceeding that authorized by the certificate;-----
33.-----b.---The Office of Planning and Zoning shall not approve a final-----

~~1. plat for any subdivision that provides an extent of development beyond that authorized~~
~~2. in the certificate;~~
~~3. c. With respect to an application for development which does~~
~~4. not require subdivision approval, no building permits shall be issued for development~~
~~5. which allows an extent of development exceeding that authorized by the certificate.~~
~~6. 2. a. An application for a reserve capacity use certificate shall~~
~~7. be accepted by the Director of the Office of Planning and Zoning after the applicant~~
~~8. has applied for a building permit or final subdivision approval for which the application~~
~~for a reserve capacity use certificate is sought.~~
~~10. b. Applications may be acted upon only according to the order in~~
~~11. which they are accepted by the Office of Planning and Zoning.~~
~~12. 3. a. Prior to January 1, 1980 no applications for a reserve capacity~~
~~13. use certificate shall be accepted by the Office of Planning and Zoning unless the~~
~~14. applicant has a final subdivision plat covering the subject property recorded prior~~
~~15. to the effective date of this Article or the applicant has applied for a building~~
~~16. permit for development of the property for which subdivision approval is not otherwise~~
~~17. required.~~
~~18. b. After January 1, 1980, applications shall be accepted pursuant~~
~~19. to the provisions of subparagraph 1 of this paragraph G.~~
~~20. 4. A reserve capacity use certificate shall authorize development only~~
~~21. to the extent that it will not utilize more than the reserve capacity of the sewerage~~
~~22. or the transportation network, as the case may be, of the basic services mapped area~~
~~23. within which the property is located. Before issuance of such a certificate, the~~
~~24. capacity shall be determined under the formula~~
~~25. $R = N - A + E$~~
~~26. in which~~
~~27. R = the reserve capacity at the time of application, in millions of~~
~~28. gallons per day or peak hour trips per day, as the case may be,~~
~~29. N = the numerical designation of the mapped area;~~
~~30. A = the aggregate reserve capacity already authorized by certificate~~
~~31. applications approved on or after the effective date of the basic~~
~~32. services map in question plus the aggregate reserve capacity that will~~
~~33. be used by development for which certificates are not required but~~
~~34. which has been authorized by building permits since that date; and~~

1. ~~----- E - the aggregate reserve capacity so authorized by issuance of certifi-----~~
2. ~~----- cates that have expired, as provided in this paragraph G.-----~~
3. ~~----- 5. Except as otherwise provided in Subparagraph 6, any reserve capacity-----~~
4. ~~----- use certificate for development of a subdivision tract shall expire 9 months after the-----~~
5. ~~----- date it is issued, except to the extent that it applies to a tract or part of a tract--~~
6. ~~----- on which substantial construction of the utilities or roads has taken place on that-----~~
7. ~~----- date or with respect to which a public works agreement has been both executed and-----~~
8. ~~----- funded, in that there has been deposited with Baltimore County money or irrevocable-----~~
9. ~~----- security in an amount sufficient to secure the construction of the public improvements-----~~
10. ~~----- covered by that agreement.-----~~
11. ~~----- 6. A reserve capacity use certificate pertaining to development that-----~~
12. ~~----- has been authorized by a building permit does not expire unless the building permit has-----~~
13. ~~----- expired.-----~~
14. ~~----- 7. For all sewerage allocations made by the Department of Public Works-----~~
15. ~~----- prior to the effective date of this Article, and for all development for which there is-----~~
16. ~~----- an approved and unexpired building permit issued prior to the effective date of this-----~~
17. ~~----- Article, reserve capacity use certificates shall be issued by the Director of the Office-----~~
18. ~~----- of Planning and Zoning without application. The effective date of issuance of such-----~~
19. ~~----- certificates shall be the effective date of this Article.-----~~

20. G. 1. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, NO BUILDING PERMIT,
21. PURSUANT TO SUBSECTION 500.1 OF ARTICLE 5 OF THESE ZONING REGULATIONS AND NO FINAL SUB-
22. DIVISION APPROVAL SHALL BE ISSUED OR GRANTED AFTER THE EFFECTIVE DATE OF THIS ARTICLE
23. WITHIN A BASIC SERVICES MAPPED AREA, UNLESS THE DIRECTOR OF THE OFFICE OF PLANNING AND
24. ZONING HAS ISSUED, UPON APPROPRIATE APPLICATION ON FORMS PREPARED BY THE DIRECTOR, A
25. RESERVE-CAPACITY-USE CERTIFICATE FOR THAT DEVELOPMENT IN ACCORDANCE WITH THE FOLLOWING:
26. A. WITH RESPECT TO ALL SUBDIVISIONS RECORDED PRIOR TO THE EFFECTIVE DATE
27. OF THIS ARTICLE, NO RESERVE-CAPACITY-USE CERTIFICATE SHALL BE ISSUED WHICH ALLOWS AN
28. EXTENT OF DEVELOPMENT EXCEEDING THAT ALLOWED IN ACCORDANCE WITH SUBPARAGRAPH 4 HEREOF.
29. B. WITH RESPECT TO ALL SUBDIVISIONS FINALLY APPROVED SUBSEQUENT TO THE
30. EFFECTIVE DATE OF THIS ARTICLE, THE OFFICE OF PLANNING AND ZONING SHALL NOTIFY THE AP-
31. PPLICANT AS PART OF ANY SUCH FINAL SUBDIVISION APPROVAL, THE EXTENT OF DEVELOPMENT
32. ALLOWED PURSUANT TO SUCH RESERVE-CAPACITY-USE CERTIFICATES APPLICABLE THERETO AS OF THE
33. DATE OF FINAL SUBDIVISION APPROVAL ISSUED IN ACCORDANCE WITH SUBPARAGRAPH 4 HEREOF.
34. C. WITH RESPECT TO AN APPLICATION FOR A BUILDING PERMIT FOR DEVELOPMENT
35. WHICH DOES NOT REQUIRE SUBDIVISION APPROVAL, NO RESERVE-CAPACITY-USE CERTIFICATE SHALL
36. BE ISSUED WHICH ALLOWS AN EXTENT OF DEVELOPMENT EXCEEDING THAT ALLOWED IN ACCORDANCE
37. WITH SUBPARAGRAPH 4 HEREOF.

1. 2. A. EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH 3, AN APPLICATION FOR
2. A RESERVE-CAPACITY-USE CERTIFICATE SHALL BE FILED WITH THE DIRECTOR OF THE OFFICE OF
3. PLANNING AND ZONING AFTER THE APPLICANT HAS APPLIED FOR A BUILDING PERMIT (FOR DEVELOP-
4. MENT WHICH DOES NOT OTHERWISE REQUIRE SUBDIVISION APPROVAL) OR FINAL SUBDIVISION APPROVAL
5. FOR WHICH THE APPLICATION FOR A RESERVE-CAPACITY-USE CERTIFICATE IS SOUGHT, AND SHALL
6. BE ACTED UPON BY THE DIRECTOR WITHIN 3 WORKING DAYS AFTER SAID FILING.

7. B. APPLICATIONS MAY BE ACTED UPON ONLY ACCORDING TO THE ORDER IN WHICH
8. THEY ARE PROPERLY FILED WITH THE OFFICE OF PLANNING AND ZONING.

9. 3. PRIOR TO JANUARY 1, 1980, NO APPLICATIONS FOR A RESERVE-CAPACITY-USE CER-
10. TIFICATE SHALL BE ACCEPTED BY THE OFFICE OF PLANNING AND ZONING UNLESS THE APPLICANT
11. HAS A FINAL SUBDIVISION PLAT COVERING THE SUBJECT PROPERTY RECORDED PRIOR TO THE EFFEC-
12. TIVE DATE OF THIS ARTICLE OR THE APPLICANT HAS APPLIED FOR A BUILDING PERMIT FOR DEVELOP-
13. MENT FOR WHICH SUBDIVISION APPROVAL IS NOT OTHERWISE REQUIRED.

14. 4. A. A RESERVE-CAPACITY-USE CERTIFICATE SHALL AUTHORIZE DEVELOPMENT ONLY
15. TO THE EXTENT THAT IT WILL MEET THE WATER SUPPLY STANDARDS OF SECTION 4A02.4 AND WILL
16. NOT UTILIZE MORE THAN THE RESERVE CAPACITY OF THE SEWERAGE OR THE TRANSPORTATION NETWORK,
17. AS THE CASE MAY BE, OF THE BASIC SERVICES MAPPED AREA WITHIN WHICH THE PROPERTY IS
18. LOCATED. BEFORE ISSUANCE OF SUCH A CERTIFICATE, THE SEWERAGE OR TRANSPORTATION CAPACITY
19. SHALL BE DETERMINED UNDER THE FORMULA

20.
$$R = (N - A) + E$$

21. IN WHICH

22. R = THE RESERVE CAPACITY AT THE TIME OF APPLICATION, IN MILLIONS OF GALLONS
23. PER DAY OR PEAK-HOUR TRIPS PER DAY, AS THE CASE MAY BE;

24. N = THE NUMERICAL DESIGNATION OF THE MAPPED AREA;

25. A = THE AGGREGATE RESERVE CAPACITY ALREADY AUTHORIZED BY CERTIFICATE APPLICA-
26. TIONS APPROVED ON OR AFTER THE EFFECTIVE DATE OF THE BASIC SERVICES MAP
27. IN QUESTION PLUS THE AGGREGATE RESERVE CAPACITY THAT WILL BE USED FOR
28. DEVELOPMENT FOR WHICH CERTIFICATES ARE NOT REQUIRED BUT WHICH HAS BEEN
29. AUTHORIZED BY BUILDING PERMITS SINCE THAT DATE; AND

30. E = THE AGGREGATE RESERVE CAPACITY SO AUTHORIZED BY ISSUANCE OF CERTIFICATES
31. THAT HAVE EXPIRED, AS PROVIDED IN THIS PARAGRAPH G.

32. B. IN THE EVENT THAT ANY RESERVE-CAPACITY-USE CERTIFICATE DETERMINATION
33. RESULTS IN R EQUALLING ZERO, SUCH DETERMINATION SHALL NOT PROHIBIT THE GRANTING OF
34. FINAL SUBDIVISION APPROVAL.

35. 5. EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH 6, ANY RESERVE-CAPACITY-USE
36. CERTIFICATE FOR DEVELOPMENT OF A SUBDIVISION TRACT SHALL EXPIRE 9 MONTHS AFTER THE DATE

1. IT IS ISSUED, EXCEPT TO THE EXTENT THAT IT APPLIES TO A TRACT OR PART OF A TRACT ON
2. WHICH SUBSTANTIAL CONSTRUCTION OF THE UTILITIES OR ROADS HAS TAKEN PLACE ON THAT DATE
3. OR WITH RESPECT TO WHICH A PUBLIC WORKS AGREEMENT HAS BEEN BOTH EXECUTED AND FUNDED
4. IN THAT THERE HAS BEEN DEPOSITED WITH BALTIMORE COUNTY MONEY OR IRREVOCABLE SECURITY
5. IN AN AMOUNT SUFFICIENT TO SECURE THE CONSTRUCTION OF THE PUBLIC IMPROVEMENTS COVERED
6. BY THAT AGREEMENT.

7. 6. A RESERVE-CAPACITY-USE CERTIFICATE PERTAINING TO DEVELOPMENT THAT HAS BEEN
8. AUTHORIZED BY A BUILDING PERMIT DOES NOT EXPIRE UNLESS AND UNTIL THE BUILDING PERMIT
8a. EXPIRES.

9. 7. FOR ALL SEWERAGE ALLOCATIONS MADE BY THE DEPARTMENT OF PUBLIC WORKS
10a. PRIOR TO NOVEMBER 19, 1979, AND FOR ALL DEVELOPMENT FOR WHICH THERE IS AN
11. APPROVED AND UNEXPIRED BUILDING PERMIT ISSUED PRIOR TO NOVEMBER 19, 1979, AND
11a. FOR ALL DEVELOPMENT OF A SUBDIVISION TRACT OR PART OF A
12. TRACT ON WHICH SUBSTANTIAL CONSTRUCTION OF THE UTILITIES OR ROADS HAS TAKEN PLACE
13. PRIOR TO NOVEMBER 19, 1979 OR WITH RESPECT TO WHICH A PUBLIC WORKS AGREEMENT HAS BEEN
14. BOTH EXECUTED AND FUNDED IN THAT THERE HAS BEEN DEPOSITED WITH BALTIMORE COUNTY MONEY
15. OR IRREVOCABLE SECURITY IN AN AMOUNT SUFFICIENT TO SECURE THE CONSTRUCTION OF THE
16. PUBLIC IMPROVEMENTS COVERED BY THAT AGREEMENT PRIOR TO NOVEMBER 19, 1979, RESERVE-
17. CAPACITY-USE CERTIFICATES SHALL BE ISSUED BY THE DIRECTOR OF THE OFFICE OF PLANNING
18. AND ZONING UPON APPLICATION REGARDLESS OF THE CIRCUMSTANCE THAT SAID ISSUANCE WOULD
19. ALLOW AN EXTENT OF DEVELOPMENT BEYOND THAT ALLOWED PURSUANT TO SUBPARAGRAPH 4 ABOVE.
20. THE EFFECTIVE DATE OF ISSUANCE OF SUCH CERTIFICATES SHALL BE THE EFFECTIVE DATE OF
21. THIS ARTICLE REGARDLESS OF THE DATE OF FILING BY THE APPLICANT. ANY SUCH CERTIFICATES
22. SHALL BE GOVERNED BY AND SUBJECT TO THE PROVISIONS OF SUBPARAGRAPHS 5 AND 6 ABOVE.

23. 4A02.4 Basic Services Mapping Standards.

24. A. Generally.

25. The standards contained herein are intended to form the basis for the delineation
26. of areas on the basic services maps as well as for the evaluation of development
27. applications in accordance with the requirements of this Article.

28. B. Water Supply Standards.

29. 1. Intent. The water supply standards and maps are intended to regulate
30. nonindustrial development where there are serious deficiencies in the public water supply
31. system, as evidenced by County tests of water flows from a substantial sample of fire
32. hydrants.

33. 2. Standard. Residual water pressure at the public fire hydrant nearest
34. the site of the proposed nonindustrial development must meet the standards established
35. by the National Board of Fire Underwriters fire flow test.

36. 3. Exception. This subparagraph does not apply to any development
37. application relating to a structure or structures that would not draw upon the public
38. water supply system or which involve a residential development of no more than 3 dwelling

1. units on a lot of record as of the effective date of this Article or to any development in
2. a CCC district, CSA district OR RAE zone ~~or~~ IN a town center other than a town center
3. within a new development area so designated in the Master Plan.

4. C. Sewerage Standards.

5. 1. Intent. The sewerage standards and maps are intended to regulate
6. nonindustrial development where it has been determined that the County's share of public
7. sewerage capacity is substantially less than the capacity necessary both to serve already
8. established uses and to serve new uses likely to be established pursuant to this legisla-
9. tion.

10. 2. Determination of Reserve Capacity. The County's share of public
11. sewerage capacity must be capable of serving already established uses and new uses likely
12. to be established under the provisions of this legislation.

13. 3. Maximum Level of Nonindustrial Development. The maximum level of
14. nonindustrial development per sewerage area shall not be greater than that capable of
15. being provided with available sewerage capacity based on the following:

16. a. the County's share of the maximum reserve capacity of the
17. sewerage in the area on the effective date of mapping of the area minus the daily
18. quantity of sewerage from any industrial buildings for which construction permits are
19. expected to be issued between that date and the time the "basic services" map is next
20. revised, in millions of gallons of sewage per day, and

21. b. the maximum level of nonindustrial development allowable in
22. the district as determined based on the following assumptions:

23. 1. Each dwelling unit with 3 bedrooms or more shall be
24. considered to result in a yield of 300 gallons of sewage per day; and

25. 2. Each dwelling unit with less than 3 bedrooms shall be
26. considered to result in a yield of 200 gallons of sewage per day.

27. 3. Each square foot of gross floor area of a building or a
28. part of a building devoted principally to retail use shall be considered to result in a
29. yield of 0.05 gallon of sewage per day; and

30. 4. Each square foot of gross floor area of a building or a
31. part of a building devoted principally to office use shall be considered to result in a
32. yield of 0.09 gallon of sewage per day.

33. c. The quantity of sewage yielded by a building or a part of a
34. building to be devoted principally to ~~nonindustrial~~ uses other than dwelling or retail

1. or office uses shall determined by the Department of Public Works.

2. 4. Exception. This subparagraph does not apply to any development
3. application relating to a structure or structures that will be situated on a lot or lots
4. not served by a public sewerage system or which involve a residential development of no
5. more than 3 dwelling units on a lot of record as of the effective date of this Article or
6. to any development in a CCC district, CSA district OR RAE zone or in a town center; or other
7. than a town center within a new development area so designated in the Master Plan.

8. D. Transportation.

9. 1. Intent. The transportation standards and maps are intended to regulate
10. nonindustrial development where it has been determined that the capacity of arterial and
11. arterial collectors- INTERSECTIONS is less than the capacity necessary to accommodate
12. traffic both from established uses and from uses likely to be built pursuant to this
13. Article. Such development is not intended to be restricted unless there is a substantial
14. probability that an arterial and arterial collector intersection situated within and serving
15. the MAPPED area will, on the date the map becomes effective, be rated at level-of-service
16. E or F under standards established by the Highway Capacity Manual, 1965, published by
17. the Highway Research Board of the Division of Engineering and Industrial Research,
18. National Academy of Sciences-National Research Council.

19. 2. Determination of critical vehicle-trip number. a. For the purpose of
20. this subparagraph, the "critical vehicle-trip number" of an intersection is determined
21. by the formula

22.
$$C = \frac{F - E}{2} + E$$

23. in which each letter represents a number of daily vehicle trips through a
24. given intersection at peak hour and

25. C = the critical vehicle-trip number;

26. F = that number which if reduced by one would result in a change
27. in the intersection's level of service from F to E; and

28. E = that number which if reduced by one would result in a change
29. in the intersection's level of service from E to D.

30. b. Determination of reserve capacity. It is intended that the
31. reserve capacity be determined for each district by the formula

32.
$$N = C - (THI)$$

33. in which

34. N = reserve capacity

35. C = the critical vehicle-trip number for the most congested arterial

1. intersection in a transportation mapped area on the date the
2. designation becomes effective;
3. T = the number of daily peak-hour vehicle trips, based on actual
4. traffic counts taken by the Department of Traffic Engineering,
5. passing through the most congested arterial intersection in a
6. transportation mapped area; and
7. I = the projected number of additional daily peak-hour vehicle
8. trips to be generated by nonindustrial developments that have been
9. approved under the provisions of this Article and have not yet
10. been constructed and would most likely pass through that inter-
11. section. For partially completed nonindustrial developments,
12. the amount of peak-hour vehicle trip shall be prorated based on
13. number of completed units or square footage.
14. However, if N is less than zero under the formula, the reserve
15. capacity in the area shall be zero.

16. 3. Maximum Level of Nonindustrial Development.

17. a. The level of additional nonindustrial development in a mapped
18. area as provided above, may not exceed that which would generate the number of daily
19. peak-hour vehicle trips equal to the reserve capacity of that mapped area, based on
20. the following assumptions:

21. 1. Every 100 dwelling units, other than for the elderly,
22. shall be considered to result in the generation of 85 peak-hour vehicle trips daily;
23. 2. Every 100 dwelling units in housing for the elderly shall
24. be considered to result in the generation of twenty-five peak-hour vehicle trips
25. daily;
26. 3. Every 1000 square feet of gross floor area of a building
27. or a part of a building devoted principally to retail use shall be considered to
28. result in the generation of 14.70 peak-hour vehicle trips daily; and
29. 4. Every 1000 square feet of gross floor area of a
30. building or a part of a building devoted principally to office use shall be considered
31. to result in the generation of 2.34 peak-hour vehicle trips daily.

1. b. The number of daily peak-hour vehicle trips generated by
2. a building or a part of a building to be devoted principally to uses other than
3. dwellings or retail or office uses shall be determined by the Department of Traffic
4. Engineering.

7. 4. Exception.

6. This subparagraph does not apply to any development application
7. relating to a residential development of no more than 3 dwelling units on a lot of
8. record as of the effective date of this Article or to any development in a COC district,
9. CSA district OR RAE zone or- IN a town center, other than a town center within a new
10. development area so designated in the Master Plan.

11.-----~~1A02.5--Basic-Services-Determination.~~-----

12.-----~~A.--Generally.~~-----

13.-----~~Any--development-application-within-any-basic-services-mapped-area-in----~~

14.-----~~addition-to-all-other-requirements-imposed-by-the-zoning-regulations,-subdivision-----~~

15.-----~~regulations-and-other-County-legislation-and-regulations,-shall-be-subject-to-a-basic---~~

16.-----~~services-availability-determination.~~-----

17.-----~~B.--Scope-and-Applicability-of-Basic-Services-Availability-Determination.~~-----

18.-----~~The-basic-services-availability-determination-shall-be-made-by-the-----~~

19.-----~~Director-of-the-Office-of-Planning-and-Zoning,-in-accordance-with-the-basic-services-----~~

20.-----~~maps-and-standards-set-forth-in-this-Article.~~-----

21. SECTION 2. Be it further enacted, that Subsections 1A01.2.B., 1A01.2.C.,
22. 1A01.3.B., 1A02.1, 1A03.1, 1A03.2, 1A03.4.B.1. and 2., 1A03.4.B.5, and
23. 1A04.3.B.1 of the Baltimore County Zoning Regulations, by and they are hereby
24. repealed and new Subsections 1A01.2.B., 1A01.2.C, 1A01.3.B., 1A02.1, 1A03.1,

1. 1A03.2, 1A03.4.B.1. and 2., 1A03.4.B.5 and 1A04.3.B.1 are hereby enacted
2. in lieu thereof to said regulations, to read as follows:
3. Section 1A01 - R.C.2 (AGRICULTURAL) ZONES
4. 1A01.2-Use regulations.
5. B. Uses permitted as of right. The following uses, only, are
6. permitted as of right in all R.C. 2 zones:
7. 1. Dwellings, 1-family detached
8. 2. Farms, satellite farms, farmettes, and limited-acreage
9. wholesale flower farms (see Section 404)
10. 3. Open space, common
11. 4. Streets and ways
12. 5. Telephone, telegraph, electrical-power, or other lines or
13. cables, provided that any such line or cable is underground; underground gas,
14. water, or sewer mains or storm drains; or other underground conduits, except
15. interstate or international pipelines.
16. 6. Trailers, provided that any trailer allowed under this
17. provision must be used or stored in accordance with the provisions of paragraphs
18. b, c, e or f of subsection 415.1 and subparagraph 415.2.a(1) or 415.3.c(1), as
19. applicable.
20. 7. Accessory uses or structures, including, but not limited to,
21. the following:
22. a. Excavations, uncontrolled
23. b. Farmers' roadside stands (see Section 404)
24. c. Home occupations
25. d. Offices or studios of physicians, dentists, lawyers,
26. architects, engineers, artists, musicians, or persons engaged in other, similar
27. occupations, provided that the use is established within the building that serves
28. as the owner's domicile; occupies a floor area no greater than 25% of the floor
29. area used for residential purposes, not including garage floor area or unfinished
30. basement space; and does not involve the employment of more than 2 nonresidents.

1. e. Parking space, including residential-garage space and space
2. for recreational vehicle (see Section 415A)
3. f. Piers, wharves, docks and bulkheads (subject to the provisions
4. of Section 417)
5. g. Radio antennas in conjunction with wireless transmitting or
6. receiving facilities, provided that any such facility is used by a resident who has
7. an amateur radio operator's license issued by the Federal Communications Commission.
8. No such antenna may extend closer than the front building line to any street on which
9. the lot may front; no rigid-structure antenna may be taller above grade level than the
10. horizontal distance to the nearest property line or 100 feet, whichever is less; and
11. no supporting structure may be situated within 50 feet of any property line (see also
12. Section 400).
13. h. Swimming pools, tennis courts, garages, utility sheds or
14. other accessory structures or uses (subject to the height and area provisions for
15. buildings as set forth in Section 400)
- 15a. I. TENANT HOUSES, INCLUDING TRAILERS USED AS TENANT HOUSES.
16. C. Uses permitted by special exception. The following uses, only, may
17. be permitted by special exception in any R.C. 2 zone, provided that in each case the
18. hearing authority empowered to hear the petition finds that the use would not be detri-
19. mental to the primary agricultural uses in its vicinity; and, in the case of any use
20. permitted under Item 24, further provided that the hearing authority finds that the
21. use would support the primary agricultural use in its vicinity and would not itself be
22. situated on land more appropriately used for primary agricultural uses:
23. 1. Airports
24. 2. Animal boarding places (regardless of class), kennels, veteri-
25. narians' offices, or veterinarians (see Section 421)
26. 3. Antique shops (see Section 402B)
27. 4. Camps, including day camps
28. 5. Community care centers providing care for not more than 15
29. persons per site
30. 6. Churches or other buildings for religious worship
31. 7. Excavations, controlled
32. 8. Farmers' co-op roadside stands
33. 9. Fishing and shellfishing facilities, Class I or II

1. 10. Golf courses or country clubs
2. 11. Hunting or fishing preserves
3. 12. Offices for agriculture-related uses; physicians' or dentists'
4. offices as principal uses
5. 13. Public-utility uses not permitted as of right
6. 14. Research institutes (see Section 418)
7. 15. Residential art salons (see Section 402C)
8. 16. Restaurants or tea rooms converted from dwellings (see sub-
9. section 402.3)
10. 17. Riding stables
11. 18. Sanitary landfills (see Section 412)
12. 19. Schools, including schools for agricultural training, private
13. preparatory schools, business or trade schools, conservatories, or colleges
14. 20. Shooting ranges, including archery, pistol, skeet, trap, or
15. small-bore rifle ranges, or turkey shoots
16. 21. Trailers as provided in Paragraph 415.1.d
17. 22. Volunteer-fire-company or ambulance rescue facilities
18. 23. Wireless transmitting or receiving facilities as principal uses
19. 24. The following "agricultural-support" uses:
20. a. Farm-machinery sales, storage, or service; blacksmithing
21. b. Feed or grain mills or driers
22. c. Fertilizer sales or storage
23. d. Sawmills
24. e. Slaughter houses or manufacture, processing, or packing
25. of fruit, vegetables, animal, or meat products, or by-products
26. f. Wine or spirits manufacture, including the manufacture of
27. alcohol to be used in gasoline-alcohol mixtures, but excluding the production of those
28. mixtures (as a principal use)
29. 1A01.3 - Height and area regulations
30. B. Area regulations
 1. Subdivision Lot Density.
32. No lot of record lying within an R.C.2 zone and having a gross area of
33. LESS THAN 2 acres ~~or less~~ may be subdivided. No such lot having a gross area between
34. 2 and 100 acres may be subdivided into more than 2 lots (total), and such a lot having
35. a gross area of MORE THAN 100 acres ~~or more~~ may be subdivided only at the rate of 1

1. lot for each 50 acres of gross area.
2. 2. Lot size. A lot having an area less than 1 acre may not be
3. created in an R.C. 2 zone.
4. 3. Setback requirements. No principal structure or dwelling (whether
5. or not it is a principal structure) in an R.C.2 zone may be situated within 75 feet
6. of the centerline of any street or within 35 feet of any lot line other than a street
7. line.
8. 4. Principal dwellings per lot. No more than 1 principal dwelling is
9. permitted on any lot in an R.C. 2 zone.
10. Section 1A02 - R.C. 3 (DEFERRAL OF PLANNING AND DEVELOPMENT) ZONES
11. 1A02.1 - Findings and Legislative Policy.
12. A. Declaration of findings. The County Council finds that some presently
13. rural areas which may in the future be suitable for urban development are being pre-
14. empted by sprawling development that will preclude future development of urban intensity.
15. The Council also foresees a strong possibility that market demand, energy policies,
16. food needs, and numerous other significant conditions may change substantially, or even
17. drastically, with the result that the public interest would be impaired if urban
18. development were to be allowed in some of these areas, despite their physiographic
19. suitability to accommodate urban water-supply and sewerage systems. All of these
20. areas are suitable for agriculture, which is the preferred use of the land in these
21. areas, thus providing a reasonable present and future use for the land. The R.C. 3
22. zoning classification and its regulations are established, therefore, to prevent inappro-
23. priate sprawling development when WHERE urban development may be appropriate in the
24. future and where the detailed planning necessary for that development must be deferred.
25. B. Location. The R.C. 3 classification may be applied only to land that
26. lies beyond the Urban-Rural Demarcation Line, as established in the 1979- 1975 Master
27. Sewer and Water Plan, and as amended from time to time.
28. Section 1A03 - R.C. 4 (WATERSHED PROTECTION) ZONES
29. 1A03.1 - Findings and Legislative Policy. The County Council finds that
30. major, high-quality sources of water supply for the entire Baltimore metropolitan
31. area and for other neighboring jurisdictions lie within Baltimore County and that
32. continuing development in the critical watersheds of those water-supply sources is
33. causing increased pollution and sedimentation in the impoundments, resulting in

1. increasing water-treatment costs and decreasing water-storage capacity. The R.C. 4
2. zoning classification and its regulations are established to provide for the protection
3. of the water supplies of metropolitan Baltimore and neighboring jurisdictions by pre-
4. venting contamination through unsuitable types or levels of development in their
5. watersheds.

6. 1A03.2 - Rezoning by petition. No petition for reclassification of property

7. in an R.C. 4 zone may be granted unless a registered professional engineer, architect,

landscape architect, or land surveyor first certifies:

9. 1. That the parcel of land under petition lies at least 200 feet
10. from the property line of any public water reservoir;
11. 2. That the parcel lies at least 300 feet from any 1st - or 2nd - order
12. or greater stream that flows directly into a public water reservoir;
13. 3. That the parcel lies at least 300 feet from any 3rd - order or
14. greater stream that flows directly or indirectly into a public water reservoir;
15. 4. That no more than 30% of the parcel has a slope of more than 20%;
16. 5. That the parcel does not lie within a 100-year floodplain; and
17. 6. That, as shown by an environmental impact statement, the MANNER IN
18. WHICH proposed reclassification will not-impair- AFFECT water quality in the watershed
19. or any public water reservoir.

20. For the purpose of this subsection, streams are classified by order as

21. shown on the map of stream orders adopted by the Planning Board on March 25, 1976.

22. 1A03.4 - Height and Area Regulations.

23. B. Area regulations.

24. 1. No lot less than three acres in area may be hereafter created from

25. a larger tract in an R.C. 4 zone, and no detached single-family dwelling may be

26. hereafter erected on any lot of smaller area except as otherwise provided in Subsection

27. 103.3 or in Paragraph 6, below.

28. 2. Lot density. A lot of record in an R.C. 4 zone with a gross

29. area of less than 6 acres may not be subdivided, and a lot of record with a gross area

30. of ~~more than~~ 6 ACRES but not more than 10 acres may not be subdivided into more than

31. 2 lots (total). The maximum gross density of a lot of record with a gross area of more

32. than 10 acres is 0.2 lot per acre.

33. 5. Coverage. No more than 10 percent of any lot in an R.C. 4 zone

34. may be covered by impermeable surfaces (such as structures or pavement). No more than

1. 25 per cent of the natural vegetation may be removed from any lot in an R.C. 4 zone.

2. Section 1A04 - R.C. 5 (RURAL - RESIDENTIAL) ZONE

3. 1A04.3 - Height and area regulations.

4. B. Area regulations.

5. 1. Lot area; density control. A lot having an area of less than 1
6. acre may not be created in an R.C. 5 zone. The maximum gross residential density
7. of a lot of record is 0.667 dwellings per acre.

8. SECTION 3. Be it further enacted, that new Subsections 1A01.4, 1A02.4,
9. and new definitions "Housing for the elderly", "Industrial, quasi-industrial, or
10. industry-related uses" and "Nonindustrial uses" to Section 101, all of the Baltimore
11. County Zoning Regulations, be and they are hereby added to said regulations, to read
12. as follows:

13. ^{1A01}
Section ~~1A02~~ - R.C. 2 (AGRICULTURAL) ZONES

14. 1A01.4 - Maryland Agricultural Land Preservation Program. The use or
15. development of land in an agricultural district established in accordance with Section
16. 2-509 of the Agriculture article of the Annotated Code of Maryland, 1974, 1979 Cumu-
17. lative Supplement, shall be governed by agricultural land preservation provisions
18. enacted by the County Council pursuant to Section 2-513 of that article in the case
19. of any conflict between those provisions and these Zoning Regulations.

20. Section 1A02 - R.C. 3 (DEFERRAL OF PLANNING AND DEVELOPMENT) ZONES

21. 1A02.4 - Maryland Agricultural Land Preservation Program. The use or
22. development of land in an agricultural district established in accordance with Section
23. 2-509 of the Agriculture article of the Annotated Code of Maryland, 1974, 1979 Cumu-
24. lative Supplement, shall be governed by agricultural land preservation provisions
25. enacted by the County Council pursuant to Section 2-513 of that article in the case of
26. any conflict between those provisions and these Zoning Regulations.

27. Section 101 - DEFINITIONS

28. Housing for the elderly: Housing that is constructed and designated for
29. occupancy by elderly persons under the applicable provisions of a federal housing act.

30. Industrial, quasi-industrial, or industry-related use: Any use listed in
31. Paragraph 253.1.A other than Item 33; any use listed in Paragraph 253.1.B, Paragraph
32. 253.2.A, or Subsection 256.2; any manufacturing use not listed in those provisions; or
33. any use accessory to one of those uses.

34. Nonindustrial use: Any use other than an industrial, quasi-industrial,

1. or industry-related use.

2. SECTION 4. Be it further enacted, that Subsection 1A04.3.B.2 of the
3. Baltimore County Zoning Regulations, be and it is hereby repealed.

4. SECTION 5. Be it further enacted, that Council Bill No. 177-79 be and it is
5. hereby repealed upon the enactment of this bill. EFFECTIVE 12:01 A.M. November 25, 1979.

6. SECTION 6. Be it further enacted, that every part of every section, sub-
7. section, sentence, clause or word of this Act is enacted independently and is therefore,
8. severable; if any section, subsection, sentence, clause, phrase or word hereof is for
9. any reason held to be unconstitutional, void or invalid, the validity of the remaining
10. portions shall not be affected thereby, it being the intent of the County Council of
11. Baltimore County, Maryland in adopting this Act that no portion thereof or provision
12. or regulation contained therein shall become inoperative or fail by reason of any
13. unconstitutionality or invalidity of any other portion or provision or regulation.

14. SECTION 7. And be it further enacted, that this Act is hereby declared to
15. be an emergency measure affecting the public health, safety or welfare, and having
16. been passed by the affirmative vote of five members of the County Council, the same
17. shall take effect from the date of its enactment. 12:01 A.M. November 25, 1979.

READ AND PASSED this

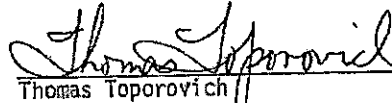
19th

day of

November

1979

By Order


Thomas Toporovich
Secretary

PRESENTED to the County Executive for his approval this

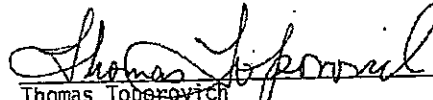
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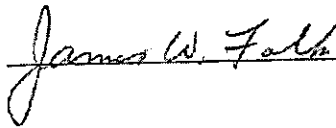
of

November

1979


Thomas Toporovich
Secretary

APPROVED AND ENACTED: November 24, 1979.




Donald P. Hutchinson
County Executive

I HEREBY CERTIFY THAT BILL NO. 178-79 IS TRUE AND CORRECT AND TOOK EFFECT
ON November 25, 1979.


Norman W. Lauenstein
Chairman, County Council

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7

consuming public — *Preview of Amer. Viscose Corp.* > (why do the A forces Group people in public r ions fire that upstairs an they don't know whether it ue or not — J.G. Cozzens)

public rights *n pl* : the rights under law of the state over the subject and of the subject against the state

publics *pl of PUBLIC*

public sale *n* : AUCTION 1

public school *n 1 a* : any of various endowed secondary boarding schools in Great Britain offering a classical curriculum and preparing boys esp. for the ancient universities or for public service *b* : a similar school for girls **2 a** : a tax-supported school controlled by a local governmental authority; *specif* : an elementary or secondary school in the U.S. providing free education for the children of residents of a specified area *b* : the building housing a public school

public servant *n 1* : a holder of public office **2** : an individual or corporation (as a bus company) rendering a public service

public service *n 1 a* : a publicly or privately owned enterprise (as a waterworks, railway, telephone company) conducted for the benefit of the community as a whole *b* : a service rendered in the public interest (the program is not sponsored but is presented by the network as a *public service*) **2** : governmental employment; *esp* : CIVIL SERVICE (first appointment to the *public service* is usually on a temporary basis — *Employment Opportunities in the Civil Service*)

public-service corporation *n* : a corporation providing services essential to the general public convenience or safety

public speaker *n* : one skilled in public speaking

public speaking *n 1* : the act or process of making speeches in public **2** : the art or science of effective oral communication with an audience (took a course in *public speaking*)

public-spirited \ˈpʌb-əl-spaɪr-ɪd\ *adj* : motivated by devotion to the general or national welfare (the trustees of our American universities are, as a class, *public-spirited* citizens . . . trying to promote the public good — M.R.Cohen) — **public-spiritedness** *n -ES*

public statute *n* : PUBLIC LAW 1

public store *n* : a warehouse where dutiable goods are appraised or held under bond

public time *n* : OBJECTIVE TIME

public utility *n 1* : a business organization deemed by law to be vested with public interest usu. because of monopoly privileges and so subject to public regulation such as fixing of rates, standards of service and provision of facilities **2** : a stock or bond issued by a public utility

public vessel *n* : a ship belonging to a government and not engaging in trade

public warehouse *n* : a privately owned warehouse for public use

public waters *n pl* : waters open of right to the use of the general public; *specif* : navigable waters

public way *n* : any passageway (as an alley, road, highway, boulevard, turnpike) or part thereof (as a bridge) open as of right to the public and designed for travel by vehicle, on foot, or in a manner limited by statute (as by excluding pedestrians or commercial vehicles) — compare PRIVATE WAY

public works *n pl* : fixed works (as schools, highways, docks) constructed for public use or enjoyment esp. when financed and owned by the government; *specif* : government sponsored public improvements (as parks or playgrounds) as distinguished from work of a routine nature such as the grading and lighting of streets

(7) Continue to seek adequate funding to acquire easements on at least 2500 acres per year.

(8) As part of any update to this section of the Master Plan the County will:

- Determine progress towards meeting the goals of the MALPF;
- Evaluate any shortcomings in the County's ability to achieve the goals of MALPF;
- Determine and implement actions to correct identified shortcomings.

Rural Legacy Program

In 1997, the Maryland General Assembly adopted the Rural Legacy Program to address the continuing loss of natural resources and productive agricultural lands to development. The goals of the Program are to protect and maintain rural character, permanently preserve land through easement programs, and limit new residential growth in these areas. The Rural Legacy Program enables local jurisdictions and private organizations, such as Land Trusts, to apply for designation of significant areas as "Rural Legacy Areas." The County and its Land Trusts have received designation and funding for five Rural Legacy Areas: Coastal, Piney Run, Gunpowder, Long Green, and Manor (Map 41).

Policy: Manage growth within the designated Rural Legacy Areas and seek permanent preservation of undeveloped properties through easement programs.

Actions:

- (1) Work with local land trusts to monitor goals and accomplishments of Rural Legacy Areas.
- (2) Work with local land trusts to integrate comprehensive resource protection elements in Rural Legacy areas, including forest buffers, Chesapeake Bay shorelines, forest habitat, endangered species, and planning measures that reduce sprawl.

The Rural Legacy Program

The Piney Run Rural Legacy Area is among the most successful Rural Legacy Areas in the State of Maryland. The Rural Legacy area seeks to provide protection of the source water for the metropolitan drinking water supply through good land stewardship while also seeking to maintain the agricultural industry in the County. Over 17,000 acres of land have been protected through all preservation programs within the 32,320-acre Rural Legacy Areas. Of greatest significance is that through the use of the complimentary preservation programs and the targeting of Rural Legacy, a block of over 12,000 contiguous acres has been preserved. This is one of the largest blocks of land protected in this manner on the East Coast.

(3) Continue financial partnership with the State for preserving properties within Rural Legacy areas.

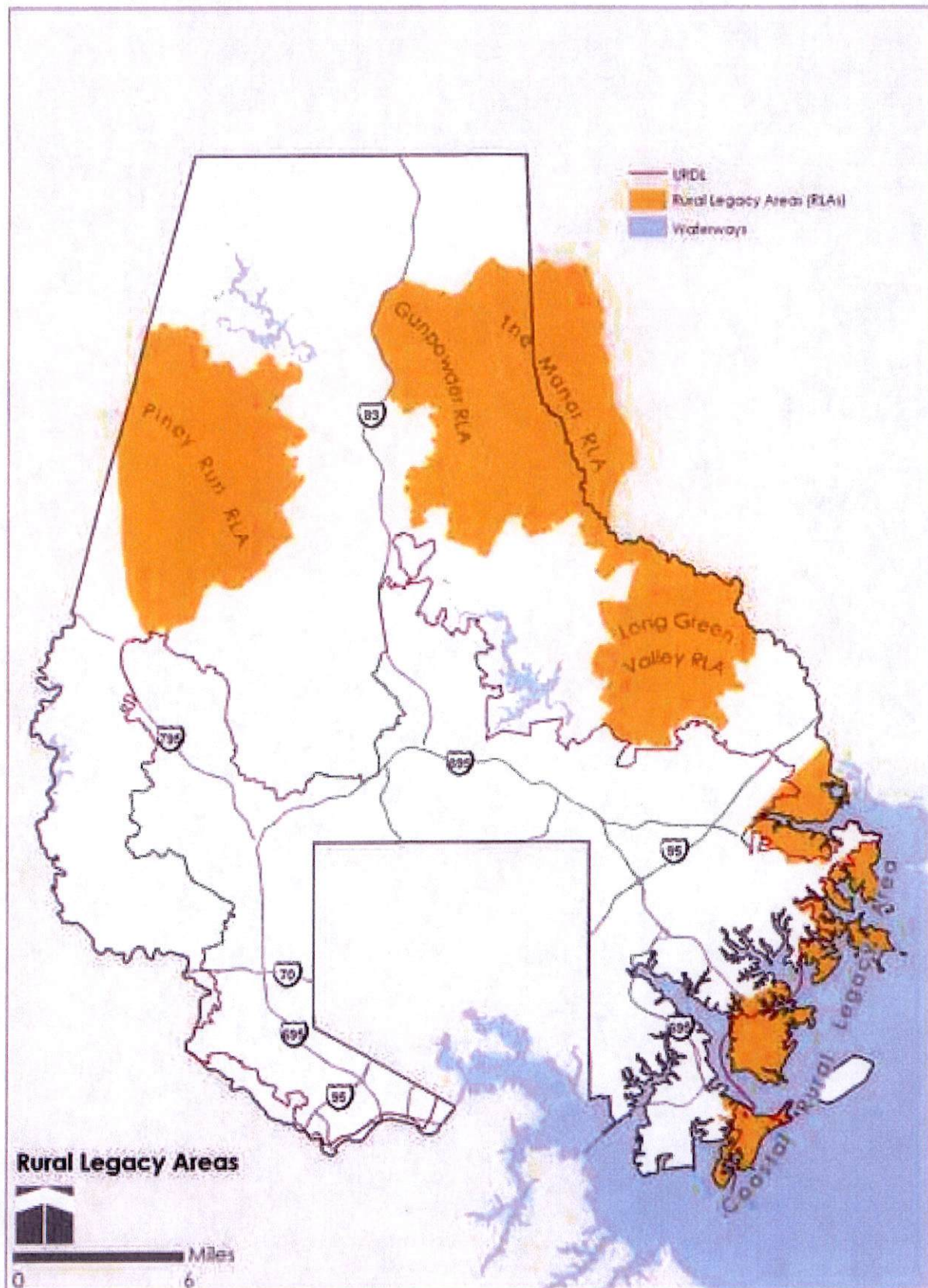
(4) Encourage donation of conservation easements to supplement purchased easements.

Forest Resources

Forests covered almost all of Baltimore County at the time of European settlement. Today, forests, agricultural lands, and developed areas each cover about 130,000 acres or one third of the County's land area. The largest forest blocks, totaling 30,800 acres, are public parks and reservoir reservations owned by the State of Maryland, the City of Baltimore, and Baltimore County. The County is placing its public forests under management plans that prioritize forest health and the protection of water quality, habitat, biological diversity, and the maintenance of forest-dependent recreation. Approximately 75% of the forests in the County are held in private ownership.

Historically, the greatest forest loss in the County occurred before the early 1900's, and there was a net increase in forest cover of about 17,000 acres from 1914 to 1997. Forest losses in recent decades have occurred as a result of land development. As a result of historical clearing, the forests in Baltimore County are fragmented into thousands of patches, most of which are smaller than 100 acres. Small patch size increases the forest's vulnerability to the many stresses imposed by the surrounding non-forested landscape, including temperature extremes, drying winds, air and

Map 42: Rural Legacy Areas



Montreal Process Criteria & Indicators (MPC&I)

The MPC&I measure the ecological and economic sustainability of forest resources. These measures have been adopted by the U.S. and eleven other nations that collectively comprise 60% of the world's forests. Baltimore County uses the Criteria as goals. They include (1) Conservation of Biological Diversity, (2) Maintenance of the Productive Capacity of Forest Ecosystems, (3) Maintenance of Forest Ecosystem Health and Vitality, (4) Conservation and Maintenance of Soil and Water Resources, (5) Maintenance of Forest Contribution to Global Carbon Cycles, (6) Maintenance and Enhancement of Long-term Multiple Socioeconomic Benefits to Meet the Needs of Societies, and (7) Legal, Institutional, and Economic Framework for Forest Conservation and Sustainable Management. As a framework for sustainable forest management, the MPC&I have guided Baltimore County's efforts for forest assessment and program implementation. In addition to preparation of forest health assessments and management plans for forested County lands, an assessment of the urban tree canopy within the URDL was completed, and GIS analyses and typologies were developed (see the Forest Conservation typology under Sensitive Areas Protection). An estimate of the carbon dynamics of forestlands in the County was also completed. Programs to increase forest cover have been developed, including the Growing Home Campaign and rural reforestation projects with landowners. A case study of the development of the County's Forest Sustainability Program is available through The Conservation Fund (<http://www.baltimorecountymd.gov/agencies/environment/workgroup/index.html>). The County's Forest Sustainability Strategy and the State of Our Forests – 2007 report are also available. Information about the MPC&I is available from the national Roundtable on Sustainable Forests (<http://www.sustainableforests.net>).

water pollutants, and invasive species. The forests are also vulnerable due to a number of diseases and pests, and the lack of natural regeneration as a result of browsing by high populations of deer. These stressors can degrade forest health and reduce the forest's capacity to regulate critical watershed functions.

The multi-layered structure of the forest tree canopy and lower vegetation breaks the force of falling rain on forest soils, protects soil structure and the infiltration capacity of the forest floor. This function alone slows surface runoff, reduces erosion and soil loss, replenishes soil nutrients, and cleanses precipitation of pollutants as it moves slowly through the soil to adjacent streams. When forests become fragmented and degraded, flooding occurs more frequently, rushing streams threaten streambed stability, eroding

soils and excess nutrients foul stream waters, and the efficiency of the forest ecosystem to regulate watershed function for the health of both the human and wildlife communities is greatly impaired.

In addition to water management, other forest functions include the sustainability of habitat for the diverse plant and animal communities associated with the eastern deciduous forest, as well as a valuable industry of timber and other forest products. Forests also clean air and reduce the effects of greenhouse gases such as carbon dioxide through the sequestration and storage of atmospheric carbon. In urban areas, trees and neighborhood woods shade and cool buildings, thereby reducing energy demands and costs. Forests and trees improve public health, provide recreational opportunities, and enhance urban living.

To protect forest resources, the Chesapeake Bay Critical Area Act (1984) was enacted to regulate forest harvesting to protect the full range of forest ecological functions. Outside the Critical Area, forest conversion to development is subject to the County's Forest Conservation Act (1992), passed pursuant to requirements of the Maryland Forest Conservation Act, the nation's first statewide forest protection measure. Through these laws, developers are required to preserve or reestablish forests on development sites, utilize approved forest retention banks, or provide mitigation through off-site plantings or through the payment of fees to the County. The Critical Area Act is a no net loss measure, whereas outside the Critical Area, only forest losses exceeding allowable thresholds are required to be mitigated. From 1993 through 2006, more than 6,500 acres (65%) of forests on development sites were protected through the Forest Conservation Act (FCA). Another 3,200 acres (32%) of forests were cleared, averaging about 245 acres per year. Additional losses were incurred from activities exempt from the FCA regulations. Non-development timber harvests average about 700 acres per year but have declined since 2000. These harvest areas generally remain to regenerate.

In 2003, Baltimore County was invited by the U.S. Department of Agriculture - Forest Service to participate as one of three counties in the U.S. in the "Linking Communities to the Montreal



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Baltimore County
My Neighborhood



This data is only for general information purposes only. This data may be inaccurate or contain errors or omissions. Baltimore County, Maryland does not warrant the accuracy or reliability of the data and disclaims all warranties with regard to or implied, of Baltimore County, including but not limited to damages, attorney's fees, or arising from the use of this data. Baltimore County, Maryland disclaims, to, all warranties, express or implied, and liability for damages, actual, direct, and consequential costs incurred as a result of reliance upon this data.

Protestant CBA Exhibit

C



An Exelon Company

John C. Frain
Director
Regulatory Strategy & Revenue Policy

Telephone 410.470.1169
Fax 410.470.8022
www.bge.com
john.frain@bge.com

P.O. Box 1475
Baltimore, Maryland 21203-1475

March 2, 2017

Via Electronic Filing

David J. Collins, Executive Secretary
Public Service Commission of Maryland
William Donald Schaefer Tower
6 Saint Paul Street, 16th Floor
Baltimore, Maryland 21202-6806

**Re: Rulemaking 56 – COMAR 20.62 – Community Solar Energy Generation Systems
Supplement No. 587 to P.S.C. Md. E-6: Rider 32–Community Energy Pilot Program
Compliance Filing to February 15, 2017 Order**

Dear Mr. Collins:

Attached for filing in the above-referenced case is the revised Supplement No. 586 to P.S.C. Md. E-6: Rider 32 – Community Energy Pilot Program of Baltimore Gas and Electric Company, submitted in compliance with the Commission's February 15, 2017 Letter Order (Letter Order).

This filing incorporates the following changes from the Letter Order:

- Permits the Subscriber Organization to provide a partially executed interconnection agreement with its community energy pilot application
- States that projects that do not receive a position in the pilot in year 1 of the pilot must re-apply for a position in a future year
- Includes a list of the applicable permits for the Subscriber Organization to submit with its application
- Clarifies the Subscriber Organization need only submit to the utility a monthly subscriber list update when a change occurs to such list
- Adds a table that contains the capacity limits for each category of projects in each year, as well as includes a statement that updates to the capacity limit can be found on www.bge.com

BGE includes a redline and clean copy of the revised Rider 32.

Sincerely,

John C. Frain

Attachments

**Protestant
CBA Exhibit**

10

ATTACHMENT 1

(Redline)

32. Community Energy Pilot Program

Availability: This rider is applicable to all customer classes for 3 years from the earlier of 1) the first date of the application of Subscriber Organization to operate a CSEGS or 2) 6 months from the effective date of Code of Maryland Regulations 20.62. In addition to the requirements set herein, all participants in this rider are subject to the regulations as stated in Code of Maryland Regulations 20.62. BGE shall continue to facilitate the operation of Subscriber Organization that was established during the program for a period of 25 years after the program has ended.

Definitions: In addition to the definitions provided in Code of Maryland Regulations 20.62, the following definitions are used for the purposes of this rider.

Community Solar Energy Generating System (CSEGS): The physical solar energy generating facility.

Subscriber Organization: The body responsible for maintaining Subscribers and providing the list of Subscribers to the utility for billing. A Subscriber Organization must be a customer of any BGE electric tariff schedule. The Subscriber Organization must be the name on the account for the CSEGS with BGE and must have obtained a Subscriber Organization Number from the Maryland Public Service Commission (PSC).

Subscriber: A Subscriber is a customer of any BGE electric tariff schedule that has subscribed with a Subscriber Organization for a portion of the output produced by a CSEGS.

Subscriber: A Subscriber is a BGE Customer taking service on any electric Tariff Schedule being billed the charges that would be assigned if the Subscriber were not participating in this pilot program. A Subscriber may subscribe to more than one subscription from more than one Subscriber Organization and may also participate in net-metering. A Subscriber may not subscribe for greater than 200% of their annual baseline energy, including any net-metering, if applicable. The Subscriber will be allocated a bill credit for a percentage of the monthly output of the CSEGS as provided to BGE by the Subscriber Organization.

A Subscriber will receive a monthly dollar credit on their bill that will be the equivalent of their subscription percentage of the CSEGS monthly generation amount applied to all energy charges on the Subscriber's Bill. If the Subscriber is with a third party supplier, the monthly dollar credit on their bill will be the equivalent of their subscription allocation of the CSEGS monthly generation amount applied to all energy charges and their third party supply rate, where available through a PSC approved predefined and standardized electronic process across all Maryland utilities. If the third party supply rate is unavailable, or the Subscriber has not chosen a third party supplier, the applicable BGE Standard Offer Service Rate will be used. Supply portions of the credit provided to Subscribers and incremental costs will be recovered through the applicable SOS Rider. The distribution portion of the credits provided to Subscribers will be treated as a reduction to the actual revenues collected in the calculation of the Rider 25 monthly rate adjustment where applicable; all other distribution credits will be recovered through base distribution rates. Depending on timing of notification from the Subscriber Organization of the Subscriber's subscription amount, it may take up to two billing cycles, or more, before a bill credit is applied to the Subscriber's bill. Subscriptions may not take effect retroactively.

(Continued on Next Page)

32. *Community Energy Pilot Program - continued*

On or before 30 days after the billing cycle that is complete immediately prior to the end of April each year, BGE will apply to the bill of each eligible Subscriber a true up for any excess generation. The Subscriber's excess generation shall be credited to reasonably exclude the distribution, transmission, and non-commodity portion of the Subscriber's bill for the excess generation amount.

Subscriber Organization: Prior to applying for an Interconnection Agreement for this pilot program, a Subscriber Organization must first be granted permission to participate in this pilot from the PSC and have received a Subscriber Organization Identification Number. Once the Subscriber Organization has an Identification Number, they must apply to BGE for an Interconnection Agreement under Code of Maryland Regulations 20.50.09, indicating a request to participate in the Pilot Program. Interconnection Applications will be processed in the order in which the completed Interconnection Applications are received. A Subscriber Organization is responsible for all interconnection costs.

A CSEGS is subject to all tariff provisions applicable under the schedule they are placed. Tariff Schedule and demand are determined based on the capacity of the CSEGS system. A CSEGS may not exceed 2MW in AC rated capacity. A CSEGS of 500 kW or greater may not be located on the same or contiguous parcel of property as another CSEGS of 500kW or greater owned by the same Subscriber Organization or its affiliate. A CSEGS facility with a capacity greater than 1 MW will be placed on Primary Service. Metering for a CSEGS will be divided into an input and an output channel. All usage on the input channel will be billed in accordance with the applicable tariff schedule of the CSEGS. All generation on the output channel will be used in the calculation of the Subscriber Credits. BGE reserves the right to require the CSEGS facility to be moved to a bill cycle in order to facilitate efficient credit calculation.

A Subscriber Organization must provide ~~an~~ partially executed Interconnection Agreement, in conjunction with a Community Energy Pilot Application. Pilot Program Applications shall be processed in the order in which they are received. BGE will notify the Subscriber Organization of receipt of the Pilot Program Application and whether the Pilot Program Application is complete within 5 business days. A Subscriber Organization receiving notice of an incomplete Pilot Program Application shall revise and resubmit within 10 days of receiving the notice. Projects that are not awarded pilot program capacity in Year 1 will have their Interconnection Application canceled and must reapply for interconnection and reapply to the pilot program in a future year and do not maintain their waiting list position for capacity in Year 2. In Year 2, if a Pilot Program Application exceeds the available program capacity or category and is otherwise complete, the Pilot Program Application shall be deferred to the next program year if cap space is available. Deferral of one Pilot Program Application does not preclude the company from accepting a smaller Pilot Program Application received after the deferred Pilot Program Application. Available pilot program capacity can be found on BGE.com. A CSEGS Identification Number will be assigned and capacity in the pilot program queue will be reserved for the Subscriber Organization's specific CSEGS upon a complete and accepted Pilot Program Application. If a CSEGS or Subscriber Organization raises a dispute with BGE or the Commission regarding the processing of an Interconnection Application or a Pilot Program Application, BGE will not set aside capacity for the CSEG during the pendency of the investigation of the dispute.

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32. Community Energy Pilot Program - continued

Pilot Program Applications will only be accepted in electronic format as defined by BGE. In order to apply for capacity in an electric company's pilot program queue, a Subscriber Organization shall provide the following to the electric company upon Pilot Program Application:

- A ~~partially~~ executed Interconnection Agreement
- ~~Proof of application for all applicable permits~~ A receipt confirming the filing fee from a local jurisdiction demonstrating application for at least one of the following permits: 1) a Site Plan Review Application, 2) a Zoning Conditional Use Application, 3) a Zoning Variance Application, 4) a Zoning Certificate of Use Application, 5) a Special Exception Application, 6) a Board of Appeals Hearing Application, or 7) a Building Permit Application. If one of the following is not available due to preliminary action required by the jurisdiction, the Subscriber Organization may provide a receipt confirming completion of the preliminary action in lieu of one of the permits listed above. If a subscriber organization is unable to provide confirmation of the required permit application within 120 days of application, the Company may rescind the award of project capacity.
- Proof of site control:
 - Evidence of property ownership;
 - An executed lease agreement; or
 - A signed option to purchase or lease.
- Selection of one of the Following Project types, as defined in COMAR 20.62.02.02A(3):
 - Small/Brownfield;
 - Open; or
 - Low to Moderate Income (LMI)
- Amount of that Pilot Program capacity the project intends to take

If a project fails to begin operating within 12 months of submission of a completed application, it shall be removed from the queue unless a \$50 per kW deposit is paid to maintain its spot in the queue for 6 additional months. Projects in LMI category are exempt from queue deposits. A project may lose its place in the queue if the Subscriber Organization does not complete any item required. BGE will notify a Subscriber Organization prior to removal from the queue. A Subscriber Organization must maintain all data and information as prescribed in the regulations as stated in Code of Maryland Regulations 20.62.

A Subscriber Organization shall maintain a minimum average subscription size of 2kW. The number of Subscribers may not exceed 350 accounts per project. A Subscriber Organization will certify in the Pilot Program Application that each Subscriber's total subscriptions will not exceed the statutory 200% annual baseline energy usage eligibility threshold. The Subscriber Organization will certify in the Pilot Program Application each Subscriber's LMI eligibility, if relevant to the CSEGS project. The Subscriber Organization will certify in the Pilot Program Application that each Subscriber authorizes the utility to release that Subscriber's account information as necessary.

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32. Community Energy Pilot Program - continued

A Subscriber Organization must provide BGE, following requirements set forth by BGE, with an individual document for each CSEGS facility indicating the proportion of a CSEGS output that shall be applied to each Subscriber's bill at least monthly, if a change occurs, including:

- CSEGS Identification Number
- Applicable Month
- Subscriber Organization Identification Number
- Subscriber Organization Name
- Subscriber name (per BGE account)
- Each Subscriber's Electric Choice ID
- Percentage share of each Subscriber

(Continued on Next Page)

32. Community Energy Pilot Program—continued

Subscriber Organization monthly Subscriber List updates should clearly indicate which Subscribers are new to the list. Non-compatible or incorrect information will be provided to the Subscriber Organization. BGE will apply credits using the most recently updated Subscriber List at the time of the credit calculation. Subscriptions associated with ineligible Subscribers (such as Subscribers that are not BGE customers or have finalized their BGE accounts) will be treated as Unsubscribed Energy. Unsubscribed Energy will be credited monthly to the Subscriber Organization at the net hourly PJM locational marginal price (LMP) in the BGE Zone. No retroactive corrections or changes can be made to Subscriber information or allocation percentage.

Capacity Limits: The following table sets forth the annual capacity limits under the Pilot Program for the Company. Updates to the status of the Company's Pilot Program's queue and capacity limits can be found at www.bge.com.

<u>Program MW Capacity</u>	<u>Small/Brownfield/Other</u>	<u>Open</u>	<u>LMI</u>
<u>Year 1</u>	<u>12.1</u>	<u>16.1</u>	<u>12.1</u>
<u>Year 2</u>	<u>12.1</u>	<u>16.1</u>	<u>12.1</u>
<u>Year 3</u>	<u>6.0</u>	<u>8.1</u>	<u>6.0</u>

ATTACHMENT 1

(Clean)

32. Community Energy Pilot Program

Availability: This rider is applicable to all customer classes for 3 years from the earlier of 1) the first date of the application of Subscriber Organization to operate a CSEGS or 2) 6 months from the effective date of Code of Maryland Regulations 20.62. In addition to the requirements set herein, all participants in this rider are subject to the regulations as stated in Code of Maryland Regulations 20.62. BGE shall continue to facilitate the operation of Subscriber Organization that was established during the program for a period of 25 years after the program has ended.

Definitions: In addition to the definitions provided in Code of Maryland Regulations 20.62, the following definitions are used for the purposes of this rider.

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32. Community Energy Pilot Program - continued

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32. Community Energy Pilot Program - continued

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- A partially executed Interconnection Agreement
- A receipt confirming the filing fee from a local jurisdiction demonstrating application for at least one of the following permits: 1) a Site Plan Review Application, 2) a Zoning Conditional Use Application, 3) a Zoning Variance Application, 4) a Zoning Certificate of Use Application, 5) a Special Exception Application, 6) a Board of Appeals Hearing Application, or 7) a Building Permit Application. If one of the following is not available due to preliminary action required by the jurisdiction, the Subscriber Organization may provide a receipt confirming completion of the preliminary action in lieu of one of the permits listed above. If a subscriber organization is unable to provide confirmation of the required permit application within 120 days of application, the Company may rescind the award of project capacity.
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 - An executed lease agreement; or
 - A signed option to purchase or lease.
- Selection of one of the Following Project types, as defined in COMAR 20.62.02.02A(3):
 - Small/Brownfield;
 - Open; or
 - Low to Moderate Income (LMI)
- Amount of that Pilot Program capacity the project intends to take

If a project fails to begin operating within 12 months of submission of a completed application, it shall be removed from the queue unless a \$50 per kW deposit is paid to maintain its spot in the queue for 6 additional months. Projects in LMI category are exempt from queue deposits. A project may lose its place in the queue if the Subscriber Organization does not complete any item required. BGE will notify a Subscriber Organization prior to removal from the queue. A Subscriber Organization must maintain all data and information as prescribed in the regulations as stated in Code of Maryland Regulations 20.62.

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32. *Community Energy Pilot Program - continued*

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- CSEGS Identification Number
- Applicable Month
- Subscriber Organization Identification Number
- Subscriber Organization Name
- Subscriber name (per BGE account)
- Each Subscriber's Electric Choice ID
- Percentage share of each Subscriber

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Capacity Limits: The following table sets forth the annual capacity limits under the Pilot Program for the Company. Updates to the status of the Company's Pilot Program's queue and capacity limits can be found at www.bge.com.

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Year 1	12.1	16.1	12.1
Year 2	12.1	16.1	12.1
Year 3	6.0	8.1	6.0

IN RE: PETITION FOR SPECIAL EXCEPTION *

(11121 Pfeffers Road)

11th Election District *

5th Council District

11121 Pfeffers LLC *

Legal Owner

Petitioner *

BEFORE THE

OFFICE OF

ADMINISTRATIVE HEARINGS

FOR BALTIMORE COUNTY

Case No. 2016-0086-X

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Special Exception filed for property located at 11121 Pfeffers Road. The Petition was filed on behalf of the legal owner of the subject property, 11121 Pfeffers LLC. The Special Exception petition seeks relief pursuant to §1A04.2.B.12 of the Baltimore County Zoning Regulations (B.C.Z.R) to approve a solar panel array field as a "public utility use". The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner's Exhibit No. 1.

Appearing in support of the request was Aaron Menger and Brian Childress, whose firm prepared the site plan. Patricia A. Malone, Esq. represented the Petitioner. The Petition was advertised and posted as required by the B.C.Z.R. Several citizens, whose names are listed on the sign-in sheets, attended the hearing to obtain additional information regarding the requests.

Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). Those agencies did not oppose the request, but provided suggested conditions for inclusion in the final Order.

The subject property is approximately 31.59 acres and is zoned RC-5. The site is improved with a single-family dwelling, and has a large area currently being used for agricultural purposes.

2016-0335-SPHX

Petitioner proposes to lease an 11 acre portion of the site to be used for an array of solar panel devices. As shown on the plan, the solar panels will be situated in the southern portion of the site, near to where Interstate 95 adjoins the property. The RC-5 zone permits by special exception a "public utility" use, although that term is not defined in the Regulations.

Aaron Mengle, employed by SGC Power, LLC (the Lessee) described the components which will be used in the project, which he estimated will provide on a yearly basis 2.2 megawatts of electricity; i.e., roughly the amount of energy which is used by about 200 homes every year. The energy produced by the solar panels will be transferred to the electric "grid" and ultimately sold to consumers by energy suppliers, as shown on Petitioner's Exhibit 6. Though his company will lease approximately 11 acres of the site, Mr. Mengle estimated the solar panels and necessary equipment will occupy roughly 6 acres of the property. Mr. Mengle opined that B.C.Z.R. §502.1 (concerning special exceptions) was satisfied, and that the use would have little to no impact upon surrounding properties.

The only interpretive difficulty in the case arises because the B.C.Z.R. does not define what constitutes a "public utility," and by all accounts that term is harder to apply in light of the emergence of wind, solar and other alternative energy sources. Industry literature and the Solar Energy Industries Association, the leading trade group for solar developers, recognize that "utility-scale" solar (in contrast to residential-scale (rooftop) systems) is defined as greater than 1 megawatt. In this case the solar panels are projected to generate 2.2 megawatts, which under prevailing industry standards would constitute "utility-scale solar." For similar reasons, I believe the proposed use is properly characterized under the Regulations as a "public utility."

Special Exception Law in Maryland

Under Maryland law, a special exception use (in this case, a public utility) enjoys a presumption

that it is in the interest of the general welfare, and therefore, valid. Schultz v. Pritts, 291 Md. 1 (1981). The Schultz standard was revisited in People's Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use. No evidence was presented in this case regarding that issue, and the petition will therefore be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 16th day of December, 2015, that the Petition for Special Exception to approve a solar panel array field as a "public utility use" be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. The special exception area shall be restricted to the 11 acre tract shown on the site plan, and all public utility uses must be restricted to that area.
3. Petitioner must comply with the ZAC comments of DOP and DPR, both of which are attached hereto and incorporated herein.
4. No lighting shall be permitted on the special exception area.
5. No signage (other than customary "No Trespassing" signs) shall be permitted in connection with the public utility use.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JEB/sln

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County



Net 34



Feb 30



Y04 4A





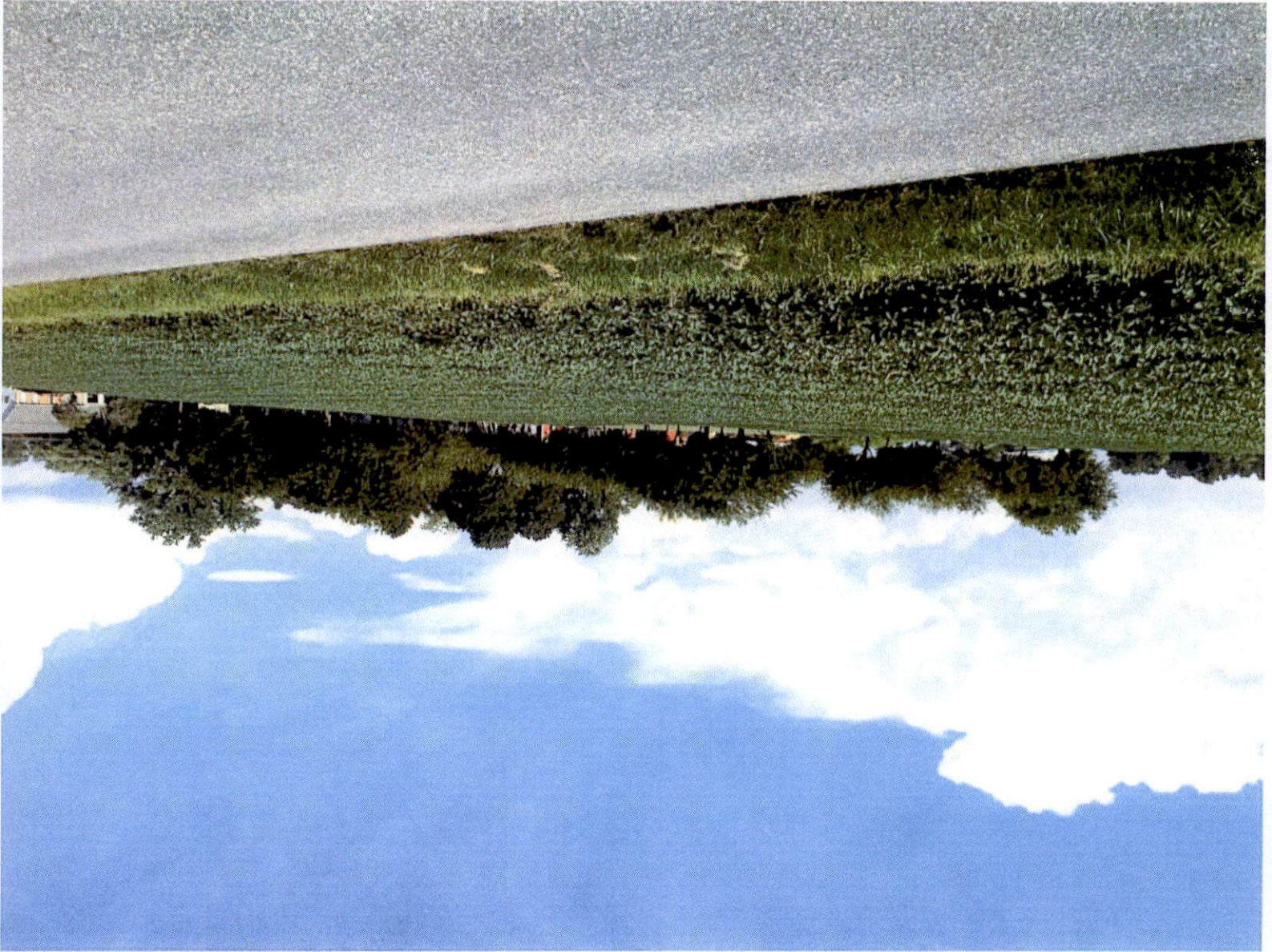
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4/11





KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

November 18, 2016

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue
Suite 200
Towson, Maryland 21204

Michael R. McCann, Esquire
118 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: APPEAL TO BOARD OF APPEALS
Case No. 2016-0335-SPHX
Location: 15700 Hanover Pike

RECEIVED

NOV 18 2016

BALTIMORE COUNTY
BOARD OF APPEALS

Dear Counsel:

Please be advised that an appeal of the above-referenced case was filed in this Office on November 17, 2016. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals ("Board").

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to contact the Board at 410-887-3180.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Stahl", is written over the typed name.

LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS/sln

c:

Baltimore County Board of Appeals
People's Counsel for Baltimore County



PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address Hanover Road 15700 Hanover Pike which is presently zoned RC 2

Deed References: 27651/00231

10 Digit Tax Account # 1900007892

Property Owner(s) Printed Name(s) Donald E. Lippy and Kathleen F. Lippy

(SELECT THE HEARING(S) BY MARKING **X** AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. ☒ a **Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

Please see attached.

2. ☒ a **Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

Please see attached.

3. ☐ a **Variance** from Section(s)

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons:
(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)

TO BE PRESENTED AT HEARING

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

Donald E. Lippy, Authorized Representative of New Source Generation, LLC

Name- Type or Print

Donald E. Lippy

Signature

421 Lees Mill Road Hampstead MD

Mailing Address City State

21074

Zip Code Telephone # Email Address

Attorney for Petitioner:

Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC

Name- Type or Print

Lawrence E. Schmidt

Signature

600 Washington Avenue, Suite 200 Towson MD

Mailing Address City State

21204 (410) 821-0070 lschmidt@sgs-law.com

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Donald E. Lippy

Kathleen F. Lippy

Name #1 - Type or Print

Donald E. Lippy

Signature #1

421 Lees Mill Road

Mailing Address

21074

Zip Code

Name #2 - Type or Print

Kathleen F. Lippy

Signature #2

421 Lees Mill Road

Mailing Address

21074

Zip Code

Telephone #

Email Address

Representative to be contacted:

Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC

Name- Type or Print

Lawrence E. Schmidt

Signature

600 Washington Avenue, Suite 200 Towson MD

Mailing Address City State

21204 (410) 821-0070 lschmidt@sgs-law.com

Zip Code Telephone # Email Address

CASE NUMBER 2016-0335-SPHX Filing Date 6/24/2016

Do Not Schedule Dates:

Date 10-18-16

Reviewer Lu

REV. 10/4/11

By Den

**ATTACHMENT TO PETITION FOR SPECIAL EXCEPTION AND
SPECIAL HEARING**

Bortner Farm: *Tax Id. No. 1900007892*

Special Exception Relief:

1. Pursuant to BCZR § 502, to grant Special Exception relief for a solar panel array field as a “public utility use” under BCZR § 1A01.2.C.18; and
2. For such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

Special Hearing Relief (in the alternative):

1. If necessary and in the alternative to the Special Exception relief requested, to approve the proposed solar panel array field as a permitted accessory use or structure to the farm; and
2. For such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

2016-0335-SPHX

RTF ASSOCIATES, INC. *LAND SURVEYORS & PLANNERS*

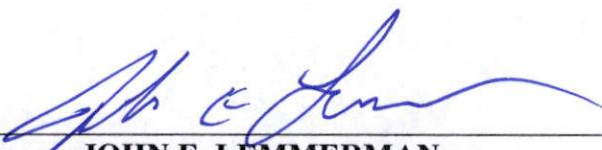
142 East Main Street
Westminster, Maryland 21157
Phone 410-848-2040, 410-876-1222
Web RTFsurveying.com
Fax 443-289-8942

June 15, 2016
RTF Assoc. # 16-44

ZONING PROPERTY DESCRIPTION FOR LIPPY PROPERTY
INTERSECTION OF MD. ROUTE # 30 AND FRINGER ROAD

BEGINNING at a point on the west side of Maryland Route # 30 (Hanover Pike), which is a 66 foot wide right of way at the distance of 200.00 feet north of the centerline of the nearest improved intersecting street Fringer Road which is a 40 foot wide right of way. Thence with the following course and distances: (1st Point of Call "POC") S.01°09'49" E. 161.44', (2nd POC) S. 63°49'56" W. 743.76', (3rd POC) N. 04°17'59" W. 688.02', (4th POC) N. 79°12'03" E. 318.88', (5th POC) S. 01°09'49" E. 332.00', (6th POC) N. 79°12'03" E. 403.00', back to the point of beginning, S. 01°09'49" E. 332.00' from the beginning point as recorded in deed liber 27651, folio 231, containing 281,130 square feet or 6.454 acres of land. Located in the Fourth Election District and the Third Council District of Baltimore County, Maryland.




JOHN E. LEMMERMAN
PROFESSIONAL LAND SURVEYOR NO. 21096
CURRENT LICENSE EXPIRES AUGUST 3, 2017

2016-0335-SPHX

IN THE MATTER OF:
DONALD AND KATHLEEN LIPPY – LEGAL
OWNERS – PETITIONS FOR SPECIAL
HEARING AND SPECIAL EXCEPTION
FOR THE PROPERTY LOCATED AT
15700 HANOVER PIKE

4th Election District
3rd Councilmanic District

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 16-335-SPHX

* * * * *

OPINION

This matter came before the Baltimore County Board of Appeals as a *de novo* appeal of an October 18, 2016 decision of Administrative Law Judge John E. Beverungen of the Office of Administrative Hearings. In his Opinion and Order, ALJ Beverungen granted the Petition filed by Donald E. and Kathleen F. Lippy, legal owners of the property located at 15700 Hanover Pike (the “Property”), for a Special Exception to approve a proposed solar panel array as a “public utility use” on the Property. ALJ Beverungen denied the Lippy’s Petition for Special Hearing to approve the same solar array as a permitted accessory use on the Property.

Protestants Santo Mirable and the Hanover Road Association filed an appeal of the ALJ’s decision. The Board held hearings on this matter on February 7, 2017 and March 16, 2017 and publicly deliberated the matter on April 19, 2017. During the proceedings before the Board, Lawrence E. Schmidt, Esquire represented Petitioners Lippy and New Source Generation LLC. Michael R. McCann, Esquire represented Protestants Mirable and the Hanover Road Association, along with Chris Calao. Carole Demilio, Esquire appeared on behalf of People’s Counsel for Baltimore County.

FACTS

The Property is a single unimproved parcel, zoned R.C. 2 and approximately 6.5 acres in size. It is located near the intersection of Hanover Pike (Rt. 30) and Fringer Road in northern Baltimore County. Mr. and Mrs. Lippy, owners of the Property, have been farming in the region for decades. The Lippys own approximately 2,400 acres of land in the region, 2,200 acres of which are protected by agricultural easements. The Property is not in an agricultural easement area.

The testimony demonstrates that the Lippys contracted with Earth and Air Technologies, LLC ("Earth and Air") for the installation of solar panels to cover much of the undeveloped Property. Earth and Air, a private company that designs, builds and installs renewable energy systems, primarily solar, proposed the installation of approximately 6,000 panels, each approximately 3 x 6 feet in dimension and rising 4-7 feet off the ground. According to Mr. Lippy, the proposed use is intended, in contrast to the farming operations on his other lands, to provide a steadier income stream. In June 2016, the Lippys filed a Petition for Special Exception pursuant to Baltimore County Zoning Regulation ("BCZR") § 502 seeking approval of the solar panel array field as a 'public utility' use under BCZR § 1A01.2.C.18. Petitioners sought, alternatively, a Special Hearing pursuant to BCZR § 500.7 to approve the proposed solar array field as a permitted accessory use or structure to the farm.

Ken Donithan, the owner of Earth and Air, testified about the specifics of the proposed solar installation, and was accepted as an expert in power engineering.¹ He indicated that the panels proposed for the Property would produce energy that ultimately will be distributed to

¹ It should also be noted that Mr. Donithan's company has a financial interest in the approval of this project, and that his company previously has provided solar panels for use on structures on other property the Lippys own.

BGE utility lines and physically transmitted by BGE to the ultimate customers. The Lippys would own the panels, inverter, and transmission lines running from the inverter to the meter owned by BGE. Earth and Air would operate and maintain the equipment. He anticipates that the Lippys would use 60% of the power output; the remainder would be for use by others.

Mr. Donithan stated that Earth and Air is a privately held company. The company does not file reports with the Public Service Commission ("PSC"). Earth and Air is not licensed as an "electricity supplier" (Prot. Ex. #2), and does not need to meet requirements or standards the state imposes on renewable energy suppliers. He also stated that Earth and Air, unlike BGE, is not included on the list of Gas and Electric companies and "Utility Customer Contact Information" provided by the PSC. (Prot. Ex. # 4).

Mr. Donithan also discussed his company's intent to participate in the state's Community Solar Energy Generating Systems Pilot Program. That is a relatively recent project designed to provide greater access to solar-generated electricity and increase the use of solar energy in the state. According to Mr. Donithan, under this program, PCS-approved "subscriber organizations" in this area apply to BGE to operate community solar projects and connect to BGE's power grid. The ultimate community retail customer buys from BGE a share of the energy output of the supplier's system. Mr. Donithan was not clear on the billing mechanism for the project as it applies to Earth and Air. He did indicate that the PSC regulates the rates that BGE charges customers, but not the rates Earth and Air would charge. As of the hearing date, Earth and Air had not yet applied to become a subscriber organization.

Discussion

I. The Petition for Special Hearing for the Solar Array as an Accessory Structure on the Property.

The Petition for a Special Hearing seeks approval of the solar array as an accessory use to the Lippy's farm. BCZR § 101 defines "Accessory Use or Structure" as follows:

A use or structure which: (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principal use or structure served. . . .

Written in the conjunctive, this regulation provides that a proposed use is not considered an "accessory" unless it meets all four parts of the definition: it must be customarily incident and subordinate to a principal use or structure, and subordinate in area or purpose to a separate principal use or structure; the proposed use also must be located on the same lot as the principal use or structure, and must contribute to the comfort, convenience or necessity of a principal use or structure. The proposed solar array does not meet this definition. Even assuming the other requirements were met, there was no evidence demonstrating that the proposed "accessory", the solar array, is located on land that also contains a separate "principal" use or structure. The testimony establishes, rather, that the Property is unimproved, that no other structure is on the Property, and that there is no other use of the Property, farming or otherwise. The solar panels would be the sole structures on the Property, and the only use of the Property.

In some R.C. zones, the regulations recognize and permit some solar panel use as accessory structures. For instance, BCZR § 1A07.8.C.2.g. states that "[a]ccessory structures, including solar panels, antennas and storage sheds are not permitted in the front yard of any principal use. Section 400.1 is not applicable in an R.C.6 Zone." The regulations are virtually

identical for the R.C. 7 zone. *See* BCZR §§ 1A08.6.C.2.f. As for the R.C. 8 zone, BCZR § 1A09.7.C.2.e provides similarly that “[s]tructures accessory to residential use, excluding agricultural buildings, but including solar panels, antenna and storage shed, are not permitted in the front yard of any principal use. Section 400.1 is not applicable in an R.C. 8 Zone.” These regulations, like the definition in Section 101 above, contemplate a solar panel as an use or structure incidental to another, principal structure or use. That is not the situation in this matter. Moreover, no similar regulation exists for the R.C. 2 zone, the location of the Property. The Board therefore denies the Petition for Special Hearing.

II. The Petition for Special Exception for the Solar Array as a Public Utility.

By their Petition for Special Exception, Petitioners seek relief for the solar panel array as a “public utility use” under BCZR § 1A01.2.C.18. That regulation states as follows:

The following uses, only, may be permitted by special exception in any R.C.2 Zone, provided that in each case the hearing authority empowered to hear the petition finds that the use would not be detrimental to the primary agricultural uses in its vicinity. . . .

18. Public utility uses not permitted as of right.²

As all parties recognize, BCZR does not define the term “public utility.” In such a circumstance, the term is to be defined as in *Webster's Third New International Dictionary of the English Language, Unabridged*. BCZR § 101.1. That dictionary, first published in 1961, defines “public utility” as a “[b]usiness organization deemed by law to be vested with public interest

² Utility uses permitted in this zone as of right include “[t]elephone, telegraph, electrical-power or other lines or cables, provided that any such line or cable is underground. . . .” BCZR § 1A01.2.A.6.

usually because of monopoly privileges and so subject to public regulation such as fixing of rates, standards of service, and provision of facilities.” Petitioner’s solar array does not appear to meet this particular definition. There was no evidence that its owner or operating organization was vested with a public interest and granted monopoly privileges. Moreover, the testimony was also insufficient as to whether the proposed entity was subject to public regulation, with respect to such items as the fixing of rates, standards of service, or provision of facilities.

At the same time, given the advances of technology and time since the publication of that definition, it is not clear that the 1961 Webster’s definition, particularly the monopoly aspect of an organization, remains the sole or appropriate method to determine what constitutes a “public utility” in 2017. *See Delmarva Power & Light Co. v. PSC*, 370 Md. 1, 15 (2002) (more recent legislation “provided a basis for shifting away from the 90-year-old guarded monopoly regime back to a competitive approach.”); *AT&T v. State Dept. of Assessments & Taxation*, 1995 Md. Tax LEXIS 2, at *8-9 (Md. T.C. Jan. 26, 1995) (“technological evolution and Court intervention have altered the long distance industry to an extent certainly well beyond the comprehension of the original drafters of the statute Their perception of “public utilities” may have also altered over the years.”).

Under the circumstances, the Board finds the term ‘public utility,’ and the provisions of BCZR § 1A01.2.C.18 relatively ambiguous. “An ambiguity exists ‘when the language of the statute is subject to more than one interpretation.’ Further, there are circumstances when ‘an ambiguity may exist even when the words of the statute are crystal clear. That occurs when its application in a given situation is not clear.’” *Neser v. Howard Cty. Pers. Bd.*, No. 0109, 2016 Md. App. LEXIS 730, at *13 (Feb. 4, 2016) (citations omitted). A reviewing body is “justified

in looking beyond the text of the statute when 'its application in a given situation is not clear.'"
Id. at *15. Such a broader examination is warranted here to settle on an appropriate definition of "public utility" in the current matter.

Ironically, like the BCZR, the Public Utilities article of the Maryland Code also does not define "public utility." However, § 1-101(x) of the article does provide a definition for a "public service company." That is defined as "a common carrier company, electric company, gas company. . . or any combination of public service companies." Related state regulations also lack a definition of 'public utility,' but do define the word 'utility.' Similar to the article above, it means an "'electric company' as defined in Public Utilities Article, § 1-101, Annotated Code of Maryland." *See, e.g.*, COMAR 20.50.01.03(50); 20.62.01.02 (22). Section 1-101(h)(1) of the Public Utilities Article in turn defines an 'electric company' as "a person who physically transmits or distributes electricity in the State to a retail electric customer." A "retail electric customer" is itself defined as "a purchaser of electricity for end use in the State." Public Utilities Article, §1-101(cc)(3).

Taken together, for purposes of this discussion, these statutes and regulations indicate that a public utility or public service company means an entity that physically transmits or distributes electricity in Maryland to retail purchasers of electricity for end use in the state. Petitioners have not proffered any evidence to suggest they meet that definition. Rather, the testimony indicates that Petitioners convert and transmit solar energy to the BGE utility grid, but that BGE is the entity which transmits and distributes electricity to the retail electric customer.

Petitioners also point to their anticipated participation in the state's Community Solar Energy Generating Systems Pilot Program (the "Solar Program") as evidence that they are a

public utility. The legislature established the pilot Solar Program for a period of three years to promote the use of renewable energy resources and provide greater access to solar-generated electricity. The Solar Program allows customers to buy, through their electricity company, electricity generated by the solar facility, known as the "community solar energy generating system."³ It does this through a network of electric companies, "subscriber organizations," and "subscribers." A 'subscriber organization' includes entities such as Earth and Air that install and operate solar generating systems. *See* Md. Code Ann., Pub. Util §7-306.2(a). "Subscribers" are the retail customers that purchase electricity from the subscriber organization. *Id.*

A solar energy company seeking to participate in the Solar Program as a subscriber organization first applies to the PSC for admission to the program. *See* COMAR 20.62.03.02. Next, as Mr. Donithan noted, upon PSC approval, the subscriber organization must then apply to the electric company serving the system location (here, BGE) for interconnection. *Id.* at 20.62.03.03. The electric company processes any applications submitted and administers the program. Of critical importance is the fact that unlike public utilities such as BGE, the supplier organization's price is not regulated by the PSC. *See* COMAR 20.62.05.03B.2.(b). *See Spintman v. Chesapeake & Potomac Tel. Co.*, 254 Md. 423, 428 (1969) ("the legislature intended that the Public Service Commission should have authority to regulate the rates of a public utility. . . .") (emphasis supplied).

³ It is more specifically defined as a solar energy system that: (i) is connected to the electric distribution grid serving the State; (ii) is located in the same electric service territory as its subscribers; (iii) is attached to the electric meter of a subscriber or is a separate facility with its own electric meter; (iv) credits its generated electricity, or the value of its generated electricity, to the bills of the subscribers to that system through virtual net energy metering; (v) has at least two subscribers; (vi) does not have subscriptions larger than 200 kilowatts constituting more than 60% of its subscriptions; (vii) has a generating capacity that does not exceed 2 megawatts as measured by the alternating current rating of the system's inverter; and (viii) may be owned by any person. Md. Code Ann., Pub. Util. at §7-306.2(a)(3).

Earth and Air's potential status as a supplier organization for the limited purpose of the Solar Program does not change the conclusion that the company, the supplier organization, itself is not a public service company or public utility such as BGE. In fact, the Solar Program law draws a specific distinction between the different types of entities, stating that "[a] community solar energy generating system, including a subscriber or subscriber organization associated with the community solar energy generating system, is not: (1) an electric company; (2) an electricity supplier." Md. Code Ann., Pub. Util. at §7-306.2(c).⁴ Moreover, while a subscriber organization such as Earth and Air may operate under BGE's control for purposes of the Solar Program, the fact remains that it is treated differently under the law than an electric company, and is not physically transmitting the electricity to a retail customer. Neither are its rates regulated by the PSC. Without these attributes, it should not be considered a public utility.

The conclusion that Petitioners are not a public utility leads to the corollary finding that their proposed use of the Property does not constitute a "public utility use" as set forth in BCZR § 1A01.2.C.18. There was no evidence suggesting that Petitioner's proposed solar field is a direct use by BGE, one that is necessary for the rendering of BGE's public utility service.⁵ Allowing every entity with a connection to BGE to piggy-back upon this special exception by claiming it is a BGE use, would likely expand the scope of the special exception far beyond its apparent intended boundaries. See *Chesapeake & Potomac Tel. Co. v. Md./Del. Cable Television Asso.*, 310 Md. 553, 562 (1987) ("public utility services" are limited to those services

⁴ Similarly, the Application for Authorization to Participate in the Solar Program also distinguishes between the applicant subscriber organization and "utilities" and "electric companies."

⁵ This conclusion is strengthened by the fact that only 40% of the energy generated by the solar array will be converted for use by BGE; the majority is to be used privately by the Lippys.

that a utility company provides under "the privileges granted to it by the State."); BCZR 411.1 ("For public utility uses permitted only by special exception in addition to the provisions of Section 502, the following regulations shall apply. . . .The use must be needed for the proper rendition of the public utility's service")

The increased use of solar energy is an important and laudable goal. It is hoped the County Council will promptly address any zoning ambiguities to facilitate this goal and maintain the character of the R.C. 2 zone. Currently, however, as in *People's Counsel for Balt. Cty. v. Surina*, 400 Md. 662, 688 (2007), and *Kowalski v. Lamar*, 25 Md. App. 493, 498 (1975), the only uses in this R.C. 2 zone are those permitted as of right, and those permitted by special exception. "Any use other than those permitted and being carried on as of right or by special exception is prohibited." *Id.* The use proposed by Petitioners currently is not permitted as of right, nor by special exception. The Petition for Special Exception is denied.

ORDER

THEREFORE, FOR THE REASONS STATED ABOVE, IT IS THIS 28th
day of April 2017 by the Board of Appeals of Baltimore County

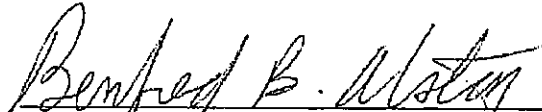
ORDERED that the Petition for Special Hearing to approve the proposed solar panel array field as a permitted accessory use or structure, be and the same is hereby **DENIED**; and it is further

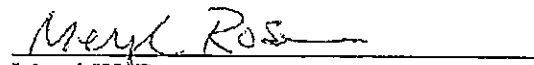
ORDERED that the Petition for Special Exception to approve the proposed solar panel array field as a "public utility use," be and the same is hereby **DENIED**.

In the matter of: Donald and Kathleen Lippy/16-335-SPHX

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Benfred B. Alston, Panel Chairman


Meryl W. Rosen

IN THE MATTER OF:
DONALD AND KATHLEEN LIPPY – LEGAL
OWNERS – PETITIONS FOR SPECIAL
HEARING AND SPECIAL EXCEPTION
FOR THE PROPERTY LOCATED AT
15700 HANOVER PIKE

4th Election District
3rd Councilmanic District

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 16-335-SPHX

* * * * *

CONCURRING/DISSENTING OPINION

First, the undersigned concurs with the majority in its opinion regarding the Petition for Special Hearing for the Solar Array as an Accessory Structure. A use or structure cannot be considered accessory in the absence of a primary use or structure on the same site to which the proposed accessory use or structure must be incidental and subordinate (among other requirements in BCZR §101). The record reflects unanimity among the parties --- the proposed solar array will be the sole, and therefore, primary use/structure on this property.

However, as to the Petition for Special Exception, the undersigned dissents from the majority's decision that the proposed solar array fails to qualify as a "public utility use not permitted by right," pursuant to Baltimore County Zoning Regulation ("BCZR") §1A01.2.C.18.

By way of background, BCZR §1A01.2 governs the RC-2 Zone, in which the property at issue falls. The proposal seeks to establish a solar array, consisting of 6,000 or so solar panels, over the property (6.5 acres). That use will be the primary and sole use for that property. Unquestionably, BCZR §1A01.2B fails to identify the proposed use as one permitted by right within the RC-2 Zone, whether expressly, implicitly or by common sense (e.g. as noted above, because the solar array is the primary and solitary use, it cannot qualify as an accessory use to be permitted by right). As such, Petitioners seek to have the solar array permitted by special

exception as a “public utility.” With that, an exercise in technological taxonomy commenced to figure out how to classify this animal --- a privately-owned and operated energy capture and distribution business that had its own energy customers, but the operation of which required BGE, clearly a public utility, and its transmission lines and meters.

Once again, the parties (and the Board) unanimously agree that the absence of a definition of “public utility” compels the Board to rely upon the definition provided by *Webster’s Thrd New International Dictionary of the English Language, Unabridged*. See, BCZR §101.1. That version defines “public utility” as a “business organization deemed by law to be vested with public interest usually because of monopoly privileges and so subject to public regulation such as fixing of rates, standards of service, and provision of facilities.”

Without question, Petitioners are not a public utility. It appears that determination is the dispositive factor for the Board’s majority. The undersigned concludes, however, Petitioners need not be a public utility to qualify under BCZR §1A01.2.C.18.

BCZR §1A01.2.C.18 does not end with the word “utility;” rather, BCZR identifies “Public utility uses not permitted as of right.” For this Board member, the phrase “public utility” describes the word “uses,” as opposed to identifying those that may avail itself of special exception relief for such uses. Utilizing this framework, the focus is properly upon the use, as opposed to the identification of the user.

If the County Council intended to limit application to existing public utilities, the phrase “public utility” would be expressed in the possessive, e.g. “public utility’s,” “public utilities’,” or be phrased in manner conveying the same, as in “Uses by a public utility not permitted by right.” In the absence of language, punctuation, or an indication that “public utility” was intended as a term of art to limit the applicability of §1A01.2.C.18 to a public utility, the

undersigned interprets the regulation in a more expansive manner than the majority. This approach also echoes the drive for renewable and alternative energy sources and reflects the advances in the technology permitting commercial production of the same.¹

Moreover, the Board needs to consider how the phrase “not permitted by right” fits into this analysis. Notably, BCZR § 1A01.2.B, permitting uses by right, does not limit the reach of any enumerated use to public utilities. The phrase “public utility,” in fact, does not appear in BCZR § 1A01.2.B. Instead, the regulation identifies certain uses, while customarily associated with public utilities, e.g. “[t]elephone, telegraph, electrical-power or other lines or cables, provided that any such line or cable is underground; underground gas, water or sewer mains or storm drains; or other underground conduits, except interstate or international pipelines,” are not exclusive to public utilities. See BCZR § 1A01.2.B.6.

Even if, arguably, the phrase “public utility” should be read in a more narrow way than the undersigned suggests, the undersigned would still find that the proposed use qualifies for a special exception under BCZR §1A01.2.C.18. The use at issue concerns the production of electricity for distribution is a use, as noted above, historically associated with a “public utility.” The subsequent distribution of the captured energy into the electrical grid require BGE meters and BGE transmission lines. Merely because a private entity originates the capture and distribution does not change the use. BGE, of course, is a public utility.

Because the regulations at issue were written while the Colts still played in Baltimore, questions arise in identifying how and where this proposal, a privately-owned energy capture and distribution operation that requires a public utility’s transmission lines to reach customers,

¹ Particularly, the proposed solar array is intended to be part of the Community Solar Energy Generating Systems Pilot Program. See Public Util Art. §7-306.2, and related COMAR regulations.

fits within the zoning regulations. The County Council recently has attempted to craft legislation that specifically governs solar arrays, conditions, and placement throughout Baltimore County. While those attempts continue, and are encouraged, the absence of more specific regulations is not dispositive.

The criteria for approval of a petition for special exception requires more. BCZR §1A01.2.C also requires that "in each case the hearing authority empowered to hear the petition finds that the use would not be detrimental to the primary agricultural uses in its vicinity." With that in mind, the undersigned concludes that the presence of a solar array on these 6.5 acres in particular are not detrimental in this manner. First, the immediate adjacent properties primarily used for agriculture are owned by the Lippys and in fact, approximately 2,200 acres of the Lippys' land have been placed into land preservation programs and easements to preserve their agricultural use. Second, Public Util. Art. § 7-306.2(d)(13) precludes equipment for a community solar energy generating system from being built on contiguous parcels of land unless the equipment is installed only on building rooftops. Because any neighboring system would be required to be limited to rooftops, the ground is preserved for agricultural use. On this point, the undersigned would encourage the County Council, when considering these issues in more specific legislation, to also fully embrace the intent to protect primary agricultural uses within the RC and other zones that prioritize it and to make sure that Baltimore County's agricultural history and future are preserved.

The undersigned further concludes that the proposal satisfies the criteria under BCZR § 502.1 to grant the Petition for a Special Exception. The Board is also required to consider BCZR § 411.1 and find that the location of the use will not seriously impair the use of the neighboring property. On this point, the proposal presents a concern in one identifiable respect --- noise ---

as testified to by Mr. Calao, an adjacent neighbor. While certain impacts may be generally accounted for by being a use permitted by special exception in a RC-2 Zone, the question of noise here is not one where there is sufficient evidence to determine if the noise would have an adverse effect above and beyond those inherently associated with special exception uses.

Mr. Calao testified that the system will be “buzzing like cicadas.” Mr. Donithan, for Earth and Air Technologies, testified that the inverter gives off 60 decibels, but the panels give off “minimal noise.” There is nothing in the record as to what would be audible at the property line separating the subject parcel with Mr. Calao’s. The record is silent as to the distance the 60 decibels would carry and the frequency, regularity, hours, and duration for such sounds. To the undersigned, this is different than other public utility uses as contemplated, including, by way of example, overhead power lines.

For these reasons and to ensure that the Calaos and other neighbors can have the quiet enjoyment of their property, the undersigned, recognizing the limited record on the issue, would condition approval upon dampening the sound so that the noise from the system, whether inverter, panels or anything else, does not exceed 40 decibels within 50 feet of the neighboring houses during the daytime and 30 decibels at night time. It is expected that the screening required to be planted may assist in this regard. If additional measures are needed, however, to preserve the Calaos and other neighbors quiet enjoyment of their respective properties, then Petitioners shall be responsible for such measures. The undersigned would also impose the other conditions ordered by the Administrative Law Judge in the hearing below on this matter and as otherwise required by any County agency or department and otherwise by law.

In the matter of: Donald and Kathleen Lippy/16-335-SPHX - Dissent

April 28, 2017
Date



Jason Garber



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

April 28, 2017

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: *In the Matter of: Donald and Kathleen Lippy – Legal Owner*
Case No.: 16-335-SPHX

Dear Counsel:

Enclosed please find a copy of the final Majority Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter, as well as a copy of Mr. Garber's Dissent.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all **Petitions for Judicial Review** filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: Donald and Kathleen Lippy
Santo Mirabili/Hanover Road Association
John Lemmerman/RTF Associates, Inc.
Ken Donithan/Earth & Air Technologies, LLC
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

TO: PATUXENT PUBLISHING COMPANY
Tuesday, August 23, 2016 Issue - Jeffersonian

Please forward billing to:

Lawrence Schmidt
Smith, Gildea & Schmidt
600 Washington Avenue, Ste. 200
Towson, MD 21204

410-821-0700

NOTICE OF ZONING HEARING

The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

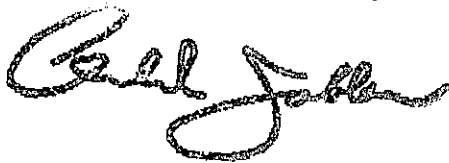
CASE NUMBER: 2016-0335-SPHX

15700 Hanover Pike
W/s Hanover Pike, 200 ft. N/of Fringer Road
4th Election District – 3rd Councilmanic District
Legal Owners/Petitioners: Donald & Kathleen Lippy

Special Exception relief for a solar panel array field as a "public utility use;" for such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

Special Hearing, if necessary and in the alternative to the Special Exception relief requested, to approve the proposed solar panel array field as a permitted accessory use or structure to the farm; and for such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

Hearing: Tuesday, September 13, 2016 at 1:30 p.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204



Arnold Jablon
Director of Permits, Approvals and Inspections for Baltimore County

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

**DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
ZONING REVIEW OFFICE**

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the legal owner/petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the legal owner/petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Case Number: 2016-0335-SPHX

Property Address: ~~Hanover Road~~ 15700 Hanover Pike

Property Description: _____

Legal Owners (Petitioners): Donald E. Lippy and Kathleen F. Lippy

Contract Purchaser/Lessee: New Source Generation, LLC

PLEASE FORWARD ADVERTISING BILL TO:

Name: Lawrence E. Schmidt, Esquire

Company/Firm (if applicable): Smith, Gildea & Schmidt, LLC

Address: 600 Washington Avenue, Suite 200
Towson, MD 21204

Telephone Number: 410-821-0070

Revised 5/20/2014



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
*Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections*

ADDRESS VERIFICATION

DATE: 6/24/15

ADDRESS: 15700 Hanover Pike

PROPERTY ID NO.: 19 00 007892

FROM: Joseph Chmura
410-887-3335

TO: Mr. Donald E. Lippy
Ms. Kathleen F. Lippy
421 Lees Mill Road
Hampstead, MD 21074

The above address, in accordance with Baltimore County House Numbers and Street Addresses is located in the boundaries of Baltimore County. Please make sure you use this address with all your correspondence from this day forward. Identify your residence and/or building by posting the number on it and your mailbox.

This official address is important not only for proper mail deliveries, but also for our Public Safety Agencies to ensure they can locate you in case of an emergency.

15700 P.k.e

CHECKLIST

<u>Comment Received</u>	<u>Department</u>	<u>Support/Oppose/ Conditions/ Comments/ No Comment</u>
<u>7-13</u>	DEVELOPMENT PLANS REVIEW (if not received, date e-mail sent _____)	<u>C</u>
<u>6/29</u>	DEPS (if not received, date e-mail sent _____)	<u>N/C</u>
_____	FIRE DEPARTMENT	_____
<u>8-2</u>	PLANNING (if not received, date e-mail sent _____)	<u>no obj w/ conditions</u>
<u>7-5-16</u>	STATE HIGHWAY ADMINISTRATION	<u>no obj</u>
_____	TRAFFIC ENGINEERING	_____
_____	COMMUNITY ASSOCIATION	_____
_____	ADJACENT PROPERTY OWNERS	_____

ZONING VIOLATION (Case No. _____)

PRIOR ZONING (Case No. _____)

NEWSPAPER ADVERTISEMENT Date: 8-23-16

SIGN POSTING Date: 8-21-16 by O'Keefe

PEOPLE'S COUNSEL APPEARANCE Yes ☒ No ☐

PEOPLE'S COUNSEL COMMENT LETTER ☐ No ☐

Comments, if any: _____

Pet No 1

sIN RE: PETITION FOR SPECIAL EXCEPTION *	BEFORE THE
(11121 Pfeffers Road)	
11 th Election District *	OFFICE OF
5 th Council District	
11121 Pfeffers LLC *	ADMINISTRATIVE HEARINGS
Legal Owner	
Petitioner *	FOR BALTIMORE COUNTY
	Case No. 2016-0086-X

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Special Exception filed for property located at 11121 Pfeffers Road. The Petition was filed on behalf of the legal owner of the subject property, 11121 Pfeffers LLC. The Special Exception petition seeks relief pursuant to §1A04.2.B.12 of the Baltimore County Zoning Regulations (B.C.Z.R) to approve a solar panel array field as a "public utility use". The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner's Exhibit No. 1.

Appearing in support of the request was Aaron Menger and Brian Childress, whose firm prepared the site plan. Patricia A. Malone, Esq. represented the Petitioner. The Petition was advertised and posted as required by the B.C.Z.R. Several citizens, whose names are listed on the sign-in sheets, attended the hearing to obtain additional information regarding the requests.

Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). Those agencies did not oppose the request, but provided suggested conditions for inclusion in the final Order.

The subject property is approximately 31.59 acres and is zoned RC-5. The site is improved with a single-family dwelling, and has a large area currently being used for agricultural purposes.

Petitioner proposes to lease an 11 acre portion of the site to be used for an array of solar panel devices. As shown on the plan, the solar panels will be situated in the southern portion of the site, near to where Interstate 95 adjoins the property. The RC-5 zone permits by special exception a "public utility" use, although that term is not defined in the Regulations.

Aaron Mengle, employed by SGC Power, LLC (the Lessee) described the components which will be used in the project, which he estimated will provide on a yearly basis 2.2 megawatts of electricity; i.e., roughly the amount of energy which is used by about 200 homes every year. The energy produced by the solar panels will be transferred to the electric "grid" and ultimately sold to consumers by energy suppliers, as shown on Petitioner's Exhibit 6. Though his company will lease approximately 11 acres of the site, Mr. Mengle estimated the solar panels and necessary equipment will occupy roughly 6 acres of the property. Mr. Mengle opined that B.C.Z.R. §502.1 (concerning special exceptions) was satisfied, and that the use would have little to no impact upon surrounding properties.

The only interpretive difficulty in the case arises because the B.C.Z.R. does not define what constitutes a "public utility," and by all accounts that term is harder to apply in light of the emergence of wind, solar and other alternative energy sources. Industry literature and the Solar Energy Industries Association, the leading trade group for solar developers, recognize that "utility-scale" solar (in contrast to residential-scale (rooftop) systems) is defined as greater than 1 megawatt. In this case the solar panels are projected to generate 2.2 megawatts, which under prevailing industry standards would constitute "utility-scale solar." For similar reasons, I believe the proposed use is properly characterized under the Regulations as a "public utility."

Special Exception Law in Maryland

Under Maryland law, a special exception use (in this case, a public utility) enjoys a presumption

that it is in the interest of the general welfare, and therefore, valid. Schultz v. Pritts, 291 Md. 1 (1981). The Schultz standard was revisited in People's Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use. No evidence was presented in this case regarding that issue, and the petition will therefore be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 16th day of December, 2015, that the Petition for Special Exception to approve a solar panel array field as a "public utility use" be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. The special exception area shall be restricted to the 11 acre tract shown on the site plan, and all public utility uses must be restricted to that area.
3. Petitioner must comply with the ZAC comments of DOP and DPR, both of which are attached hereto and incorporated herein.
4. No lighting shall be permitted on the special exception area.
5. No signage (other than customary "No Trespassing" signs) shall be permitted in connection with the public utility use.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JEB/sln

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

Real Property Data Search (w2)

Guide to searching the database

Search Result for BALTIMORE COUNTY

View Map		View GroundRent Redemption		View GroundRent Registration	
Account Identifier:		District - 04 Account Number - 1900007892			
Owner Information					
Owner Name:	LIPPY DONALD E LIPPY KATHLEEN F		Use:	AGRICULTURAL	
Mailing Address:	421 LEES MILL RD HAMPSTEAD MD 21074-1904		Principal Residence:	NO	
			Deed Reference:	/27651/ 00231	
Location & Structure Information					
Premises Address:		HANOVER RD 0-0000		Legal Description:	6.837 AC WS HANOVER 1590 S BORTNER RD
Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section: Block: Lot: Assessment Year: Plat No: Plat Ref:
0025	0021	0267		0000	2016
Special Tax Areas:			Town: NONE Ad Valorem: Tax Class:		
Primary Structure Built	Above Grade Enclosed Area		Finished Basement Area	Property Land Area	County Use
				6.8300 AC	05
Stories	Basement	Type	Exterior	Full/Half Bath	Garage Last Major Renovation
Value Information					
	Base Value		Value As of 01/01/2016		Phase-in Assessments As of 07/01/2016 As of 07/01/2017
Land:	2,500		2,500		
Improvements	0		0		
Total:	2,500		2,500		2,500
Preferential Land:	2,500				2,500
Transfer Information					
Seller: LIPPY BROTHERS INC		Date: 02/13/2009		Price: \$205,000	
Type: ARMS LENGTH IMPROVED		Deed1: /27651/ 00231		Deed2:	
Seller: BORTNER ROBERT O		Date: 12/08/1982		Price: \$0	
Type: NON-ARMS LENGTH OTHER		Deed1: /06442/ 00740		Deed2:	
Seller:		Date:		Price:	
Type:		Deed1:		Deed2:	
Exemption Information					
Partial Exempt Assessments:	Class	07/01/2016		07/01/2017	
County:	000	0.00			
State:	000	0.00			
Municipal:	000	0.00 0.00		0.00 0.00	
Tax Exempt:	Special Tax Recapture:				
Exempt Class:	AGRICULTURAL TRANSFER TAX				
Homestead Application Information					
Homestead Application Status: No Application					

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No.

141408

Date:

6/24/16

PAID RECEIPT

BUSINESS ACTUAL TIME DRW
6/27/2016 6/24/2016 10:46:21 2

SSS 3302 MAIL JEE
>>RECEIPT # 969686 6/24/2016 CFLW

Dept 5 528 ZONING VERIFICATION
CF NO. 141408

Recpt Tot \$1,000.00
\$1,000.00 CK \$.00 CA
Baltimore County, Maryland

Fund	Dept	Unit	Sub Unit	Rev Source/	Sub Rev/	Obj	Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150						1000.00

Total: 1000.00

Rec From: Smith, Gilder & Schmidt

For: 15700 Hammer Pike

2016-0335-SPHX

DISTRIBUTION

WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING
PLEASE PRESS HARD!!!!

CASHIER'S
VALIDATION

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No 143313

Date:

11/17/16

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Obj	Dept	Obj	BS Acct	Amount
001	806	000		6150					450.00 385.00

Total:

~~450.00~~
385.00

Rec From:

Mike McCann, Esq

For:

2016-0335-SPHY (SX only)
15700 Hanover Pike
CK# 4581

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

PAID RECEIPT

BUSINESS

ACTUAL

TIME

DRW

11/18/2016

11/17/2016

15:26:22

5

REG MS05

WALKIN LRB

>>RECEIPT # 878750

11/17/2016

OFLH

Dept

5 528 ZONING VERIFICATION

CR NO.

143313

Recpt Tot

\$385.00

\$385.00 CK

\$1.00 CA

Baltimore County, Maryland

CASHIER'S
VALIDATION

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Michael R. McCann, P.A.

118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

RECEIVED

NOV 17 2016

OFFICE OF ADMINISTRATIVE HEARINGS

November 17, 2016

Via Hand-Delivery

Arnold Jablon, Director
Department of Permits, Approvals & Inspections
111 W. Chesapeake Ave.
Suite 205
Towson, Maryland 21204

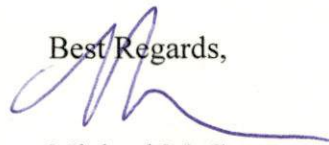
Re: Notice of Appeal of OAH Decision
Case No:2016-0335-SPHX

Dear Mr. Jablon:

Enclosed please find a notice of appeal of the Opinion and Order of the Office of Administrative Hearings in the above-referenced matter. Enclosed is a check for Three Hundred Eighty Dollars (\$380.00) for the filing fee.

Thank you for your attention to this matter. Please contact me if you have any questions or concerns.

Best Regards,



Michael McCann

cc: Baltimore County Board of Appeals
Office of Administrative Hearings

IN RE: PETITION FOR SPECIAL HEARING
AND SPECIAL EXCEPTION
15700 Hanover Pike
4th Election District
3rd Councilmanic District

Legal Owner: Donald and Kathleen Lippy

Petitioner

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* Case No: 2016-0335-SPHX

*

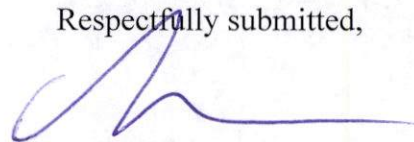
*

* * * * *

NOTICE OF APPEAL

Hanover Road Association and Santo Mirabili, pursuant to Baltimore County Code §32-3-401, hereby file an appeal to the Board of Appeals of Baltimore County from the Opinion and Order of the Administrative Law Judge dated October 18, 2016. Pursuant to Rule 3 of the Rules of Practice and Procedure of the Board of Appeals, the address of the appellants is: Hanover Road Association, PO Box 121, Upperco, Maryland 21155.

Respectfully submitted,



Michael R. McCann
Michael R. McCann, P.A.
118 W. Pennsylvania Ave.
Towson, MD 21204
(410) 825-2150

Attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on 17th day of November a copy of the foregoing Notice of Appeal was mailed, via first-class mail, postage prepaid to:

Lawrence Schmidt
Gildea & Schmidt, LLC
600 Washington Avenue, Ste. 200
Towson, Maryland 21204



Michael R. McCann



KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

October 18, 2016

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue
Suite 200
Towson, Maryland 21204

Michael R. McCann, Esquire
118 W. Pennsylvania Avenue
Towson, Maryland 21204

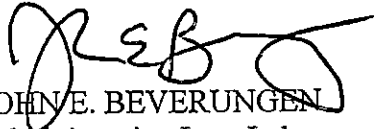
RE: Petition for Special Hearing and Special Exception
Property: 15700 Hanover Pike
Case No. 2016-0335-SPHX

Dear Counsel:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the Baltimore County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Baltimore County Office of Administrative Hearings at 410-887-3868.

Sincerely,


JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

**IN RE: PETITIONS FOR SPECIAL HEARING *
AND SPECIAL EXCEPTION**

(15700 Hanover Pike)

4th Election District

3rd Council District

Donald E. & Kathleen F. Lippy

Legal Owners

Petitioners

BEFORE THE

OFFICE OF

ADMINISTRATIVE HEARINGS

FOR BALTIMORE COUNTY

Case No. 2016-0335-SPHX

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Special Exception filed on behalf of Donald E. & Kathleen F. Lippy, legal owners ("Petitioners"). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve the proposed solar panel array field as a permitted accessory use or structure to the farm. A Petition for Special Exception was filed to approve the proposed solar panel array field as a "public utility use."

Appearing at the public hearing in support of the requests was Donald E. Lippy, surveyor John Lemmerman and Ken Donithan. Lawrence E. Schmidt, Esq. represented the Petitioners. Several protestants, represented by Michael McCann, Esq., opposed the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR).

Petitioners presented testimony from surveyor John Lemmerman, who described the project and introduced the site plan (Ex. 2A) he prepared for the case. The witness testified the parcel is approximately 6.5 acres and is zoned R.C.-2. He stated landscaping and fencing would be provided to screen the solar panels, and noted Petitioners would comply with the County's

ORDER RECEIVED FOR FILING

Date 10-18-16

By sen

Scenic Route guidelines.

Ken Donithan is the owner of Earth and Air Technologies, and he testified that solar projects comprise the vast majority of his business. He has an electrical engineering degree from Johns Hopkins University and is certified as a "power engineer." Mr. Donithan testified he has designed and constructed approximately 100 solar farms, and he believes the subject property is ideal given the site is open, relatively flat and adjacent to high power electric lines on Hanover Pike. The witness stated approximately 6,500 panels would be installed at the site--which would be an unmanned facility--which would generate two (2) megawatts of electricity. Mr. Donithan opined the use would not be detrimental to the community, and he also stated the panels would meet all fire protection codes and the solar farm would not generate any noise which could be heard off site.

In response to questions on cross-examination, the witness stated approximately 60% of the electricity generated would be used by the Lippy farm, while 40% would go into the electric grid and sold to other customers. Given the size and scope of the facility, he confirmed the project would be regulated by the Maryland Public Service Commission.

The final witness in Petitioners' case was Donald Lippy, who has been farming in Baltimore County for over 50 years. Mr. Lippy testified his family owns approximately 2,600 acres of land in the County, 2,200 of which are protected by agricultural easements. The witness stated his children would like to continue farming, but face increasing economic pressures with the rapidly fluctuating prices of crops. He testified the solar farm would generate steady income that would greatly assist his farming operations.

Several community members testified and expressed concern with the project. In addition to noting that proposed legislation concerning solar farms was pending before the County Council,

ORDER RECEIVED FOR FILING

Date 10-18-11
By SEN

neighbors stated that numerous applications have been made recently to construct solar farms in agricultural zones. The neighbors believe the solar farm would be a visual blight that would be detrimental to the character of the rural area. In addition, they testified that using prime and productive agricultural land for solar farms would jeopardize the viability of area farms.

One threshold issue concerns whether a “solar farm” is permitted in the R.C.-2 zone. The Regulations permit by special exception “public utility uses.” B.C.Z.R. §1A01.2.C.18. The term “public utility” is not defined in the Regulations. The Webster’s Third New International Dictionary defines the term as “a business organization deemed by law to be vested with public interest usually because of monopoly privileges and so subject to public regulation.” Here, Mr. Donithan confirmed this project would be regulated by the Maryland Public Service Commission, which regulates public utility companies. As such, I believe the solar farm would qualify as a “public utility use” permitted in the zone by special exception.

SPECIAL EXCEPTION

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. Schultz v. Pritts, 291 Md. 1 (1981). The Schultz standard was revisited in People’s Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use.

Maryland courts recognize most uses for which a special exception is required are regarded as “potentially troublesome because of noise, traffic, congestion....” Montgomery County v. Butler, 417 Md. 271, 297 (2010). The primary concern identified by the community was aesthetics or the loss of a rural feel, which I believe would be the case for any solar farm in an R.C.-2 zone.

ORDER RECEIVED FOR FILING

Date

10-18-14

By

SEN

Thus that impact is “inherent” in the use. To warrant the denial of a special exception, the opponents must show that the use, at the particular location proposed, would have “non-inherent adverse effects.” Id. at 282. In this case, I do not believe the Protestants made such a showing.

A discussion was held at the hearing concerning the evidentiary burden in a special exception case. I believe Petitioners have an initial burden to establish a *prima facie* case, demonstrating they “conform to all applicable requirements.” Loyola College, 406 Md. at 109. Thereafter, protestants must rebut the evidence presented by Petitioners and establish that the adverse impacts at this location would be greater than those inherent in the use. Id.; Attar v. DMS Tollgate, LLC, 2015 WL 9461754 (unreported, Court of Special Appeals); Dellinger v. Lincoln County, 789 S.E.2d 21, 30 (N.C. 2016)(reviewing special exception burden of proof in case involving solar farm).

Based on the testimony of Petitioners’ witnesses (as summarized above), I believe they have stated a *prima facie* special exception case, especially since they are aided by the presumption discussed in Schultz. In rebuttal, Protestants focused upon the aesthetic or visual impact of the use, which I believe is “inherent” in “public utilities” generally and solar farms specifically. Protestants argue the impact would be greater here due to the scenic route designation, but I do not believe such a designation would cause the panels to have any non-inherent impacts. The scenic route guidelines do not prohibit development; instead they attempt to ensure that new buildings and projects are constructed in such a manner so as to reduce to the extent possible their impact upon the scenic view or route. Here, Petitioners’ witnesses testified there will be a significant buffer area with fencing and landscaping, which I believe is consistent with the scenic view requirements set forth in the CMDP.

In granting a special exception in the R.C.-2 zone, the ALJ must also find “that the use

ORDER RECEIVED FOR FILING

Date

10-18-16

By

SLN

would not be detrimental to the primary agricultural uses in the vicinity.” B.C.Z.R. §1A01.2.C. Testimony addressing this point was provided by Donald Lippy, who is arguably one of the best known and well regarded farmers in Baltimore County. In fact, it is the Lippy family that owns and conducts most of the “agricultural uses in the vicinity.” Mr. Lippy explained the solar farm would provide a reliable source of income that would help to subsidize his farming operations that face enormous economic pressures in the current climate. The solar farm would occupy only six (6) acres of agricultural land, but would yield significant benefits that would allow Mr. Lippy’s children to continue farming in this area.

I understand Protestants’ concerns about the large number of solar farms proposed in this area and throughout the County generally. But I am required to focus upon the facts of this case, and cannot consider the impact of other cases that may or may not be filed in the future seeking similar approvals. Such issues will of course be considered by the County Council as it determines whether or not to enact legislation governing solar farms.

SPECIAL HEARING

The petition for special hearing seeks approval of the solar array as accessory to the farm use. As indicated at the hearing, while solar panels are frequently located in rural agricultural settings, I do not believe the practice is so widespread that it can be said they are “customarily” found on farms. B.C.Z.R. §101.1 (definition of “accessory use or structure”). In addition, the proposed solar panels will occupy nearly all of the parcel on which they would be situated, as shown on Petitioners’ Exhibit 2B. There would be no farming operations on the parcel if the solar panels were installed, and thus there would not be a principal farm use to which the panels would be “accessory.” The principal--and only--use of the property would be a solar farm. As

ORDER RECEIVED FOR FILING
Date 10-18-16
By Sen

such, I believe the petition for special hearing must be denied.

THEREFORE, IT IS ORDERED this 18th day of October 2016, by this Administrative Law Judge, that the Petition for Special Hearing to approve the proposed solar panel array field as a permitted accessory use or structure to the farm, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Special Exception to approve the proposed solar panel array field as a "public utility use" be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.
2. Prior to issuance of permits Petitioners must submit for approval by the Baltimore County landscape architect a landscape plan demonstrating the "solar farm" will be adequately screened from Hanover Pike consistent with the Scenic View guidelines in the CMDP.
3. No signage or lighting shall be permitted.
4. If the solar farm is not in continuous use and operation for a period of one (1) year or more, it shall be removed at the owners' or operator's sole expense. Should the owners or operators fail to do so, Baltimore County may engage a contractor to perform the work, and all costs and expenses associated therewith shall be a lien on the property and collected in the same manner as real estate taxes.
5. The solar farm shall be enclosed by perimeter fencing to prevent unauthorized access to the site and screen the view from off-site.
6. All power lines at the site, to the extent practicable, shall be placed underground.

ORDER RECEIVED FOR FILING

Date 10-18-16
By sen

Any appeal of this decision must be made within thirty (30) days of the date of this Order.



JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

ORDER RECEIVED FOR FILING

Date 10-18-14

By sln

CASE NAME En. Mr. AIR Tech
CASE NUMBER 2016-335-SPHX
DATE 10/12/16

[illegible]

CASE NAME _____
CASE NUMBER 2016-0335-SPHX
DATE 10-12-2016

[illegible]

CASE NAME Lippy
CASE NUMBER 2016-0335-SPHX
DATE 9-13-16

[illegible]

CASE NAME Jumpy
CASE NUMBER 2016-0335-SPHX
DATE 9-13-16

[illegible]



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

September 8, 2016

Donald E & Kathleen Lippy
421 Lees Mill Road
Hampstead MD 21074

RE: Case Number: 2016-0335 SPHX, Address: 15700 Hanover Pike

Dear Mr. & Ms. Lippy:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on June 24, 2016. This letter is not an approval, but only a **NOTIFICATION**.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

A handwritten signature in black ink, reading "W. Carl Richards, Jr." in a cursive style.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: jaw

Enclosures

c: People's Counsel
Lawrence E Schmidt, Esquire, 600 Washington Avenue, Suite 200, Towson MD 21204

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor



Pete K. Rahn, Secretary
Gregory C. Johnson, P.E., Administrator

Date: 7.5.2016

Ms. Kristen Lewis
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

Dear Ms. Lewis:

Thank you for the opportunity to review your referral request on the subject of the Case number referenced below. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Case No. 2016-0335-SPH X

*Special Exception Special Hearing
Donald E. Lippy
15700 Hanover Pike*

Should you have any questions regarding this matter, please contact Mr. Richard Zeller at 410-229-2332 or 1-866-998-0367 (in Maryland only) extension 2332, or by email at (rzeller@sha.state.md.us).

Sincerely,

A handwritten signature in blue ink that reads "Richard Zeller".

Wendy Wolcott, PLA
Acting Metropolitan District Engineer – District 4
Baltimore & Harford Counties

WW/RAZ

BALTIMORE COUNTY, MARYLAND INTER-OFFICE MEMORANDUM

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: August 2, 2016

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 16-335

RECEIVED

AUG 15 2016

INFORMATION:

Property Address: 15700 Hanover Pike
Petitioner: Donald Lippy
Zoning: RC 2
Requested Action: Special Hearing, Special Exception

OFFICE OF ADMINISTRATIVE HEARINGS

The Department of Planning has reviewed the petition for special exception to use the property as a public utility (solar panel array field) and, in the alternative, the petition for special hearing to determine whether or not the Administrative Law Judge should approve the proposed solar panel array field as a permitted accessory use or structure to the farm.

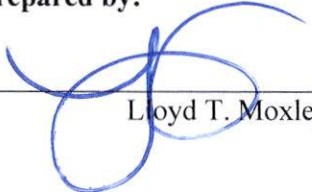
A site visit was conducted on July 19, 2016. Hanover Pike is a Baltimore County Scenic Route.

The Department has no objection to granting the petitioned zoning relief conditioned upon the following:

- Install vegetative screening consisting of mixed indigenous hardwood and evergreen trees and shrubs in a natural formation along the Fringer Road and Hanover Pike frontages to mitigate the visual impact of the public utility from the scenic route.
- All proposed lighting will be sited in such a way as to have minimal spillage unto neighboring properties.
- Proposed signage to be limited to that necessary for safety and security purposes.
- Provisions of BZCR § 426.10, modified to address removal of the renewable energy production installation/public utility, be incorporated into the Final Decision and Order of the Administrative Law Judge.

For further information concerning the matters stated herein, please contact Joseph Wiley at 410-887-3480.

Prepared by:



Lloyd T. Moxley

Division Chief:



Kathy Schlabach

AVA/KS/LTM/ka

c: Joseph Wiley

James Hermann, R.L.A., Department of Permits, Approvals and Inspections
Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC
Office of the Administrative Hearings
People's Counsel for Baltimore County

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

FROM: Dennis A. Kennedy, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For July 4, 2016
Item No. 2016-0335

DATE: July 13, 2016

The Bureau of Development Plans Review has reviewed the subject zoning item and we have the following comment.

If granted, a Landscape Plan is required per requirements of the Landscape Manual, and it should include screening from adjacent residential uses.

*

*

*

*

*

*

DAK:CEN
cc:file

ZAC-ITEM NO 16-0335-07042016.doc

9-13

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



RECEIVED

JUN 29 2016

OFFICE OF ADMINISTRATIVE HEARINGS

TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and
Sustainability (EPS) - Development Coordination

DATE: June 29, 2016

SUBJECT: EPS Comment for Zoning Item # 2016-0335-SPHX
Address 15700 Hanover Pike
(Lippy Property)

Zoning Advisory Committee Meeting of **July 4, 2016.**

X The Department of Environmental Protection and Sustainability has no
comment on the above-referenced zoning item.

Reviewer: Steve Ford

Date: 06-29-2016

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and
Sustainability (EPS) - Development Coordination

DATE: June 29, 2016

SUBJECT: EPS Comment for Zoning Item # 2016-0335-SPHX
Address 15700 Hanover Pike
(Lippy Property)

Zoning Advisory Committee Meeting of **July 4, 2016.**

X The Department of Environmental Protection and Sustainability has no
comment on the above-referenced zoning item.

Reviewer: Steve Ford

Date: 06-29-2016

Sherry Nuffer

From: John E. Beverungen
Sent: Thursday, September 08, 2016 1:27 PM
To: Lawrence Schmidt; Michael McCann
Cc: Alyssa Fiore; Debra Wiley; Sherry Nuffer
Subject: RE: Lippy property - Case no. 0335-SPHX

Gentlemen,

The postponement request in the above matter will be granted in part and denied in part, as I hope to make clear below.

The hearing will convene on September 13 at 1:30 P.M. so that counsel can enter their appearance and the case can be formally opened. I trust Mr. McCann—with the Board's indulgence-- can make himself available for this purpose, which should take no more than 5-10 minutes. After confirming some preliminary issues (i.e., proper posting, etc.) the hearing will conclude for the day, to be rescheduled for a later date by agreement of counsel. On this point, I am confident the case can be rescheduled during the month of October, and the Petitioner would not be required to again post the property or place an advertisement in the newspaper.

As for notifying interested citizens of the postponement, I assume Mr. McCann has the sign-in sheets for the Hanover Road Ass'n. meeting referenced by Mr. Schmidt. It will be Mr. McCann's responsibility to notify these folks of the postponement as well as the date of the new hearing when that is scheduled. Should any members of the community appear on September 13, I will give them the option of providing their testimony on that date or returning when the hearing is rescheduled.

John Beverungen
ALJ

From: Lawrence Schmidt [mailto:lschmidt@sgs-law.com]
Sent: Thursday, September 08, 2016 9:02 AM
To: Michael McCann <michael@mmccannlaw.net>
Cc: Alyssa Fiore <afiore@sgs-law.com>; John E. Beverungen <jbeverungen@baltimorecountymd.gov>; Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: Re: Lippy property - Case no. 0335-SPHX

Judge Beverungen

I certainly defer to what Mr. McCann says as I am not in the case. I was relying on what info I received from the Board and Mr. Rosenblatt.

There was a sign in sheet at the meeting but I do not have it. The meeting was hosted by the Hanover Road Association.

At the least, I would ask that we convene the hearing. We could postpone if necessary and select a date while all are present. If Mr McCann is at the board (down the hall) perhaps he could get away to do that

Obviously I will defer to your wishes
Larry Schmidt

Sent from my iPhone

On Sep 8, 2016, at 8:55 AM, Michael McCann <michael@mmccannlaw.net> wrote:

Judge Beverungen: Despite what the notice in *In re: Hunt Valley Presbyterian Church* may say, and despite even what Mr. Rosenblatt may say, the hearing in that case will not last 30-60 minutes. It involves a dispositive motion on a very complicated issue with numerous exhibits. While it is *conceivable* the hearing could conclude by 1:30 pm, particularly if the Board does not break for lunch, there is no certainty to that.

I understand Mr. Schmidt's concern about notifying people who may want to attend. There is a list of the attendees at the meeting two nights ago referenced by Mr. Schimidt. We would take responsibility for notifying those people.

Thank you for your consideration.

Michael R. McCann, PA
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(p) 410 825 2150
(f) 410 825 2149

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From: Alyssa Fiore [<mailto:afiore@sgs-law.com>]
Sent: Wednesday, September 07, 2016 3:34 PM
To: jbeverungen@baltimorecountymd.gov
Cc: Michael McCann <michael@mmccannlaw.net>; dwiley@baltimorecountymd.gov; Lawrence Schmidt <lschmidt@sgs-law.com>
Subject: RE: Lippy property - Case no. 0335-SPHX

Judge Beverungen,

Please see the attached response from Mr. Schmidt in connection with the pending postponement request for the above referenced matter.

Thank you.

Alyssa M. Fiore | Paralegal
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
afiore@sgs-law.com | www.sgs-law.com

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From: Lawrence Schmidt
Sent: Wednesday, September 07, 2016 11:54 AM
To: Alyssa Fiore
Subject: FW: Lippy property - Case no. 0335-SPHX

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

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From: John E. Beverungen [<mailto:jbeverungen@baltimorecountymd.gov>]
Sent: Wednesday, September 07, 2016 11:51 AM
To: Michael McCann; Lawrence Schmidt
Cc: Debra Wiley
Subject: FW: Lippy property - Case no. 0335-SPHX

Gentlemen,

I received the attached request yesterday from Mr. McCann, and understand that Mr. Schmidt intends to file a response in the next day or so. I will review both submissions and send out an order by the end of the week.

On another note, I received this email at my personal email address, rather than my County email account. I am sure Mr. McCann got that address from correspondence in a prior matter, since I frequently read and respond to emails from home. I would ask however that in the future you use either my County address or **both** accounts, to be sure I receive and review things in a timely manner.

John Beverungen
ALJ

From: John Beverungen [<mailto:johnbeverungen@gmail.com>]
Sent: Wednesday, September 07, 2016 11:15 AM
To: John E. Beverungen <jbeverungen@baltimorecountymd.gov>
Subject: Fwd: Lippy property - Case no. 0335-SPHX

----- Forwarded message -----

From: "Michael McCann" <michael@mmccannlaw.net>
Date: Sep 6, 2016 5:32 PM
Subject: Lippy property - Case no. 0335-SPHX

To: "John Beverungen" <johnbeverungen@gmail.com>
Cc: "Lawrence Schmidt" <lschmidt@sgs-law.com>

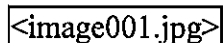
Judge Beverungen: Please see attached.

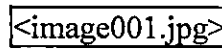
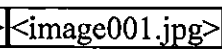
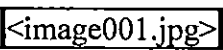
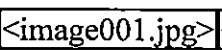
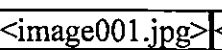
Thank you.

Michael R. McCann, PA
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(p) [410 825 2150](tel:4108252150)
(f) [410 825 2149](tel:4108252149)

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www.baltimorecountymd.gov

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
JASON T. VETTORI
DAVID W. TERRY*

*Admitted in MD, MO, IL, AR

LAUREN DODRILL BENJAMIN
CHRISTOPHER W. COREY
MARIELA C. D'ALESSIO**
MELISSA L. ENGLISH
SARAH A. ZADROZNY

of counsel:

JAMES T. SMITH, JR.
EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON

**Admitted in MD, FL, PA

September 7, 2016

Sent Via Email Only

John E. Beverungen, Esquire
Office of Administrative Hearings
105 W. Chesapeake Avenue, Suite 103
Towson, MD 21204

Re: 15700 Hanover Pike
Case No. 2016-0335-SPHX

Dear Administrative Law Judge Beverungen:

I am in receipt of Mr. McCann's Entry of Appearance and Request for Postponement in the above matter currently scheduled for a hearing on September 13, 2016 at 1:30 PM. I received Mr. McCann's email at 5:32PM yesterday. Although I normally have no objection to consenting to a postponement by fellow counsel, events in this case dictate otherwise.

First, I have been advised by the Board of Appeals that the matter which Mr. McCann identifies as a source of the conflict is *In Re: Hunt Valley Presbyterian Church*. According to the Board's website and Notice of Assignment (a copy attached) the matter is scheduled for a 10:00AM Motion's Hearing on September 13, 2016. The Board's website indicates a time estimate of 30 minutes for argument. The Notice indicates that no testimony or evidence will be presented. Further, I happened to run into Adam Rosenblatt, Esquire (opposing counsel in that matter) this morning at the Board of Appeals. He advised that he anticipated that argument would be concluded within 30-60 minutes. Therefore, I do not believe that this case will present a conflict for Mr. McCann.

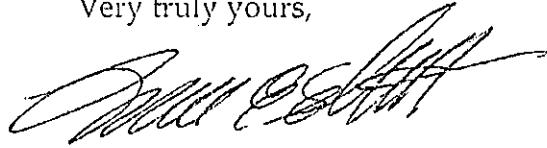
Secondly, I attended a meeting last evening beginning at 7:30PM at the St. Paul's Church in Upperco, Maryland related to this matter and the general subject matter of the Petition (solar farms). The meeting was hosted by the Hanover Road Association which is the primary association for that geographic area. There were significant number of residents present and a number indicated their intent to attend the hearing on September 13, 2016. A representative of the Valley's Planning Council was present and did not indicate that Mr. McCann had been engaged, nor that a postponement was being requested. I question whether the individuals that attended the meeting yesterday can be notified of a postponement at this late hour.

John E. Beverungen, Esquire
September 7, 2016
Page 2

Finally, from my client's perspective, obtaining a decision on the Petition for Special Exception on a timely basis is desirable. A delay is costly and detrimental to my client's business concerns.

Again, I do not make it a practice to cause inconvenience to opposing counsel, but I question whether a postponement for the reasons expressed is warranted. I would appreciate you taking these comments under consideration when deciding Mr. McCann's request.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lawrence E. Schmidt", with a stylized, cursive script.

Lawrence E. Schmidt

LES/amf
Enclosures

CC: Michael R. McCann, Esquire
Donald Lippy
Ken Donithan, Earth & Air Technologies
John Lemmerman, RTF Surveying

[Back](#)

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Hunt Valley Presbyterian Church

Date/Time:

Tue. Sep 13 2016 10:00am - 10:30am

Location:

Jefferson Building

Details:

Hearing Location: Second Floor, Suite 206

The Jefferson Building, 105 West Chesapeake Avenue, Towson, Maryland 21204

In the matter of: Hunt Valley Presbyterian Church, Inc.

Case number: 16-099-SPH

Property located: 13015 Beaver Dam Road

Petition for Special Hearing to approve the removal of Lot 1 as an amendment to the most recently approved Final Development Plan for Bishops Pond or to approve the proposed plan changes as an amendment to the Final Development Plan.

Contact:

Board of Appeals appealsboard@baltimorecountymd.gov 410-887-3180

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- [Share](#)



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

July 21, 2016

NOTICE OF POSTPONEMENT AND REASSIGNMENT OF ARGUMENT ONLY ON MOTION TO DISMISS

IN THE MATTER OF: Hunt Valley Presbyterian Church, Inc.
13015 Beaver Dam Road
16-099-SPH 8th Election District; 3rd Councilmanic District

Re: Petition for Special Hearing to approve the removal of Lot 1 as an amendment to the most recently approved Final Development Plan for Bishops Pond or to approve the proposed plan changes as an amendment to the Final Development Plan.

3/15/16 Opinion and Order issued by the Administrative Law Judge wherein the requested relief was DISMISSED as unnecessary.

ASSIGNED FOR: TUESDAY, SEPTEMBER 13, 2016 AT 10:00 A.M.

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE:

- This will be a **MOTION ONLY HEARING**. The Board will hear argument only on the subject Motion to Dismiss, and any responses thereto, with no evidence or testimony as to the merits of the case to be received at that time.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

NEW! Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.

NEW! Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington, Administrator

Notice of Postponement and Reassignment
In the matter of: Hunt Valley Presbyterian Church
Case number: 16-099-SPH
July 21, 2016
Page 2

c: Counsel for Petitioner
Petitioner

: Patricia A. Malone, Esquire
: Hunt Valley Presbyterian Church, Inc.

Counsel for Protestants
Protestants

: Michael R. McCann, Esquire
: Deidre Bosley, Michael and Mary Kate Fitz-Patrick;
Tony and Marsha Gaspari; Beaver Dam Community Assoc

Century Engineering
Office of People's Counsel
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney

Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Michael Field, County Attorney, Office of Law

Michael R. McCann, P.A.

118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

JB 9-13-16
1130 PM
RECEIVED

SEP 09 2016

OFFICE OF ADMINISTRATIVE HEARINGS

August 6, 2016

Via Email & US Mail

The Honorable John Beverungen
Administrative Law Judge
Office of Administrative Hearings
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: 2016-0335-SPHX
West side of Hanover Pike, 200 ft. north of Fringer Road

Dear Judge Beverungen:

I was retained today to represent the Valleys Planning Council in the above-referenced matter. I write to request a postponement of the hearing in the case, which is set for September 13, 2016. I am scheduled to appear before the County Board of Appeals that day in *In re: Hunt Valley Presbyterian Church*, Case No. 2016-0099-SPH.

Thank you for your consideration.

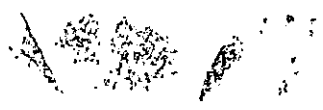
Respectfully,

Michael R. McCann

cc: Larry Schmidt, Esq. (via email & US Mail)



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Michael R. McCann
Michael R. McCann, PA
118 W. Pennsylvania Avenue
Towson, Maryland 21204

BALTIMORE
MD 212
07 SEP '16
PM 9 L



RECEIVED

SEP 09 2016

OFFICE OF ADMINISTRATIVE HEARINGS

The Honorable John Beverungen
Administrative Law Judge
Office of Administrative Hearings
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

21204-471028





501 N. Calvert St., P.O. Box 1377
Baltimore, Maryland 21278-0001
tel: 410/332-6000
800/829-8000

WE HEREBY CERTIFY, that the annexed advertisement of Order No 4394489

Sold To:

Smith Gildea & Schmidt LLC - CU00513080
600 Washington Ave
Ste 200
Towson, MD 21204-1301

Bill To:

Smith Gildea & Schmidt LLC - CU00513080
600 Washington Ave
Ste 200
Towson, MD 21204-1301

Was published in "Jeffersonian", "Bi-Weekly", a newspaper printed and published in Baltimore County on the following dates:

Aug 23, 2016

The Baltimore Sun Media Group

By S. Wilkinson

Legal Advertising

NOTICE OF ZONING HEARING

The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: # 2016-0335-SPHX

15700 Hanover Pike
W/s Hanover Pike, 200 ft. N/of Fringer Road
4th Election District - 3rd Councilmanic District
Legal Owner(s) Donald & Kathleen Lippy

SPECIAL EXCEPTION: relief for a solar panel array field as a "public utility use"; for such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

SPECIAL HEARING: if necessary and in the alternative to the Special Exception relief requested, to approve the proposed solar panel array field as a permitted accessory use or structure to the farm; and for such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

Hearing: Tuesday, September 13, 2016 at 1:30 p.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204.

ARNOLD JABLON, DIRECTOR OF PERMITS, APPROVALS AND INSPECTIONS FOR BALTIMORE COUNTY

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Administrative Hearings Office at (410) 887-3868.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT 8/776 Aug. 23

4394489

CERTIFICATE OF POSTING

ATTENTION: KRISTEN LEWIS

DATE: 8/21/2016

Case Number: 2016-0335-SPHX

Petitioner / Developer: LAWRENCE SCHMIDT, ESQ. ~
MR. & MRS. LIPPY

Date of Hearing (Closing): SEPTEMBER 13, 2016

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at:
15700 HANOVER PIKE

The sign(s) were posted on: AUGUST 21, 2016



Linda O'Keefe
(Signature of Sign Poster)

Linda O'Keefe
(Printed Name of Sign Poster)

523 Penny Lane
(Street Address of Sign Poster)

Hunt Valley, Maryland 21030
(City, State, Zip of Sign Poster)

410 - 666 - 5366
(Telephone Number of Sign Poster)



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

August 4, 2016

NOTICE OF ZONING HEARING

The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2016-0335-SPHX

15700 Hanover Pike
W/s Hanover Pike, 200 ft. N/of Fringer Road
4th Election District – 3rd Councilmanic District
Legal Owners/Petitioners: Donald & Kathleen Lippy

Special Exception relief for a solar panel array field as a "public utility use;" for such other and further relief as may be required by the Administrative Law Judge for Baltimore County. **Special Hearing**, if necessary and in the alternative to the Special Exception relief requested, to approve the proposed solar panel array field as a permitted accessory use or structure to the farm; and for such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

Hearing: Tuesday, September 13, 2016 at 1:30 p.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

A handwritten signature in black ink, appearing to read "Arnold Jablon", is written over a circular stamp that partially overlaps the signature.

Arnold Jablon
Director

AJ:kl

C: Lawrence Schmidt, 600 Washington Avenue, Ste. 200, Towson 21204
Mr. & Mrs. Lippy, 421 Lees Mill Road, Hampstead 21074

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WEDNESDAY, AUGUST 24, 2016.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE OFFICE
AND SPECIAL EXCEPTION	*	
15700 Hanover Pike; W/S Hanover Pike,	*	OF ADMINSTRATIVE
200' N of c/line Fringer Road	*	
4 th Election & 3 rd Councilmanic Districts	*	HEARINGS FOR
Legal Owner(s): Donald & Kathleen Lippy	*	
Contract Purchaser(s): New Source	*	BALTIMORE COUNTY
Generation, LLC	*	
Petitioner(s)	*	2016-335-SPHX

* * * * *

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all documentation filed in the case.

RECEIVED
JUL 05 2016

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of July, 2016, a copy of the foregoing Entry of Appearance was mailed to Lawrence Schmidt, Esquire, 600 Washington Avenue, Suite 200, Towson, Maryland 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address Hanover Road 15700 Hanover Pike which is presently zoned RC 2
 Deed References: 27651/00231 10 Digit Tax Account # 1900007892
 Property Owner(s) Printed Name(s) Donald E. Lippy and Kathleen F. Lippy

(SELECT THE HEARING(S) BY MARKING **X** AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. ☒ a **Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

Please see attached.

2. ☒ a **Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

Please see attached.

3. ☐ a **Variance** from Section(s)

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons:
 (Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)

TO BE PRESENTED AT HEARING

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

Donald E. Lippy, Authorized Representative of New Source Generation, LLC

Name- Type or Print

Donald E. Lippy

Signature

421 Lees Mill Road Hampstead MD

Mailing Address City State

21074

Zip Code Telephone # Email Address

Attorney for Petitioner:

Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC

Name- Type or Print

Lawrence E. Schmidt

Signature

600 Washington Avenue, Suite 200 Towson MD

Mailing Address City State

21204 (410) 821-0070 lschmidt@sgs-law.com

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Donald E. Lippy / Kathleen F. Lippy

Name #1 - Type or Print

Donald E. Lippy

Signature #1

Name #2 - Type or Print

Kathleen F. Lippy

Signature #2

421 Lees Mill Road Hampstead MD

Mailing Address City State

21074

Zip Code Telephone # Email Address

Representative to be contacted:

Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC

Name - Type or Print

Lawrence E. Schmidt

Signature

600 Washington Avenue, Suite 200 Towson MD

Mailing Address City State

21204 (410) 821-0070 lschmidt@sgs-law.com

Zip Code Telephone # Email Address

CASE NUMBER 2016-0335-SPAX Filing Date 6/24/2016

ORDER RECEIVED FOR FILING

Do Not Schedule Dates: 10-18-16 Reviewer W

Date 12/1 REV. 10/4/11

By Den

**ATTACHMENT TO PETITION FOR SPECIAL EXCEPTION AND
SPECIAL HEARING**

Bortner Farm: *Tax Id. No. 1900007892*

Special Exception Relief:

1. Pursuant to BCZR § 502, to grant Special Exception relief for a solar panel array field as a “public utility use” under BCZR § 1A01.2.C.18; and
2. For such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

Special Hearing Relief (in the alternative):

1. If necessary and in the alternative to the Special Exception relief requested, to approve the proposed solar panel array field as a permitted accessory use or structure to the farm; and
2. For such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

2016-0335-SP4X

RTF ASSOCIATES, INC. *LAND SURVEYORS & PLANNERS*

142 East Main Street
Westminster, Maryland 21157
Phone 410-848-2040, 410-876-1222
Web RTFsurveying.com
Fax 443-289-8942

June 15, 2016
RTF Assoc. # 16-44

ZONING PROPERTY DESCRIPTION FOR LIPPY PROPERTY
INTERSECTION OF MD. ROUTE # 30 AND FRINGER ROAD

BEGINNING at a point on the west side of Maryland Route # 30 (Hanover Pike), which is a 66 foot wide right of way at the distance of 200.00 feet north of the centerline of the nearest improved intersecting street Fringer Road which is a 40 foot wide right of way. Thence with the following course and distances: (1st Point of Call "POC") S.01°09'49" E. 161.44', (2nd POC) S. 63°49'56" W. 743.76', (3rd POC) N. 04°17'59" W. 688.02', (4th POC) N. 79°12'03" E. 318.88', (5th POC) S. 01°09'49" E. 332.00', (6th POC) N. 79°12'03" E. 403.00', back to the point of beginning, S. 01°09'49" E. 332.00' from the beginning point as recorded in deed liber 27651, folio 231, containing 281,130 square feet or 6.454 acres of land. Located in the Fourth Election District and the Third Council District of Baltimore County, Maryland.



[Handwritten Signature]

JOHN E. LEMMERMAN

PROFESSIONAL LAND SURVEYOR NO. 21096

CURRENT LICENSE EXPIRES AUGUST 3, 2017

2016-0335-SPHX

Sherry Nuffer

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Wednesday, September 14, 2016 11:06 AM
To: Alyssa Fiore; Debra Wiley; Kristen L Lewis
Cc: Sherry Nuffer; Michael McCann
Subject: RE: Lippy property - Case no. 0335-SPHX

Kristen: Please schedule a second day for this when you next are scheduling hearings. Thanks.

Michael: Hopefully, we won't need it and we will advise Kristen if we don't.

Thanks.

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

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From: Alyssa Fiore
Sent: Wednesday, September 14, 2016 9:40 AM
To: Lawrence Schmidt; Debra Wiley; Kristen L Lewis
Cc: Sherry Nuffer; Michael McCann
Subject: RE: Lippy property - Case no. 0335-SPHX

To follow up on the email exchange below, I spoke with Kristen this morning. October 12th has been set, however there are no other dates available on the October calendar. Kristen will need to wait for the ALJ's November calendar before we can get the second day.

Alyssa M. Fiore | Paralegal
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
afiore@sgs-law.com | www.sgs-law.com

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From: Lawrence Schmidt
Sent: Tuesday, September 13, 2016 2:29 PM
To: Debra Wiley; Kristen L Lewis

Cc: Alyssa Fiore; Sherry Nuffer; Michael McCann
Subject: RE: Lippy property - Case no. 0335-SPHX

Kristen: Can you please add a second day to this. As Debbie indicated below, the case was continued today and is reset to October 12, 2016 at 10:00 a.m. Although we hope to finish on the 12th, we like a second day if we cannot complete the case that day. Thank you.

Larry Schmidt

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

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From: Debra Wiley [<mailto:dwiley@baltimorecountymd.gov>]
Sent: Tuesday, September 13, 2016 2:16 PM
To: Kristen L Lewis
Cc: Alyssa Fiore; Sherry Nuffer; Lawrence Schmidt; Michael McCann
Subject: RE: Lippy property - Case no. 0335-SPHX

Hi Kristen,

Please be advised that the above-referenced hearing was opened today and will be continued for Wednesday, October 12th @ 10 AM in Room 205. If another date is necessary, counsel has been informed to contact you directly.

Per Judge Beverungen, since the posting and advertising requirements have been met, no re-posting is required, and Mr. McCann will take care of notifying the protestants for the continuation dates.

Thank you.

From: John E. Beverungen
Sent: Thursday, September 08, 2016 3:17 PM
To: Lawrence Schmidt <lschmidt@sgs-law.com>; Michael McCann <michael@mmccannlaw.net>
Cc: Alyssa Fiore <afiore@sgs-law.com>; Debra Wiley <dwiley@baltimorecountymd.gov>; Sherry Nuffer <snuffer@baltimorecountymd.gov>
Subject: RE: Lippy property - Case no. 0335-SPHX

Gentlemen,

Ms. Wiley contacted the Dept. of PAI and was able to obtain the following dates which are available for rescheduling this case: Oct. 4th at 1:30 P.M.; Oct. 12th at 10 A.M. If these dates are not agreeable, counsel will need to contact Ms. Lewis at the Dept. of PAI to reschedule the hearing.

John Beverungen
ALJ

From: Lawrence Schmidt [<mailto:lschmidt@sgs-law.com>]
Sent: Thursday, September 08, 2016 1:46 PM
To: John E. Beverungen <jbeverungen@baltimorecountymd.gov>; Michael McCann <michael@mmccannlaw.net>
Cc: Alyssa Fiore <afiore@sgs-law.com>; Debra Wiley <dwiley@baltimorecountymd.gov>; Sherry Nuffer <snuffer@baltimorecountymd.gov>
Subject: RE: Lippy property - Case no. 0335-SPHX

Judge Beverungen: Thank you for your prompt ruling. I will be there at 1:30 on Tuesday. I particularly appreciate that you will open the hearing and then recess, so that this is not a postponement (per se) but a continuance. Therefore we will not have to start from scratch to get a hearing date, re-post the sign, etc.

Since we need only obtain a date which suits our respective calendars, I would ask that Mr. McCann bring his calendar so that we can agree to a date on Tuesday. I will bring my calendar. I am hopeful that the hearing can be set within 30 days of the postponement and that when we leave on Tuesday, we will know when we are to return. And that that return date will be agreed to and firm.

I will see you all then.

Larry Schmidt

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

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From: John E. Beverungen [<mailto:jbeverungen@baltimorecountymd.gov>]
Sent: Thursday, September 08, 2016 1:27 PM
To: Lawrence Schmidt; Michael McCann
Cc: Alyssa Fiore; Debra Wiley; Sherry Nuffer
Subject: RE: Lippy property - Case no. 0335-SPHX

Gentlemen,

The postponement request in the above matter will be granted in part and denied in part, as I hope to make clear below.

The hearing will convene on September 13 at 1:30 P.M. so that counsel can enter their appearance and the case can be formally opened. I trust Mr. McCann—with the Board's indulgence-- can make himself available for this purpose, which should take no more than 5-10 minutes. After confirming some preliminary issues (i.e., proper posting, etc.) the hearing will conclude for the day, to be rescheduled for a later date by agreement of counsel. On this point, I am confident the case can be rescheduled during the month of October, and the Petitioner would not be required to again post the property or place an advertisement in the newspaper.

As for notifying interested citizens of the postponement, I assume Mr. McCann has the sign-in sheets for the Hanover Road Ass'n. meeting referenced by Mr. Schmidt. It will be Mr. McCann's responsibility to notify these folks of the postponement as well as the date of the new hearing when that is scheduled. Should any members of the community appear on September 13, I will give them the option of providing their testimony on that date or returning when the hearing is rescheduled.

John Beverungen
ALJ

From: Lawrence Schmidt [<mailto:lschmidt@sgs-law.com>]
Sent: Thursday, September 08, 2016 9:02 AM
To: Michael McCann <michael@mmccannlaw.net>
Cc: Alyssa Fiore <afiore@sgs-law.com>; John E. Beverungen <jbeverungen@baltimorecountymd.gov>; Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: Re: Lippy property - Case no. 0335-SPHX

Judge Beverungen

I certainly defer to what Mr. McCann says as I am not in the case. I was relying on what info I received from the Board and Mr. Rosenblatt.

There was a sign in sheet at the meeting but I do not have it. The meeting was hosted by the Hanover Road Association.

At the least, I would ask that we convene the hearing. We could postpone if necessary and select a date while all are present. If Mr McCann is at the board (down the hall) perhaps he could get away to do that

Obviously I will defer to your wishes
Larry Schmidt

Sent from my iPhone

On Sep 8, 2016, at 8:55 AM, Michael McCann <michael@mmccannlaw.net> wrote:

Judge Beverungen: Despite what the notice in *In re: Hunt Valley Presbyterian Church* may say, and despite even what Mr. Rosenblatt may say, the hearing in that case will not last 30-60 minutes. It involves a dispositive motion on a very complicated issue with numerous exhibits. While it is *conceivable* the hearing could conclude by 1:30 pm, particularly if the Board does not break for lunch, there is no certainty to that.

I understand Mr. Schmidt's concern about notifying people who may want to attend. There is a list of the attendees at the meeting two nights ago referenced by Mr. Schimidt. We would take responsibility for notifying those people.

Thank you for your consideration.

Michael R. McCann, PA
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(p) 410 825 2150
(f) 410 825 2149

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From: Alyssa Fiore [<mailto:afiore@sgs-law.com>]
Sent: Wednesday, September 07, 2016 3:34 PM
To: jbeverungen@baltimorecountymd.gov
Cc: Michael McCann <michael@mmccannlaw.net>; dwiley@baltimorecountymd.gov; Lawrence Schmidt <lschmidt@sgs-law.com>
Subject: RE: Lippy property - Case no. 0335-SPHX

Judge Beverungen,

Please see the attached response from Mr. Schmidt in connection with the pending postponement request for the above referenced matter.

Thank you.

Alyssa M. Fiore | Paralegal
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
afiore@sgs-law.com | www.sgs-law.com

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From: Lawrence Schmidt
Sent: Wednesday, September 07, 2016 11:54 AM
To: Alyssa Fiore
Subject: FW: Lippy property - Case no. 0335-SPHX

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

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From: John E. Beverungen [<mailto:jbeverungen@baltimorecountymd.gov>]
Sent: Wednesday, September 07, 2016 11:51 AM
To: Michael McCann; Lawrence Schmidt
Cc: Debra Wiley
Subject: FW: Lippy property - Case no. 0335-SPHX

Gentlemen,

I received the attached request yesterday from Mr. McCann, and understand that Mr. Schmidt intends to file a response in the next day or so. I will review both submissions and send out an order by the end of the week.

On another note, I received this email at my personal email address, rather than my County email account. I am sure Mr. McCann got that address from correspondence in a prior matter, since I frequently read and respond to emails from home. I would ask however that in the future you use either my County address or **both** accounts, to be sure I receive and review things in a timely manner.

John Beverungen
ALJ

From: John Beverungen [<mailto:johnbeverungen@gmail.com>]
Sent: Wednesday, September 07, 2016 11:15 AM
To: John E. Beverungen <jbeverungen@baltimorecountymd.gov>
Subject: Fwd: Lippy property - Case no. 0335-SPHX

----- Forwarded message -----
From: "Michael McCann" <michael@mmccannlaw.net>
Date: Sep 6, 2016 5:32 PM
Subject: Lippy property - Case no. 0335-SPHX
To: "John Beverungen" <johnbeverungen@gmail.com>
Cc: "Lawrence Schmidt" <lschmidt@sgs-law.com>

Judge Beverungen: Please see attached.

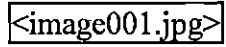
Thank you.

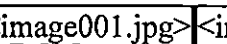
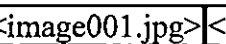
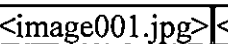
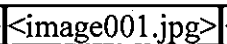
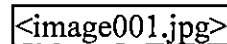
Michael R. McCann, PA
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(p) [410 825 2150](tel:4108252150)
(f) [410 825 2149](tel:4108252149)

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CONNECT WITH BALTIMORE COUNTY




www.baltimorecountymd.gov

Debra Wiley

10/12
10 AM

From: Alyssa Fiore <afiore@sgs-law.com>
Sent: Wednesday, September 14, 2016 9:40 AM
To: Lawrence Schmidt; Debra Wiley; Kristen L Lewis
Cc: Sherry Nuffer; Michael McCann
Subject: RE: Lippy property - Case no. 0335-SPHX

To follow up on the email exchange below, I spoke with Kristen this morning. October 12th has been set, however there are no other dates available on the October calendar. Kristen will need to wait for the ALJ's November calendar before we can get the second day.

Alyssa M. Fiore | Paralegal
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
afiore@sgs-law.com | www.sgs-law.com

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From: Lawrence Schmidt
Sent: Tuesday, September 13, 2016 2:29 PM
To: Debra Wiley; Kristen L Lewis
Cc: Alyssa Fiore; Sherry Nuffer; Michael McCann
Subject: RE: Lippy property - Case no. 0335-SPHX

Kristen: Can you please add a second day to this. As Debbie indicated below, the case was continued today and is reset to October 12, 2016 at 10:00 a.m. Although we hope to finish on the 12th, we like a second day if we cannot complete the case that day. Thank you.
Larry Schmidt

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

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From: Debra Wiley [<mailto:dwiley@baltimorecountymd.gov>]
Sent: Tuesday, September 13, 2016 2:16 PM
To: Kristen L Lewis
Cc: Alyssa Fiore; Sherry Nuffer; Lawrence Schmidt; Michael McCann
Subject: RE: Lippy property - Case no. 0335-SPHX

Hi Kristen,

Please be advised that the above-referenced hearing was opened today and will be continued for Wednesday, October 12th @ 10 AM in Room 205. If another date is necessary, counsel has been informed to contact you directly.

Per Judge Beverungen, since the posting and advertising requirements have been met, no re-posting is required, and Mr. McCann will take care of notifying the protestants for the continuation dates.

Thank you.

From: John E. Beverungen
Sent: Thursday, September 08, 2016 3:17 PM
To: Lawrence Schmidt <lschmidt@sgs-law.com>; Michael McCann <michael@mmccannlaw.net>
Cc: Alyssa Fiore <afiore@sgs-law.com>; Debra Wiley <dwiley@baltimorecountymd.gov>; Sherry Nuffer <snuffer@baltimorecountymd.gov>
Subject: RE: Lippy property - Case no. 0335-SPHX

Gentlemen,

Ms. Wiley contacted the Dept. of PAI and was able to obtain the following dates which are available for rescheduling this case: Oct. 4th at 1:30 P.M.; Oct. 12th at 10 A.M. If these dates are not agreeable, counsel will need to contact Ms. Lewis at the Dept. of PAI to reschedule the hearing.

John Beverungen
ALJ

From: Lawrence Schmidt [<mailto:lschmidt@sgs-law.com>]
Sent: Thursday, September 08, 2016 1:46 PM
To: John E. Beverungen <jbeverungen@baltimorecountymd.gov>; Michael McCann <michael@mmccannlaw.net>
Cc: Alyssa Fiore <afiore@sgs-law.com>; Debra Wiley <dwiley@baltimorecountymd.gov>; Sherry Nuffer <snuffer@baltimorecountymd.gov>
Subject: RE: Lippy property - Case no. 0335-SPHX

Judge Beverungen: Thank you for your prompt ruling. I will be there at 1:30 on Tuesday. I particularly appreciate that you will open the hearing and then recess, so that this is not a postponement (per se) but a continuance. Therefore we will not have to start from scratch to get a hearing date, re-post the sign, etc.

Since we need only obtain a date which suits our respective calendars, I would ask that Mr. McCann bring his calendar so that we can agree to a date on Tuesday. I will bring my calendar. I am hopeful that the hearing can be set within 30 days of the postponement and that when we leave on Tuesday, we will know when we are to return. And that that return date will be agreed to and firm.

I will see you all then.

Larry Schmidt

Lawrence E. Schmidt | Partner

SMITH, GILDEA & SCHMIDT, LLC

600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070

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From: John E. Beverungen [<mailto:jbeverungen@baltimorecountymd.gov>]

Sent: Thursday, September 08, 2016 1:27 PM

To: Lawrence Schmidt; Michael McCann

Cc: Alyssa Fiore; Debra Wiley; Sherry Nuffer

Subject: RE: Lippy property - Case no. 0335-SPHX

Gentlemen,

The postponement request in the above matter will be granted in part and denied in part, as I hope to make clear below.

The hearing will convene on September 13 at 1:30 P.M. so that counsel can enter their appearance and the case can be formally opened. I trust Mr. McCann—with the Board's indulgence-- can make himself available for this purpose, which should take no more than 5-10 minutes. After confirming some preliminary issues (i.e., proper posting, etc.) the hearing will conclude for the day, to be rescheduled for a later date by agreement of counsel. On this point, I am confident the case can be rescheduled during the month of October, and the Petitioner would not be required to again post the property or place an advertisement in the newspaper.

As for notifying interested citizens of the postponement, I assume Mr. McCann has the sign-in sheets for the Hanover Road Ass'n. meeting referenced by Mr. Schmidt. It will be Mr. McCann's responsibility to notify these folks of the postponement as well as the date of the new hearing when that is scheduled. Should any members of the community appear on September 13, I will give them the option of providing their testimony on that date or returning when the hearing is rescheduled.

John Beverungen

ALJ

From: Lawrence Schmidt [<mailto:lschmidt@sgs-law.com>]

Sent: Thursday, September 08, 2016 9:02 AM

To: Michael McCann <michael@mmccannlaw.net>

Cc: Alyssa Fiore <afiore@sgs-law.com>; John E. Beverungen <jbeverungen@baltimorecountymd.gov>; Debra Wiley <dwiley@baltimorecountymd.gov>

Subject: Re: Lippy property - Case no. 0335-SPHX

Judge Beverungen

I certainly defer to what Mr. McCann says as I am not in the case. I was relying on what info I received from the Board and Mr. Rosenblatt.

There was a sign in sheet at the meeting but I do not have it. The meeting was hosted by the Hanover Road Association.

At the least, I would ask that we convene the hearing. We could postpone if necessary and select a date while all are present. If Mr McCann is at the board (down the hall) perhaps he could get away to do that

Obviously I will defer to your wishes
Larry Schmidt

Sent from my iPhone

On Sep 8, 2016, at 8:55 AM, Michael McCann <michael@mmccannlaw.net> wrote:

Judge Beverungen: Despite what the notice in *In re: Hunt Valley Presbyterian Church* may say, and despite even what Mr. Rosenblatt may say, the hearing in that case will not last 30-60 minutes. It involves a dispositive motion on a very complicated issue with numerous exhibits. While it is *conceivable* the hearing could conclude by 1:30 pm, particularly if the Board does not break for lunch, there is no certainty to that.

I understand Mr. Schmidt's concern about notifying people who may want to attend. There is a list of the attendees at the meeting two nights ago referenced by Mr. Schimidt. We would take responsibility for notifying those people.

Thank you for your consideration.

Michael R. McCann, PA
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(p) 410 825 2150
(f) 410 825 2149

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From: Alyssa Fiore [<mailto:afiore@sgs-law.com>]
Sent: Wednesday, September 07, 2016 3:34 PM
To: jbeverungen@baltimorecountymd.gov
Cc: Michael McCann <michael@mmccannlaw.net>; dwiley@baltimorecountymd.gov; Lawrence Schmidt <lschmidt@sgs-law.com>
Subject: RE: Lippy property - Case no. 0335-SPHX

Judge Beverungen,

Please see the attached response from Mr. Schmidt in connection with the pending postponement request for the above referenced matter.

Thank you.

Alyssa M. Fiore | Paralegal

SMITH, GILDEA & SCHMIDT, LLC

600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070

afiore@sgs-law.com | www.sgs-law.com

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From: Lawrence Schmidt

Sent: Wednesday, September 07, 2016 11:54 AM

To: Alyssa Fiore

Subject: FW: Lippy property - Case no. 0335-SPHX

Lawrence E. Schmidt | Partner

SMITH, GILDEA & SCHMIDT, LLC

600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070

lschmidt@sgs-law.com | www.sgs-law.com

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From: John E. Beverungen [<mailto:jbeverungen@baltimorecountymd.gov>]

Sent: Wednesday, September 07, 2016 11:51 AM

To: Michael McCann; Lawrence Schmidt

Cc: Debra Wiley

Subject: FW: Lippy property - Case no. 0335-SPHX

Gentlemen,

I received the attached request yesterday from Mr. McCann, and understand that Mr. Schmidt intends to file a response in the next day or so. I will review both submissions and send out an order by the end of the week.

On another note, I received this email at my personal email address, rather than my County email account. I am sure Mr. McCann got that address from correspondence in a prior matter, since I frequently read and respond to emails from home. I would ask however that in the future you use either my County address or **both** accounts, to be sure I receive and review things in a timely manner.

John Beverungen

ALU

From: John Beverungen [mailto:johnbeverungen@gmail.com]
Sent: Wednesday, September 07, 2016 11:15 AM
To: John E. Beverungen <jbeverungen@baltimorecountymd.gov>
Subject: Fwd: Lippy property - Case no. 0335-SPHX

----- Forwarded message -----

From: "Michael McCann" <michael@mmccannlaw.net>
Date: Sep 6, 2016 5:32 PM
Subject: Lippy property - Case no. 0335-SPHX
To: "John Beverungen" <johnbeverungen@gmail.com>
Cc: "Lawrence Schmidt" <lschmidt@sgs-law.com>

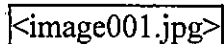
Judge Beverungen: Please see attached.

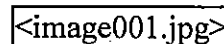
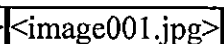
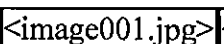
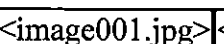
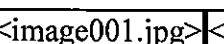
Thank you.

Michael R. McCann, PA
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(p) [410 825 2150](tel:4108252150)
(f) [410 825 2149](tel:4108252149)

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Debra Wiley

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Tuesday, September 13, 2016 2:14 PM
To: Debra Wiley
Cc: Alyssa Fiore
Subject: RE: Lippy property - Case no. 0335-SPHX

Yes, we are all good with October 12 at 10:00 a.m. It was put on the record before ALJ B and everyone agreed. Since the hearing was opened, no additional posting or advertising required.

Debbie, Mr. McCann "thinks" he might need a second day. I am hoping we finish on the 12th. Out of an abundance of caution, can you ask Kristen for a second day too. But please confirm the 12th at 10:00.

Larry

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

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From: Debra Wiley [<mailto:dwiley@baltimorecountymd.gov>]
Sent: Tuesday, September 13, 2016 1:40 PM
To: Lawrence Schmidt
Subject: RE: Lippy property - Case no. 0335-SPHX

Everyone in agreement with this date ? If so, I'll contact Kristen.

From: Lawrence Schmidt [<mailto:lschmidt@sgs-law.com>]
Sent: Tuesday, September 13, 2016 1:38 PM
To: John E. Beverungen <jbeverungen@baltimorecountymd.gov>
Cc: Michael McCann <michael@mmccannlaw.net>; Alyssa Fiore <afiore@sgs-law.com>; Debra Wiley <dwiley@baltimorecountymd.gov>; Sherry Nuffer <snuffer@baltimorecountymd.gov>
Subject: Re: Lippy property - Case no. 0335-SPHX

Confirming October 12 at 10:00

Sent from my iPhone

On Sep 8, 2016, at 3:16 PM, John E. Beverungen <jbeverungen@baltimorecountymd.gov> wrote:

Gentlemen,

Ms. Wiley contacted the Dept. of PAI and was able to obtain the following dates which are available for rescheduling this case: Oct. 4th at 1:30 P.M.; Oct. 12th at 10 A.M. If these dates are not agreeable, counsel will need to contact Ms. Lewis at the Dept. of PAI to reschedule the hearing.

John Beverungen
ALJ

From: Lawrence Schmidt [<mailto:lschmidt@sgs-law.com>]
Sent: Thursday, September 08, 2016 1:46 PM
To: John E. Beverungen <jbeverungen@baltimorecountymd.gov>; Michael McCann <michael@mmccannlaw.net>
Cc: Alyssa Fiore <afiore@sgs-law.com>; Debra Wiley <dwiley@baltimorecountymd.gov>; Sherry Nuffer <snuffer@baltimorecountymd.gov>
Subject: RE: Lippy property - Case no. 0335-SPHX

Judge Beverungen: Thank you for your prompt ruling. I will be there at 1:30 on Tuesday.

I particularly appreciate that you will open the hearing and then recess, so that this is not a postponement (per se) but a continuance. Therefore we will not have to start from scratch to get a hearing date, re-post the sign, etc.

Since we need only obtain a date which suits our respective calendars, I would ask that Mr. McCann bring his calendar so that we can agree to a date on Tuesday. I will bring my calendar. I am hopeful that the hearing can be set within 30 days of the postponement and that when we leave on Tuesday, we will know when we are to return. And that that return date will be agreed to and firm.

I will see you all then.

Larry Schmidt

Lawrence E. Schmidt | Partner
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Debra Wiley

From: Debra Wiley
Sent: Tuesday, September 13, 2016 2:16 PM
To: Kristen L Lewis
Cc: Alyssa Fiore; Sherry Nuffer; 'Lawrence Schmidt'; 'Michael McCann'
Subject: RE: Lippy property - Case no. 0335-SPHX

Hi Kristen,

Please be advised that the above-referenced hearing was opened today and will be continued for Wednesday, October 12th @ 10 AM in Room 205. If another date is necessary, counsel has been informed to contact you directly.

Per Judge Beverungen, since the posting and advertising requirements have been met, no re-posting is required, and Mr. McCann will take care of notifying the protestants for the continuation dates.

Thank you.

From: John E. Beverungen
Sent: Thursday, September 08, 2016 3:17 PM
To: Lawrence Schmidt <lschmidt@sgs-law.com>; Michael McCann <michael@mmccannlaw.net>
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Subject: RE: Lippy property - Case no. 0335-SPHX

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Sent: Thursday, September 08, 2016 1:46 PM
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Cc: Alyssa Fiore <afiore@sgs-law.com>; Debra Wiley <dwiley@baltimorecountymd.gov>; Sherry Nuffer <snuffer@baltimorecountymd.gov>
Subject: RE: Lippy property - Case no. 0335-SPHX

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Debra Wiley

From: Debra Wiley
Sent: Tuesday, September 13, 2016 2:17 PM
To: Kristen L Lewis
Subject: Removal of Hold for 10/4

Hi Kristen,

You may remove the hold for 10/4 @ 1:30 PM since 10/12 was selected @ 10 AM.

Thanks again.

Debra Wiley
Baltimore County Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204
410-887-3868

Debra Wiley

From: John E. Beverungen
Sent: Thursday, September 08, 2016 3:17 PM
To: Lawrence Schmidt; Michael McCann
Cc: Alyssa Fiore; Debra Wiley; Sherry Nuffer
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John Beverungen
 ALJ

From: Lawrence Schmidt [mailto:lschmidt@sgs-law.com]
Sent: Thursday, September 08, 2016 1:46 PM
To: John E. Beverungen <jbeverungen@baltimorecountymd.gov>; Michael McCann <michael@mmccannlaw.net>
Cc: Alyssa Fiore <afiore@sgs-law.com>; Debra Wiley <dwiley@baltimorecountymd.gov>; Sherry Nuffer <snuffer@baltimorecountymd.gov>
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I will see you all then.

Larry Schmidt

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Sherry Nuffer

From: Michael McCann <michael@mmccannlaw.net>
Sent: Thursday, September 08, 2016 2:23 PM
To: Lawrence Schmidt; John E. Beverungen
Cc: Alyssa Fiore; Debra Wiley; Sherry Nuffer
Subject: RE: Lippy property - Case no. 0335-SPHX

Will do. Thanks.

*Michael R. McCann, PA
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(p) 410 825 2150
(f) 410 825 2149*

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From: Lawrence Schmidt [mailto:lschmidt@sgs-law.com]
Sent: Thursday, September 08, 2016 2:23 PM
To: Michael McCann <michael@mmccannlaw.net>; John E. Beverungen <jbeverungen@baltimorecountymd.gov>
Cc: Alyssa Fiore <afiore@sgs-law.com>; Debra Wiley <dwiley@baltimorecountymd.gov>; Sherry Nuffer <snuffer@baltimorecountymd.gov>
Subject: RE: Lippy property - Case no. 0335-SPHX

And Michael. Please bring your calendar. So we can get the new date scheduled.
Thanks for your courtesy.

Larry

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

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From: Michael McCann [<mailto:michael@mmccannlaw.net>]
Sent: Thursday, September 08, 2016 2:21 PM
To: John E. Beverungen; Lawrence Schmidt
Cc: Alyssa Fiore; Debra Wiley; Sherry Nuffer
Subject: RE: Lippy property - Case no. 0335-SPHX

Thank you, Judge.

Per your instruction, my client and I will handle notifying the attendees of the postponement and the next hearing date.

See you at 1:30 p.m. on September 13th.

Michael

*Michael R. McCann, PA
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(p) 410 825 2150
(f) 410 825 2149*

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Cc: Alyssa Fiore <afiore@sgs-law.com>; Debra Wiley <dwiley@baltimorecountymd.gov>; Sherry Nuffer <snuffer@baltimorecountymd.gov>
Subject: RE: Lippy property - Case no. 0335-SPHX

Gentlemen,

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The hearing will convene on September 13 at 1:30 P.M. so that counsel can enter their appearance and the case can be formally opened. I trust Mr. McCann—with the Board's indulgence-- can make himself available for this purpose, which should take no more than 5-10 minutes. After confirming some preliminary issues (i.e., proper posting, etc.) the hearing will conclude for the day, to be rescheduled for a later date by agreement of counsel. On this point, I am confident the case can be rescheduled during the month of October, and the Petitioner would not be required to again post the property or place an advertisement in the newspaper.

As for notifying interested citizens of the postponement, I assume Mr. McCann has the sign-in sheets for the Hanover Road Ass'n. meeting referenced by Mr. Schmidt. It will be Mr. McCann's responsibility to notify these folks of the postponement as well as the date of the new hearing when that is scheduled. Should any members of the community appear on September 13, I will give them the option of providing their testimony on that date or returning when the hearing is rescheduled.

John Beverungen
ALJ

From: Lawrence Schmidt [mailto:lschmidt@sgs-law.com]
Sent: Thursday, September 08, 2016 9:02 AM
To: Michael McCann <michael@mmccannlaw.net>
Cc: Alyssa Fiore <afiore@sgs-law.com>; John E. Beverungen <jbeverungen@baltimorecountymd.gov>; Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: Re: Lippy property - Case no. 0335-SPHX

Judge Beverungen

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Obviously I will defer to your wishes
Larry Schmidt

Sent from my iPhone

On Sep 8, 2016, at 8:55 AM, Michael McCann <michael@mmccannlaw.net> wrote:

Judge Beverungen: Despite what the notice in *In re: Hunt Valley Presbyterian Church* may say, and despite even what Mr. Rosenblatt may say, the hearing in that case will not last 30-60 minutes. It involves a dispositive motion on a very complicated issue with numerous exhibits. While it is *conceivable* the hearing could conclude by 1:30 pm, particularly if the Board does not break for lunch, there is no certainty to that.

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Thank you for your consideration.

*Michael R. McCann, PA
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(p) 410 825 2150
(f) 410 825 2149*

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have received this communication in error, please delete, destroy any copy of this message and notify Michael R. McCann at 410 825-2150.

From: Alyssa Fiore [<mailto:afiore@sgs-law.com>]
Sent: Wednesday, September 07, 2016 3:34 PM
To: jbeverungen@baltimorecountymd.gov
Cc: Michael McCann <michael@mmccannlaw.net>; dwiley@baltimorecountymd.gov; Lawrence Schmidt <lschmidt@sgs-law.com>
Subject: RE: Lippy property - Case no. 0335-SPHX

Judge Beverungen,

Please see the attached response from Mr. Schmidt in connection with the pending postponement request for the above referenced matter.

Thank you.

Alyssa M. Fiore | Paralegal
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
afiore@sgs-law.com | www.sgs-law.com

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From: Lawrence Schmidt
Sent: Wednesday, September 07, 2016 11:54 AM
To: Alyssa Fiore
Subject: FW: Lippy property - Case no. 0335-SPHX

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

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From: John E. Beverungen [<mailto:jbeverungen@baltimorecountymd.gov>]
Sent: Wednesday, September 07, 2016 11:51 AM
To: Michael McCann; Lawrence Schmidt
Cc: Debra Wiley
Subject: FW: Lippy property - Case no. 0335-SPHX

Gentlemen,

I received the attached request yesterday from Mr. McCann, and understand that Mr. Schmidt intends to file a response in the next day or so. I will review both submissions and send out an order by the end of the week.

On another note, I received this email at my personal email address, rather than my County email account. I am sure Mr. McCann got that address from correspondence in a prior matter, since I frequently read and respond to emails from home. I would ask however that in the future you use either my County address or **both** accounts, to be sure I receive and review things in a timely manner.

John Beverungen
ALJ

From: John Beverungen [<mailto:johnbeverungen@gmail.com>]
Sent: Wednesday, September 07, 2016 11:15 AM
To: John E. Beverungen <jbeverungen@baltimorecountymd.gov>
Subject: Fwd: Lippy property - Case no. 0335-SPHX

----- Forwarded message -----
From: "Michael McCann" <michael@mmccannlaw.net>
Date: Sep-6, 2016 5:32 PM
Subject: Lippy property - Case no. 0335-SPHX
To: "John Beverungen" <johnbeverungen@gmail.com>
Cc: "Lawrence Schmidt" <lschmidt@sgs-law.com>

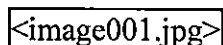
Judge Beverungen: Please see attached.

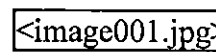
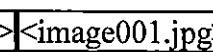
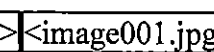
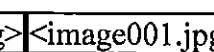
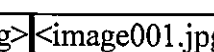
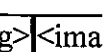
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Debra Wiley

From: John E. Beverungen
Sent: Thursday, September 08, 2016 1:27 PM
To: Lawrence Schmidt; Michael McCann
Cc: Alyssa Fiore; Debra Wiley; Sherry Nuffer
Subject: RE: Lippy property - Case no. 0335-SPHX

Gentlemen,

The postponement request in the above matter will be granted in part and denied in part, as I hope to make clear below.

The hearing will convene on September 13 at 1:30 P.M. so that counsel can enter their appearance and the case can be formally opened. I trust Mr. McCann—with the Board's indulgence-- can make himself available for this purpose, which should take no more than 5-10 minutes. After confirming some preliminary issues (i.e., proper posting, etc.) the hearing will conclude for the day, to be rescheduled for a later date by agreement of counsel. On this point, I am confident the case can be rescheduled during the month of October, and the Petitioner would not be required to again post the property or place an advertisement in the newspaper.

As for notifying interested citizens of the postponement, I assume Mr. McCann has the sign-in sheets for the Hanover Road Ass'n. meeting referenced by Mr. Schmidt. It will be Mr. McCann's responsibility to notify these folks of the postponement as well as the date of the new hearing when that is scheduled. Should any members of the community appear on September 13, I will give them the option of providing their testimony on that date or returning when the hearing is rescheduled.

John Beverungen
ALJ

From: Lawrence Schmidt [mailto:lschmidt@sgs-law.com]
Sent: Thursday, September 08, 2016 9:02 AM
To: Michael McCann <michael@mmccannlaw.net>
Cc: Alyssa Fiore <afiore@sgs-law.com>; John E. Beverungen <jbeverungen@baltimorecountymd.gov>; Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: Re: Lippy property - Case no. 0335-SPHX

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To: jbeverungen@baltimorecountymd.gov
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Sent: Wednesday, September 07, 2016 11:54 AM
To: Alyssa Fiore
Subject: FW: Lippy property - Case no. 0335-SPHX

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John Beverungen
ALJ

From: John Beverungen [<mailto:johnbeverungen@gmail.com>]
Sent: Wednesday, September 07, 2016 11:15 AM
To: John E. Beverungen <jbeverungen@baltimorecountymd.gov>
Subject: Fwd: Lippy property - Case no. 0335-SPHX

----- Forwarded message -----

From: "Michael McCann" <michael@mmccannlaw.net>
Date: Sep 6, 2016 5:32 PM
Subject: Lippy property - Case no. 0335-SPHX

To: "John Beverungen" <johnbeverungen@gmail.com>
Cc: "Lawrence Schmidt" <lschmidt@sgs-law.com>

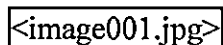
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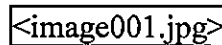
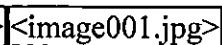
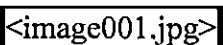
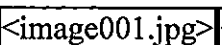
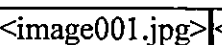
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(f) [410 825 2149](tel:4108252149)

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JB 9-28
1:30 pm

Debra Wiley

From: Alyssa Fiore <afiore@sgs-law.com>
Sent: Wednesday, September 07, 2016 9:31 AM
To: Debra Wiley
Cc: michael@mmccannlaw.net; Lawrence Schmidt
Subject: FW: Lippy property - Case no. 0335-SPHX
Attachments: 20160906172600959.pdf

Debbie - Per our conversation this morning, Larry would like to respond to this postponement request but is tied up in a hearing this morning. He hopes to respond by the end of today.

Thank you for your courtesy.

Alyssa M. Fiore | Paralegal
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070 afiore@sgs-law.com | www.sgs-law.com

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-----Original Message-----

From: Lawrence Schmidt
Sent: Wednesday, September 07, 2016 9:24 AM
To: Alyssa Fiore
Subject: FW: Lippy property - Case no. 0335-SPHX

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070 lschmidt@sgs-law.com | www.sgs-law.com

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-----Original Message-----

From: Michael McCann [<mailto:michael@mmccannlaw.net>]
Sent: Tuesday, September 06, 2016 5:32 PM
To: John Beverungen
Cc: Lawrence Schmidt

Subject: Lippy property - Case no. 0335-SPHX

Judge Beverungen: Please see attached.

Thank you.

Michael R. McCann, PA
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(p) 410 825 2150
(f) 410 825 2149

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Michael R. McCann, P.A.

118 W. Pennsylvania Avenue

Towson, Maryland 21204

Phone: (410) 825-2150

Facsimile: (410) 825-2149

michael@mmccannlaw.net

August 6, 2016

Via Email & US Mail

The Honorable John Beverungen
Administrative Law Judge
Office of Administrative Hearings
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

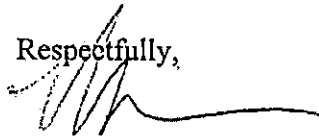
Re: 2016-0335-SPHX
West side of Hanover Pike, 200 ft. north of Fringer Road

Dear Judge Beverungen:

I was retained today to represent the Valleys Planning Council in the above-referenced matter. I write to request a postponement of the hearing in the case, which is set for September 13, 2016. I am scheduled to appear before the County Board of Appeals that day in *In re: Hunt Valley Presbyterian Church*, Case No. 2016-0099-SPH.

Thank you for your consideration.

Respectfully,



Michael R. McCann

cc: Larry Schmidt, Esq. (via email & US Mail)

1 Zoning & Plan. Deskbook § 5:59 (2d ed.)

Zoning and Planning Deskbook, Second Edition
Database updated December 2015

Douglas W. Kmiec and Katherine Kmiec Turner

Part A. Zoning
Chapter 5. Zoning Objectives and Methods

References

§ 5:59. Alternative energy

The current trend for developers in most states in 2010 and 2011 is a push to implement and take advantage of alternative energy. Some states have set goals and guidelines requiring utilities to offer a certain percentage of alternative energy by a date specific. Over 20 states have passed legislation encouraging and protecting alternative energy projects on small and large scales. Local laws are being passed to limit local entities from zoning out wind throughout the state. Wisconsin statute section 196.378(4g)(b) directed the Public Service Commission to work with the wind siting counsel to "promulgate rules that specify the restrictions a political subdivision may impose on the installation or use of a wind energy system[.]" The rules had to "address setback requirements that provide reasonable protection from any health effects, including health effects from noise and shadow flicker, associated with wind energy systems. The subject matter of these rules shall also include decommissioning and may include visual appearance, lighting, electrical connections to the power grid, setback distances, maximum audible sound levels, shadow flicker, proper means of measuring noise, interference with radio, telephone, or television signals, or other matters. A political subdivision may not place a restriction on the installation or use of a wind energy system that is more restrictive than these rules." In addition to local incentives, the federal government has offered incentives to implement green projects, both small-scale and large-scale.

The types of alternative energy are so different that it is necessary to deal with a separate land use mechanism. Each type of energy uses different resources and requires the developer and the public entity to consider different factors for approval. The main types of alternative energy are wind, solar and geothermal. Wind energy is expensive, but can be completed on mountainous or otherwise non-desirable land, so long as there is a continuous wind source. The height of the equipment will require a close look. Geothermal energy, which requires ample flow of hot water under the ground, can only be located where the resource exists. The technology does not take up more than several acres, but does require a heavy water supply.

Solar energy requires the sun, but also requires ample space to accommodate the necessary panels. Most of the technology is stationary, photovoltaic mirrors, but thermal power and advanced hydraulic systems to maximize the time the panel faces the sun are also being utilized. For a single family residence or small project, a roof facing the sun should suffice, but a larger project such as powering cattle feed yard will require the panels to be built on a larger portion of the property, typically separate from the current structures. Finally, a large-scale solar farm that sells energy to the local utility will require hundreds of acres. An additional consideration for solar projects is the rapidly developing technology and changing power market. In just a few short years, the technology has improved and that improved technology should have a significant impact on land use decisions. The more advanced the solar technology, the more efficient it becomes and the less land it takes up. Additionally, the power companies entering into the Power Purchase Agreements with the solar developers have a rapidly changing market. In 2010, numerous projects around 100-200 megawatts were being approved. Recently, smaller solar farms of approximately 10 to 20 megawatts are more common. In 2013, a 10 megawatt solar farm can be built on less than 160 acres. Land use planning for years in the future should remember that flexibility in the approvals to encourage more advanced technology, more efficient solar panels and utilizing fewer acres should be considered.

Each of the alternative energy sources requires the equipment to transmit the power to a substation or to the location the source is powering. When a public entity is approving one of these projects, it must consider factors such as co-location of the power lines or substations. Developers should work with other solar companies and the utility which it is selling to in order to propose a plan rather than leaving the determination in the hands of the public entity.

Numerous jurisdictions are taking action to adopt rules that impact alternative energy. While some jurisdictions are such as Winnebago County, Illinois³ are actively working to streamline approval of alternative energy such as geothermal, solar and wind, other jurisdictions are taking action to limit the uses. For example, in Oregon, an ordinance prohibiting windmills within two miles of residential homes was passed. In this case, a wind farm spreading over 20,000 acres had been approved before the two mile rule was passed.⁴ When the facility applied for a time extension, opponents attempted to apply the two mile rule and prohibit some of the wind turbines from being built. The Oregon Supreme Court found that wind turbines did not need to comply with a land use regulation requiring the turbines to be two miles from residential houses. The original permit and first amended permit were granted prior to implementing the two mile rule. Despite arguments that the health and safety of noise and the blades, the court held that the two mile rule was not for health and safety, but rather a siting ordinance not passed to protect the public health and therefore does not apply to an already permitted project. If possible, practitioners should actively participate in the quickly forming body of law governing alternative energy. The findings supporting the regulations can have a significant impact on their applicability.

Because solar technology is popular and heavily incentivized, there are applications in to develop thousand of acres into solar farms. The problem with the push to approve and build solar farms is that smart land use planning is put on the sidelines. When geothermal energy started to gain popularity in the 1980s, public entities worked with developers to study the technology and add overlays to general plans to identify the appropriate locations and match the goals of the project. Solar incentives are only available for a short period of time and current substations can only accommodate so many solar farms. Therefore, public entities are not updating their general plan, are not adding ordinances, and are not participating in a comprehensive environmental review or policy decision before taking individual project applications on a one by one basis. An additional problem is that solar farms are so new that the impacts are not being fully addressed. For example, if there are any fire hazards created by the solar farms, or the potential for increased theft in the community, the public entity should be addressing that prior to approval.

One tactic to address solar farms that will speed up an application is to argue that the solar farm is temporary in nature. A temporary farm is less likely to require comprehensive mitigation measures and will be less costly for the developer. The argument is currently being accepted in several states because the underlying land is not being altered: the solar panels are simply put in on the property with several drilled holes and the facility will only require a small utility building to facilitate the electrical equipment. So long as the developer puts forth a plan to return the property to its original state (and typically providing a bond for this expense), the use can be considered temporary. The impact of a temporary use is that zoning will not need to be changed, typically, the CUP would allow the use and the underlying zoning will remain the same.

The economic impact of a solar farm is somewhat unknown at this point. The decision makers in farming communities are slowly discovering that converting their farm fields to solar farms will have a negative financial impact on the community. Agricultural land can have numerous direct employees for growing and harvesting as well as produce delivery trucks, coolers, grocery stores etc. A solar farm will have numerous employees during construction which typically lasts about six to 18 months for a 300-1,000 acre solar farm. But, after construction, the estimates for a solar PV farm are only four to five employees. Security is typically completed through remote monitoring, the glass is not typically washed, and the electrical needs for a 1,000-acre farm would not require more than one employee. Further, in states such as California, the legislature has excused solar farms from paying certain taxes which makes them less desirable from a purely economic standpoint. On the other hand, solar uses almost no water, so its use compared to agricultural production is beneficial from that standpoint. In one of the early solar litigations, the Vermont Supreme Court upheld a Board's decision to grant a certificate of public good for a 40-acre solar farm on farmland.⁵ A nearby landowner argued that determination has an undue adverse effect. The Court gave deference to the hearing board, agreeing that there was sufficient evidence in the record to support the three factors of the *Quechee* test and holding there was not an undue adverse effect.⁶ First, the project did not violate a clear, written, community standard preserving the beauty of area. Second, the project did not offend the sensibilities of the average person. Third, the developer took mitigating steps to improve the project in light of the surrounding area. The applicant made an effort to preserve this beauty by using trees and hedges to screen the panels, ensuring 300 foot setbacks, expanding the existing agricultural use and adopting design standards. Both the legislature and courts continue to encourage and authorize on-site solar. A Pennsylvania zoning officer and board denied a permit for a solar energy field permit on the property of an elementary school based on a finding that the solar energy field is not an accessory use.⁷ The Commonwealth Court of Pennsylvania overturned the denial because the legislature determined that a solar energy field is always an accessory use and must only be consistent with the zoning.⁸ Although not the basis for the Court's ruling, the record set forth expert testimony showing the beneficial use of the solar on the property as an accessory use. "[T]he solar energy field was desirable because the School District would obtain energy at a significantly lower cost, and save between two and four million dollars over a twenty-year term. He explained that the solar energy field would also provide an educational component because the elementary and high schools could run programs regarding the application

of solar energy, power and electricity. He explained that the solar energy panels would comply with all building codes, and comply with all appropriate setbacks and requirements of the A/R/R Zoning District. He also confirmed the solar energy panels would create no noise, no glare, no vibration, and, in his opinion, there were no deleterious effects on the surrounding neighborhoods. The solar energy field would be surrounded by vegetation. There would be no soil disturbance, and the solar energy panels would be weather and wind resistant.”

The trend for most commercial scale alternative energy is to allow the use through conditional use permits. A county in Kansas had no specific zoning related to wind farms, so it issued a moratorium on issuance without a conditional use permit.¹⁰ After the moratorium, the county allowed commercial wind farms only with a conditional use permit. A landowner who wanted to put a commercial wind facility on their property alleged that the requirement was a taking. The Kansas Supreme Court held that there is no taking because there is no vested right in the wind farm. The property owner would have had to obtain a CUP which is discretionary and therefore does not amount to a vested right and both the takings and inverse condemnation claims fail. The landowners also brought a commerce clause challenge which was examined under the Pike test to see if the burden on commerce is excessive compared to the benefit conferred: (1) nature of the benefits of the statute, (2) the burden on commerce, and (3) whether or not the burden is excessive. The record did not have sufficient evidence to determine the outcome of the Pike test, so the matter was remanded to the trial court. Whether banning wind energy becomes a commerce clause matter remains to be seen, but the court did state that there is no “more basic element of interstate commerce than electric energy.” Courts routinely approve alternative energy facilities in a favorable manner that does not necessarily coincide with typical land use rules and regulations. While Courts may be more strict with certain uses such as adult entertainment or gun ranges, alternative energy approvals have seen an exercise of broad discretion to the decision making body.

For example, the Washington Supreme Court upheld the Council’s recommendation and the governor’s approval of an approval of 35 wind turbines in light of the furtherance of the goal of providing alternative sources of energy.” In *Friends of Columbia Gorge, Inc.*, the Court explained that the Energy Facilities Site Locations Act’s purpose is “to recognize the pressing need for increased energy facilities and promote the creation of such facilities in a way that will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.”¹² The Court found that the project could be on unmapped area because wind turbines are not a nuisance, that some discussion of avian collision is sufficient, and that the project had sufficient mitigation measures.

Similarly, the Wisconsin Supreme Court upheld a 62 turbine wind project in *Northern Laramie Range Foundation v. Converse County Bd. of Commissioners*.¹³ The petitioners argued numerous areas of insufficient analysis but the Court found that all of the analysis was sufficient in a lengthy and detailed opinion. For example, the Court found that because there was some analysis that the Board found sufficient and because there was a future road agreement, the decision was not overturned. An interesting element of the case involved the financial assurance statute for wind energy systems. Wyoming Statute 35-12-109(a)(xxi) requires an application for a permit for a wind energy conversion system facility to include information demonstrating the applicant’s financial capability to construct, maintain, operate, decommission and reclaim the facility. In order to grant the application, the Industrial Siting Council is required to determine the applicant has financial resources to construct, maintain, operate, decommission and reclaim the facility.” The Court held that the financial assurances did not need to be in place at the time the permit was issued, but at a later date.

A Massachusetts court upheld a wind turbine with 37 conditions on the approval. The neighboring property appealed and “[a]fter a four-day bench trial, including a site view, a judge of the Land Court issued a forty-four-page decision upholding the board’s approval.” The Massachusetts Appellate Court upheld the approval finding there were sufficient conditions such as the turbine be shut down if the noise level exceeded 10 dBA or if the shadow flicker impact exceeds thirty minutes per day or thirty hours per year. The judge dismissed an argument about the safety manual of the turbine stating “Golden Living has neither challenged the validity of the by-laws setback requirement, nor suggested that the wind turbine fails to comply with the by-laws. Instead, Golden Living merely speculates that the operating manual contains a larger setback requirement than the by-laws. The board was charged with determining whether the proposed wind turbine satisfied the by-laws, not the manufacturer’s operating guidelines.”¹⁴

On the other hand, there are a few examples of limitations on alternative energy permits. A New York Court extended the permit start date for a 29 turbine wind farm.¹⁵ There was an expiration of the permit if construction did not commence within one year. The deadline was extended one year or 90 days after pending litigation against the project, whichever was sooner. The developer informed the town that it would use a different type of technology on the project and requested a second extension which was denied. The Court upheld the time extension denial based upon the fact that there was a material change in circumstances. The Court did not find evidence that the board’s decision was arbitrary and capricious or based upon generalized community objections.

Gas prices continue to increase with no definitive end in sight, but resorting to alternative energy does not provide

long-sought economic guarantees. A residential solar panel, for instance, does not require excess space but unimpeded access to sunlight is imperative. This presents the question of whether access to sunlight can be guaranteed. In *Fontainebleau Hotel Corp. v. Forty-Five Twenty-Five, Inc.*,¹⁶ a 14 story addition was added to the Fontainebleau Hotel, causing a shadow to be cast on the Eden Roc's pool which was located on the adjoining land. The effect of this shadow resulted in the pool being unsuitable for sun bathing for most of the day. The court concluded there was no statutory protection to the use of sunlight. Absent such protection, incentives for land-owners to resort to solar energy are diminished. For example, installing a residential solar panel in Massachusetts is currently around \$30,000 to \$45,000—and could be made superfluous at the discretion of a neighbor effecting home improvements.

Absent statutory protection to the use of sunlight, a landowner must resort to acquiring an easement. An easement by necessity is typically limited to the necessity of physically accessing the property, rather than accessing the resources that approach the property. Alternatively, a negative easement is created when the owner of a dominant tenement restricts the exercise of property rights of the servient tenement owner. The neighboring tenant's future use of their land would effectively be restricted. It is unlikely for a tenant to voluntarily give up this right. Next, is an easement by implication. Here, the restriction is only going to be allowed if the use of the easement is reasonably necessary to the use of the neighboring land.¹⁷ Unfortunately, this is a difficult argument given the more cost effective, conventional electricity modalities. Finally, an easement by prescription might be explored, however, the adverse use requirement would prove exceedingly difficult. One does not enter a neighbors land in order to capture sunlight, instead, it comes to them. The high investment and uncertain use indicates solar panels may be an unworthy investment.

Other New England states have codified solar easements so that they can formally be created. In New York, a solar easement may be created in writing and is subject to the same instrumentalities as other easements.¹⁸ In Maine, solar easements are required to be appurtenant and run with the land benefitted and burdened.¹⁹ They are further subject to limitations provided by law. Next, in New Hampshire, a solar easement is a limitation created from a landowner's instrument or deed, which creates a right to unobstructed access to solar energy.²⁰ While all states agree that any easement must be created in writing, requirements such as the extent of the easement vary. Courts have agreed with local jurisdictions distinguishing between commercial solar and residential accessory solar uses. An example of the difference between an accessory use and a commercial use was raised in *Briggs*.²¹ In this case, the applicant was denied a permit to build 3,520 panels on a 5.93 acre parcel. The landowner argued that limiting the solar "a use incidental and subordinate to the principal use of the structure or lot" is an unreasonable regulation. *Briggs v. Zoning Bd. of Appeals of Marion*, 2014 WL at 46. The court remanded the matter back to the zoning board to determine whether the solar energy system at issue is a "light manufacturing" and could be allowed in that zone.

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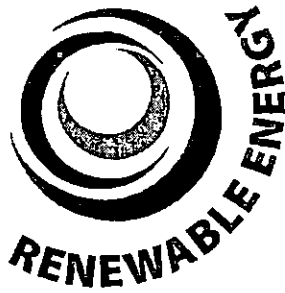
Footnotes

- ¹ See 2009 Wis. Act 40, § 12.
- ² *Wisconsin Realtors Ass'n v. Public Service Com'n of Wisconsin*, 2014 WI App 45, 353 Wis. 2d 554, 846 N.W.2d 34 (Ct. App. 2014), review granted, 2014 WI 122, 855 N.W.2d 694 (Wis. 2014) and aff'd, 2015 WI 63, 363 Wis. 2d 430, 867 N.W.2d 364 (2015) (an unpublished decision holding that a housing impact report was not necessary when considering the siting rules).
- ³ See *Muscarello v. Winnebago County Bd.*, 702 F.3d 909, 912 (7th Cir. 2012) ("Under the Winnebago County ordinance before it was amended in 2009, a property owner had to run an elaborate procedural gauntlet in order to obtain a special-use permit for a wind farm. See 55 Ill.CS 5/5-12009.5; Winnebago County Code of Ordinances, ch. 90, art. II, § 90-39. The 2009 amendment made wind farms a permitted use, id., art. X, § 90-353; and although a wind farm cannot be built before a zoning clearance and a building permit are obtained, id., § 90-354, a zoning clearance requires merely a demonstration of compliance with the zoning code, id. art. II, § 90-73, and obtaining a building permit presumably is routine. So the amendment made it easier to build a wind farm in the county, and that at bottom is the plaintiff's gripe, as she is a pertinacious foe of wind farms.").
- ⁴ *Blue Mountain Alliance v. Energy Facility Siting Council*, 353 Or. 465, 467, 300 P.3d 1203 (2013) (In re Request for Amendment #2 of the Site Certificate for the Helix Wind Power Facility).
- ⁵ In re *Cross Pollination*, 2012 VT 29, 2012 WL 1352675 (Vt. 2012).
- ⁶ In re *Quechee Lakes Corp.*, 154 Vt. 543, 580, 580 A.2d 957 (1990).

- 7 Northampton Area School Dist. v. Zoning Hearing Bd. of Tp. of Lehigh, 64 A.3d 1152, 1154, 292 Ed. Law Rep. 960 (Pa. Commw. Ct. 2013), appeal denied, 76 A.3d 540 (Pa. 2013).
- 8 Pennsylvania Code section 180-25(A).
- 9 *Northampton Area School Dist. v. Zoning Hearing Bd. of Tp. of Lehigh*, 64 A.3d at 1154 (internal citations omitted).
- 10 *Zimmerman v. Hudson*, 293 Kan. 332, 264 P.3d 989, 74 Env't. Rep. Cas. (BNA) 1465 (2011).
- 11 *Friends of Columbia Gorge, Inc. v. State Energy Facility Site Evaluation Council*, 178 Wash. 2d 320, 310 P.3d 780 (2013).
- 12 *Friends of Columbia Gorge, Inc. v. State Energy Facility Site Evaluation Council*, 178 Wash. 2d 320, 310 P.3d 780 (2013).
- 13 *Northern Laramie Range Foundation v. Converse County Bd. of County Com'rs*, 2012 WY 158, 290 P.3d 1063 (Wyo. 2012).
- 14 *GPH Cohasset, LLC v. Trustees of Reservations*, 85 Mass. App. Ct. 555, 562, 11 N.E.3d 641 (2014).
- 15 *Allegany Wind LLC v. Planning Bd. of Town of Allegany*, 115 A.D.3d 1268, 982 N.Y.S.2d 278 (4th Dep't 2014).
- 16 *Fontainebleau Hotel Corp. v. Forty-Five Twenty-Five, Inc.*, 114 So. 2d 357, 358 (Fla. 3d DCA 1959).
- 17 See *Fazio v. Trustees of River House Condominium Trust*, 81 Mass. App. Ct. 1140, 967 N.E.2d 1158 (2012), review denied, 463 Mass. 1104, 972 N.E.2d 1057 (2012) (unpublished table decision). The Massachusetts Court of Appeals stated that "[u]nder Massachusetts law, property owners do not have an implied or inherent right to a view" *Fazio v. Trustees of River House Condominium Trust*, 81 Mass. App. Ct. 1140.
- 18 N.Y. Real Prop. Law § 335-b (McKinney 2012).
- 19 Me. Rev. Stat. Ann. tit. 33, § 1401 (2012).
- 20 N.H. Rev. Stat. Ann. § 477:49 (2012).
- 21 *Briggs v. Zoning Bd. of Appeals of Marion*, 2014 WL 471951 (Mass. Land Ct. 2014).

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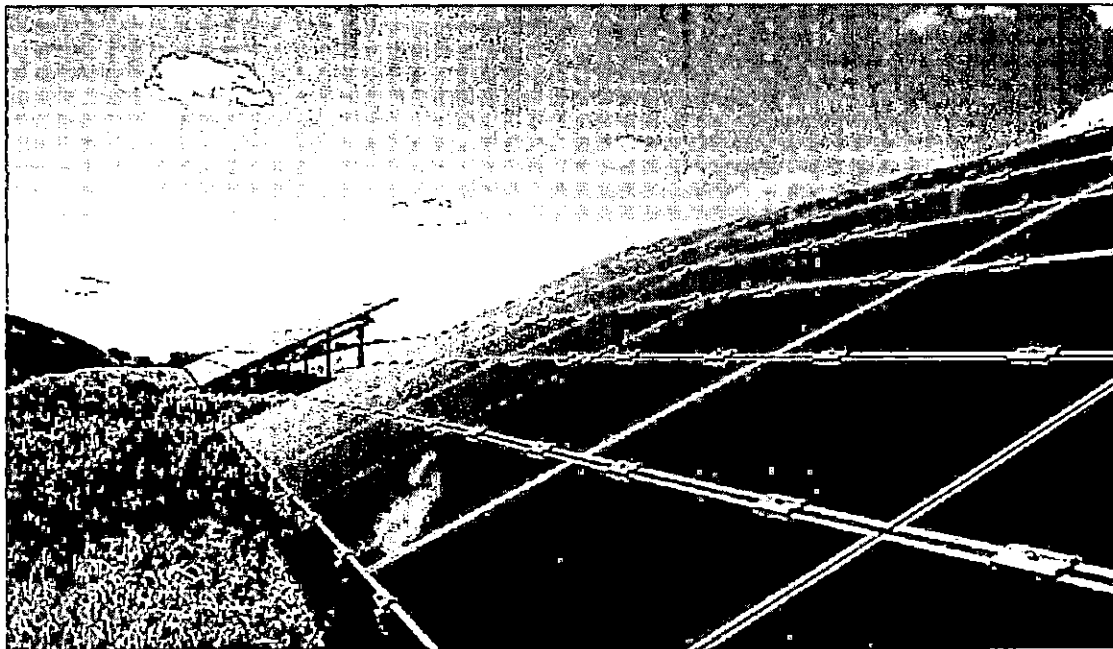
RENEWABLE ENERGY

a series on alternative energy sources

What is a solar farm?

Solar farm development projects are being proposed in municipalities throughout Montgomery County. Montgomery County gets enough sunlight per year, has large parcels available for development and is well-connected to the electric grid. All these factors make the county an attractive location for solar farm developments.

A solar farm is a term commonly used to describe a collection of photovoltaic solar panels. There is no official number of panels installed or acres of land used that qualify a project as a solar farm, though a peak output of one megawatt of power has been cited as a common standard. Due to the lack of a standardized definition for solar farms, most industry representatives and government agencies refer to solar farms as **utility-scale solar applications**. When this publication refers to solar farms, it means only those projects that can be categorized as utility-scale solar applications.



*Crayola's 1.9-megawatt solar facility. Built in partnership with PPL Renewable Energy and UGI Energy Services Inc.
Courtesy of Crayola.*

The definition of a solar farm is not based on the number of panels or energy generated, but on the purpose of the energy. If the primary purpose of power from a solar application's is the sale for commercial gain, then it is considered a utility-scale solar application. Energy generated by a solar farm is typically sold to energy companies, rather than end-users. The owners of the solar application obtain a permit from the State of Pennsylvania and are listed by the Department Of Energy as a power generation source.

If a solar application primarily powers a residence or business, then it is not utility-scale, even if it sells back any excess electricity through net metering. In this application, the energy derived is used to run the primary use of the property. This type of application is commonly seen on houses and businesses in the county.

A solar farm can be located many places throughout a municipality. It can turn a closed landfill, a brownfield site or even some superfund sites into economically productive parcels. It can be placed on large commercial properties either on the ground or possibly on rooftops. There may even be instances where it can also be placed on farm land or unprotected open space, though the municipality, community, and developer should all agree that this is the best use for the land before the development proceeds. No matter what kind of land is being used, the site must have the correct solar orientation, geology, topography and should be close to an area where there is a sufficient demand for electricity and a means to distribute it are available. The information presented

in this publication will help municipalities understand the issues surrounding the development and implementation of a solar farm.

Role of a zoning ordinance

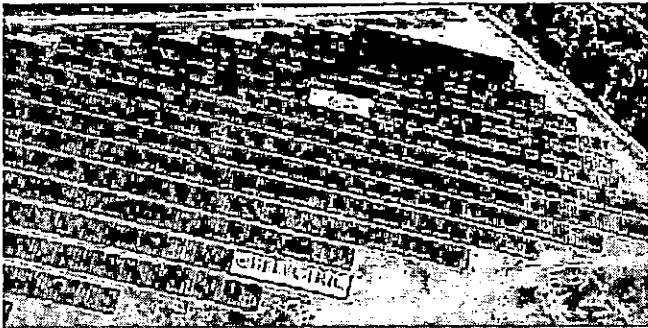
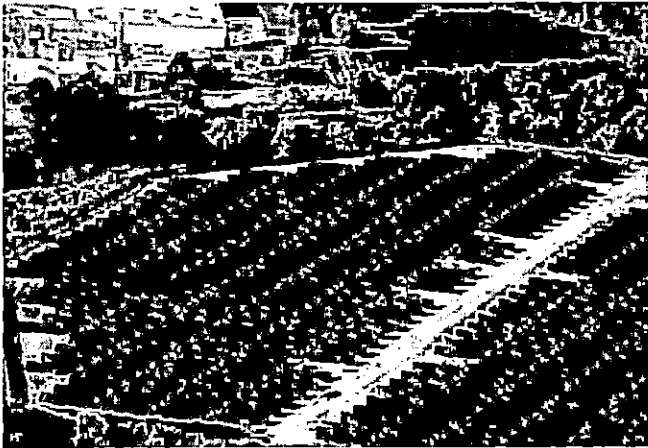
The municipal zoning ordinance can be used to direct utility-scale solar projects to appropriate areas of the municipality and regulate certain aspects of them. A municipality that receives a land development application for a solar farm but has no ordinance in place to regulate such activity should anticipate a complicated variance process. The municipality should enact an ordinance, or amend an existing solar ordinance, to regulate the development of utility-scale solar applications as a conditional use in appropriate zoning districts. This will benefit both the municipality and the developer. The municipality will be able to require the developer to meet certain conditions that will ensure a project is completed responsibly. The developer will understand the municipality's requirements before the project begins, allowing them to plan appropriately, saving time and money throughout the regulatory process.

Municipal considerations

Financing: While financing is not under municipal purview, it is a critical aspect of a utility-scale solar project that can have an immense impact on the municipality. Many of these projects are financed through a solar power purchase agreement (SPPA). A SPPA can be a very complicated lease and purchasing agreement, including multiple parties such as the host site, a



Calpine Corporation owns and manages Vineland Solar One, a 4-megawatt array that provides power to nearly 500 residents of Vineland, NJ, through a partnership with Vineland Municipal Electric Utility and Landis Sewerage Authority.



Top photo: A 2-megawatt PSEG and Mars Chocolate SPPA project in Hackettstown, NJ.

Middle Photo: A 3-megawatt facility that powers Pocono Raceway through a SPPA.

Bottom Photo: Aqua's Ingram's Mill Wastewater Treatment Plant in East Bradford, PA is the site of a 1.1-megawatt solar project. Courtesy of Keates Electrical Contracting, Inc.

solar developer, financial backers, and power purchasers. The Environmental Protection Agency has information explaining this topic on its website at www.epa.gov/greenpower/buygp/solarpower.htm. Obtaining the financing for a project of this scale can be difficult and ensuring that it will be funded through to completion can be even more difficult. This difficulty is due to the many entities involved and the possible financial risks that come with a long-term, multi-million dollar project requiring the sale of energy in an emerging market. A municipality should become knowledgeable about the complexities of a SPPA to be better prepared for the development process.

The municipality should require proof that all the financing is in place before any land development begins. A project that removes trees, grades land and builds roads but then lacks the funding to install the solar panels can leave many acres of land in a distressed state.

Insurance: A municipality should require proof that all the necessary insurance is in place before land development begins. This is especially important if the project is going to take place on a landfill or brownfield.

Connections: Just because a project can be financed and built does not mean that the electric grid has the capacity to support the energy generated. It is important to know that the project can get all the necessary connections. The developer should follow all the interconnection regulations required by the local network operator, probably PECO or PPL, and by the Public Utility Commission (PUC). The PUC publishes its interconnection rules on its website at www.puc.state.pa.us; under the electric tab, select "alternative energy," and scroll down to "interconnections" for the most recent information. The municipality should require proof that the interconnections are possible before allowing land development to begin. It is also possible that the interconnections may need new transmission lines to be run to the site and that these lines may require new easements, property purchases, etc. The municipality should be made aware of any impacts stemming from the interconnection.

Pennsylvania Natural Diversity Inventory (PNDI) and Cultural Resource Notice (CRN): A municipality should require the completion of these two common state forms before any land development begins to help ensure the

protection of any plant or animal species of concern, and any historical resources on the parcel.

Stormwater: It is commonly thought that solar panels are not an impervious surface due to the fact that they are elevated, tilted, and allow the stormwater to flow onto the ground. While that may be the case, large areas of solar panels will definitely have an impact on how stormwater flows. The panels may channelize the flows and create higher velocities of stormwater. The footings for the panels, the conduit trenches, and the associated service roads may also affect the stormwater flows on and leaving a site. A municipality should pay special attention to the stormwater management on a solar site and require best management practices (BMPs) be installed. This may include meadow mixes under the panels instead of gravel, vegetated swales, or naturalized basins. The owner/operator of the site should be required to create and follow a maintenance/operations guide for the BMPs.

Fencing: The developer and municipality may want to require fencing around the site to ensure the panels are not damaged and no one is accidentally injured on the site. Consideration should be given as to the type of fencing to ensure it serves its purpose while also attempting to fit into the character of the surrounding area.

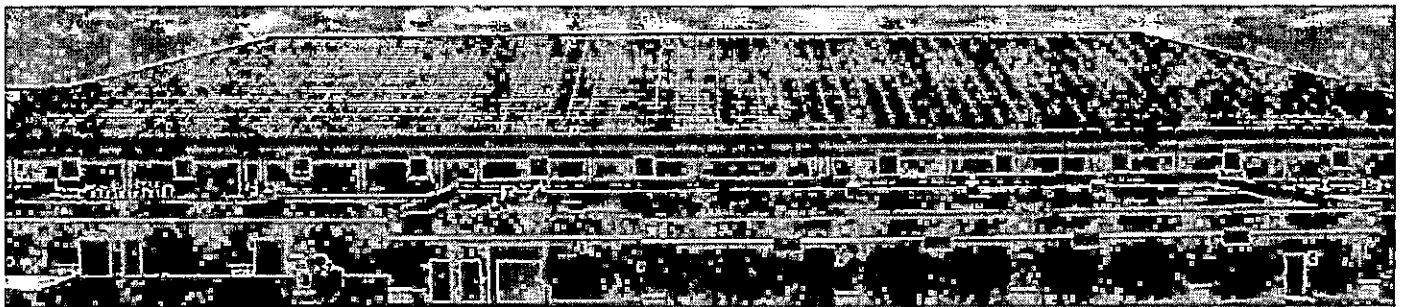
Viewshed/glare: This is an important issue to help avoid complaints from neighbors. A municipality could require the applicant to demonstrate that the proposal will not have an adverse effect on neighboring properties. Information provided by the applicant should include aerials of the site, graphic renderings of the project, and/or pictures from the

site of surrounding parcels demonstrating sight lines. The municipality could also require renderings of the proposed project site as viewed from nearby public right-of-ways, open space, parks, trails, etc. Appropriate vegetated buffers could also be required to help limit the visual impact of the site and possible glare issues.

Tree replacement: If trees must be removed from the site the municipality should require that a tree replacement policy be followed to minimize the environmental impact of the project.

Construction standards: Because the profitability of the site is directly correlated to the solar site's quality of construction, most developers will work diligently to ensure it is built properly. The municipality should take steps to ensure that the site is inspected by all necessary municipal authorities, PECO, and state authorities.

Community resource: A utility-scale solar project's primary goal is to produce power, but it can also be a community resource. A municipality can encourage the project to integrate educational opportunities such as partnerships with schools and the provision of educational materials at the site as appropriate. The project site may also be suitable for open space and trail opportunities which would allow the public to use a portion of the site for recreation while becoming educated about the benefits of solar energy.



An 815,000 kW installation at Fort Dix in New Jersey. The installation is part of a Honeywell energy conservation contract. Courtesy of Honeywell International.

RENEWABLE ENERGY

For more information, please contact the Montgomery County Planning Commission at 610.278.3722 or visit our site online at www.planning.montcopa.org to see the complete renewable energy series and other resources.

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PLANT LIST								Cost Estimate	
ID	QUANT	BOTANIC NAME	COMMON NAME	minimum SIZE	ROOT	SPACING	ultimate size	UNIT COST	TOTAL COST
37 Major deciduous trees									
A	14	Acer campestre 'S'igrezam'	St. Gregory Hedge Maple	2" cal.	B&B	random (see plan)	Ht/Width 30' x 30'	\$300	\$4,200
G	5	Gleditsia triacanthos 'Shademaster'	Shademaster Locust	2" cal.	B&B	random (see plan)	45' x 35'	\$300	\$1,500
Q	18	Quercus palustris	Pin Oak	2" cal.	B&B	random (see plan)	70' x 40'	\$300	\$5,400
115 Evergreen Trees									
INS	27	Ilex x "Nellie R. Stevens"	Nellie Stevens Holly	6'	B&B	random (see plan)	20' x 10'	\$180	\$4,860
Jv	54	Juniperus virginiana	Eastern Red Cedar	6'	B&B	random (see plan)	45' x 14'	\$180	\$9,720
Pf	22	Pinus flexilis 'Vanderwolf'	Limber Pine	6'	B&B	random (see plan)	22' x 12'	\$180	\$3,960
To	12	Thuja occidentalis 'Techny'	Green Giant Arborvitae	6'	B&B	random (see plan)	20' x 6'	\$180	\$2,160
23 Minor Deciduous Trees									
CW	4	Crataegus viridis 'Winter King'	Winter King Hawthorn	1" cal.	B&B	random (see plan)	25' x 25'	\$200	\$800
M	13	Malus "Indian Summer"	Indian Summer Crabapple	1" cal.	B&B	random (see plan)	16' x 24'	\$200	\$2,600
Py	6	Prunus x yedoensis "Akabono"	"Akabono" Yoshino Cherry	1" cal.	B&B	random (see plan)	25' x 25'	\$200	\$1,200
66 Evergreen Shrubs									
PI	38	Prunus laurocerasus 'Schipkaensis	Schip Laurel	24"	#5 cont.	random (see plan)	4' x 8'	\$60	\$2,280
V	28	Viburnum rhytidophyllum	Latherleaf Viburnum	24"	#5 cont.	random (see plan)	8' x 8'	\$60	\$1,680
total = 241								total = \$40,360	

Minimum Landscape Maintenance Requirements

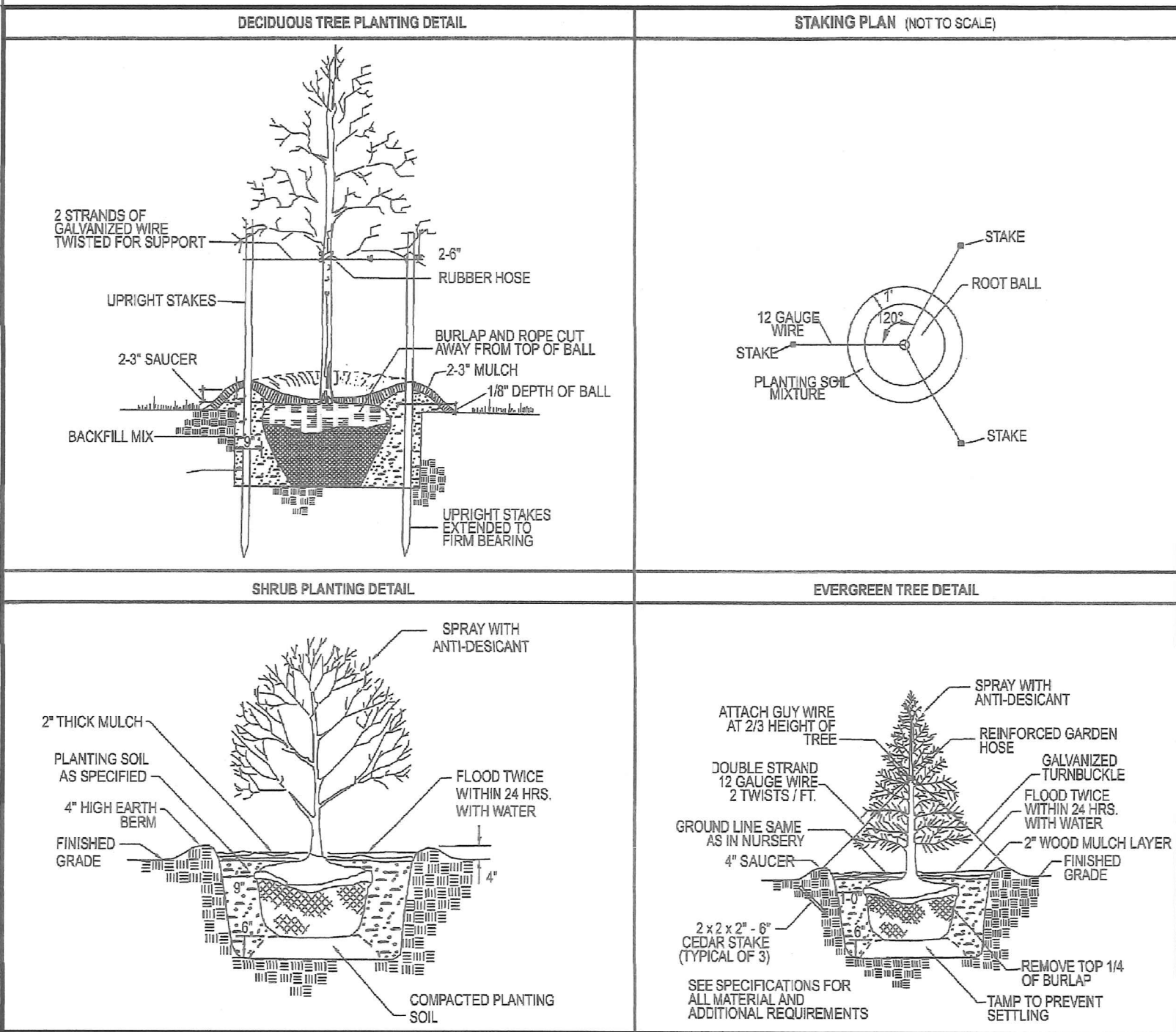
- Lawn areas shall be mowed to a height of 2 to 3 inches and not allowed to reach a height of 4 inches before mowing.
- All curbs and walks shall be edged as needed.
- All lawn areas adjacent to building faces or structures shall be trimmed.
- A slow release nitrogen balanced fertilizer with a 2-1-1 ratio shall be applied at a rate of 2 pounds of nitrogen per 1000 square feet in September, October, and February.
- Lime shall be applied at the rate determined by a soil report.
- It is recommended that lawn areas be treated in mid-March to early April with pre-emergent herbicide (Bentazon) or equal applied at the manufacturer's recommended rate.
- A post-emergent herbicide (Trimec) or equal is recommended to be sprayed on lawn areas in the late spring or the early fall. Follow manufacturer's rates and recommendations.
- Insecticides and fungicides are recommended for insect and disease control.
- Reseed bare areas of lawn as necessary. Yearly aeration is recommended.
- All trash, liner, and debris shall be removed from lawn areas, parking lots, and shrub beds as needed.
- Mulch all shrub and groundcover beds yearly with 3 inches of shredded hardwood bark.
- Permit shrubs and trees to grow and entangle to their design size. Consult project landscape architect for details.
- Prune trees in accordance with Landscape Specification Guidelines for Baltimore-Washington Metropolitan Areas.

LANDSCAPE SPECIFICATIONS

- All plants shall be identified in accordance with the latest edition of Hortus Third, by "The Staff of the Hortorium"
- All nursery stock shall conform to American Association of Nurserymen, Inc. standards as described in American standard for Nursery Stock, current ANSI A-300 specifications.
- Landscape specifications shall conform to Landscape Guidelines for Maryland, Washington, D.C., and Virginia, latest edition. All nursery stock shall be planted in accordance with the procedures outlined in the guidelines.
- Three (3) inches topsoil on all disturbed areas to be landscaped, seeded or sodded is required.

INSTALLATION

- Standards to conform to the most recent version of the ANSI A300 Standards Part 6 - Transplanting and Landscape Specifications Guidelines of the Landscape Contractors Association for Maryland, Washington, D.C., and Virginia.
- Planting on individual lots shall be installed upon final grading inspection. No final grading approval shall be given on the building permit until landscaping is complete.
- A completed and sealed certification by a landscape architect shall be provided at the initial inspection. The completion form with photographs is required.
- Acceptable plant survival shall be defined as not more than 1/3 mortality. A 12 month inspection will be performed by the County. No inspections shall be finalized from November 1st to March 1st.



RTF
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LAND SURVEYORS & PLANNERS

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410-440-0440 FAX 410-238-4342 410-876-1222
EMAIL: RTF142@GMAIL.COM WWW.RTF-SURVEYING.COM

CHECKED BY: _____ DATE: _____
DRAWN BY: MEB DATE: 12/22/2016
SCALE: 1" = 50' RTF JOB#: 16-44

..... DENOTES LIMIT OF DISTURBANCE

REVIEWS	
DATE	REASON
2-3-2017	County review comments
2-6-2017	County review comments



- AREA OF DISTURBANCE:**
- 500 PERKS: @ 1.50, FT. EACH = 500 SQ. FT. (PILE DRIVEN)
 - CONCRETE PADS FOR INVERTERS = 500 SQ. FT. ±
 - STABILIZED CONSTRUCTION ENTRANCE = 750 SQ. FT. ±
 - TOTAL AREA OF DISTURBANCE = 1750 SQ. FT.
 - THERE WILL BE NO ADDITIONAL GRADING (PAV DISTURBANCE OF EARTH, INCLUDING BUT NOT LIMITED TO CLEARING, STRIPPING, STOCKPILING, EXCAVATING, SCARIFYING, FILLING OR ANY COMBINATION THEREOF) OTHER THAN DISTURBANCE NOTED ABOVE.

John E. Lemmerman
JOHN E. LEMMERMAN
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 2106
EXP. 8-3-17



TREE PROTECTION NOTES

- Upon notification of County approval of the final landscape plan, trees which are to remain shall be marked in the field by the developer and protected in an approved manner. Trees within the construction area which are to remain undisturbed shall be encircled with a fence for protection, (knock fencing or other approved methods). The contractor shall not disturb the area within the fence in any manner deleterious to the trees.
- Any trenching operations within the vicinity of trees should be done in a manner to protect the tree roots. Tearing and ripping of tree roots should be avoided. Roots should be severed neatly.
- All trees to be removed should be removed in a manner that will not damage the remaining trees. Any trees that are to remain that are damaged during clearing operation must be repaired in an approved manner by a tree expert as soon as final clearing has been completed. After construction is completed, temporary barriers, surplus materials and all trash, debris and rubbish shall be removed from the site. All backfill shall be clear of building material, stone and rubble.
- Existing trees (particularly mature trees) which are retained will undergo "post operative shock" caused by the construction activity. All possible safeguards should be taken to minimize these effects and to provide optimum growth conditions. Foliage feeding and liquid or root feeding are encouraged. Branch and foliage thinning are also desirable.

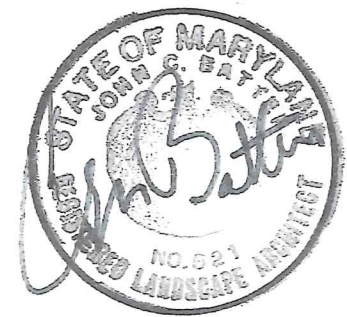
OPERATIONS IN INSTALLATION PHASE SCHEDULE	
1	LAYOUT UTILITIES REVIEW AND MARKING.
2	UNDERSIRABLE VEGETATION REMOVAL AND HERBICIDE APPLICATION.
3	PLANTING PIT EXCAVATION, SOIL PREPARATION, AND PLANT INSTALLATION.
4	PLANTING BED ROTO-TILLING AND SOIL PREPARATION, APPLYING SHREDDED HARDWOOD BARK (SHB) MULCH, AND PLANT INSTALLATION.
5	APPLYING FERTILIZER SOLUTION AFTER INSTALLATION, AND CLEANUP.

FINAL LANDSCAPE PLAN LANDSCAPE ARCHITECT CERTIFICATION FORM

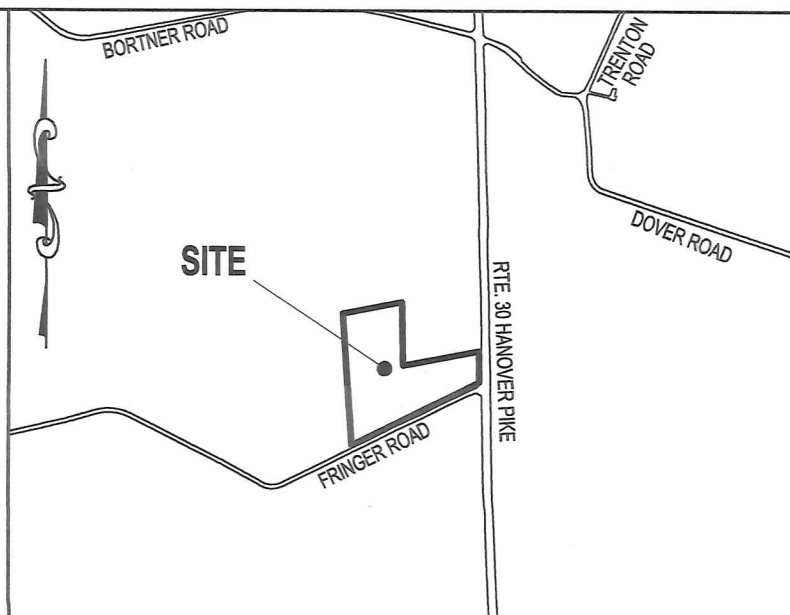
IT IS CERTIFIED THAT THIS LANDSCAPE PLAN IS IN COMPLIANCE WITH ALL PLANS PREVIOUSLY APPROVED BY BALTIMORE COUNTY AND THE BALTIMORE COUNTY COMMENTS ATTENDANT THERETO.

CHRIS BATTEN
PRINT NAME

2/6/2017
DATE



APPLICANT	OWNER	TITLE REFERENCE
EARTH AND AIR TECHNOLOGY C/O KEN DONITHON 60 AILE RUN CT, SUITE 4 WESTMINSTER, MD 21157	DONALD E. LIPPY KATHLEEN F. LIPPY 421 LEES MILL ROAD HAMPSTEAD, MD 21074	DONALD E. LIPPY KATHLEEN F. LIPPY 27651-231 JANUARY 14, 2009

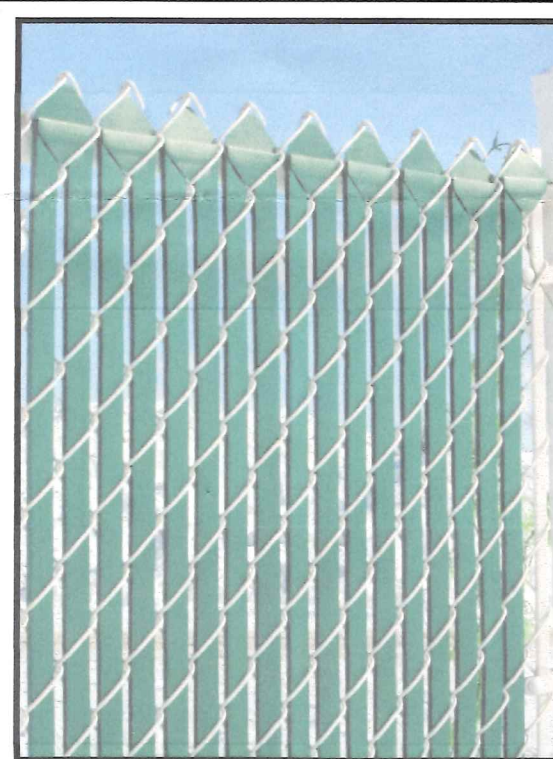


VICINITY MAP

SCALE: 1" = 1000'

NOTE:

- "SPECIAL EXCEPTION" HEARING/ APPROVAL CASE #2016-0335-SPHX ON OCTOBER 12, 2016. THE RELIEF GRANTED IS SUBJECT TO THE FOLLOWING
 - PETITIONERS MAY APPLY FOR NECESSARY PERMITS AND/OR LICENSES UPON RECEIPT OF THIS ORDER. HOWEVER, PETITIONERS ARE HEREBY MADE AWARE THAT PROCEEDING AT THIS TIME IS AT THEIR OWN RISK UNTIL 30 DAYS FROM THE DATE HEREOF. DURING WHICH TIME AN APPEAL CAN BE FILED BY ANY PARTY. IF FOR WHATEVER REASON THIS ORDER IS REVERSED, PETITIONERS WOULD BE REQUIRED TO RETURN THE SUBJECT PROPERTY TO ITS ORIGINAL CONDITION.
 - PRIOR TO ISSUANCE OF PERMITS PETITIONERS MUST SUBMIT FOR APPROVAL BY THE BALTIMORE COUNTY LANDSCAPE ARCHITECT A LANDSCAPE PLAN DEMONSTRATING THE "SOLAR FARM" WILL BE ADEQUATELY SCREENED FROM HANOVER PIKE CONSISTENT WITH THE SCENIC VIEW GUIDELINES IN THE CHOP.
 - NO SIGNAGE OR LIGHTING SHALL BE PERMITTED.
 - IF THE SOLAR FARM IS NOT IN CONTINUOUS USE AND OPERATION FOR A PERIOD OF ONE (1) YEAR OR MORE, IT SHALL BE REMOVED AT THE OWNERS' OR OPERATORS' SOLE EXPENSE. SHOULD THE OWNERS OR OPERATORS FAIL TO DO SO, BALTIMORE COUNTY MAY ENGAGE A CONTRACTOR TO PERFORM THE WORK, AND ALL COSTS AND EXPENSES ASSOCIATED THEREWITH SHALL BE A LIEN ON THE PROPERTY AND COLLECTED IN THE SAME MANNER AS REAL ESTATE TAXES.
 - THE SOLAR FARM SHALL BE ENCLOSED BY PERIMETER FENCING TO PREVENT UNAUTHORIZED ACCESS TO THE SITE AND SCREEN THE VIEW FROM OFF-SITE.
 - ALL POWER LINES AT THE SITE, TO THE EXTENT PRACTICABLE, SHALL BE PLACED UNDERGROUND.
- SITE IS UN-MANAGED AND MONITORED REMOTELY. NO COMMERCIAL ENTRANCE OR PARKING IS REQUIRED.
- ALL PROPERTIES SHOWN ARE ZONED RC-2



6' PERIMETER
SCREENED CHAIN LINK FENCING
DETAIL
NTS

FINAL LANDSCAPE PLAN
FOR
SOLAR PANEL ARRAY FIELD
AS A "PUBLIC UTILITY USE"
FOR

LIPPY PROPERTY

HANOVER ROAD AND NORTH SIDE OF FRINGER ROAD
4TH ELECTION DISTRICT, BALTIMORE CO., MD
3RD COUNCILMANIC DISTRICT
TAX MAP: 25, GRID: 21, PARCEL: 267

FINAL LANDSCAPE PLAN OWNER CERTIFICATION FORM

I CERTIFY THAT I HAVE REVIEWED THIS FINAL LANDSCAPE PLAN; THAT I AM AWARE OF THE REGULATIONS PRESENTED IN THE BALTIMORE COUNTY LANDSCAPE MANUAL; AND I AGREE TO COMPLY WITH THESE REGULATIONS AND ALL APPLICABLE POLICY, GUIDELINES AND ORDINANCES. I AGREE TO CERTIFY THE IMPLEMENTATION OF THIS APPROVED FINAL LANDSCAPE PLAN UPON COMPLETION OF THE LANDSCAPE INSTALLATION PRIOR TO PWA CLOSEOUT IF APPLICABLE OR NOT LATER THAN ONE (1) YEAR FROM THE DATE OF APPROVAL OF THIS PLAN TO THE DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS, DEVELOPMENT PLANS REVIEW, ROOM 119, COUNTY OFFICE BUILDING, 111 W. CHESAPEAKE AVENUE, TOWSON, MD 21204.

APPLICANT'S SIGNATURE	DATE	EARTH AND AIR TECHNOLOGY	PRINT NAME
60	2/6/2017	AILE RUN COURT	SUITE 4
ADDRESS (PLEASE PRINT)	STREET	PHONE #	
WESTMINSTER	MARYLAND	21157	
CITY	STATE	ZIP	
PAI #	PERMIT #	Petitioner CBA Exhibit	
FILE: SPECIAL EXCEPTION # 2016-0335-SPHX			

PLANT LIST								Cost Estimate	
ID	QUANT	BOTANIC NAME	COMMON NAME	minimum SIZE	ROOT	SPACING	ultimate size	UNIT COST	TOTAL COST
37 Major deciduous trees									
A	14	Acer campestre 'Sigrazem'	St. Gregory Hedge Maple	2" cal.	B&B	random (see plan)	30' x 30'	\$300	\$4,200
G	5	Gleditsia triacanthos 'Shademaster'	Shademaster Locust	2" cal.	B&B	random (see plan)	45' x 35'	\$300	\$1,500
Q	16	Quercus palustris	Pin Oak	2" cal.	B&B	random (see plan)	70' x 40'	\$300	\$5,400
115 Evergreen Trees									
INS	27	Ilex x 'Nellie R. Stevens'	Nellie Stevens Holly	6'	B&B	random (see plan)	20' x 10'	\$180	\$4,860
Jv	54	Juniperus virginiana	Eastern Red Cedar	6'	B&B	random (see plan)	45' x 14'	\$180	\$9,720
Pf	22	Pinus flexilis 'Vanderwolf'	Limber Pine	6'	B&B	random (see plan)	22' x 12'	\$180	\$3,960
To	12	Thuja occidentalis 'Tectny'	Green Giant Arborvitae	6'	B&B	random (see plan)	20' x 6'	\$180	\$2,160
23 Minor Deciduous Trees									
CW	4	Crataegus viridis 'Winter King'	Winter King Hawthorn	1" cal.	B&B	random (see plan)	25' x 25'	\$200	\$800
M	13	Malus 'Indian Summer'	Indian Summer Crabapple	1" cal.	B&B	random (see plan)	18' x 24'	\$200	\$2,600
Py	6	Prunus x yedoensis 'Akabono'	'Akabono' Yoshino Cherry	1" cal.	B&B	random (see plan)	25' x 25'	\$200	\$1,200
66 Evergreen Shrubs									
PI	36	Prunus laurocerasus 'Schipkaensis'	Schip Laurel	24"	#5 cont.	random (see plan)	4' x 8'	\$60	\$2,280
V	28	Viburnum rhytidophyllum	Leatherleaf Viburnum	24"	#5 cont.	random (see plan)	8' x 8'	\$60	\$1,680
total = 241								total = \$40,380	

Minimum Landscape Maintenance Requirements

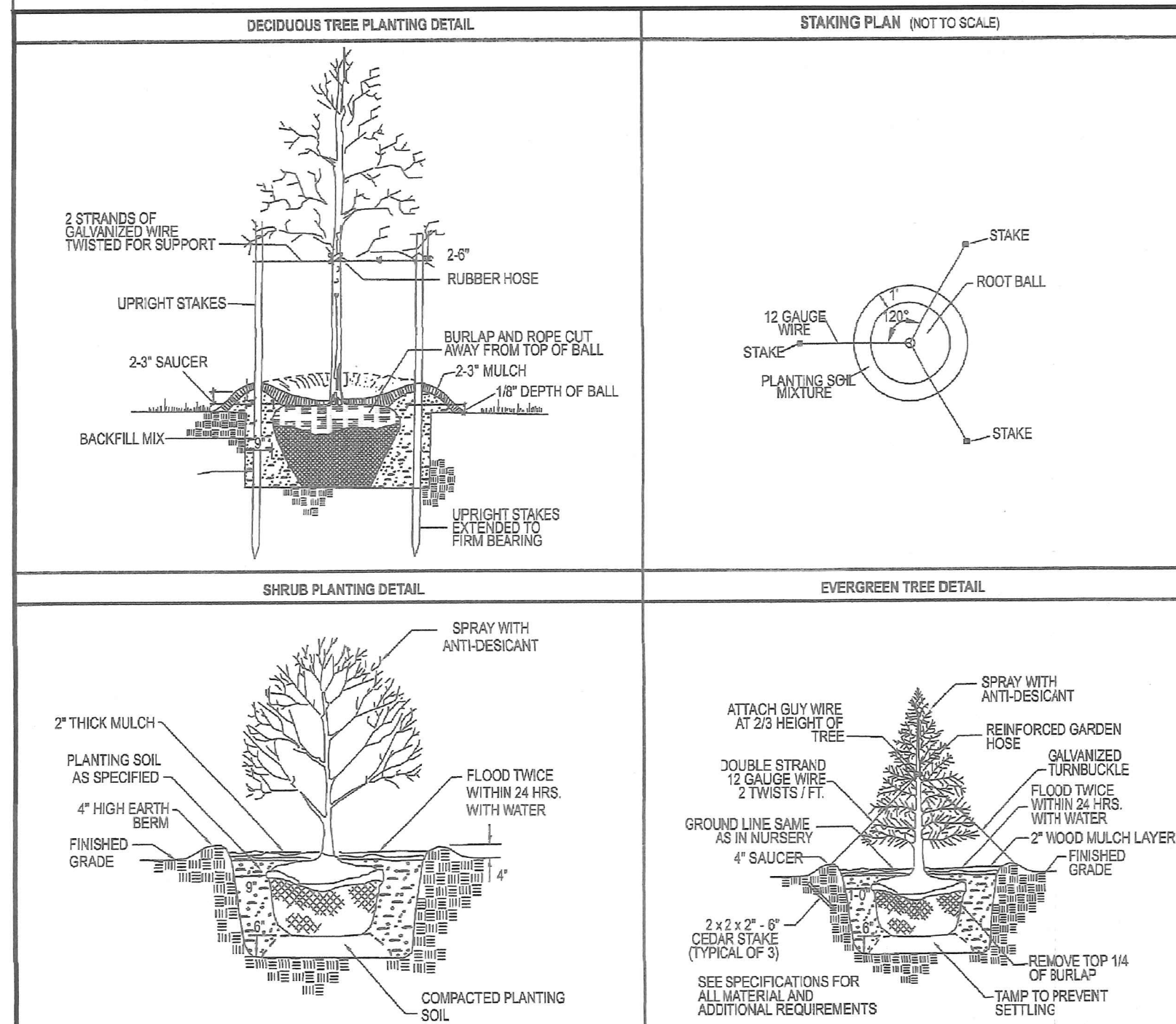
- Lawn areas shall be mowed to a height of 2 to 3 inches and not allowed to reach a height of 4 inches before mowing.
- All curbs and walks shall be edged as needed.
- All lawn areas adjacent to building faces or structures shall be trimmed.
- A slow release nitrogen balanced fertilizer with a 2-1-1 ratio shall be applied at a rate of 2 pounds of nitrogen per 1000 square feet in September, October, and February.
- Lime shall be applied at the rate determined by a soil report.
- It is recommended that lawn areas be treated in mid-March to early April with pre-emergent herbicide (Betasan) or equal applied at the manufacturer's recommended rate.
- A post-emergent herbicide (Tranece) or equal is recommended to be sprayed on lawn areas in the late spring or the early fall. Follow manufacturer's rates and recommendations.
- Insecticides and fungicides are recommended for insect and disease control.
- Reseed bare areas of lawn as necessary. Yearly aeration is recommended.
- All trash, litter, and debris shall be removed from lawn areas, parking lots, and shrub beds as needed.
- Mulch all shrub and groundcover beds yearly with 2 inches of shredded hardwood bark.
- Permit shrubs and trees to grow and enlarge to their design size. Consult project landscape architect for details.
- Prune trees in accordance with Landscape Specification Guidelines for Baltimore-Washington Metropolitan Areas.

LANDSCAPE SPECIFICATIONS

- All plants shall be identified in accordance with the latest edition of Hortus Third, by "The Staff of the Hortorium".
- All nursery stock shall conform to American Association of Nurserymen, Inc. standards as described in American standard for Nursery Stock, current ANSI A-300 specifications.
- Landscape specifications shall conform to Landscape Guidelines for Maryland, Washington, D.C., and Virginia, latest edition. All nursery stock shall be planted in accordance with the procedures outlined in the guidelines.
- Three (3) inches topsoil on all disturbed areas to be landscaped, seeded or sodded is required.

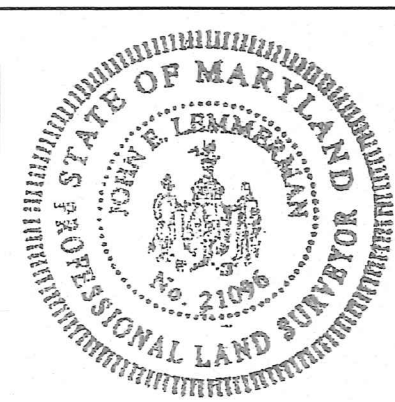
INSTALLATION

- Standards to conform to the most recent version of the ANSI A300 Standards Part 6 - Transplanting and Landscape Specifications Guidelines of the Landscape Contractors Association for Maryland, Washington, D.C., and Virginia.
- Planting on individual lots shall be installed upon final grading inspection. No final grading approval shall be given on the building permit until landscaping is complete.
- A completed and sealed certification by a landscape architect shall be provided at the initial inspection. The completion form with photographs is required.
- Acceptable plant survival shall be defined as not more than 1/3 mortality. A 12 month inspection will be performed by the County. No inspections shall be finalized from November 1st to March 1st.



142 EAST MAIN STREET WESTMINSTER, MD 21157
410-848-2040 FAX# 443-288-8842 410-876-1222
EMAIL: RTF142@GMAIL.COM WWW.RTFSURVEYING.COM
CHECKED BY: DATE: 12/22/2016
DRAWN BY: MEB DATE: 12/22/2016
SCALE: 1" = 50' RTF JOB#: 16-44

REVISIONS	
DATE	REASON
2-3-2017	County review comments
2-6-2017	County review comments



AREA OF DISTURBANCE:
• 500 PERFS @ 1 SQ. FT. EACH = 500 SQ. FT. (PLE DRIVEN)
• CONCRETE PADS FOR INVERTERS = 500 SQ. FT. ±
• STABILIZED CONSTRUCTION ENTRANCE = 750 SQ. FT. ±
• TOTAL AREA OF DISTURBANCE = 1750 SQ. FT.
• THERE WILL BE NO ADDITIONAL GRADING (ANY DISTURBANCE OF EARTH, INCLUDING BUT NOT LIMITED TO CLEARING, STRIPPING, STOCKPILING, EXCAVATING, SCARPING, FILLING OR ANY COMBINATION THEREOF) OTHER THAN DISTURBANCE NOTED ABOVE.

JOHN E. LEMMERMAN
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 21096
EXP. 6-6-17

TREE PROTECTION NOTES

- Upon notification of County approval of the final landscape plan, trees which are to remain shall be marked in the field by the developer and protected in an approved manner. Trees within the construction area which are to remain undisturbed shall be enclosed with a fence for protection (fence fencing or other approved methods). The contractor shall not disturb the area within the fence in any manner deleterious to the trees.
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OPERATIONS IN INSTALLATION PHASE SCHEDULE	
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2	UNDESIRABLE VEGETATION REMOVAL AND HERBICIDE APPLICATION.
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4	PLANTING BED ROTO-TILLING AND SOIL PREPARATION, APPLYING SHREDDED HARDWOOD BARK (SHB) MULCH, AND PLANT INSTALLATION.
5	APPLYING FERTILIZER SOLUTION AFTER INSTALLATION, AND CLEANUP.

FINAL LANDSCAPE PLAN LANDSCAPE ARCHITECT CERTIFICATION FORM

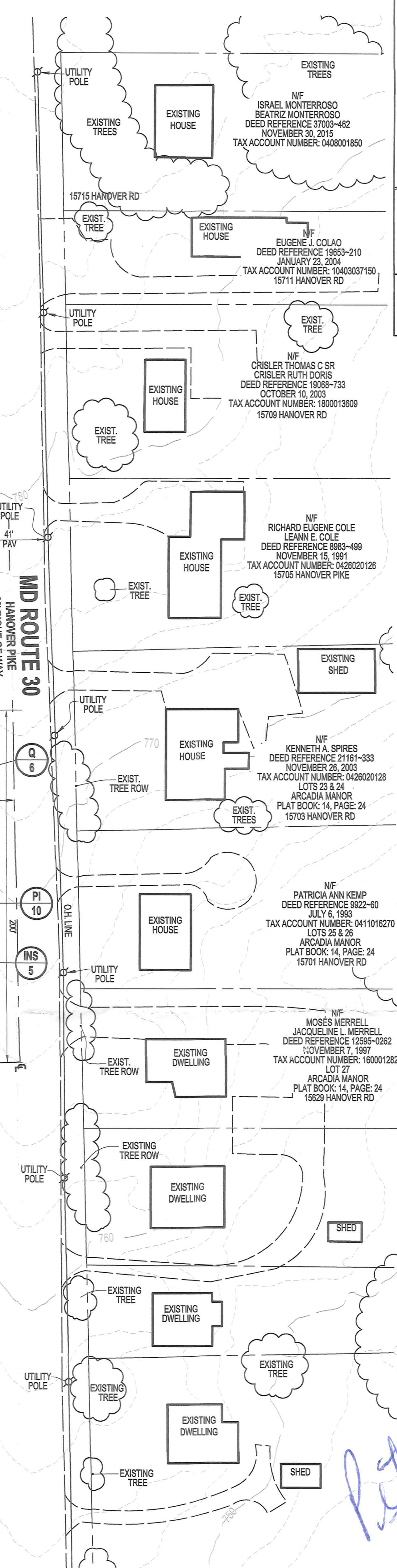
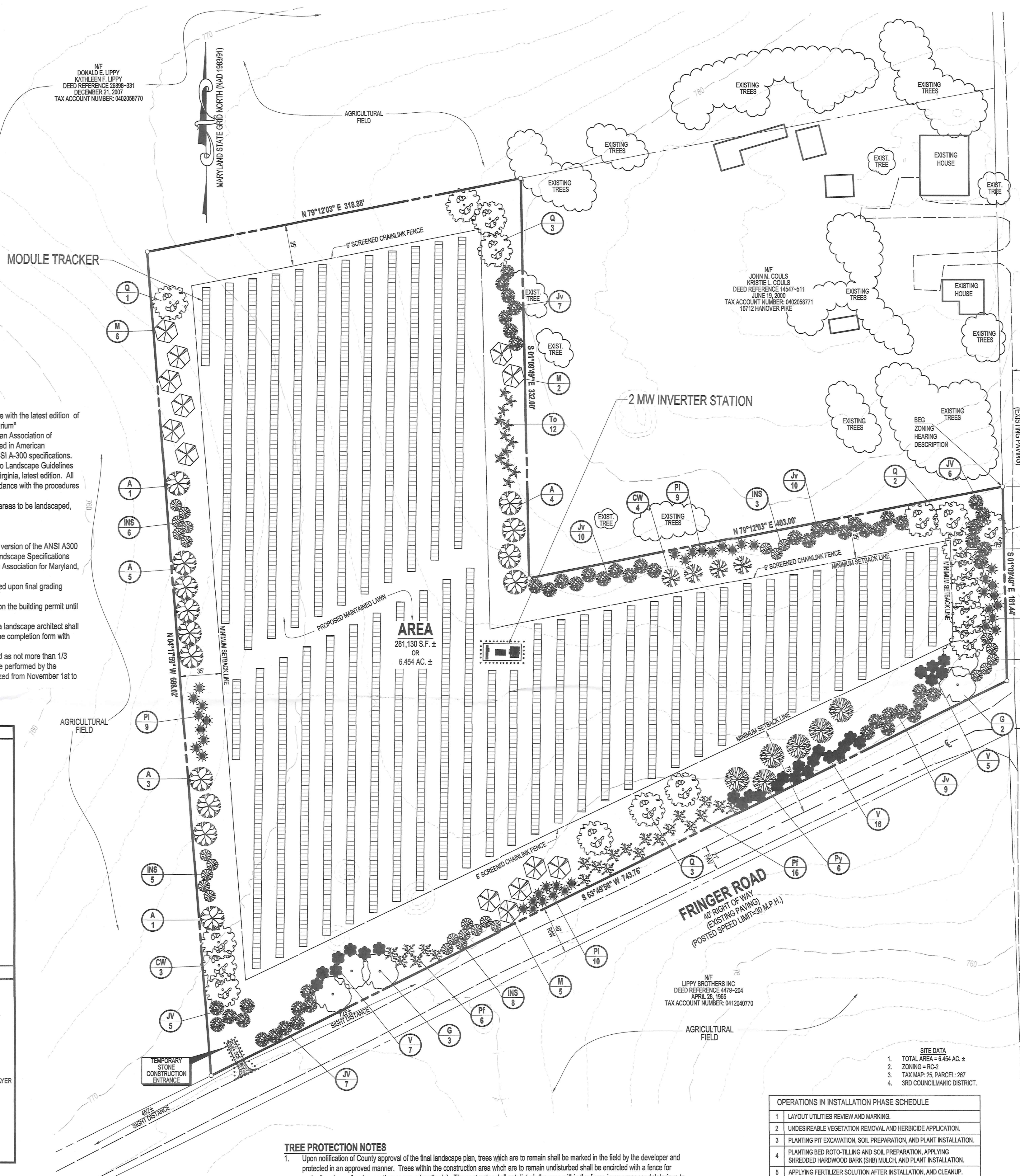
IT IS CERTIFIED THAT THIS LANDSCAPE PLAN IS IN COMPLIANCE WITH ALL PLANS PREVIOUSLY APPROVED BY BALTIMORE COUNTY AND THE BALTIMORE COUNTY COMMENTS ATTENDANT THERE TO.

CHRIS BATTEN
PRINT NAME

2/6/2017
DATE



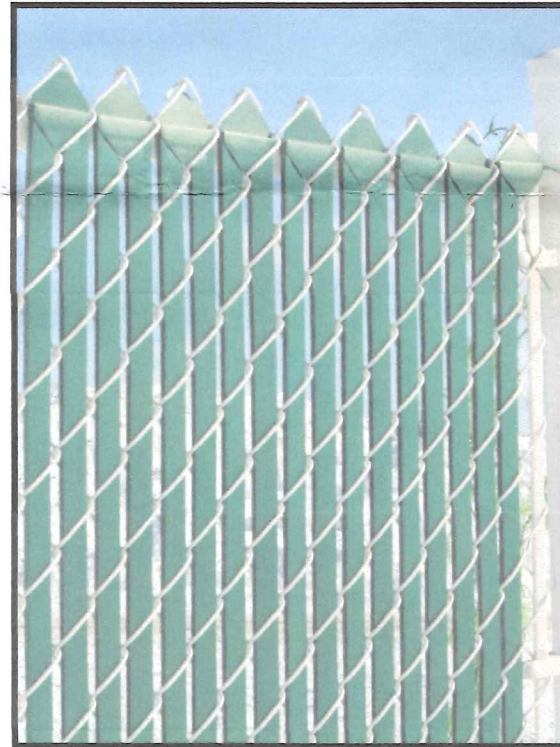
APPLICANT	OWNER	TITLE REFERENCE
EARTH AND AIR TECHNOLOGY C/O KEN DONITHON 60 AILE RUN CT, SUITE 4 WESTMINSTER, MD 21157	DONALD E. LIPPY KATHLEEN F. LIPPY 421 LEES MILL ROAD HAMPSTEAD, MD 21074	DONALD E. LIPPY KATHLEEN F. LIPPY 27651-231 JANUARY 14, 2009



VICINITY MAP

SCALE: 1" = 100'

- NOTE:
- "SPECIAL EXCEPTION" HEARING/ APPROVAL CASE #2016-0335-SPHX ON OCTOBER 12, 2016. THE RELIEF GRANTED IS SUBJECT TO THE FOLLOWING:
 - PETITIONERS MAY APPLY FOR NECESSARY PERMITS AND/OR LICENSES UPON RECEIPT OF THIS ORDER. HOWEVER, PETITIONERS ARE HEREBY MADE AWARE THAT PROCEEDING AT THIS TIME IS AT THEIR OWN RISK UNTIL 90 DAYS FROM THE DATE HEREOF. DURING WHICH TIME AN APPEAL CAN BE FILED BY ANY PARTY. IF FOR WHATEVER REASON THIS ORDER IS REVERSED, PETITIONERS WOULD BE REQUIRED TO RETURN THE SUBJECT PROPERTY TO ITS ORIGINAL CONDITION. PRIOR TO ISSUANCE OF PERMITS PETITIONERS MUST SUBMIT FOR APPROVAL BY THE BALTIMORE COUNTY LANDSCAPE ARCHITECT A LANDSCAPE PLAN DEMONSTRATING THE "SOLAR FARM" WILL BE ADEQUATELY SCREENED FROM HANOVER PIKE CONSISTENT WITH THE SCENIC VIEW GUIDELINES IN THE CMP.
 - NO SIGNAGE OR LIGHTING SHALL BE PERMITTED.
 - IF THE SOLAR FARM IS NOT IN CONTINUOUS USE AND OPERATION FOR A PERIOD OF ONE (1) YEAR OR MORE, IT SHALL BE REMOVED AT THE OWNERS' OR OPERATOR'S SOLE EXPENSE. SHOULD THE OWNERS OR OPERATORS FAIL TO DO SO, BALTIMORE COUNTY MAY ENGAGE A CONTRACTOR TO PERFORM THE WORK, AND ALL COSTS AND EXPENSES ASSOCIATED THEREWITH SHALL BE A LIEN ON THE PROPERTY AND COLLECTED IN THE SAME MANNER AS REAL ESTATE TAXES.
 - THE SOLAR FARM SHALL BE ENCLOSED BY PERIMETER FENCING TO PREVENT UNAUTHORIZED ACCESS TO THE SITE AND SCREEN THE VIEW FROM OFF-SITE.
 - ALL POWER LINES AT THE SITE, TO THE EXTENT PRACTICABLE, SHALL BE PLACED UNDERGROUND.
 - SITE IS UNMANNED AND MONITORED REMOTELY. NO COMMERCIAL ENTRANCE OR PARKING IS REQUIRED.
 - ALL PROPERTIES SHOWN ARE ZONED RC-2



FINAL LANDSCAPE PLAN
FOR
SOLAR PANEL ARRAY FIELD
AS A "PUBLIC UTILITY USE"
FOR
LIPPY PROPERTY
HANOVER ROAD AND NORTH SIDE OF FRINGER ROAD
4TH ELECTION DISTRICT, BALTIMORE CO., MD
3RD COUNCILMANIC DISTRICT
TAX MAP: 25, GRID: 21, PARCEL: 267

FINAL LANDSCAPE PLAN OWNER CERTIFICATION FORM

I CERTIFY THAT I HAVE REVIEWED THIS FINAL LANDSCAPE PLAN; THAT I AM AWARE OF THE REGULATIONS PRESENTED IN THE BALTIMORE COUNTY LANDSCAPE MANUAL; AND I AGREE TO COMPLY WITH THESE REGULATIONS AND ALL APPLICABLE POLICY, GUIDELINES AND ORDINANCES. I AGREE TO CERTIFY THE IMPLEMENTATION OF THIS APPROVED FINAL LANDSCAPE PLAN UPON COMPLETION OF THE LANDSCAPE INSTALLATION PRIOR TO PWA CLOSEOUT IF APPLICABLE OR NOT LATER THAN ONE (1) YEAR FROM THE DATE OF APPROVAL OF THIS PLAN TO THE DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS, DEVELOPMENT PLANS REVIEW, ROOM 119, COUNTY OFFICE BUILDING, 111 W. CHESAPEAKE AVENUE, TOWSON, MD 21204.

APPLICANT'S SIGNATURE		DATE	PETITIONER	PRINT NAME
60		2/6/2017	CBA Exhibit 26	
ADDRESS (PLEASE PRINT)		STREET	SUITE	PHONE #
WESTMINSTER		MARYLAND		21157
CITY		STATE		ZIP
N/A				
PAI #		PERMIT #		
		FILE: SPECIAL EXCEPTION # 2016-0335-SPHX		



My Neighborhood Map

Created By
Baltimore County
My Neighborhood



This data is only for general information purposes only. This data may be inaccurate or contain errors or omissions. Baltimore County, Maryland does not warrant the accuracy or reliability of the data and disclaims all warranties with regard to the data, including but not limited to, all warranties, express or implied, of merchantability and fitness for any particular purpose. Baltimore County, Maryland disclaims all obligation and liability for damages, including but not limited to, actual, special, indirect, and consequential damages, attorneys' and experts' fees, and court costs incurred as a result of, arising from or in connection with the use of or reliance upon this data.

Printed 10/11/2016



Petitioner
CBA Exhibit
4B

Pet. 588 BPA 4/13

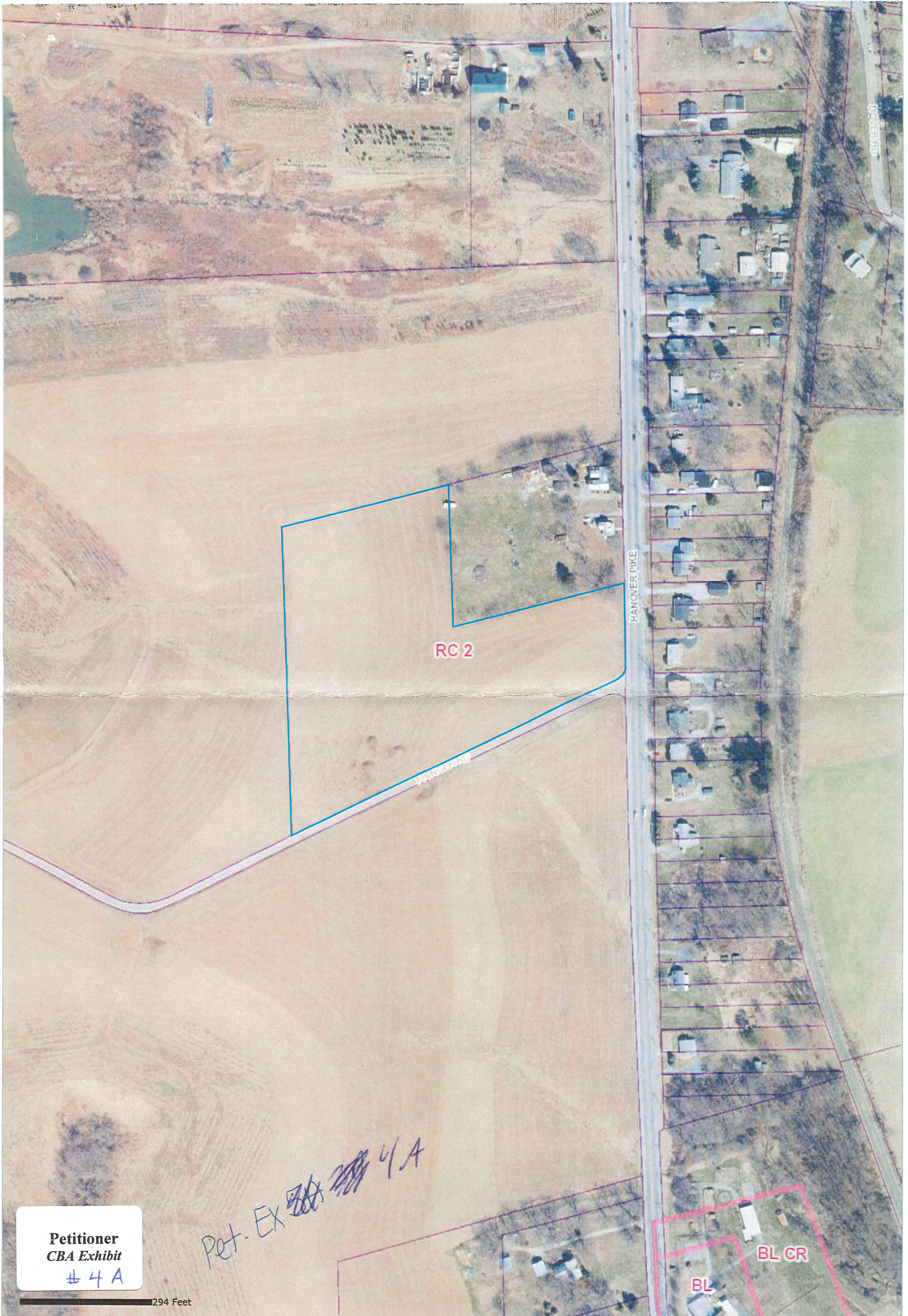


My Neighborhood Map

Created By
Baltimore County
My Neighborhood



This data is only for general information purposes only. This data may be inaccurate or contain errors or omissions. Baltimore County, Maryland does not warrant the accuracy or reliability of the data and disclaims all warranties with regard to the data, including but not limited to, all warranties, express or implied, of merchantability and fitness for any particular purpose. Baltimore County, Maryland disclaims all obligation and liability for damages, including but not limited to, actual, special, indirect, and consequential damages, attorneys' and experts' fees, and court costs incurred as a result of, arising from or in connection with the use of or reliance upon this data.



Petitioner
CBA Exhibit
4 A

Pet. EX 4A

294 Feet



My Neighborhood Map

Created By
Baltimore County
My Neighborhood



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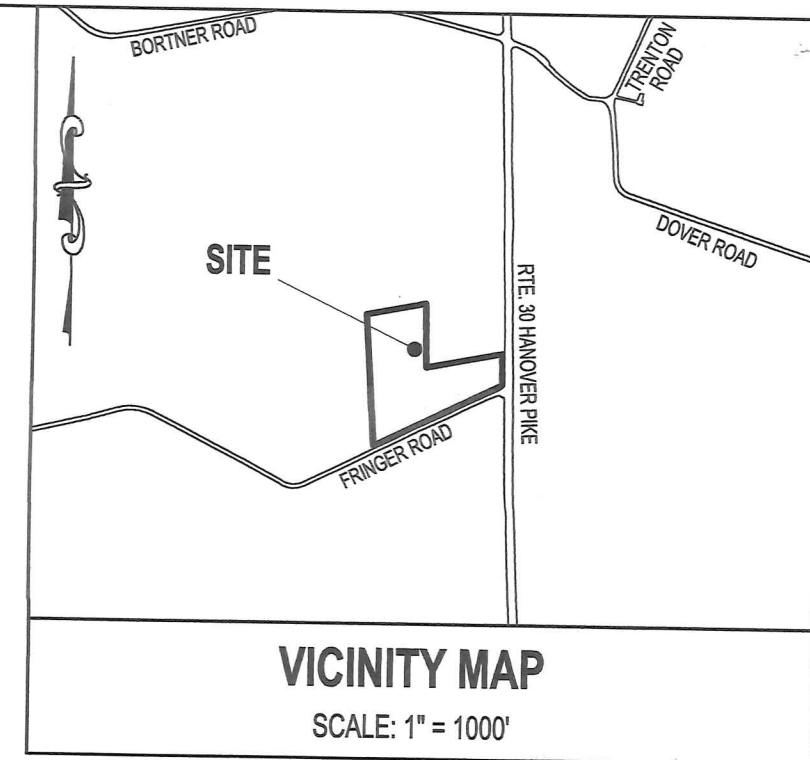
Printed 10/11/2016



MARYLAND STATE GRID NORTH (NAD 1983)

NOTE:
THIS SURVEY WAS COMPLETED WITHOUT THE BENEFIT OF A TITLE REPORT.

NOTE:
A LICENSEE EITHER PERSONALLY PREPARED THIS BOUNDARY SURVEY OR WAS IN RESPONSIBLE CHARGE OVER ITS PREPARATION AND THE SURVEY WORK REFLECTED IN IT, IN COMPLIANCE WITH REQUIREMENTS SET FORTH IN §98.13.06.12 OF THE ANNOTATED CODE OF MARYLAND.



- GENERAL NOTES:**
1. DEVELOPMENT NAME: LIPPY PROPERTY
 2. OWNER:
DONALD E. LIPPY
KATHLEEN F. LIPPY
421 LEES MILL ROAD
HAMPSTEAD, MD 21074
 3. APPLICANT:
EARTH AND AIR TECHNOLOGIES, LLC.
C/O KETH DONTNATHAN
445 HAND COURT
HAMPSTEAD, MD 21074
 4. PREPARED BY:
RTF ASSOCIATES, INC.
142 EAST MAIN STREET
WESTMINSTER, MD 21157
ATTEN: JOHN E. LEMMERMAN
410-548-2040
 5. PROPERTY REFERENCE:
TAX MAP: 25, GRID: 21, PARCEL: 287
TAX ACCOUNT #: 190007892
DEED: 27651-231
 6. BOUNDARY: RTF ASSOCIATES, INC.
ZONING: BALTIMORE COUNTY, 200 SCALE ZONING MAP, GIS FILE 02583
FLOODPLAIN: NO IDENTIFIED FEMA FLOODPLAIN ON SITE
 7. SITE AREA: 6.454 AC. ±; ZONED: RC-2
 8. PARKING:
REQUIRED: 0
 9. EXISTING USE IS RESIDENTIAL AND AGRICULTURAL.
 10. SITE HISTORY: NONE
 11. THE PROPERTY HAS BEEN HELD INTACT SINCE 1982
 12. THE SITE IS NOT LOCATED WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
 13. THE SITE IS LOCATED BEYOND THE URBAN RURAL DEMARCATION LINE (URDL).
 14. THERE WERE NO COMMERCIAL PERMITS OR ACTIVE ZONING VIOLATIONS FOUND ON FILE WITH BALTIMORE COUNTY.
 15. NO SIGNAGE IS PROPOSED.
 16. THIS SITE IS NOT IN ANY FAILED BASIC SERVICES MAP AREAS.
 17. ALL ADJOINING PROPERTIES ARE ZONED RC2

- SPECIAL EXCEPTION RELIEF:**
1. PURSUANT TO BCZR § 502, TO GRANT SPECIAL EXCEPTION RELIEF FOR A SOLAR PANEL ARRAY FIELD AS A "PUBLIC UTILITY USE" UNDER BCZR § 1A01.2.C.18; AND
 2. FOR SUCH OTHER AND FURTHER RELIEF AS MAY BE REQUIRED BY THE ADMINISTRATIVE LAW JUDGE FOR BALTIMORE COUNTY.

- SPECIAL HEARING RELIEF (IN THE ALTERNATIVE):**
1. IF NECESSARY AND IN THE ALTERNATIVE TO THE SPECIAL EXCEPTION RELIEF REQUESTED, TO APPROVE THE PROPOSED SOLAR PANEL ARRAY FIELD AS A PERMITTED ACCESSORY USE OR STRUCTURE TO THE FARM; AND
 2. FOR SUCH OTHER AND FURTHER RELIEF AS MAY BE REQUIRED BY THE ADMINISTRATIVE LAW JUDGE FOR BALTIMORE COUNTY.

Part 2 A

Petitioner
CBA Exhibit
2A

PLAN TO ACCOMPANY PETITION FOR SPECIAL
EXCEPTION AND SPECIAL HEARING
FOR
LIPPY PROPERTY
HANOVER ROAD AND NORTH SIDE OF FRINGER ROAD
4TH ELECTION DISTRICT, BALTIMORE CO., MD
3RD COUNCILMANIC DISTRICT
TAX MAP: 25, GRID: 21, PARCEL: 287

TITLE REFERENCE

DONALD E. LIPPY
KATHLEEN F. LIPPY
27651-231
JANUARY 14, 2009



REVISIONS		
DATE	REASON	
08/13/2016	FINALIZE & ADD BEG. PT.	
02/06/2017	REMOVE LOD & EXPAND VIEW	

JOHN E. LEMMERMAN
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 21098
EXP. 8-3-17

RTF
ssociates, Inc.
LAND SURVEYORS
& PLANNERS

142 EAST MAIN STREET WESTMINSTER, MD 21157
410-548-2040 FAX 410-548-289-842 410-576-1222
EMAIL: RTF142@GMAIL.COM WWW.RTFSSURVEYING.COM

CHECKED BY: SPJEL DATE: 06/08/2016
DRAWN BY: RMF DATE: 06/07/2016
SCALE: 1" = 50' RTF JOB#: 16-44



- GENERAL NOTES:**
1. DEVELOPMENT NAME: LIPPY PROPERTY
 2. OWNER:
DONALD E. LIPPY
KATHLEEN F. LIPPY
421 LEES MILL ROAD
HAMPSTEAD, MD 21074
 3. APPLICANT:
EARTH AND AIR TECHNOLOGIES, LLC.
C/O KEITH DONTNAN
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TAX ACCOUNT #: 190007892
DEED: 27851-231
 6. BOUNDARY: RTF ASSOCIATES, INC.
 7. ZONING: BALTIMORE COUNTY, 200 SCALE ZONING MAP, GIS TILE 02583
 8. FLOODPLAIN: NO IDENTIFIED FEMA FLOODPLAIN ON SITE
 9. SITE AREA: 6.454 AC. ±; ZONED: RC-2
 10. PARKING:
REQUIRED: 0
 11. EXISTING USE IS RESIDENTIAL AND AGRICULTURAL.
 12. SITE HISTORY: NONE
 13. THE PROPERTY HAS BEEN HELD INTACT SINCE 1982
 14. THE SITE IS NOT LOCATED WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
 15. THE SITE IS LOCATED BEYOND THE URBAN RURAL DEMARCATION LINE (URDL).
 16. THERE WERE NO COMMERCIAL PERMITS OR ACTIVE ZONING VIOLATIONS FOUND ON FILE WITH BALTIMORE COUNTY.
 17. NO SIGNAGE IS PROPOSED.
 18. THIS SITE IS NOT IN ANY FAILED BASIC SERVICES MAP AREAS.
 19. ALL ADJOINING PROPERTIES ARE ZONED RC2

- SPECIAL EXCEPTION RELIEF:**
1. PURSUANT TO BCZR § 802, TO GRANT SPECIAL EXCEPTION RELIEF FOR A SOLAR PANEL ARRAY FIELD AS A "PUBLIC UTILITY USE" UNDER BCZR § 1A01.2.C.18; AND
 2. FOR SUCH OTHER AND FURTHER RELIEF AS MAY BE REQUIRED BY THE ADMINISTRATIVE LAW JUDGE FOR BALTIMORE COUNTY.

- SPECIAL HEARING RELIEF (IN THE ALTERNATIVE):**
1. IF NECESSARY AND IN THE ALTERNATIVE TO THE SPECIAL EXCEPTION RELIEF REQUESTED, TO APPROVE THE PROPOSED SOLAR PANEL ARRAY FIELD AS A PERMITTED ACCESSORY USE OR STRUCTURE TO THE FARM; AND
 2. FOR SUCH OTHER AND FURTHER RELIEF AS MAY BE REQUIRED BY THE ADMINISTRATIVE LAW JUDGE FOR BALTIMORE COUNTY.

PLAN TO ACCOMPANY PETITION FOR SPECIAL
EXCEPTION AND SPECIAL HEARING
FOR
LIPPY PROPERTY
HANOVER ROAD AND NORTH SIDE OF FRINGER ROAD
4TH ELECTION DISTRICT, BALTIMORE CO., MD
3RD COUNCILMANIC DISTRICT
TAX MAP: 25, GRID: 21, PARCEL: 267

NOTE:
THIS SURVEY WAS COMPLETED WITHOUT THE BENEFIT OF A TITLE REPORT.

NOTE:
A LICENSEE EITHER PERSONALLY PREPARED THIS BOUNDARY SURVEY OR WAS IN RESPONSIBLE CHARGE OVER ITS PREPARATION AND THE SURVEY WORK REFLECTED IN IT, IN COMPLIANCE WITH REQUIREMENTS SET FORTH IN §08.13.06.12 OF THE ANNOTATED CODE OF MARYLAND.

REVISIONS	
DATE	REASON
06/15/2016	FINALIZE & ADD BEG. PT.

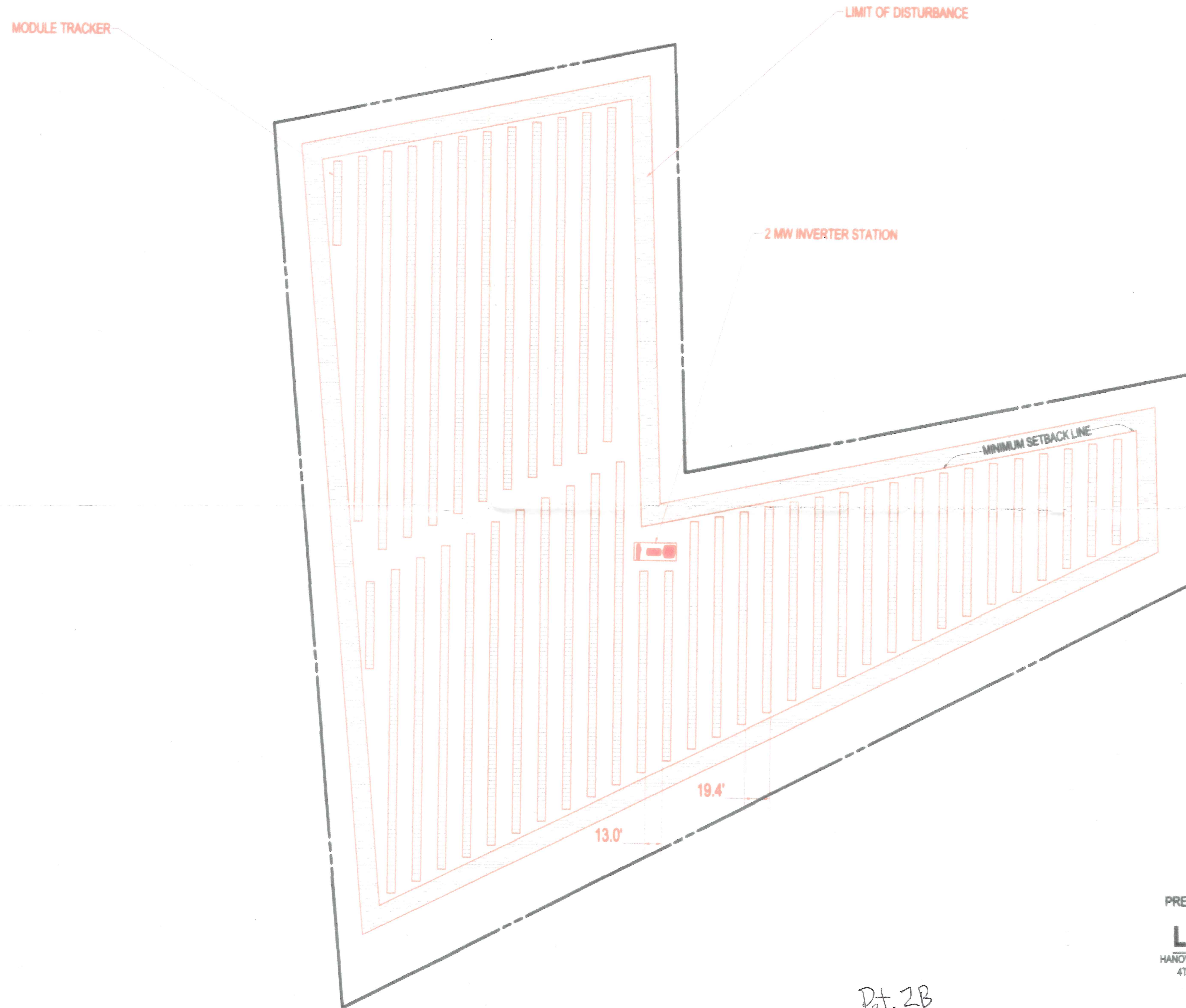
John E. Lemmerman
JOHN E. LEMMERMAN
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 21086
EXC. 8-3-17

TITLE REFERENCE

DONALD E. LIPPY
KATHLEEN F. LIPPY
27851-231
JANUARY 14, 2009



142 EAST MAIN STREET WESTMINSTER, MD 21157
410-848-2040 FAX: 443-289-8942 410-876-1222
EMAIL: RTF142@GMAIL.COM WWW.RTFSURVEYING.COM
CHECKED BY: SPJ/EL DATE: 06/09/2016
DRAWN BY: RMF DATE: 06/07/2016
SCALE: 1" = 50' RTF JOB#: 16-44



PRELIMINARY SOLAR LAYOUT OVERLAY
FOR
LIPPY PROPERTY
HANOVER ROAD AND NORTH SIDE OF FRINGER ROAD
4TH ELECTION DISTRICT, BALTIMORE CO., MD
3RD COUNCILMANIC DISTRICT
TAX MAP: 25, GRID: 21, PARCEL: 267
SCALE: 1"=50' RTF JOB # 16-44

P&T-2B

2016-0335-SPHX



- GENERAL NOTES:
1. DEVELOPMENT NAME: LIPPY PROPERTY
 2. OWNER:
DONALD E. LIPPY
KATHLEEN F. LIPPY
421 LEES MILL ROAD
HAMPSHIRE, MD 21074
 3. APPLICANT:
EARTH AND AIR TECHNOLOGIES, LLC.
CO. KEITH DONTNAN
445 HAND COURT
HAMPSHIRE, MD 21074
 4. PREPARED BY:
RTF ASSOCIATES, INC.
142 EAST MAIN STREET
WESTMINSTER, MD 21157
ATTN: JOHN E. LEMMERMAN
410-848-2040
 5. PROPERTY REFERENCE:
TAX MAP: 25, GRID: 21, PARCEL: 267
TAX ACCOUNT #: 180007892
DEED: 27651-231
 6. BOUNDARY: RTF ASSOCIATES, INC.
 7. ZONING: BALTIMORE COUNTY, 200 SCALE ZONING MAP, GIS TILE 02583
FLOODPLAIN: NO IDENTIFIED FEMA FLOODPLAIN ON SITE
 8. SITE AREA: 6.454 AC. ±; ZONED: RC-2
 9. PARKING:
REQUIRED: 0
 10. EXISTING USE IS RESIDENTIAL AND AGRICULTURAL.
 11. SITE HISTORY: NONE
 12. THE PROPERTY HAS BEEN HELD INTACT SINCE 1982
 13. THE SITE IS NOT LOCATED WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
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 16. NO SIGNAGE IS PROPOSED.
 17. THIS SITE IS NOT IN ANY FAILED BASIC SERVICES MAP AREAS.
 18. ALL ADJOINING PROPERTIES ARE ZONED RC-2

- SPECIAL EXCEPTION RELIEF:
1. PURSUANT TO BCZR § 502, TO GRANT SPECIAL EXCEPTION RELIEF FOR A SOLAR PANEL ARRAY FIELD AS A "PUBLIC UTILITY USE" UNDER BCZR § 1A01.2.C.18; AND
 2. FOR SUCH OTHER AND FURTHER RELIEF AS MAY BE REQUIRED BY THE ADMINISTRATIVE LAW JUDGE FOR BALTIMORE COUNTY.

- SPECIAL HEARING RELIEF (IN THE ALTERNATIVE):
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PLAN TO ACCOMPANY PETITION FOR SPECIAL
EXCEPTION AND SPECIAL HEARING
FOR
LIPPY PROPERTY
HANOVER ROAD AND NORTH SIDE OF FRINGER ROAD
4TH ELECTION DISTRICT, BALTIMORE CO., MD
3RD COUNCILMANIC DISTRICT
TAX MAP: 25, GRID: 21, PARCEL: 267

TITLE REFERENCE
DONALD E. LIPPY
KATHLEEN F. LIPPY
27651-231
JANUARY 14, 2009



REVISIONS	
DATE	REASON
06/15/2016	FINALIZE & ADD BEG. PT.

John E. Lemmerman
JOHN E. LEMMERMAN
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 21098
256 84-17



142 EAST MAIN STREET WESTMINSTER, MD 21157
410-848-2040 FAX# 443-289-8942 410-876-1222
EMAIL: RTF142@GMAIL.COM WWW.RTFSURVEYING.COM
CHECKED BY: SPJEL DATE: 06/09/2016
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SCALE: 1" = 50' RTF JOB#: 16-44

NOTE:
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NOTE:
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