

IN THE APPELLATE COURT OF MARYLAND

In the Matter of Timothy Fales, et al

*
* No. 0938, September Term 2021
* CSA-REG-0938-2021
* Circuit Court No. C-03-CV-20-000175
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MANDATE

On the 16th day of December, 2022, a Dismissal of Appeal was filed by appellant counsel. Appeal Dismissed.

STATE OF MARYLAND, Sct.:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Appellate Court of Maryland. In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Appellate Court of Maryland, this 19th day of December, 2022.



Rachel Dombrowski

Rachel Dombrowski, Clerk
Appellate Court of Maryland



MANDATE - STATEMENT OF COSTS

Appellate Court of Maryland

CSA-REG-0938-2021

In the Matter of Timothy Fales, et al.

Appellant

Santo Mirabile

Notice of Appeal

50.00

RPIF

11.00

Appellant Total

61.00

Total Costs

61.00

STATE OF MARYLAND, ss:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Appellate Court of Maryland.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Appellate Court of Maryland this 19th day of December, 2022.

Rachel Dombrowski

Clerk of the Appellate Court of Maryland

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE.

* IN THE
* COURT OF SPECIAL APPEALS
* OF MARYLAND
* No. 0938, SEPTEMBER TERM, 2021
* MDEC No. CSA-REG-0938-2021
* (CC# C-03-CV-20-000175)

IN THE MATTER OF
TIMOTHY FALES, et al.

* * * * *

ORDER TERMINATING ADR AND
DIRECTING THE PREPARATION OF THE TRANSCRIPT

On November 3, 2021, Alternative Dispute Resolution proceedings were held pursuant to this Court's Order dated October 15, 2021.

It now appearing to the Court that the parties have:

() limited, though not settled, the issues raised by the appeal.

(XX) been unable to settle the issues raised by the appeal.

It is, this 21st day of November 2022, by the Court of Special Appeals,

ORDERED that the stay imposed by this Court's Order dated October 15, 2021 is hereby vacated; and it is further

ORDERED that the time within which a transcript must be ordered pursuant to Maryland Rule 8-411(b) and the record prepared and filed with this Court pursuant to Maryland Rule 8-412(a) shall begin to run from the date of this Order.

Judge's Signature Appears
on Original Order

E. Gregory Wells, Chief Judge

IN THE MATTER

OF

TIMOTHY FALES, et al.

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No.: C-03-CV-20-000175

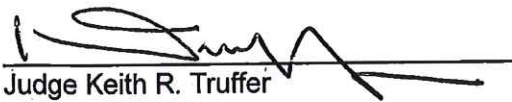
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ORDER

For the reasons stated in the Opinion in this case, issued contemporaneously with this Order, it is this 30th day of July 2021,

ORDERED that the December 19, 2019 Opinion and Order of the Board of Appeals of Baltimore County is AFFIRMED.




Judge Keith R. Truffer

Entered: Clerk, Circuit Court for
Baltimore County, MD
July 30, 2021

IN THE MATTER

OF

TIMOTHY FALES, et al.

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IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

Case No.: C-03-CV-20-000175



* * * * *

OPINION

Introduction

This matter is before the court for judicial review of the December 19, 2019 Opinion and Order (hereinafter the "Opinion") of the Board of Appeals for Baltimore County (hereinafter the "Board"). In its Opinion, the Board approved a special exception for a proposed solar facility on the unimproved property at 5298 Frye Road in Baltimore County (hereinafter the "Property"). The Petitioners are nearby residents of the Property; People's Counsel has intervened in the matter on the side of the Petitioners. The Respondents are Woodensburg Land and Cattle Company and SGC Power, LLC, respectively the owner and lessee of the Property.

Following initial approval of the Respondents' Special Exception Petition on December 5, 2018, the decision was appealed to the Board which held public evidentiary hearings on the appeal in May and July 2019 and a "public deliberation" on September 26, 2019. In its 32 page December 19, 2019 Opinion, the Board carefully detailed the applicable provisions of the Baltimore County Zoning Regulations (hereinafter "BCZR") and the evidence presented for and in opposition to the request. In its Opinion, the Board determined that all legal requirements applicable to a special exception had been satisfied and, pursuant to BCZR §4F-101, *et seq.*, granted the Petition for Special Exception with conditions. As a result of its decision, the Board authorized the requested construction of a solar energy facility on the Property. The Petitioners filed a timely Petition for Judicial Review of the Board's decision.

During the pendency of the Board's consideration of the Respondent's Petition for a Special Exception, the zoning applicable to the Property changed from RC. 2 to RC. 4. All parties agree that the current zoning classification of RC. 4 applies to the consideration of the Petition for Special Exception.

Standard of Review

It is well established that a court's role in reviewing an administrative agency decision is narrow and "limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *Maryland Aviation Administration v. Noland*, 386 Md. 556, 571 (2005) (quoting *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 67–69, (1999)). Generally, agency decisions receive no special deference on questions of law, which we review de novo. *Employees' Ret. Sys. of Baltimore Cty. v. Bradford*, 227 Md. App. 75, 82 (2016) (citing *Talbot County v. Miles Point Property, LLC*, 415 Md. 372, 384 (2010)). However, the consistent interpretation and application of a regulation by the agency responsible for administering it is entitled to considerable weight by reviewing courts. *Lussier v. Maryland Racing Com'n*, 343 Md. 681, 697 (1996) (citing *Consumer Protection Div. Office of Atty. Gen. v. Consumer Pub. Co., Inc.*, 304 Md. 731, 759 (1985)).

An agency decision based on regulatory and statutory interpretation is a conclusion of law. *Carven v. State Ret. & Pension Sys. of Maryland*, 416 Md. 389, 406 (2010). Keeping in mind the deference owed to administrative decisions, the court will conduct an independent review of the regulations and statutory provisions upon which the Board rests its decision to determine whether the Board's decision is "plainly erroneous or inconsistent with the regulation." *Id.* (citing *Crofton Convalescent Ctr. v. Dep't of Health & Mental Hygiene*, 413 Md. 201, 215 (2010)).

A decision of an administrative agency must be upheld on judicial review if it is not based upon an erroneous determination of law and if the agency's conclusions reasonably may be based upon the facts proven. *Montgomery County v. Buckman*, 333 Md. 516 (1994). A reviewing court may, and should, examine facts found by the agency, to see if there was substantial evidence to support each fact found. *Commissioner, Baltimore City Police Dep't v. Cason*, 34 Md. App. 487, cert. denied, 280 Md. 728 (1977).

Issues Presented

The Petitioners raise the following issues for judicial review which the court has rephrased:

1. Solar facilities are not permitted to be constructed in a "designated conservancy area" in an RC. 4 Zone.

The Petitioners maintain that the Board erred as a matter of law in permitting a solar facility constructed in a "designated conservancy area" in an RC. 4 Zone. The Petitioners argue that, as a result of the Property's rezoning to RC. 4, it is subject to the requirement that the Respondent create a "conservancy area," as defined by BCZR 101.1¹ This argument is based upon what the court views as a strained interpretation of the following two sections of the Baltimore County Zoning Regulations.

BCZR §1A03.4.B. Area regulations.

1. Lot density.

a. A tract to be developed in an R.C.4 Zone with a gross area of less than six acres may not be subdivided, and a tract to be developed with a gross area of at least six acres but not more than ten acres may not be subdivided into more than two lots (total), each of which must be at least three acres, ...

b. The maximum gross density of a tract to be developed with a gross area of more than ten acres is 0.2 lot per acre. **Any lots created hereafter, except as provided in Paragraph 4 below, shall be in accordance with the following standards for rural cluster development:**

(1) A minimum of 70 percent of the gross area of the tract to be developed shall be designated as the conservancy area. Only one of the permitted dwelling units, including any existing dwellings, may be located in the conservancy area. The conservancy area is subject to the standards contained in Section 1A03.5.

(2) All of the remaining permitted density shall be located in the building area on lots with a minimum lot size of one acre.

BCZR § 4F-104. - Requirements.

A. A solar facility located in an R.C. Zone is subject to the following requirements:

3. The portion of the land on which a solar facility is proposed may not be in a forest conservation easement or be in a designated conservancy area in an R.C. 4 or R.C. 6 Zone. [Emphasis added]

In its approval of the solar energy facility, no conservancy area was required by the Board. Petitioners argue that the property is in an RC. 4 zone, that 70% of the tract must be set aside as a "conservancy area" and no portion of the solar facility may be located within that "conservancy area." The court does not agree with this conclusion; under the proposed non-residential use, no "conservancy area" is required.

A plain reading of these two statutes in context to one another draws the court to the conclusion that:

¹ BCZR 101.1 "CONSERVANCY AREA — The portion of a rural cluster development which contains significant natural or historic features and which has been dedicated through deed restriction and easements for continued farming, forestry or open space use in order to remain largely undisturbed."

- A. If a property owner seeks to develop a tract of 10 or more acres, that owner may create a minimum residential lot of 1 acre, if it also creates a "conservancy area" comprising at least 70% of the gross area of the tract;
- B. A conservancy area in an RC. 4 zone is required only for a "residential cluster development;" (See BCZR § 101.1)
- C. A "residential cluster development" does not include primarily nonresidential uses;
- D. A nonresidential use permitted by special exception in an RC. 4 zone is not required to create and set aside a conservancy area as part of its development of the property.

The definition of conservancy area in BCZR 101.1 and the direct references in BCZR 1A03.4 B. to "dwellings" and "dwelling units" support this conclusion. The Board did not err as a matter of law on this issue.

2. The Board erred as a matter of law in considering "economic issues" in its review of the proposed landscape plan.

In its Opinion, the Board made the following statement in analyzing the necessity for extensive "tiered contour" landscaping urged by the Petitioners.

However, we decline to require the Petitioner [Respondents here] to install tiered buffering between the solar panels as that would shade the panels and reduce the energy produced." (Brackets added) (Opinion, pg. 26).

Instead, the Board required additional landscape buffer in the form of:

[A]t least three (3) rows of mature, fast growing deciduous trees at varying heights and widths along with mature, fast growing shrubbery beneath to provide the densest possible screening of the site." (Opinion, pg. 30).

While one might quibble with the Board's phrasing in declining to order the landscaping buffer sought by the Petitioners, the Board had the authority to consider, among other factors, whether the landscape buffer would be so intrusive as to defeat the viability of the proposed use. The Board determined that the imposition of "tiered contour" landscaping would unreasonably interfere with the proposed use, a matter which was within its discretion and supported by substantial evidence. In doing so, the Board did not err as a matter of law.

3. The Board failed to articulate its decision and rationale on the issue of water runoff from the Property.

The Petitioners raised an issue before the Board that a pre-existing off-site flooding problem near the southwest corner of the Property would be exacerbated by the proposed solar energy facility. The Petitioners maintain that the Board did not address the issue in its approval of the special exception.

In considering the request for a special exception, the Board was required to evaluate "whether there are facts and circumstances that show that the particular use proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." *Scholz v. Pritts* 291Md. 1, 22-23 (1981). Whether the project created an increase in off-site flooding is fairly within the ambit of this review.

In order to permit an intelligent review of the rationale for the Board's decision, its "Findings of fact must be meaningful and cannot simply repeat statutory criteria, broad conclusory statements, or boilerplate resolutions," *Bucktail, LLC v. County Council of Talbot County*, 352 Md. 530, 553 (1999) [internal citations omitted].

At pages 23 and 24 of its Opinion, the Board carefully detailed the evidence it relied on to determine that there would be no increased water runoff from the Property:

As for whether this use is consistent with impermeable surface and vegetative retention provisions of the BCZR, §502.1.H, Mr. Leskinen and Mr. Thaler both explained that there will not be any clearing or grading of land, and no tree removal. The existing trees to the north, west and east of the Property will remain. Rain will propel off the solar panels and soak into the ground between the rows. The rows of panels are separated so that there is no concentrated flow of water runoff as there would be with pavement.

The Board specifically applied this summation to the proposed use "at this location" as it related to "forest, streams, wetlands, aquifers and floodplains" as well as the relationship between the location of the solar facility and the forest buffer (Opinion page 24). While the

Board may not have expressly referred to off-site flooding, its analysis of the streams, wetlands, aquifers and floodplains "at this location" included, of logical necessity, a consideration of water outflow from the Property.

The court finds that the Board adequately explained its findings on this issue and did not err as a matter of law.

4. The Board erred as a matter of law in accepting the proposed landscape plan which had not been finally approved by Baltimore County.

The Petitioners object to the Board's approval of the special exception prior to final approval of a landscaping plan for the development. The court finds little merit in this objection.

At the time of filing the Petition for Special Exception, the Respondents filed a schematic landscape plan consistent with the requirements of BCZR § 32-4-224(a)(17). The Board fully reviewed the Respondents' landscape plan as evidenced by its discussion of the plan on pages 10 and 11 of its Opinion. The Board conditioned its approval of the special exception upon approval of a final landscape plan which would maximize the screening of the facility from the Petitioners' properties and along adjacent roadways. Lastly, final development plan approval will require compliance with the Baltimore County Landscape Manual. At this stage of the process - during zoning approval - no more was required of the Board's review. The Board did not err as a matter of law on this issue.

5. The Board erred in accepting the expert testimony of David Thaler on the landscaping plan.

The Board accepted Mr. David Thaler as a professional engineer and surveyor who would testify concerning the development plan, the special exception requirements for a solar facility in Baltimore County, the development review process, including the proposed landscape plan for the facility. The Petitioners objected to Mr. Thaler's expertise and testimony as they related to the landscape plan. The basis for their objection was that much of the work of the plan was done by another individual within Mr. Thaler's firm, of which he is the managing director.

Mr. Thaler testified that, in addition to others in his firm who worked on this project, Mr. Thaler was personally and directly involved with and supervised the work necessary to complete

the plan and was knowledgeable concerning it. (May 2, 2019 hearing transcript, T 108: 14-25, T 109: 1-5).

It was within the Board's discretion to admit or exclude expert testimony.² Here, Mr. Thaler's testimony was as to the plan as a whole, including the aspect of which related to landscaping. Any challenges to Mr. Thaler's expertise or to the factual basis for his opinions in any specific area went to the weight of his testimony rather than its admissibility. The Board did not err in admitting Mr. Thaler's testimony

6. Solar facilities are not expressly permitted of right or by special exception in an RC. 4 zone.

The Petitioners accurately recite the fact that the respondent's proposed use of the site as a solar facility is not expressly listed as a permitted use in BCZR § 1A03.3 – *Use Regulations* which details permitted uses in an RC. 4 zone. The Petitioners' argument proceeds on the proposition that the use of any property for a solar facility, including the subject site, is not permitted in Baltimore County because that use is not specifically listed within that section of the zoning regulations.

This argument runs headlong into BCZR §4F-102 which expressly permits solar facilities by special exception in a number of zoning classifications, including RC. 4. This conflict is resolved by the commonly accepted rules of statutory construction.

To accept the Petitioners' simplistic argument would render BCZR §4F-102 completely meaningless and would preclude the approval of solar facilities by special exception anywhere in Baltimore County. The rules of statutory construction require the court to interpret a particular statutory provision within the context of the entire statutory scheme, taken as a whole. The goal is, to the extent possible, to harmonize any inconsistencies "so as to avoid rendering either of them, or any portion, meaningless, surplusage, superfluous or nugatory." *HNS Dev., LLC v. People's Counsel for Baltimore County*, 425 Md. 436, 450, (2012) citing *Mayor & City Council of Rockville v. Rylyns Enters., Inc.*, 372 Md. 514, 550 (2002).

² "A decision to admit or exclude expert testimony is within the discretion of the administrative tribunal and will be upheld so long as the basic rules of fairness are observed," *T-UP, Inc. v. Consumer Prot. Div.*, 145 Md. App. 27, 50, (2002), citing *Dickinson-Tidewater, Inc. v. Supervisor of Assessments*, 273 Md. 245, 253-54, (1974).

It would be neither logical nor consistent with the broad statutory scheme to conclude that the Baltimore County Council would pass a statute specifically providing for solar facilities within an RC 4 zone yet intentionally omit it from BCZR § 1A03.3, the omnibus authority for permitted uses in that zone.

The court does not believe that the omission in BCZR § 1A03.3 of a solar facility as a permitted use in an RC. 4 zone is anything more than a legislative oversight and not an expression of intent to preclude approval of solar facilities in RC. 4 zones by special exception. In this regard, the Board did not err as a matter of law.

Conclusion

Having addressed each of the Petitioners' assignments of error, the December 19, 2019 Opinion and Order of the Board of Appeals of Baltimore County is **AFFIRMED**.

An order to this effect will issue contemporaneously with this Opinion.

Date July 30, 2021

Keith R. Truffer
Judge Keith R. Truffer

Entered: Clerk, Circuit Court for
Baltimore County, MD
July 30, 2021

IN THE MATTER OF	*	BEFORE THE
WOODENSBURG LAND and CATTLE CO., LLC	*	BOARD OF APPEALS
- Legal Owner	*	
SGC POWER, LLC - Lessee	*	OF
5298 Frye Road	*	BALTIMORE COUNTY
Reisterstown, MD 21136	*	Case No.: CBA-19-018

* * * * *

RULING ON MOTION FOR RECONSIDERATION

This case comes to the Board as a Limited Motion for Reconsideration/Clarification filed by Petitioners, Woodensburg Land and Cattle Company, LLC and SGC Power, LLC (“Petitioners”) on January 21, 2020 in regard to this Board’s denial of Petitioners Application for Limited Exemption under BCC, §32-4-106(a)(1)(vi).

The Petitioners were represented by Lawrence E. Schmidt, Esquire and Smith, Gildea & Schmidt, LLC. Protestants, Timothy and Elizabeth Fales, Santo and Debra Mirabile, Patrick and Thanikan Fales, Paul Merritt and Melissa DePinho, Patrick Little, Sandra Brown, James and Juli Wolf (collectively the “Protestants”) were represented by G. Macy Nelson, Esquire. On February 5, 2020, Protestants filed an Opposition to the Limited Motion for Reconsideration/Clarification. Petitioners filed a Reply to Protestants’ Opposition on February 18, 2020. On March 2, 2020, Protestants filed a Motion to Postpone the Board’s Public Deliberation. A public deliberation was held on March 3, 2020.

Factual Background

The subject property is located at 5298 Frye Road, Reisterstown, MD 21136. It is unimproved and consists of 19.68 acres+/- on the east side of Hanover Pike, MD Route 30 (the

“Property”). It is zoned RC2. On the southern end of the Property is a private driveway known as Frye Road.

The Petitioners proposed to use 15 acres of the 19.68 acres for a solar facility pursuant to Baltimore County Zoning Regulations (“BCZR”), Article 4F. By Opinion and Order dated December 19, 2019, the Board granted the Petitioners a special exception for the proposed solar facility in Case No.: 17-107-X. Petitioners also requested a limited exemption from the development process under BCC, §32-4-106(a)(1)(vi) for a “minor commercial structure” in Case No.: CBA-19-018. On January 19, 2019, the Director of PAI granted an (a)(1)(vi) exemption. In our Opinion and Order, we denied the (a)(1)(vi) exemption.

In their Limited Motion for Reconsideration/Clarification, Petitioners confirmed that they do not disagree with the Board’s decision to deny the (a)(1)(vi) exemption. (See Petitioners’ Motion, p.2). It is the Petitioners’ position that, because the Board heard this case *de novo*, the Board is required to make a finding that the proposed solar facility met the requirements of an exemption under BCC, §32-4-106(b)(8).

In essence, Petitioners contend that, in hearing limited exemption cases *de novo*, the Board *must* grant one of the exemptions under BCC, §32-4-106, and it need not matter whether an A exemption or a B exemption is requested. The Petitioners even go a step further in arguing that since some solar facilities have been granted B exemptions, they are entitled to one. Finally, Petitioners argue that they have consulted with the PAI and that PAI desires clarification on the Board’s position on whether all solar facilities should be entitled to B exemptions. We disagree.

First, a *de novo* hearing does not give this Board authority to decide issues not raised before it. The Petitioners did not request a (b)(8) exemption before or at the Board’s hearing. The Petitioners did not provide any legal support for their position that the Board is required to choose

from the 19 possible limited exemptions listed in BCC, §32-4-106. The Board's jurisdiction to hear cases *de novo* under Baltimore County Charter §603 does not require the Board to grant one of the exemptions. This Board's authority to hear a case *de novo* is an exercise of appellate jurisdiction, rather than original jurisdiction. *Halle Companies v. Crofton Civic Ass'n*, 339 Md. 131, 143; 661 A.2d 682, 687-88 (1995). *Hardy v. State*, 279 Md. 489, 492, 369 A.2d 1043, 1046 (1977). (See also *In the Matter of Carol Lynn Morris/C.G. Homes*, Case No.: 15-302-SPHA).

As we said *In the Matter of TTV Properties, III, LLC (aka Bill Kidd's Volvo)* CBA-14-039 and CBA-15-011, in deciding a whether a requested exemption to the development process applies, this Board has three (3) options:

In the Board's *de novo* review of this request for limited exemption, the Board may find a limited exemption pursuant to BCC §32-4-106(b)(8), agree with the Petitioner's request for full exemption for full development review pursuant to BCC §32-4-106(a)(1)(vi), or determine that the Petitioner is not entitled to the A or B exemption and therefore is subject to the full development review and approval process.

Given that the A exemption was denied in this case (and the Petitioners do not dispute that decision), there is no uncertainty here that the full development process would apply. Therefore, the Board did not err in making the finding that the evidence did not satisfy the A exemption criteria.

Second, the only evidence presented by Petitioners was for an (a)(1)(vi) exemption for a minor commercial structure. In our Opinion and Order dated December 19, 2019, we repeated the evidence presented as follows:

With regard to the Petitioner's request for a limited exemption from the development process under BCC, 32-4-106(a)(1)(vi), Mr. Thaler's opinion was that this use qualifies as a "minor commercial structure." It was his opinion that the proposed facility is small or

minor, and is commercial in nature. He stated that it should qualify for a full exemption under subsection (a)(1)(vi) because it would be pointless to have a development plan or a Hearing Officer's hearing. On cross examination, Mr. Thaler admitted that BCC does not define "minor commercial structure".

Unlike the evidence presented in *TTV Volvo*, there was no evidence presented here to support a (b)(8) exemption. In reviewing the evidence presented in the *TTV Volvo* case, the Court of Special Appeals, in affirming this Board's decision, held that while TTV Volvo requested an (a)(1)(vi) exemption for a minor commercial structure, the Board's determination in that case that the evidence, as presented by TTV's expert witness under the criteria for a (b)(8) exemption, "met the definition of minor development [was] reasonable and supported by the testimony of appellee's own expert". (*Sherwood Hill Improvements Association, et al. v. TTV Properties, II, LLC*, No. 676, Sept. Term, 2016).

Like the *TTV Volvo* case, the Petitioner, *In the Matter of Valley Framing*, Case No.: CBA-08-132 filed an application for an (a)(1)(vi) exemption. In that case, the DRC recommended, and the Director of PDM (now PAI) granted, a (b)(8) exemption. At that hearing before this Board, the Petitioner requested an (a)(1)(vi) exemption and, in the alternative, a (b)(8) exemption. In that case, the Petitioner, through its expert, put on evidence supporting both exemptions and this Board granted a (b)(8) exemption. In each case heard *de novo*, this Board weighs the evidence presented as related to the specific exemption requested.

Finally, as to Petitioners' suggestion that PAI is looking to this Board to advise or to direct PAI on which of the exemptions may or may not apply to solar facilities, this Board has no jurisdiction to advise PAI, or to make policy decisions. Under BCC, §32-4-102 *et seq.*, in conjunction with the Baltimore County Development Management Policy Manual as adopted by the County Council on July 1, 1993, the Director of PAI may accept or reject the recommendation

of the DRC. Any such universal policy decision by this Board that a particular type of project is entitled to a certain exemption, would undermine the separate and independent review process (first by PAI and then by this Board on appeal) as established by the County Council.

Conclusion

After reviewing the Petitioners' Limited Motion for Reconsideration/Clarification and the Protestants' opposition thereto, the Board denies the Motion.

ORDER

THEREFORE, IT IS THIS 4th day of May, 2020, by the
Board of Appeals of Baltimore County,

ORDERED, that the Petitioners' Limited Motion for Reconsideration/Clarification is hereby **DENIED** for the reasons set forth herein.

In the Matter of: Woodensburg Land and Cattle Co., Inc., et al.
Case No: CBA-19-018

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**


Maureen E. Murphy, Panel Chair

see attached
William A. McComas

Kendra Randall Jolivet

Kendra Randall Jolivet was a Panel Member and sat on the deliberation of this matter on March 3, 2020. Her term expired on April 30, 2020 and she was not reappointed.

In the Matter of: Woodensburg Land and Cattle Co., Inc., et al.
Case No: CBA-19-018

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**

App previous
Maureen E. Murphy, Panel Chair

William A. McComas
William A. McComas

Kendra Randall Jolivet

Kendra Randall Jolivet was a Panel Member and sat on the deliberation of this matter on March 3, 2020. Her term expired on April 30, 2020 and she was not reappointed.



Board of Appeals of Baltimore County

JEFFERSON BUILDING
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May 4, 2020

Lawrence E. Schmidt, Esquire
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600 Washington Avenue, Suite 200
Towson, Maryland 21204

G. Macy Nelson, Esquire
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204

RE: *In the Matter of: Woodensburg Land and Cattle Company, LLC – Legal Owner*
SGC Power, LLC – Lessee
Case No.: CBA-19-018

Dear Counsel:

Enclosed please find a copy of the Ruling on Motion for Reconsideration issued this date by the Board of Appeals of Baltimore County in the above subject matter.

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/taz
Enclosure
Duplicate Original Cover Letter

c: Glenn S. and Ruth L. Elseroad/
Woodensburg Land and Cattle Company, LLC
Bruce Wilson/SGC Power, LLC
C. Pete Gutwald, Director/Department of Planning
Lloyd Moxley, Development Manager/PAI
Michael D. Mallinoff, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law

Timothy and Elizabeth Fales
Santo and Debra Mirabile
Patrick and Thanikan Fales
Paul B. Merritt
Melissa A. DePinho
Patrick Little
Sandra M. Brown
James C. and Juli R. Wolf

IN THE MATTER OF
WOODENSBURG LAND and CATTLE CO., LLC
- Legal Owner
SGC POWER, LLC - Lessee
5298 Frye Road
Reisterstown, MD 21136

RE: Petition for a Solar Facility and
Request for Limited Exemption

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case Nos. 17-107-X
and CBA-19-018

* * * * *

OPINION

This case comes before the Board on appeal of the final decision of the Administrative Law Judge ("ALJ") in which the ALJ granted a Petition for a Solar Facility, with conditions, by Opinion and Order dated December 5, 2018. Protestants, Timothy and Elizabeth Fales, Santo and Debra Mirabile, Patrick and Thanikan Fales, Paul Merritt and Melissa DePinho, Patrick Little, Sandra Brown, James and Juli Wolf (collectively the "Protestants") filed an appeal.

A public hearing was held before this Board on May 2, 2019, July 23, 2019 and July 25, 2019. The Petitioners, Woodensburg Land and Cattle Company, LLC and SGC Power, LLC (the "Petitioners") were represented by Lawrence E. Schmidt, Esquire and Smith, Gildea & Schmidt, LLC. The Protestants were represented by G. Macy Nelson, Esquire. A public deliberation was held on September 26, 2019.

Factual Background

The subject property is located at 5298 Frye Road in the Reisterstown area of Baltimore County, Maryland. It is unimproved and consists of 19.68 acres+/- on the east side of Hanover Pike, Maryland Route 30 (the "Property"). It is zoned RC2. Hanover Pike has been designated by Baltimore County as a "scenic route" and runs in a north-south direction. The Property was

previously used as a farm but no farming activities presently take place there. On the southern end of the Property is a private driveway known as Frye Road.

The Petitioners are proposing to use 15 acres of the 19.68 acres for a solar facility pursuant to Baltimore County Zoning Regulations ("BCZR"), Article 4F. The solar facility will generate less than 2.0 Mw of alternating current (AC) electricity. There are floodplain areas as marked on Petitioners' Site Plan (Pet. Ex. 1). A forest buffer was delineated and approved by Department of Environmental Protection and Sustainability (EPS). (Pet. Ex. 8).

Petitioners are also requesting a limited exemption from the development process under BCC, §32-106(a)(1)(vi) for a "minor commercial structure."

Solar Facilities Law

On July 17, 2017, the County Council enacted Bill 37-17 permitting solar facilities by special exception in certain zones, including RC2, RC4, RC5, and RC8. BCZR, §4F-102.A. The County Council imposed limits on the number of facilities per councilmanic district (*i.e.* 10 per district), and on the maximum area for each facility (*i.e.* the amount of acreage that produces no more than 2 megawatts alternating current (AC) of electricity). (BCZR, §4F-102.B.1 and two.)

In addition to the special exception factors, there are 10 requirements set forth in BCZR, §4F-104.A:

1. The land on which a solar facility is proposed may not be encumbered by an agricultural preservation easement, an environmental preservation easement, or a rural legacy easement.
2. The land on which a solar facility is proposed may not be located in a Baltimore County historic district or on a property that is listed on the Baltimore County Final Landmarks List.
3. The portion of land on which a solar facility is proposed may not be in a forest conservation easement, or be in a designated conservancy area in an RC 4 or RC 6 Zone.

4. Aboveground components of the solar facility, including solar collector panels, inverters, and similar equipment, must be set back a minimum of 50 feet from the tract boundary. This setback does not apply to the installation of the associated landscaping, security fencing, wiring, or power lines.

5. A structure may not exceed 20 feet in height.

6. A landscaping buffer shall be provided around the perimeter of any portion of a solar facility that is visible from an adjacent residentially used property or a public street. Screening of state and local scenic routes and scenic views is required in accordance with the Baltimore County Landscape Manual.

7. Security fencing shall be provided between the landscaping buffer and the solar facility.

8. A solar collector panel or combination of solar collector panels shall be designed and located in an arrangement that minimizes glare or reflection onto adjacent properties and adjacent roadways, and does not interfere with traffic or create a safety hazard.

9. A petitioner shall comply with the plan requirements of § 33-3-108 of the County Code.

10. In granting a special exception, the Administrative Law Judge, or Board of Appeals on appeal, may impose conditions or restrictions on the solar facility use as necessary to protect the environment and scenic views, and to lessen the impact of the facility on the health, safety, and general welfare of surrounding residential properties and communities, taking into account such factors as the topography of adjacent land, the presence of natural forest buffers, and proximity of streams and wetlands.

There are also provisions regarding maintenance of the facilities:

§ 4F-106. - Maintenance.

A. All parties having a lease or ownership interest in a solar facility are responsible for the maintenance of the facility.

B. Maintenance shall include painting, structural repairs, landscape buffers and vegetation under and around solar panel structures, and integrity of security measures. Access to the facility shall be maintained in a manner acceptable to the Fire Department. The owner, operator, or lessee are responsible for the cost of maintaining the facility and any access roads.

C. Appropriate vegetation is permitted under and around the solar collector panels and the tract may be used for accessory agricultural purposes, including grazing of livestock, apiculture, and similar uses.

D. The provisions on this section shall be enforced in accordance with Article 3, Title 6 of the County Code.

A solar facility which has reached the end of its useful life must be removed in accordance with §4F-107.

In order to grant a request for a special exception under BCZR, §502.1, 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.

In *Schultz v. Pritts*, 291 Md. 1, 22-23, 432 A.2d at 1331 (1981), the Court of Appeals held that “the 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 the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.”

The Court of Appeals in *People's Counsel for Baltimore County v. Loyola College in Md.* 406 Md. 54, 106, 956 A.2d 166 (2008) upheld that longstanding *Shultz* analysis, explaining that a special exception use has "certain [inherent] adverse effects....[which] are likely to occur". In its analysis, the *Loyola* Court observed, "[t]he special exception adds flexibility to a comprehensive legislative zoning scheme by serving as a 'middle ground' between permitted use and prohibited uses in a particular zone." *Id.*, 406 Md. at 71, 956 A.2d at 176 (2008).

The *Schultz* and *Loyola* Courts, and more recently in *Attar v. DMS Tollgate, LLC*, 451 Md. 272, 285 (2017) have expressly recognized that "[a] special exception is presumed to be in the interest of the general welfare, and therefore a special exception enjoys a presumption of validity." (See also *Loyola*, 406 Md. at 84, 88; 105 *Schultz*, 291 Md. at 11). Based on this standard, once an applicant puts on its *prima facie* evidence in support of a special exception, the opponents must then "set forth sufficient evidence to indicate that the proposed [use] would have any adverse effects above and beyond those inherently associated with such use under the *Schultz* standard." *Attar*, 451 Md. at 287. (See *Montgomery County v. Butler*, 417 Md.271, 276-77 (2010) (opponent must show "non-inherent adverse effects" to "undercut the presumption of compatibility enjoyed by a proposed special exception use"). (See also, *Clarksville Residents Against Mortuary Defense Fund, Inc. v. Donaldson Properties*, 453 Md. 516, 543 (2017) ("there is a presumption that the [special exception] use is in the interest of the general welfare, a presumption that may only be overcome by probative evidence of unique adverse effects").

Protestants' Motion to Dismiss

On May 1, 2019, Protestants filed a motion styled "Motion for Summary Disposition to Deny the Application for Special Exception" as well as an accompanying Memorandum of Law. It was the Protestants' position that the County Council, in enacting Special Regulation 4F – Solar

Facilities, failed to add solar facilities to the list of special exception uses in RC2 zones found in BCZR, §1A01.2(C). Because of this alleged error, they contend that Section 4F cannot independently authorize a solar facility by special exception use.

This Board unanimously denies the Motion. We read BCZR, §1A01.2(C) as being a general regulation whereas BCZR, §4F is a special regulation. Accordingly, we interpret Section 4F as taking precedent over BCZR, §1A01.2(C). In addition, we accept Petitioner's argument that the County Council may have deliberately decided not to amend the list of uses permitted in the RC2 zone because the number of solar facilities is limited to 10 per councilmanic district. We are persuaded by this logic because, after permits for 10 facilities per district have been issued, solar facilities will no longer be permitted. We also find persuasive Petitioners' response that when the County Council amended BCZR, Article 4B to provide regulations for tattoo businesses, the list of uses permitted in a MH zone was not amended to add these businesses.

As a result, the Motion to Dismiss is denied.

Evidence

Petitioner's case

The Petitioner had several witnesses who testified on its behalf in the merits of the case:

1. Samuel Glenn Elseroad.

Glenn Elseroad lives at 5423 Mount Gilead Road in Reisterstown. He is a member of Woodensburg Land & Cattle Company, LLC, which company holds title to the Property. Mr. Elseroad is a farmer and he, and/or his associated entities, own approximately 500 acres of farmland in Baltimore County, of which 375 is in an agricultural land preservation program. His grandfather owned the Property in 1923. Subsequently, Mr. Elseroad and his wife repurchased

the Property. They had been renting it out for farming until 3 years ago when it became apparent to Mr. Elseroad that deer were eating the crops.

Mr. Elseroad noted that the Property gets a southern exposure and has rolling hills which makes it suitable for a solar facility. He described a farm swale located in the center of the Property which is thick with fescue grass. This grass creates a mat through which storm water flows. He testified that the water is clear in color as it flows off the farm, without sediment.

2. Jack Copus- SGC Power, LLC.

Jack Copus testified as the representative of SGC Power, LLC ("SGC") which is the holding company of Chesapeake Energy I, LLC ("Chesapeake Energy"). SGC is located at 6865 Deer Path Road, Elkridge, Md. Chesapeake Energy was formed to develop and operate the proposed solar facility. Mr. Copus acknowledged that neither SGC nor Chesapeake Energy will own this facility. It will be sold before permission is given to operate.

Mr. Copus has been employed with SGC for 4 ½ years where he works as an engineer. With a geography degree from Towson University, Mr. Copus holds a Leed certification. He has been involved with over 30 solar facility projects in Maryland. As part of his job duties, he is familiar with the Maryland Community Solar Energy Program. SGC has applied, and been accepted as, a subscriber entity in that program.

Mr. Copus explained that a lease of the Property would run for 20 years. Mr. Copus described that a prospective site must be located within the BGE area and must be cleared of trees in the area of the solar array in order to maximize energy production. In this case, the land was previously cleared for farming. (Pet. Ex. 2 and 3). As such, there will be no tree removal or grading.

He explained that the solar panels, which are proposed here, are fixed tilt panels, angled toward the southern exposure, requiring little maintenance. (Pet. Ex. 4). These particular panels do not rotate with the sun and thus, there are no moving parts. As a result, no noise will be generated. The height of the panels at full tilt is less than 8 feet. Each solar panel (1 module) measures 3.5 feet by 6.5 feet. There will be a 1-inch gap between each of the panels.

The sun's rays are absorbed by the silicone material on the panel to create direct current (DC) energy that is then converted into alternating current (AC) energy by an inverter. The energy from the inverter is then distributed to a grid connected to the existing distribution power lines along Hanover Pike. The proposed interconnection from the solar facility to the power lines is as shown on the Site Plan. (Pet. Ex. 1). Mr. Copus testified that this facility would generate 1.75 megawatts of AC electricity. This amount of AC electricity is projected to supply 250-300 homes with energy.

This facility will be unmanned. A team of two people will inspect the Property every 6 months to check the panels and cut the grass if needed. Neither traffic nor congestion will be generated by this use. (BCZR, §502.1.B). Rainwater cleans the panels so no chemicals will be applied. The panels are coated with a non-reflective glare substance to absorb the sun's rays while minimizing glare and reflection. There are no flammable materials contained within the parts of the solar facility. (BCZR, §502.1.C).

An 8-foot agricultural fence with pressure treated wood posts and steel wire will be erected around the facility as a security measure. (Pet. Ex. 5 and 6). The fence will not have barbed wire. The fence will be locked and marked as private property.

3. David Thaler, P.E.

David Thaler was qualified and accepted as a professional engineer and land surveyor with expertise in the requirements for solar facilities and BCZR, §502.1 - special exception factors. Mr. Thaler testified that the proposed special exception area for the solar facility would encompass 10 of the total 19.69 acre Property (the "Site Plan"). (Pet. Ex. 1, 2 and 3).

Mr. Thaler described the Property as gently sloping with the highest slope in the northwest corner measuring under 5%. He confirmed a drainage swale or agricultural channel in the middle of the Property and that this is a storm water management technique used by the farmer. The swale is not a wetland. Mr. Thaler walked the swale and it was dry. On two site visits, he took soil samples from the Property.

He explained that the diagnostic features for detecting a wetland are: (1) hydric soil which turns gray or black; (2) growth of specific plants (hydrophytes); and (3) hydrology present which make feet wet. Mr. Thaler opined that soil takes 30-50 years to demonstrate a wetland. It was Mr. Thaler's opinion that a solar facility is a good use for this soil because pesticides and herbicides used in farming will not be applied.

A floodplain was identified by Mr. Thaler on the Site Plan. (Pet. Ex. 1). Consequently, a forest buffer delineation was then setback from the floodplain and was marked on the Site Plan. (Pet. Ex. 1). The solar array area will not be located within the floodplain or within any environmental sensitive areas on the Property. On May 1, 2017, EPS approved the delineation (aka the 'Wetlands Delineation'). (Pet. Ex. 8). Access to the facility will be by way of Frye Road pursuant to a Declaration of Rights of Way filed in Land Records of Baltimore County, Liber 9509, page 139. (Pet. Ex. 13).

As to the requirements in BCZR, §4F-104.A, Mr. Thaler testified that there are no agricultural preservation, environmental or rural legacy easements on this Property under Subsection A.1. Additionally the Property is not located in a Baltimore County historic district or on the Baltimore County Final Landmarks List under Subsection A.2. Likewise, there is no forest conservation easement on the Property under Subsection A.3.

The Site Plan indicates that the 50-foot setback from the track boundary has been met under Subsection A.4. (Pet. Ex. 1). The height of the facility will be less than 8 feet in the back and no taller than 2 feet in front. Thus, the maximum height of 20 feet will not be exceeded as required under Subsection A.5.

With regard to Subsection A.6., a Schematic Landscape Plan was prepared under Mr. Thaler's supervision and was filed with the County. (Pet. Ex. 2). The installation of the solar facility in this case will not require grading or clearing of land as that area has already been cleared. No trees or existing vegetation will be removed. Mr. Thaler explained that there are three separate legal requirements for landscaping of solar facilities: (1) Section 4F-104A.6; (2) the Baltimore County Landscape Manual; and (3) the Comprehensive Manual of Development Policies ("CMDP").

The northern end of the Property is tree lined. In accordance with §4F-104A.6, the Petitioner will plant a landscaping perimeter buffer around the remainder of the Property as shown on the Landscaping Plan. (Pet. Ex. 2). Existing deciduous trees and those to be planted will soften the view of the facility from Hanover Pike and Frye Road.

The Landscape Manual dictates the number of planting units based on street frontage along Hanover Pike and Frye Road as well as the adjacent residential communities. Based on this, Mr. Thaler calculated 170 planting units are required and those plantings are represented on the Site

Plan. The Landscape Manual refers to the CMDP which requires landscaping screening along “scenic views.” Although Hanover Pike is not a scenic view, it is designated by Baltimore County as a “scenic route.” (Prot. Ex. 11). Nevertheless, the Landscape Plan provides a buffer along Hanover Pike in areas, which do not currently have vegetation in accordance with the CMDP.

Landscape is also proposed within the agricultural swale. In doing so, Mr. Thaler stated that one floodplain will be visually connected to the other. The Landscape Plan was designed to create a filter or diffused view of the facility to soften it. While the Landscape Plan was submitted to the County, it has not yet been approved. Notwithstanding the Zoning Advisory Comments (ZAC) dated July 18, 2018, Mr. Thaler stated that there was no requirement to fully screen the solar array but only to soften the view. (Prot. Ex. 11).

With regard to Subsection A.9, Mr. Thaler opined that the Site Plan contains all the information required under BCC, §33-3-108(c). (Pet. Ex. 1, 2 and 3).

As to the special exception factors, Mr. Thaler testified that the solar facility is a benign use in that it helps farm soil regenerate which is, in turn, useful to the health, safety or general welfare of the locality. Further, it is beneficial because it provides renewable, sustainable energy. He explained that any aesthetic complaints are inherent in solar facilities. (BCZR, §502.1.A).

As with Mr. Copus, Mr. Thaler stated that the facility will not create congestion in the roads, streets or alleys as there is no traffic generated by this use, save periodic maintenance. (BCZR, §502.1.B). Additionally, the facility will not create a fire hazard or other danger as solar facilities are regulated by the Fire Code and National Electric Code. There are four fire stations in the area namely: Upperco, Boring, Glyndon and Reisterstown. (BCZR, §502.1.C).

There is no overcrowding of the land or undue concentration of population because this use does not generate people in or out of the Property. (BCZR, §502.1.D). Likewise, Mr. Thaler

confirmed that there is no impact from this use on schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements because it is located outside the URDL. (BCZR, §502.1.E). Additionally, there is no interference with adequate light and air as the solar facility measures 8 feet at full tilt. It will not cast shadows over the adjacent residences. (BCZR, §502.1.F).

Mr. Thaler opined that the solar facility will not be inconsistent with the purpose of the Property's zoning classification nor in any other way inconsistent with the spirit and intent of the BCZR because the County Council has decided that solar facilities are permitted uses in the RC2 zones and it is important to offer solar power to residents. (BCZR, §502.1.G). This use does not prevent future farming of this Property as the racking system installed on steel poles are simply lifted out of the ground after it ceases to operate.

As to the consistency between solar facility and impermeable surface and vegetative retention provisions, Mr. Thaler reiterated that there will be no impermeable surfaces other than the panels. When rainwater falls onto the panels, it soaks into the grass between and beneath the panels. The Petitioner will submit a storm water management plan to the County. At that point, the County may or may not require additional storm water management techniques including level spreaders or dissipaters. (BCZR, §502.1.H).

Finally, Mr. Thaler testified that the solar facility will not be detrimental to the environmental or natural resources of the Property or vicinity, including forests, streams, wetlands aquifers and floodplains. (BCZR, §502.1.I). The solar facility will not be located in the designated forest buffer areas or within floodplains. There are no forest conservation easements, wetlands or streams on the Property. The special exception area is the cleared area which was previously used for farming. There is only temporary disturbance of the soil by the solar array because, after

removal of the poles supporting the solar panels at the end of the lease, the land may be returned to farming or other purposes. Accordingly, this use will not be detrimental or impact nearby farms.

With regard to the Petitioner's request for a limited exemption from the development process under BCC, 32-4-106(a)(1)(vi), Mr. Thaler's opinion was that this use qualifies as a "minor commercial structure." It was his opinion that the proposed facility is small or minor, and is commercial in nature. He stated that it should qualify for a full exemption under subsection (a)(1)(vi) because it would be pointless to have a development plan or a Hearing Officer's hearing. On cross-examination, Mr. Thaler admitted that BCC does not define "minor commercial structure".

4. Henry Leskinen – Landscape Architect.

Henry Leskinen, a landscape architect with Eco-Science Professionals, Inc., was admitted as an expert in the area of landscape architecture, ecology and wetland delineations. (Pet. Ex. 14). Mr. Leskinen was retained to study whether wetlands exist on the Property. To do so, he visited the Property to determine whether three (3) factors indicating that hydrology was present: (1) the presence of wetland species grasses/plants; (2) surface water ponding; and (3) gray-colored soil. Mr. Leskinen's opinion was consistent with Mr. Thaler's in that no wetlands existed on the Property.

Mr. Leskinen submitted his findings to EPS and the wetlands/streams delineations were approved by the County. (Pet. Ex. 8). Mr. Leskinen prepared an environmental plan summarizing his finding. (Pet. Ex. 15). The bank of trees on the north end of the Property consist of white pine and white oak. When he visited the Property, no water was flowing in the swale. He saw Kentucky fescue and blue grass growing in the swale. There were a few areas of junkis grass on the southern end of the Property but it was not dominant. Given that the water table was at a seasonal high in

2019, it was Mr. Leskinen's opinion that if a wetland existed, ground water would have been present.

Further, Mr. Leskinen explained that there is no need for a second wetlands study as the State of Maryland and Baltimore County regulations (as well as the US Army Corp of Engineers) provide that the delineations are valid for 5 years. He testified that in his 33 years as an ecologist, he has never seen a wetland emerge where none previously existed.

5. Stephen Barrett – Glare Study.

The Petitioner contracted with Stephen Barrett, owner of Barrett Energy Resource Group located in Concord, MA to conduct a study on whether the proposed solar facility panels will produce glare from the sun's rays. (§4F-104.A.8). Mr. Barrett was accepted as an expert in glare analysis. Toward that end, he prepared a glare study report using computer software known as GlareGauge which is accepted by the U.S. Federal Aviation Administration, and is now considered the industry standard. (Pet. Ex. 17). Mr. Barrett was involved in the development of the model tool which became part of the 2013 FAA Guidance document for solar projects at airports and is now applied as effective in residential communities. The program only considers the solar array, the movement of the sun and the position of observers; it does not take into account terrain, vegetation, or other structures which might obstruct the observer's view of glare. *Id.* The program determines the path of the sun throughout the year.

Mr. Barrett testified that the FAA glare model includes a 3-step process which he analyzed in this case. The first step is to identify the receptors (adjacent properties, roads, motor vehicles) where glare from the proposed solar panels could potentially reflect the sun's rays. Without considering terrain, vegetation or structures, he located 13 receptors and discovered that nine of the 13 receptors have the potential for glare (for longer than 5 minutes annually). He emphasized

that this step is not the same as being able to observe the solar panels. He is concerned only with whether glare is produced from a selected location, as glare is a function of where the sun is in the sky in relation to the time of year. The selection of receptor sites was from Google Earth and the focus was on potential glare from locations due to sun rising in the east and setting in the west, while recognizing that the panels will be fixed toward the south.

The study indicated that the home of Patrick Little at 14531 Hanover Pike, Upperco, MD had the highest total annual minutes for potential glare (12,021 minutes). The potential for glare would be between 5:15pm-6:15 pm during late March through mid-September.

The second step of the model factors in the existing trees, vegetation and terrain. Mr. Barrett opined that the existing natural features on this Property obstruct the glare at the receptors. In particular, the shape of the Property is that of a bowl which will minimize and diffuse any glare produced. The third step considers the additional landscaping proposed. In this case, the potential for glare is further minimized by the proposed landscaping.

In summary, Mr. Barrett opined that no glare will be produced because the proposed design of the tracking system causes the panels to continuously move while tracking the sun. As a result, in his opinion, no glare of low or high intensity will be created.

Protestants' Case

1. Ted Carter.

Mr. Carter was accepted as an expert in landscaping, having a Master's degree in landscape architecture with work experience at Pinehurst Landscape Company since 2009. Pinehurst Landscape Company is a Baltimore County landscape company which has been in business for 54 years. Part of Mr. Carter's job duties includes analyzing a site and designing landscaping which will thrive.

As part of his review of the landscaping proposed here, Mr. Carter examined the Hanover Pike Corridor Study which is part of the Baltimore County Master Plan; the CMDP; the Landscape Manual; and the ZAC Comments. Mr. Carter opined that driving northbound on Hanover Pike, a driver could see the northeast corner of the Property. The plantings proposed (deciduous trees or evergreens) would need more than 12 years to grow tall enough to block the view.

Additionally, the proposed spacing of the 12-foot trees at 10-12 feet apart will not screen the view. Toward this end, Mr. Carter opined that more dense plants, arranged in several layers, are needed. Mr. Carter recommended three (3) lines of fast growing mature trees such as Sycamores and Poplars along with lower shrubbery to fully screen the view. Although conceding that the Landscape Manual does not require the plan to “fully screen” but rather to “minimize the visual impact,” Mr. Carter highlighted the ZAC Comments which noted that the view from Hanover Pike should be “fully screened.” (Prot. Ex. 11). The Landscaping Plan, in his view, fail in this regard.

Mr. Carter also acknowledged that the CMDP does not require the facility to be “fully screened” but rather requires the “least visual impact.” Furthermore, while conceding that the Hanover Pike Study does not require the landscape to “fully screen,” he opined that it is the best practice to minimize the site lines.

Along Frye Road, Mr. Carter also opined that the proposed landscaping screening was ineffective. Relying on the photos taken along Frye Road, he testified that the plantings would need to be 25 feet tall. (Prot. Ex 5 and 12). Mr. Carter again proposed denser plantings in rows of three (rather than one row), 10 feet on center. In his view, the proposed shrubs were not a good species to create depth. He also advocated for the use of contour strip buffers placed every 50 ft.

on the contour lines between the solar panels. He advised that this type of landscaping would require the solar panels to be moved farther apart such that fewer panels would be installed.

2. James Wolf.

Mr. Wolf purchased the lot at 5133 Frye Road in 1992 and built his home in 1994. He explained that Frye Road running along the southern end of the Property is a private driveway by which he uses to gain accesses to his property. Frye Road also services eight homes, the owners of which paid for part of the driveway to be paved.

Mr. Wolf opposes the installation of solar facilities generally in the RC2 zone and finds this one particularly objectionable because it is located at the entrance to the residential community. He feels that this solar facility will negatively impact the property values. He voiced his concern that because the final landscape plan is an integral part of the project, it should be approved before the solar facility is approved. Because of the bowl-shape to the Property, it is not suitable for a solar facility because it will never be sufficiently landscaped to provide an adequate screen.

3. Patricia Fallon.

Ms. Fallon lives at 14823 Hanover Pike which is located ½ mile north of the Property. She testified that she has observed water flowing as a stream through the Property. Additionally, the front of her property, which is located south of the solar panels, is in a 100-year Floodplain. She described water flowing off the Property and into the 100-year Floodplain.

Ms. Fallon also testified that given her work experience in making chemical components for manufacturing systems at Westinghouse, she researched and discovered that the same chemical components are generally used in solar panels, although she did not know what type of material would make up these particular panels. It was her opinion that, because of this, the solar panels

should be monitored remotely 24 hours per day and 7 days per week. Solar panels, she explained could be damaged by hail, fallen power lines, or fallen tree limbs. If this occurs, the chemicals used in the solar panels could seep into the ground water.

4. Linda Barker.

Ms. Barker lives at 14813 Old Hanover Pike. She did not file an appeal in this case as a protestant but does reside near the Property and had concerns to share with the Board. Toward that end, Ms. Barker is a retired landscape contractor. She cannot see the site from her property, only when she drives on Hanover Pike. Her concern is erosion of the soil due to rain coming off the impervious surface of the solar panels. The erosion will negatively impact farming and the stream which flows on the west end of the Property.

5. Santo Mirabile.

Mr. Mirabile owns two parcels of land at 14517 and 14525 Hanover Pike. Although he does not live there now, he is planning to build a home for his family and move there upon completion. He described that the trees located at the intersection of Hanover Pike and Frye Road which can be seen while driving north on Hanover Pike belong to him. He explained the problems with maintaining Frye Road which washes away when there is a heavy rain. Water flows off the Property and onto Frye Road which has no guardrails. A hurricane displaced the culvert. All of the neighbors (except Mr. Elseroad) contributed to the repair which Mr. Mirabile himself performed.

Using the photographs of the northerly view from his properties toward the site, Mr. Mirabile explained that no landscape screening will be effective and he will have an unobstructed view of the solar facility, particularly from his proposed 2-story home. Mr. Mirabile has financially invested in building his home in this community which he bought for its rural views.

He noted that the Petitioner's Glare Report did not consider the glare to his properties as it was not selected by Mr. Barrett as a receptor.

6. Debra Mirabile.

Mrs. Mirabile is the spouse of Santo Mirabile and co-owner of 14525 and 14527 Hanover Pike. Mrs. Mirabile echoed the testimony of other Protestants about the rural nature of the area, the bowl-shape topography of the Property, the higher elevations of the adjacent residential homes, her general opposition to Bill 37-17, the ineffectiveness of the proposed landscape screen, how this solar facility will negatively impact her investment, and the Hanover Pike rush hour traffic peaks. She described that the front of her new home will face the Property and would be at a higher elevation such that glare will be a problem for them. She is suspicious of the Petitioner's glare study as she recounted a motor vehicle collision which she caused due to glare from a solar panel.

7. Timothy Fales.

Mr. Fales lives at 14619 Hanover Pike, which is located at the northwest end of the Property, at a higher elevation. His house looks down onto the Property. The access to Mr. Fales' property is from Hanover Pike through a driveway on the western edge of the Property. There is a group of existing white pine trees to the east and some trees south of his property which will remain and thus partially block the view of the solar facility when he looks east. There is landscaping proposed south of his home to provide a screen. (Pet. Ex. 2). Mr. Fales is generally opposed to Bill 37-17 because he feels it is installing an industrial product into a rural setting. If the solar facility will be granted on this Property, Mr. Fales desires to have the panels moved down from the highest point on the Property.

8. Patrick Fales.

Mr. Fales is the brother of Timothy Fales and resides at 14533 Hanover Pike. He has lived there for 15 months. This home is located on northeast end of the Property. The bank of white pine trees to remain are located west of his home. Similar to his brother, Mr. Fales' home looks down into the site. He testified that the topography of this Property disqualifies it for use as a solar facility because it cannot be effectively screened by landscaping. If the solar facility is approved, he believes that the size of it should be reduced. He estimated that 100 feet of solar panels will be installed outside his front door.

9. Paul Merritt.

Mr. Merritt lives at 14527 Hanover Pike which is located east of the Property on Frye Road. As with the Fales' brothers, his home also looks down onto the site. In the winter, the deciduous group of trees between his home and the Property do not block the view. Mr. Merritt assisted Mr. Mirabile with the repair of the culvert on Frye Road. He testified that the water from the swale flows off the Property, across Frye Road and into a ditch on the Mirabile property. This flow of water has caused the ditch to erode. Mr. Merritt is opposed to Bill 37-17 as it brings a use which is inconsistent with RC2 zone. He further believes that a solar facility will negatively affect the value of his home and will increase the cost to maintain Frye Road.

10. Sandra Brown.

Ms. Brown lives at 5135 Frye Road where she has lived for 20 years. Ms. Brown is opposed to the facility because she can see it from her home. She is actively involved in the Hanover Improvement Association. She believes this Property is not appropriate for a solar facility. The uniqueness, she explained, stems from its location in a neighborhood with families

and this use will affect their lives. She repeated the ineffectiveness of screening a bowl-shaped parcel without using tiered buffering which requires the removal of panels from the Site Plan. She reasoned that if panels are installed at a lower point on the Property, it would reduce the glare.

Rebuttal

In rebuttal, the Petitioner called Andria Weber, a solar engineer with SGC to testify. She was admitted by the Board as an expert in solar panels. Addressing some of the Protestants' concerns, she emphasized that there would be 24/7 monitoring of the site along with a camera wherein the data can be viewed from anywhere, anytime, such that if there is a failure, there is an instant email notice and the system is shut down. Additionally, there are onsite inspections 2 times per year and surplus inverters and parts are stored by SGC for instant repair. She explained that the panels consists of Tier 1 silicon (not cadmium) modules which have been found reliable after 25 years of testing. The panels meet US standards and testing guidelines.

The modules which will be used here are designed not to leak. The panels have an anti-reflective coating designed to absorb the sun's energy, not to reflect the sun's rays. Any tiered landscaping would cast shadows onto the panels and would result in less energy produced.

Decision

As set forth above in BCZR, §4F-102.A, solar facilities are only permitted by special exception under the factors set forth in BCZR §502.1. In this case, each of the nine (9) special exceptions factors was addressed through the testimony of Mr. Copus, Mr. Thaler and Mr. Leskinen and through the documents and photographs accepted into evidence which supports the Petitioner's position that the proposed solar facility would not be detrimental to the health, safety or general welfare of the locality involved. BCZR, §502.1.A. To the contrary, the Protestants' collective concerns are impacts which are inherent with this particular use. The Protestants'

complaints center on their dissatisfaction with the County Council's enactment of Bill 37-17 which is codified in BCZR, Article 4F. (Prot. Ex. 27). Understandably, the Protestants want land in RC zones to remain as farmland without non-agricultural uses.

However, it is beyond the jurisdiction of this Board to rewrite Bill 37-17 or Article 4F. Applying the standard in *Schultz*, *Loyola* and *Attar*, the Protestants were required to present evidence that the adverse effects stemming from this solar facility, at this particular location, are unique and different than the inherent impacts associated with this use in general. We did not have such evidence here.

As described in detail above, and without repeating the same testimony here, we find persuasive the testimony of Petitioner's expert and lay witnesses in regard to the special exception factors. Mr. Thaler testified that the proposed solar facility would not be detrimental to the health, safety or general welfare of the locality involved in that it does not harm the farmland. Mr. Copus and Mr. Thaler each testified that the solar facility would not create congestion in the roads as it is not a use that generates traffic into or out of the Property. (BCZR, §502.1.B.) Further, Mr. Copus confirmed that there are no flammable materials used in this solar facility. Ms. Weber testified that these panels are made from silicon (not cadmium) which have been proven effective. She also pointed out that the facility would be monitored 24/7 with cameras to ensure the facility is safe and properly working. Mr. Thaler highlighted that there are four fire stations in the immediate area. (BCZR, §502.1.C.)

As with the lack of traffic, Mr. Copus and Mr. Thaler repeated that this use does not generate people and therefore it would not tend to overcrowd the land or cause an undue concentration of population. (BCZR, §502.1.D.) Additionally, Mr. Thaler confirmed that this use does not interfere with schools, parks, water, sewerage, transportation or other public

requirements, conveniences or improvements because it is outside the URDL and does not generate people for public facilities such as schools or transportation. (BCZR, §502.1.E.) To the contrary, the Board finds that it produces electricity which benefits the surrounding community.

Mr. Copus and Mr. Thaler both confirmed that the height of the facility will be 8 feet at full tilt and as short as 2 feet in the front. The facility will stand in the area of the Property which was previously cleared for farming. Accordingly, the Board finds that shadowing and air circulation are not areas of concern. Thus, the facility would not interfere with adequate light or air. (BCZR, §502.1.F.)

As to the consistency of this use with the purposes of the RC zones and with the spirit and intent of the BCZR, §502.1.G, we find compelling the testimony of Petitioner's experts that solar facilities are consistent uses because they are temporary, and do not impair farmland. The racking system is simply lifted out of the ground at the end of the lease term. The soil type remains the same before, during and after removal.

Moreover, the County Council has deemed solar facilities to be uses which are consistent with the RC zones, provided they meet the special exception standard, as explained in *Schultz*, *Loyola* and *Attar*. The Protestants' argument about the appropriateness of a non-agricultural use in RC zones should be directed to the County Council. This Board is not required to determine whether a solar facility is detrimental to agricultural uses. Our authority to approve this use is contained in Article 4F and §502.1 factors. Even if this Property contains soil suitable for farming which Mr. Elseroad disputes, an owner cannot be compelled to farm this land, or to lease the Property to a farmer.

As for whether this use is consistent with impermeable surface and vegetative retention provisions of the BCZR, §502.1.H, Mr. Leskinen and Mr. Thaler both explained that there will

not be any clearing or grading of land, and no tree removal. The existing trees to the north, west and east of the Property will remain. Rain will propel off the solar panels and soak into the ground between the rows. The rows of panels are separated so that there is no concentrated flow of water runoff as there would be with pavement. While the panels are designed to function as a storm water management technique, Mr. Thaler added that the Department of Public Works will determine whether any further storm water management retention measures are needed.

As to the final special exception factor, Mr. Thaler and Mr. Leskinen each testified that this use, at this location, would not be detrimental to the environmental or natural resources of the Property, including the forest, streams, wetlands, aquifers and floodplains under BCZR, §502.1.I. The evidence confirmed that there are no wetlands or streams on the Property. The Protestants did not have expert testimony to the contrary. The solar panels will not be installed in the floodplains which were marked on the Site Plan. (Pet. Ex. 1). On May 1, 2017, a forest buffer was delineated and approved by EPS and the solar facility will not be located in the forest buffer. (Pet. Ex. 8). Mr. Leskinen prepared and explained a Revised Wetland and Forest Stand Delineation Plan which mirrored Mr. Thaler's floodplain boundaries. (Pet. Ex. 15).

Having found the special exception factors have been satisfied, we also find the Petitioner's evidence compelling to satisfy each of the requirements of BCZR, §4F-102.B.1 and BCZR, §4F-104.A.1-9. Mr. Copus testified that the solar facility area will produce 1.75 megawatts AC electricity; less than the maximum 2 megawatts AC. BCZR, §4F-102.B.1. Accordingly, we find that the Petitioner has met this burden.

Further, Mr. Thaler testified that the Property is not encumbered by an agricultural preservation easement, an environmental preservation easement or rural legacy easement, nor is it in a Baltimore County historic district or on the Baltimore County Final Landmarks list. (BCZR,

§§4F-104.A.1 and A.2.) In addition, as with the special exception factors, Mr. Thaler and Mr. Leskinen both testified that the solar facility will not be located in the forest conservation easement or designated conservancy area. (BCZR, §§4F-104.A.3.) There was no evidence by the Protestants which contradicted any of these requirements.

As to the setback and height requirements, Mr. Thaler made clear that the facility at its highest peak will not exceed 8 feet in the back, and will be as low as 2 feet in front. (BCZR, §§4F-104.A.4.) The Site Plan revealed that the solar facility will not be located within 50 feet from the tract boundary. (Pet. Ex. 1). (BCZR, §§4F-104.A.5.) Accordingly, both the height and setback requirements have been met. There was no evidence by the Protestants which contradicted either of these requirements.

With regard to the requirement for a landscape buffer on the perimeter, the photographs presented show a cluster of existing white pine and white oak trees on the north end of the Property. (BCZR, §4F-104.6). (Pet. Ex. 2, 3) (Prot. Ex. 5, 8, 9, 12). Although a final landscape plan has not yet been approved by the County, Mr. Thaler testified that the initial comments from the Department of Planning recommended adding additional deciduous trees where no trees exist and supplementing with low shrubbery beneath. (Prot. Ex. 11). The Petitioner is amenable to planting these additional trees and shrubs and prepared a schematic Landscaping Plan in support of its Petition. (Pet. Ex. 2).

We agree with the Petitioners assertion that Subsection A.6 does not mandate that the landscape buffer make the solar facility disappear. However, we also interpret Subsection A.10 as authorizing this Board to impose conditions or restrictions on a solar facility as is necessary to protect the environment and scenic views, and to lessen the impact of health, safety and welfare of surrounding residential community when the topography of adjacent lands is a factor. In this case,

the surrounding residential properties sit at a higher elevation (those homes look down on the Property), or at the same elevation (those homes look up at the Property) due to the bowl-shape of the Property.

Although Hanover Pike is a designated County scenic route and not a scenic view, we balance the topographical reality with the ZAC Comments which recommended 'fully screening' the solar panels along Hanover Pike. While we appreciate that Mr. Thaler has calculated the exact quantity of trees and shrubs as required by the Landscape Manual and the CMDP, in this particular case, the Board finds that certain additional landscaping conditions need to be met.

Toward that end, the Board found convincing the testimony of Ted Carter, as an expert in landscaping, who recommended that additional trees and shrubs be planted to provide for a denser screening. Specifically, Mr. Carter suggested three rows of trees rather than one row, which Petitioner proposed. He also testified that selecting fast-growing trees which will reach a height of 12 feet along with vegetation and shrubs beneath and between those trees, would more effectively screen the solar facility. He highlighted that white pine trees grow rapidly.

On this condition, we defer to the County Landscape Architect when the final landscaping plan is reviewed to require the Petitioner to plant at least three rows of mature, fast growing deciduous trees at varying heights and widths along with mature, fast growing shrubbery beneath to provide a dense screening of the Property. The County Landscape Architect shall be charged with ensuring that the proposed vegetation should be planted with such depth and height to maximize the screening from the properties of the Protestants who appealed this case, and from the vantage points along Hanover Pike and Frye Road. However, we decline to require the Petitioner to install tiered buffering between the solar panels as that would shade the panels and reduce the energy produced.

As for a security fence, the uncontradicted evidence was that an 8-foot high fence with wood posts, steel wire, and without barbed wire, will be erected between the landscape buffer and the solar facility. (Pet. Ex. 5 and 6). (BCZR, §4F-104.7). As Mr. Copus explained, access to the fence will be locked and a sign posted as to the contact information of the owner/operator. This will be a condition of this Order. With this evidence, we find that these requirements have been satisfied.

Additionally, there is a requirement that the solar panels minimize glare in order to prevent vehicle collisions and safety hazards. (BCZR, §4F-104.8). In this case, the Petitioner had Mr. Barrett testify and present his glare study. (Pet. Ex. 17). The Protestants did not present an expert to contradict Mr. Barrett. The glare study indicated that there would be no glare produced by the solar panels here. Based on the weight of the evidence, we find the Petitioner satisfied this requirement.

The final factor requires the Site Plan to comply with BCC, §33-3-108. (BCZR, §4F-104.A.9). In our review of BCC, §33-3-108, we find that the language in Subsection (a) is unambiguous. That Subsection requires EPS (as defined in §33-3-101(f)), to approve the Site Plan. Further, Subsection (b) directs that the Site Plan shall generally include such information (graphs, charts, etc.) to enable EPS to “make a reasonably informed decision regarding the proposed activity.” Additionally, a plan submitted to EPS for approval must also contain the information listed in Subsection (c).

In our view, the specific items listed in Subsection (c) must be considered by EPS, not this Board, when it reviews and approves the Plan. Sections 33-3-105 (1) and (2) provide that EPS is “responsible for enforcing the provisions of [Title 33]” and the Director of EPS “may adopt policies and regulations as necessary to implement the provisions of [Title 33].”

Given the express wording of Section 33-3-108 that EPS shall approve the Site Plan, and that EPS is responsible for ensuring that the Site Plan comply with both the general and specific requirements of Subsections (b) and (c), we find that the appropriate solution for this Board is to place a condition in the Order reiterating the words of §4F-104.A.9 (i.e. that the Petitioner shall comply with Section 33-3-108). To do otherwise would be to overstep this Board's statutory authority. That finding notwithstanding, Mr. Thaler testified that the Site Plan met all the requirements of Section 33-3-108. There was no expert testimony presented by the Protestants to counter the evidence presented by the Petitioner.

The final issue requested by the Petitioner on appeal is for a limited exemption under BCC, §32-4-106(a)(1)(vi). This exemption is for a "minor commercial structure" and permits the Petitioner a full exemption from the development process and to apply directly for a building permit. In this case, Mr. Thaler testified that the project was entitled to a full exemption because it is a commercial use and small in nature. While we agree that the use is not residential in the sense that it is not a solar facility for use in a home, we disagree that the proposed facility here is "minor." The term "minor commercial structure" is not defined in the BCC. Accordingly, this Board interprets that phrase to mean that the special exception area for the solar facility must be small, subordinate in size and scope to the total acreage of the property at issue.

In this case, the Petitioner's Memorandum in Lieu of Closing Argument states that the special exception area is 15 acres; the total Property acreage is 19.68 acres. (Pet. Memo, p. 3). However, Mr. Thaler testified that the special exception area was 10 acres. While the Petitioner was not consistent on this point, we find that if the special exception area will consume the majority of the total acreage. Therefore, it cannot be "minor" in nature. In this case, as with most solar facilities, the Petitioner elected to use maximum amount of acreage for the special exception area

in order to achieve the greatest AC of electricity under the 2 megawatt limit while still meeting the 50 feet setback and not disturbing the environmental areas on the Property. Accordingly, we find that the Petitioner must proceed through the development process and is not entitled to an exemption.

Conclusion

After reviewing all of the testimony and evidence presented, the Board finds that Petition for Special Exception pursuant to BCZR, Article 4F should be granted, with conditions. This Board further finds that the request for a limited exemption should be denied.

ORDER

THEREFORE, IT IS THIS 19th day of December, 2019, by the Board of Appeals of Baltimore County,

ORDERED, that the Protestants' Motion for Summary Disposition to Deny the Application for Special Exception be and the same is hereby **DENIED** for the reasons set forth herein, and it is further,

ORDERED that the Petition for Special Exception for a solar facility pursuant to BCZR, Article 4F as set forth on the Site Plan (Pet. Ex. 1), and the Landscape Plan (Pet. Ex .2) be, and the same is hereby **GRANTED**, subject to the following conditions under the Board's authority in §4F-104.A.10:

1. Petitioners shall submit for approval to the Baltimore County Landscape Architect and/or his/her designee, a final landscape plan for the Property demonstrating appropriate screening and vegetation along the perimeter as required under BCZR, §4F-104.A.6 and specifically to require the Petitioner to plant at least three (3) rows of mature, fast growing deciduous trees at varying heights and widths along with mature, fast growing shrubbery beneath to

provide the densest possible screening of the site. The County Landscape Architect and/or his/her designee, shall be charged with ensuring, to the best of his/her professional opinion, that the proposed vegetation should be planted with such depth and height to maximize the screening from each of the properties of the named Protestants who appealed this case, and from all vantage points along Hanover Pike and Frye Road.

2. The Petitioner shall not be required to install tiered buffering between the solar panels as that would shade the panels and reduce the energy produced.

3. Petitioners shall install an eight (8) foot high, security fence, which shall consist of wood, pressure-treated posts with steel wires between the landscaping buffer and the solar facility as required by BCZR, §4F-104.A.7. There shall be no barbed wire on the fence. The fence shall be locked at all times. Attached to the fence in a conspicuous place, while the solar facility is in operation, shall be the current contact information (name, address, 24-hour telephone number, website and email address) of the owner and operator of the solar facility. The owner/operator may also install "No Trespassing" signs.

4. The Petitioner shall remotely monitor the solar facility 24/7 to ensure it is safely and properly working at all times and shall immediately make all necessary repairs during the life of the lease.

5. Prior to the issuance of a building permit, Petitioner must satisfy the environmental regulations set forth in BCC, §33-3-108 pertaining to the protection of water quality, streams, wetlands and floodplains and obtain approval of the Site Plan from the Department of Environmental Protection and Sustainability as required in that Section.

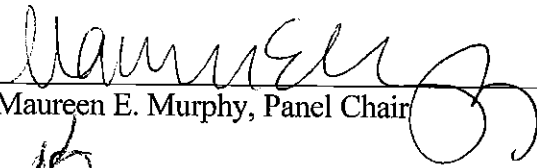
And it is further,

ORDERED that the Petitioner's request for a limited exemption under BCC, §32-4-106(a)(1)(vi), be and the same is hereby **DENIED**.

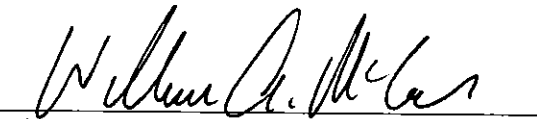
In the matter of: Woodensburg Land & Cattle Co., LLC - Legal Owner
SGC Power, LLC - Lessee
Case No : 17-107-X and CBA-19-018

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**


Maureen E. Murphy, Panel Chair


Kendra Randall Jolivet


William A. McComas



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
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December 19, 2019

Lawrence E. Schmidt, Esquire
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600 Washington Avenue, Suite 200
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G. Macy Nelson, Esquire
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204

RE: *In the Matter of: Woodensburg Land and Cattle Company, LLC – Legal Owner*
SGC Power, LLC – Lessee
Case Nos.: 17-107-X and CBA-19-018

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

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/taz
Enclosure
Duplicate Original Cover Letter

c: Glenn S. and Ruth L. Elseroad/
Woodensburg Land and Cattle Company, LLC
Bruce Wilson/SGC Power, LLC
Office of People's Counsel
C. Pete Gutwald, Director/Department of Planning
Paul M. Mayhew, Managing Administrative Law Judge
Lloyd Moxley, Development Manager/PAI
Michael D. Mallinoff, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law

Timothy and Elizabeth Fales
Santo and Debra Mirabile
Patrick and Thanikan Fales
Paul B. Merritt
Melissa A. DePinho
Patrick Little
Sandra M. Brown
James C. and Juli R. Wolf

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Woodensburg Land & Cattle Company, LLC – Legal Owner 17-107-X &
SGC Power, LLC – Lessee CBA-19-018

DATE: September 26, 2019

BOARD/PANEL: Maureen E. Murphy, Panel Chair
Kendra Randall Jolivet
William A. McComas

RECORDED BY: Tammy A. Zahner, Legal Secretary

PURPOSE: To deliberate the following:

1. Petition for Special Exception pursuant to BCZR Section 4F-102 to operate a solar facility in the RC-2 zone; and
2. Appeal of Director's letter granting a Limited Exemption under BCC Section 32-4-106(a)(1)(vi) for a minor commercial structure.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

DISCUSSION

- The Board held three days of hearings on the Petitioners' request to operate a solar facility.
- The Board discussed the Protestants' Motion to Dismiss which argues that the Bill allowing solar facilities is flawed, among other arguments. The Board unanimously agreed to DENY the Motion to Dismiss.
- The Board discussed the requirements contained in BCZR Section 4F-104, as follows:
 - The solar facility is permitted in the RC-2 zone by special exception.
 - The solar facility will produce no more than two megawatts of electricity.
 - Maximum of 10 per Council District. To the Board's knowledge this limit has not been reached.
 - Additional requirements:
 - 1) Not applicable. The land is not encumbered by an agricultural preservation easement, an environmental preservation easement or a rural legacy easement.
 - 2) Not applicable. The land is not located in a historic district or on property listed on the Baltimore County Final Landmarks List.
 - 3) Not applicable. The solar facility will not be located in a forest conservation easement, or in a designated conservancy area.
 - 4) Meets requirement. The components of the solar facility will meet the minimum setback requirement of 50 ft. from the tract boundary.

5) Meets requirement. The structure does not exceed 20 ft. in height.

6) The Board discussed the landscaping buffer which is a major concern of the Protestants. The landscaping plan itself is not filed until after special exception approval, and must be approved by the County. The Board discussed the requirement of providing adequate screening from adjoining residential properties, and the scenic road. The Protestants argue that regulations require the solar panels be invisible from adjoining properties. The Board disagrees finding that is not the intent of the regulations, however the Board can impose conditions to mitigate the impact to neighbors. There was some discussion regarding the impact to neighboring views across the property where the solar panels will be located. It was noted that the Board has ruled on multiple occasions that you do not own or have a right to the view across neighboring properties. The Board will impose a condition regarding the landscape buffer to create more depth to minimize the impact to neighbors.

- 7) The proposed security fence will be an agricultural type fence approximately 8 ft. in height, with no barbed wire on top. The Board will impose a condition that a sign be posted on the fence surrounding the solar facility with emergency contact information including a 24-hour telephone number, e-mail address, and website.
- 8) The Petitioner presented expert testimony which included a Glare Study. The solar panels will be designed to minimize glare or reflection onto adjacent properties and roads. The condition of additional landscaping will also help to minimize glare.
- The Board discussed the specific requirements of BCZR Section 502.1, Conditions determining granting of a Special Exception, as follows:
 - A) The Board found there would be no detriment to the health, safety or general welfare of the locality.
 - B) The Board noted that the solar facility will only be accessed during installation and periodic maintenance. The Board found there would be no impact on traffic or roads.
 - C) The Board found there was no evidence of potential hazard from fire, panic or other danger.
 - D) There will be no population increase as a result of the solar array, and accordingly will not overcrowd land or cause an undue concentration of population.
 - E) The Board found the project will not have an impact on schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements.
 - F) The Board noted that the height of the solar panels will not exceed 20 ft., and will not interfere with adequate light and air.
 - G) The Board noted that County Council Bill 37-17 permits solar facilities in the RC-2 zone as long as it meets the special exception requirements. The Board must apply the Bill as written and does not have the authority to change the law. The Board found the proposal to be consistent with the spirit and intent of the Zoning Regulations.

H) The Board discussed impermeable surface and vegetative retention. The Board noted there will be no grading of the property and no tree removal. The Board noted that DEPS is charged with review of storm water management and will be undertaking a more detailed analysis.

I) The Board discussed impact to environmental and natural resources on the site. The Board noted there are no streams or wetlands on the site. The Protestants argue that the swale located on the property is a wetland. The Board disagrees noting that the swale has no active flow of water, and is considered a farm swale. It was noted that DEPS will review the proposal to ensure there is no negative impact to any environmental and natural resources on the site.

- The Board discussed the Petitioners request for a limited exemption to BCC Section 32-4-106(a)(1)(vi) for a minor commercial structure. The Board noted that there is no definition of “minor commercial structure” in the BCC. The Board feels that due to the scope of the proposed project it is not a minor commercial structure and agree that the proposal should go through the development plan process.

CONCLUSION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to DENY the Protestants’ Motion to Dismiss; to GRANT the Petition for Special Exception, with conditions imposed; and to DENY the limited exemption to BCC Section 32-4-106(a)(1)(vi).

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,

_____/s_____
Tammy A. Zahner

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(5298 Frye Road)		
4 th Election District	*	OFFICE OF
3 rd Council District		
Woodensburg Land & Cattle Co., LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
SGC Power, LLC	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	Case No. 2017-0107-X

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of a Petition for Special Exception filed on behalf of Woodensburg Land & Cattle Co., LLC, legal owner and SGC Power, LLC, lessee (“Petitioners”). The Petition for Special Exception pursuant to Section 4E-102 of the Baltimore County Zoning Regulations (“BCZR”) seeks approval for a solar facility.

Glenn Elseroad and landscape architect Stacy McArthur appeared in support of the petition. Lawrence E. Schmidt, Esq. represented the Petitioners. Several citizens, represented by G. Macy Nelson, Esq. attended the hearing and opposed the request. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”), the Bureau of Development Plans Review (“DPR”) and the Department of Environmental Protection and Sustainability (“DEPS”). None of the receiving agencies opposed the request.

The subject property is approximately 19.68 acres and zoned RC-2. The property is located on Hanover Pike (Md. Route 130), which is a designated Baltimore County scenic route. Petitioners propose to construct a solar facility on the property, a use permitted by special exception in the RC-2 zone.

ORDER RECEIVED FOR FILING

Date 12/5/18

By SLH

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 *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized 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.

Petitioners presented four witnesses in their case. First was Stacy McArthur, a landscape architect accepted as an expert. Ms. McArthur described the site plan and testified the property is approximately 19.6 acres in size. She testified there are no flood plains on the site and that a wetlands delineation (as shown on the site plan) was approved by Baltimore County. She testified no trees would be removed from the site and indicated the site slopes gradually upward from Hanover Pike. Ms. McArthur stated a schematic landscape plan has not yet been approved by Baltimore County, although she explained such plans are normally approved later in the process at the time of permit application.

In response to questions on cross examination Ms. McArthur conceded the proposed landscaping will not block the view into the site although she believed the view of the panels would be softened. Ms. McArthur testified that in her opinion there is not a stream in the area where the solar panels would be located, even though an engineer in a prior case prepared a plan for the site showing an intermittent stream and buffer. Prot. Ex. No. 1.

Jack Copus, a partner in the entity that would lease this site, was the next witness. Mr. Copus explained he has been involved in the solar industry since 2008 and since that time has

ORDER RECEIVED FOR FILING

Date

12/5/18

By

sen

worked on approximately 100 solar array projects. He testified SGC Power (lessee) has completed over 140 projects in 26 states. Mr. Corpus described the various elements of the solar facility and stated the panels would be fixed and that no lights would be installed on the property. The witness testified the lessee has received conditional approval from BGE for a 1.75Mw solar facility, and that at least 51% of the power generated would be sold/distributed to low-income customers.

The next witness was owner Glenn Elseroad. Mr. Elseroad and his wife own more than 500 acres of agricultural land in Baltimore County, 355 of which are protected by an agricultural easement preservation program. He testified this property has been in his family since 1923, although his grandfather sold portions of the land (including the subject property) in 1951. Mr. Elseroad testified he "re-acquired" the subject property in 2010. He stated the subject property was farmed until last year, but that the small size of the tract makes it unprofitable to farm.

The final witness in Petitioners' case was Henry Leskinen, who was accepted as an expert ecologist. Mr. Leskinen testified he performed wetland and forest stand delineations for the site. He testified there is a wetland area on the eastern property boundary, but he opined that it did not continue into the area between the solar arrays. Mr. Leskinen described the area between the proposed solar arrays as a broad swale with upland grasses. He opined this was a "best management practice" that assisted in removing sediment from fields which were farmed. In response to a question on cross examination the witness conceded there are streams on the property, but he noted that none of the panels would be in environmentally sensitive areas. The witness also conceded several of the proposed panels would be located within the swale.

As noted by several of the Protestants (and conceded by Ms. McArthur), Petitioners will not be able to screen or enclose the panels in such a fashion that would prevent them from being seen by immediate neighbors or from motorists on Hanover Pike. But the law does not require

that; the zoning regulations specify only that “screening of...scenic routes and scenic views” be provided in accordance with the Baltimore County landscape manual. BCZR §4E-104.A.6. A condition will be added below to ensure this requirement is satisfied.

I am sympathetic to the concerns expressed by the community, and agree the proposed solar panels will be incongruous with the pastoral rural setting along a scenic roadway. But I cannot deny the petition on that basis. That is because a large field of solar panels will have a similar negative impact wherever it is located in an RC-2 zone along a scenic roadway. Indeed, nearly all of the previous solar facility cases in Baltimore County have involved property zoned RC-2, and several have also been proposed on scenic roadways.

In those cases, like this case, nearby residents stated they would be able to see the panels from their homes, and that the rolling nature or topography of the farm fields would prevent the petitioner from screening the project. In other words, these negative impacts are inherent in the operation of a solar facility in a rural area. *Montgomery County v. Butler*, 417 Md. 271, 276-77 (2010) (opponent must show “non-inherent adverse effects” to “undercut the presumption of compatibility enjoyed by a proposed special exception use”). In a more recent special exception case Maryland’s highest court reached the same conclusion, although it employed slightly different language. *Clarksville Residents Against Mortuary Defense Fund, Inc. v. Donaldson Properties*, 453 Md. 516, 543 (2017)(“there is a presumption that the [special exception] use is in the interest of the general welfare, a presumption that may only be overcome by probative evidence of unique adverse effects”).

The County Council expressly permitted solar facilities in rural areas (including RC-2 zones) and along scenic routes, provided certain landscaping requirements are satisfied. Indeed, most special exception uses are regarded as “potentially troublesome because of noise, traffic,

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Date 12/5/18
By sen

congestion....” *Butler*, 417 Md. at 297. As such, I believe the petition should be granted, subject to the conditions noted below which will help to “lessen the impact of the facility on the health, safety and general welfare of surrounding residential properties.” BCZR §4E-104.A.10.

As noted in the Memorandum submitted by Petitioners, the use of solar and other renewable energy alternatives is encouraged by the State of Maryland. In a recent case (applicable only to solar facilities which require a Certificate of Public Convenience and Necessity (CPCN) from the Public Service Commission (PSC)) the court of special appeals held that the State’s interest in the area was so strong that county zoning ordinances governing the location of such facilities were impliedly preempted by state law. *Washington County v. Perennial Solar, LLC*, --- A.3d ----2018 WL 5993859 (Nov. 15, 2018). While that case is not directly controlling here, it does show the strong public policy preference for these facilities which I believe only strengthens in the circumstances of this case the presumption of appropriateness associated with this use.

THEREFORE, IT IS ORDERED this 5th day of **December, 2018**, by this Administrative Law Judge, that the Petition for Special Exception pursuant to Section 4E-102 of the BCZR for a Solar Facility, 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. Petitioners must comply with the ZAC comments of the Bureau of DPR, DOP & DEPS, copies of which are attached.
3. No signage or lighting shall be installed at the site in connection with the solar facility.
4. No deliveries to or maintenance of the solar facility shall occur between the hours of 6:00 PM – 7:00 AM.

ORDER RECEIVED FOR FILING

5

Date

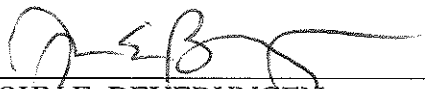
12/5/18

By

Sen

5. Petitioners must submit for approval by Baltimore County a landscape plan which satisfies the requirements set forth in the Landscape Manual and BCZR §4E-104.A.6.
6. Any expansion, enlargement and/or relocation of the solar facility as shown on the green lined site plan admitted herein as Petitioners' Ex. 10 shall require a public hearing before the OAH.

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 12/5/18

By sln

9-11

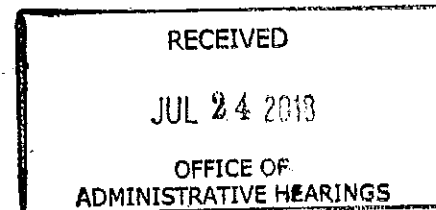
BALTIMORE COUNTY, MARYLAND INTER-OFFICE MEMORANDUM

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: July 18, 2018

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 17-107



INFORMATION:

Property Address: 5298 Frye Road
Petitioner: Glen Elseroad, Woodensburg Land and Cattle Company, LLC
Zoning: RC 2
Requested Action: Special Exception

The Department of Planning has reviewed the petition for special exception to use the property for solar panel array field as a public utility use.

A site visit was conducted on November 2, 2016. Hanover Pike is a designated Baltimore County Scenic Route. The subject site is located within an Agricultural Priority Preservation Area and is also subject to the Hanover Pike Corridor Study, adopted by the Baltimore County Council April 19, 1993.

The Department has no objection to granting the petitioned zoning relief conditioned upon the following:

- Pursuant to BCZR §502.1.A, petitioners shall demonstrate to the satisfaction of the Administrative Law Judge that the facility will not be detrimental to the adjacent residential properties as a result of glare emanating from the facility.
- Petitioners shall note on the plan that the proposed solar facility will be subject to BCZR §4F-107.
- Petitioners shall certify by note on the plan that the proposed solar facility will not exceed the maximum permitted number of facilities allowed in its respective councilmanic district. If approved, Petitioners shall submit to this Department at the time of building permit application the final fixed location and area of the facility by coordinate data so that an inventory may be kept.
- Lighting shall be limited to what is required for security purposes only and will be sited in such a way as to have minimal spillage onto neighboring properties.
- Signage shall be limited to that which is necessary for safety and security purposes.
- No deliveries or outdoor maintenance which may generate excessive noise may occur on-site between the hours of 6 P.M. through 6 A.M.
- Indicate on the plan the means and location by which the solar facility connects to the power grid and whether grading or clearing will be involved.

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Date

12/5/18

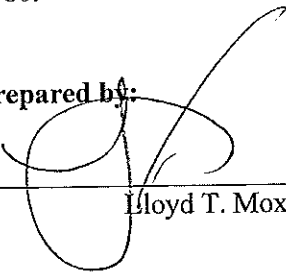
By

sen

- Protect the Hanover Pike Scenic Route by (a) planting a vegetative screening consisting of mixed indigenous hardwood and evergreen trees and shrubs along Hanover Pike to a depth that fully screens the solar panels and (b) retaining the woods on the top of the northern portion of the property to protect the distant scenic view from Hanover Pike.

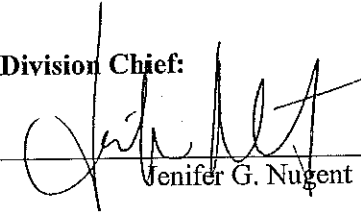
Be advised that the site is within an Agricultural Priority Preservation Area as designated in the Baltimore County Master Plan 2020 (MP2020). Said plan warns that *"incremental development continues to threaten the protection of resources and the viability of the agricultural industry."* (MP2020 pg.92). The Department recommends that the future viability of commercial agriculture in Baltimore County be weighed when considering this special exception proposal within the context of 502.1.G. For further information concerning the matters stated herein, please contact Wally Lippincott at 410-887-3480.

Prepared by:



Lloyd T. Moxley

Division Chief:



Jennifer G. Nugent

AVA/KS/LTM/ka

c: Wally Lippincott
James Hermann, R.L.A., Department of Permits, Approvals and Inspections
David H. Karceski, Esquire
Office of the Administrative Hearings
People's Counsel for Baltimore County

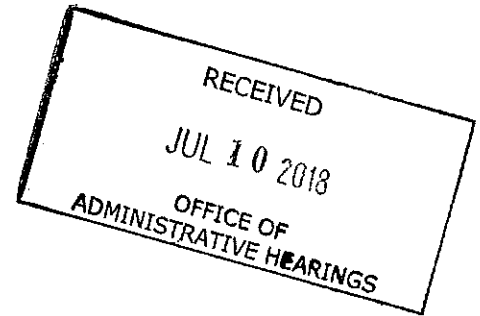
ORDER RECEIVED FOR FILING

Date 12/5/18

By sen

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: July 10, 2018

SUBJECT: DEPS Comment for Zoning Item # 2017-0107-X-AMENDED
Address 5298 Frye Road
(Woodensburg Land & Cattle
Company, LLC Property)

Zoning Advisory Committee Meeting of July 25, 2018

X The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

X Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

X Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Additional Comments:

Reviewer: Glenn Shaffer

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Date 12/5/18

By Sen

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

FROM: ^{For EFC}
Vishnu Desai, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For June 25, 2018
Item No. 2017-0107-X

DATE: July 12, 2018

The Bureau of Development Plans Review has reviewed the subject zoning items and we have the following comments.

If Special Exception is granted, a Landscape Plan is required per the requirements of the Landscape Manual, Bill No. 37-17 and the CMDP. Specific landscape comments:

1. Hanover Pike is a Baltimore County Scenic Route,
2. Perimeter landscape buffers are required,
3. Must minimize tree and vegetation removal,
4. Solar panels are considered a utility and should be designed and located to harmonize with the surroundings and to create the least visual impact. (See Comment # 8, 9, & 10 below),
5. Additional landscape buffers (including contour strip buffers) may be required to address existing topography changes, Scenic Views, Scenic Routes, etc. depending on a number of items including the subject properties topography,
6. More comments may be rendered during review of the landscape plan,
7. Proposed perimeter fence shall be black vinyl-coated chain-link fence,
8. Proposed landscape screening should begin at or near the intersection of Frye Road, north to the property line of 14619 Hanover Pike, consideration of existing topography should be considered to assure screening of the solar array field from Hanover Pike views.
9. 14525, 14531, 14533 and 14619 Hanover Pike are adjacent properties that need to be reviewed for possible landscape screening to be designed and installed between their properties and the proposed solar facility.
10. Additional landscape and screening may be needed to address adjacent properties views when it relates to the proposed solar facility.

During the review of this property the Department of Public Works has found that there is a riverine flood plain on this property that may impact the proposed development. A flood plain study of this property must be submitted for verification of the flood plain boundary. Once the flood plain boundary has been established, the Building Code requirements for riverine flood plain and the Department of Public Works Design Manual Plate DF-1 requirements should be observed.

VKD: cen
cc: file

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Date 12/5/18
By Sen



DONALD I. MOHLER III
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

December 5, 2018

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

G. Macy Nelson, Esq.
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204

RE: Petition for Special Exception
Case No. 2017-0107-X
Property: 5298 Frye Road

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 County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,

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

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:slh
Enclosure

Case No.: 2017-0107-X

Exhibit Sheet

Petitioner/Developer

Protestants

Slu
12-5-18

No. 1	McArthur Resume	7-26-16 Plan to Accompany Pet. for SX
No. 2	Site plan (redlined).	Google Earth Aerial
No. 3	Aerial exhibit	"Annotated" version of Pet. Ex. 7 - new lines of site
No. 4	Schematic Landscape Plan	Photograph - Aerial w/ Topo.
No. 5	Photo of Agric. Fence	Aerial photo w/ Topo.
No. 6	County Schedule of Fees	Aerial photo
No. 7	Photos of Views from HARDY PIKE	Aerial photo
No. 8	Glare Study	Aerial photo
No. 9	May 1, 2017 letter to H. Leskinen	Aerial photo
No. 10	Green line plan	Aerial photo
No. 11	ROW agreement	
No. 12		

Pet No 1

PROFESSIONAL QUALIFICATIONS
Stacey A. McArthur, R.L.A.

D.S. THALER & ASSOC., LLC
Vice President
7115 Ambassador Road, P.O. Box 47428
Baltimore, Maryland 21244-7428

EDUCATION

BLA, Iowa State University, 1984

PROFESSIONAL REGISTRATION

- Registered Landscape Architect
Maryland Registration No. 761
- Registered Landscape Architect
Texas Registration No. 1415

EMPLOYMENT HISTORY

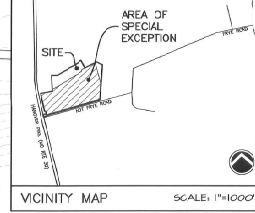
Vice President, *D.S. Thaler & Assoc., LLC* – 1987 to Present

- As a Landscape Architect, specialize in the planning phases of residential and commercial design. Responsibilities include all phases of project development from site feasibility analyses and site planning to final design, as well as County and State processing for approvals.

Landscape Architect, *Danze and Davis Architects*- Austin, TX – 1984 to 1987

- All phases of project development from conceptual planning and layout to final design, Local and State processing for approvals and construction coordination. Experienced in residential and commercial site planning and landscape design, construction coordination and document preparation.

PLAT TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION
SGC HANOVER

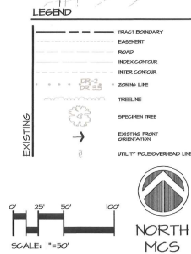


- GENERAL NOTES**
1. Owner: Hanover Land and Construction, LLC, 5422 N. Gillett Road, Baltimore, MD 21066-4100. Architect: SGC Power, 3500 Greenleaf Road, Suite 200, Baltimore, MD 21207. ATTN: Jack Capus, 443-531-3634. For Prepared by: SGC Power & Assoc., LLC, 115 Ambassador Road, Suite 410, Baltimore, MD 21244. ATTN: Brock Callahan, 410-668-3847.
 2. Property Reference: PANGEL TAX ACCOUNT # TAN HANOVER HELD SINGE DEED ADG HNP 0346 220000541 3/40 HNP 24851711 HED MCO
 3. Boundary: DRI Surveying and Land Planning, 453208. Zoning: Baltimore County 209 Zoning Map, Ord. No. 5182 & 5183. Floodplain: There is no floodplain on site (per FEMA Panel 140200000P & 2408000000).
4. Zoning: RC-3.
5. Planning: Prepared: P (Public Use Service).
6. Existing Use: Agricultural.
7. The site is not located within the Chesapeake Bay Critical Area.
8. The site is located within the Urban Rural Demonstration Area (URDA).
9. There were no commercial permits or other zoning violations found on this site.
10. No sewage is proposed.
11. Basic Services: NA - Site is beyond the URDA.
12. The proposed solar facility will be subject to the URDA.
13. The proposed solar facility will not exceed the maximum permitted number of facilities allowed in the respective jurisdiction. Should a proposed facility exceed the limit, the applicant shall submit a petition for a special exception to the local government. The final final location and area of the facility is coordinate data.
14. Lighting shall be limited to what is required for security purposes only and will be placed in such a way as to not reflect onto neighboring properties.
15. Staging shall be limited to that which is necessary for safety and security purposes.
16. No deliveries or outdoor maintenance which requires excessive vehicle access occur outside between the hours of 6:00 AM through 6:00 PM.

ADJACENT OWNERS (WITHIN VICINITY OF SITE)

Parcel ID	Owner Name	Address	Phone	Email	Notes
101	SGC Hanover LLC	5422 N. Gillett Road, Baltimore, MD 21066-4100	443-531-3634	jack@sgcpower.com	Owner
102	SGC Hanover LLC	5422 N. Gillett Road, Baltimore, MD 21066-4100	443-531-3634	jack@sgcpower.com	Owner
103	SGC Hanover LLC	5422 N. Gillett Road, Baltimore, MD 21066-4100	443-531-3634	jack@sgcpower.com	Owner
104	SGC Hanover LLC	5422 N. Gillett Road, Baltimore, MD 21066-4100	443-531-3634	jack@sgcpower.com	Owner
105	SGC Hanover LLC	5422 N. Gillett Road, Baltimore, MD 21066-4100	443-531-3634	jack@sgcpower.com	Owner
106	SGC Hanover LLC	5422 N. Gillett Road, Baltimore, MD 21066-4100	443-531-3634	jack@sgcpower.com	Owner
107	SGC Hanover LLC	5422 N. Gillett Road, Baltimore, MD 21066-4100	443-531-3634	jack@sgcpower.com	Owner
108	SGC Hanover LLC	5422 N. Gillett Road, Baltimore, MD 21066-4100	443-531-3634	jack@sgcpower.com	Owner
109	SGC Hanover LLC	5422 N. Gillett Road, Baltimore, MD 21066-4100	443-531-3634	jack@sgcpower.com	Owner
110	SGC Hanover LLC	5422 N. Gillett Road, Baltimore, MD 21066-4100	443-531-3634	jack@sgcpower.com	Owner
111	SGC Hanover LLC	5422 N. Gillett Road, Baltimore, MD 21066-4100	443-531-3634	jack@sgcpower.com	Owner
112	SGC Hanover LLC	5422 N. Gillett Road, Baltimore, MD 21066-4100	443-531-3634	jack@sgcpower.com	Owner
113	SGC Hanover LLC	5422 N. Gillett Road, Baltimore, MD 21066-4100	443-531-3634	jack@sgcpower.com	Owner
114	SGC Hanover LLC	5422 N. Gillett Road, Baltimore, MD 21066-4100	443-531-3634	jack@sgcpower.com	Owner
115	SGC Hanover LLC	5422 N. Gillett Road, Baltimore, MD 21066-4100	443-531-3634	jack@sgcpower.com	Owner
116	SGC Hanover LLC	5422 N. Gillett Road, Baltimore, MD 21066-4100	443-531-3634	jack@sgcpower.com	Owner
117	SGC Hanover LLC	5422 N. Gillett Road, Baltimore, MD 21066-4100	443-531-3634	jack@sgcpower.com	Owner
118	SGC Hanover LLC	5422 N. Gillett Road, Baltimore, MD 21066-4100	443-531-3634	jack@sgcpower.com	Owner
119	SGC Hanover LLC	5422 N. Gillett Road, Baltimore, MD 21066-4100	443-531-3634	jack@sgcpower.com	Owner
120	SGC Hanover LLC	5422 N. Gillett Road, Baltimore, MD 21066-4100	443-531-3634	jack@sgcpower.com	Owner

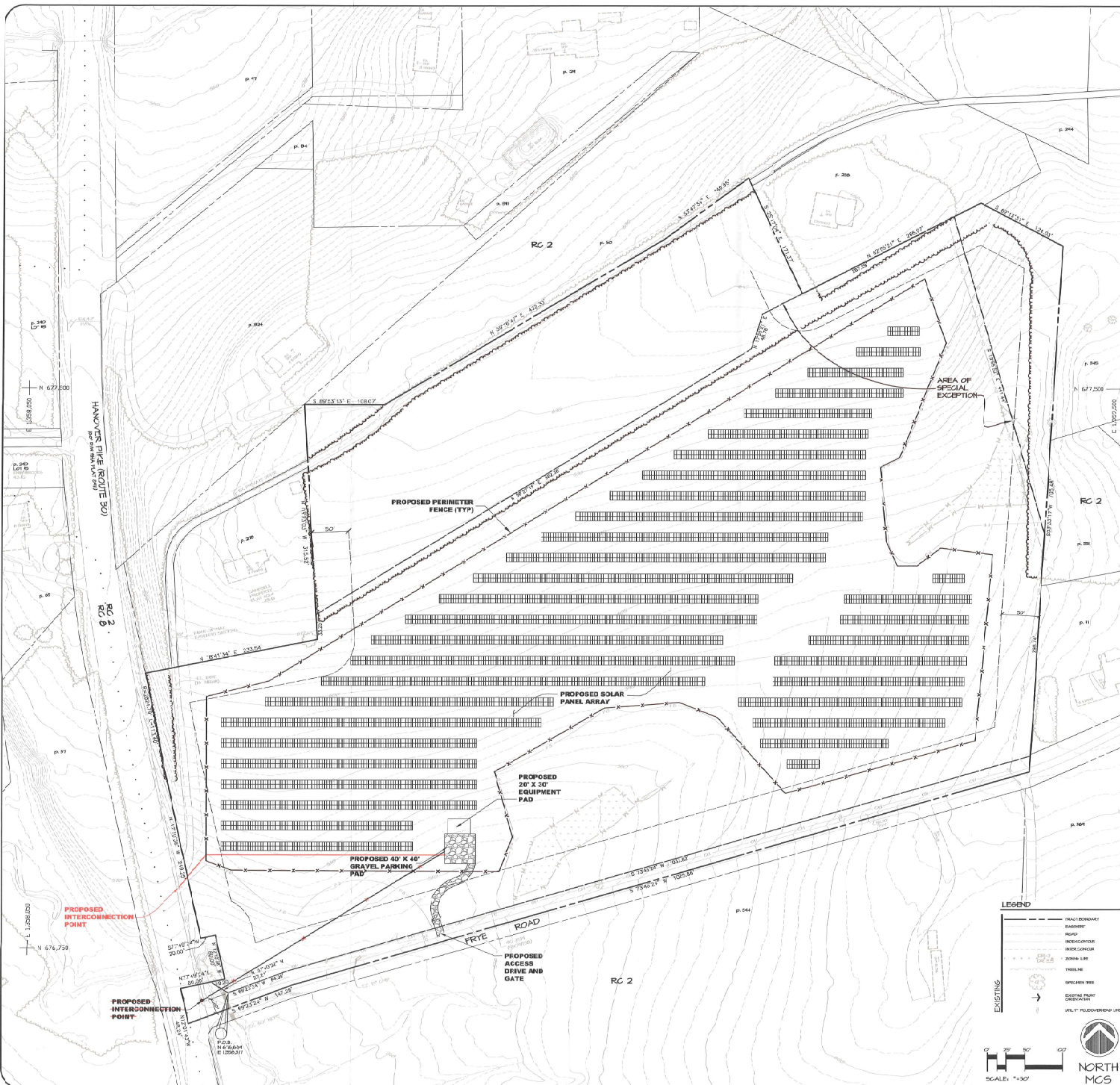
PROJECT NAME: SGC HANOVER
PLAN TITLE: PLAT TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION
CONCLUSION: DIST. 3RD ELECTION DIST. 4TH SITE ADDRESS: 5246 FRYE ROAD
AFFILIATE: SGC Power, 5865 Deerpark Road, Suite 350, Elkridge, MD 21075, ATTN: Jack Capus, 443-531-3634
REVISIONS: 6-11-18, Add Notes 112-16 per Department of Planning, ccjst connector point.
Special Exception Relief:
1. To grant Special Exception relief for a solar facility pursuant to DCZS Section 4-1-02 (as established by Bill 37-17); and
2. For such other and further relief as may be required by the Administrative Law Judge for Baltimore County.



DSThaler & ASSOC., LLC
CIVIL AND ENVIRONMENTAL ENGINEERS, SURVEYORS, LANDSCAPE ARCHITECTS & LAND PLANNERS
115 AMBASSADOR ROAD, P.O. BOX 41228, BALTIMORE, MARYLAND 21244-1428
410-444-3641
www.dsthaler.com

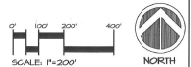
STATE OF MARYLAND
BALTIMORE COUNTY
JULY 10 2018

DATE: 06-06-18
SCALE: 1"=50'
C1: 2
PROJ. NO.: 4263
SHEET 1 OF 1





AERIAL EXHIBIT
SGC HANOVER



P4203

PROJECT NAME:
SGC HANOVER
 PLAN TITLE:
AERIAL EXHIBIT
 COUNCILMANIC DIST. 3RD
 ELECTION DIST. 4TH
 SITE ADDRESS: 5288 FRYE ROAD

APPLICANT:
 SGC Power
 6605 Deepwater Road
 Suite 330
 Elbridge, MD 21615
 ATTN: Jack Copps
 443-831-5634

DSThaler
 & ASSOC., LLC
 CIVIL AND ENVIRONMENTAL ENGINEERS, SURVEYORS,
 LANDSCAPE ARCHITECTS & LAND PLANNERS
 1115 ANNEBOURNE ROAD
 P.O. BOX 47420
 BALTIMORE, MARYLAND 21244-7420
 410-444-3641 www.dsthaler.com

DATE: 04-11-19
 SCALE: 1"=200'
 C/L:
 PROJ. NO.: 4215
 SHEET: 1 OF 1

PET. 5



Agricultural Fencing
Solar Power Project

Susquehanna University
Project Owner: WGL Energy

BALTIMORE COUNTY MARYLAND
Effective July 29, 2013 (Revised October 24, 2016)

	EFFECTIVE 07/29/2013
PUBLIC HEARINGS:	
Before Administrative Law Judge (ALJ)	
Petition For Zoning Variance (individual residential lot) (Additional \$75 fee if amending F.D.P.)	\$75
Petition For Zoning Variance (all others)	\$500
Petition For Special Hearing (individual residential lot)	\$75
Petition For Special Hearing (all others)	\$500
Petition For Special Exception	\$500
Any combination of the above - Maximum	\$1,200
Reclassification Petitions: To Board Of Appeals	
Site less than 2 acres within "planned water & sewer service area"	\$700
Site is 2 or more acres within "planned water & sewer service area"	\$1,600
Site less than 10 acres outside "planned service area"	\$700
Site is 10 or more acres outside "planned service area"	\$1,600
Map Correction	\$600
Additional Public Hearing Charges:	
Posting Of Signs on property (\$75 per sign when posted by Baltimore County)	Variable
Advertising of hearing (based upon cost billed by newspaper used to advertise)	Variable
Formal Demand to Guarantee a Public Hearing (Residential)	\$60
Formal Demand to Guarantee a Public Hearing (Commercial)	\$60
Submission of Revised Public Hearing Items (Petitions, Descriptions, Plats, Etc.)	
Revisions (individual residential lot)	\$100
Revisions (all others)	\$250
HEARINGS BEFORE THE BOARD OF APPEALS	
Appeal from Administrative Law Judge (ALJ)	
Of a Special Exception Order	\$380
Development Plan Decision	\$380
Of all other Orders (including Variances and Special Hearings)	\$265
Any combination of the above (Maximum)	\$1,155
Posting of Signs on Property (Per Sign Cost)	\$90
NOTE: All appeal fees are charged separately. (Posting Fees are also due at time of application)	
USE PERMITS/AMENDMENTS TO FINAL DEVELOPMENT PLAN (F.D.P.):	
Sign Posting Required:	
Commercial/Industrial Parking in a Residential Zone	\$600
Miscellaneous Use Permits / Administrative Approvals (For Zoning Counter Form Approvals, See Fee Below)	\$100
(Standard charge for issuance of a Use Permit / Administrative Approvals when sign posting is required such as: Bed and Breakfast, unlicensed lots, farmer's roadside stands, rooming/hearing houses, Class "A" Child Care Centers, temporary use, etc.)	
F.D.P. Single Lot Amendments	\$100
F.D.P. Administrative Amendment of Entire Subdivision (No Sign Posting Required, But May Require Lot Owners' Signatures)	\$150
Posting Challenges (All) (Charge to guarantee a hearing to challenge a proposed use permit/amendment. Additional fee for public hearing, additional posting, and advertising cost paid by the permit applicant.)	\$100
No Sign Posting Required:	
Miscellaneous Use Permits / Administrative Approvals (For Zoning Counter Form Approvals, See Fee Below)	\$100
(Standard charge for issuance of a Use Permit / Administrative Approvals when no sign posting is required such as: ALF I and II, Temporary Christmas Tree Sales, Fencing, Sidewalk-Townson Only, Snowball Stands, Temporary Flower Sales, Accessory Apartment / In-Law Declaration of Understanding)	
DEVELOPMENT VERIFICATION REQUESTS	
Application For Development Review Committee (DRC)	\$100
Application For Waiver Request	\$375
Concept Plan Review Fee	\$750
Commercial Application For Design Review Panel	\$300
Pre-Concept Plan Conference	\$50
Street Renaming	\$150
Pattern Book Revision (P/Revision)	\$100
Development Verification Letter	\$500
Design Review Hearing	\$300
Review Fee For Refined Development Plan	\$350
Review Of Single Phase Two Drawings	\$300
Modification Confirmation Letter (Standard)	\$150
Modification Confirmation Letter (Expedited)	\$500
DEVELOPMENT VERIFICATION REQUESTS:	
Zoning Counter Form Approvals	\$100
Fee charged for request to verify zoning, building, right of ways, and motor vehicle certifications (VVA forms), State Police certifications (Inspection Station), beauty/barber shops certifications, liquor board and traders licenses, etc.	
Written Verification of Zoning - Professional Letter Requests (Standard Response / Includes Spirit & Intent Requests)	\$150
Written Verification of Residential Zoning - Single Family Owner Letter Request (Standard Response / Includes Spirit & Intent Requests)	\$20
Written Verification of Zoning (Expedited Response: 10 Days)	\$500
FENCES, SIGNS AND MISCELLANEOUS:	
Fence Permit - Residential	\$20
Fence Permit - Commercial	\$75
Temporary Signs (Maximum of 2 per Calendar Year - Maximum Size of 50 Square Feet Each)	\$100
Sign - 50 square feet or less - single face	\$50
Sign - 50 square feet or less - double face	\$100
Sign - 51 - 300 square feet - single face	\$75
Sign - 51 - 300 square feet - double face	\$150
Sign - over 300 square feet - single face	\$200
Sign - over 300 square feet - double face	\$500
Sign - Inside Window Electric Sign - 3 square feet or less (Annual Permit Required)	\$50
Sign - Changeable Copy	\$500
COPIES:	
G.I.S. Color Copies (per page/No Charge For 1st Copy)	\$1
Microfilm Copies (per page)	\$2
Photocopies (per page)	\$0.50
Audio Tape of any Hearing (\$50 per tape)	\$50
PUBLICATIONS	
Zoning Commissioner's Policy Manual	\$100

Ref 6

Baltimore County - My Neighborhood

Plot No 7





Secure | <https://www.google.com/maps/@39.5241769,-76.8370267,3a,75y,2.63h,80.25t/data=!3m6!1e1!3m4!1sYMu2k-2sv6d7WVSPAJvWUQ12e0!7!13312!86656>



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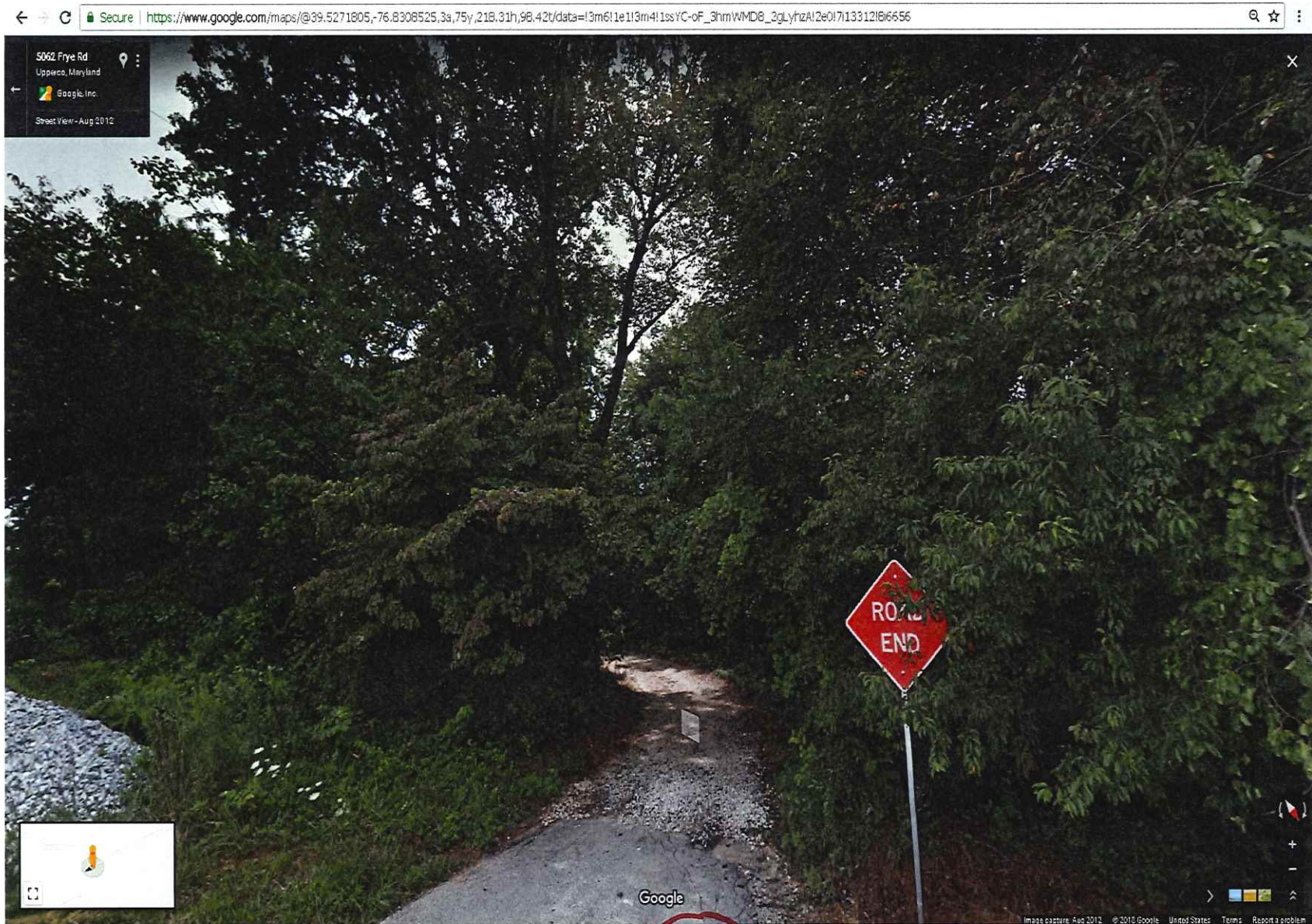
6



7



9



10



GlareGauge Glare Analysis Results

Site Configuration: Hanover Pike View-temp-0

Project site configuration details and results.



Created **Sept. 7, 2018 5:38 p.m.**
 Updated **Sept. 7, 2018 5:39 p.m.**
 DNI varies and peaks at **1,000.0 W/m²**
 Analyze every **1 minute(s)**
 0.5 ocular transmission coefficient
 0.002 m pupil diameter
 0.017 m eye focal length
 9.3 mrad sun subtended angle
 Timezone **UTC-4**
 Site Configuration ID: 20884.3559

Summary of Results No glare predicted!

PV name	Tilt	Orientation	"Green" Glare	"Yellow" Glare	Energy Produced
	deg	deg	min	min	kWh
Hanover Array	25.0	180.0	0	0	-
Hanover Array 2	25.0	180.0	0	0	-

Component Data

PV Array(s)

Name: Hanover Array
 Axis tracking: Fixed (no rotation)
 Tilt: 25.0 deg
 Orientation: 180.0 deg
 Rated power: -
 Panel material: Smooth glass with AR coating
 Vary reflectivity with sun position? No
 Reflectivity: 0.1
 Correlate slope error with surface type? Yes
 Slope error: 8.43 mrad

Vertex	Latitude	Longitude	Ground elevation	Height above ground	Total elevation
	deg	deg	ft	ft	ft
1	39.527182	-76.833682	634.08	5.00	639.08
2	39.525725	-76.836697	602.95	5.00	607.95
3	39.525684	-76.836997	601.13	5.00	606.13
4	39.525005	-76.836965	576.99	5.00	581.99
5	39.525005	-76.836128	570.91	5.00	575.91
6	39.525237	-76.835688	575.41	5.00	580.41
7	39.525460	-76.835646	585.23	5.00	590.23
8	39.525609	-76.834712	585.79	5.00	590.79
9	39.526569	-76.833500	602.96	5.00	607.96



Name: Hanover Array 2
Axis tracking: Fixed (no rotation)
Tilt: 25.0 deg
Orientation: 180.0 deg
Rated power: -
Panel material: Smooth glass with AR coating
Vary reflectivity with sun position? Yes
Correlate slope error with surface type? Yes
Slope error: 8.43 mrad

Vertex	Latitude	Longitude	Ground elevation	Height above ground	Total elevation
	deg	deg	ft	ft	ft
1	39.526271	-76.833274	604.08	5.00	609.08
2	39.526247	-76.833661	598.85	5.00	603.85
3	39.525560	-76.834422	588.66	5.00	593.66
4	39.525253	-76.834186	596.31	5.00	601.31
5	39.525444	-76.833382	611.61	5.00	616.61



Flight Path Receptor(s)

Name: Hanover Pike Approach
Description:
Threshold height : 4 ft
Direction: 348.2 deg
Glide slope: 0.469 deg
Pilot view restricted? Yes
Vertical view restriction: 15.0 deg
Azimuthal view restriction: 50.0 deg

Point	Latitude	Longitude	Ground elevation	Height above ground	Total elevation
	deg	deg	ft	ft	ft
Threshold	39.525502	-76.837491	579.16	4.00	583.16
2-mile point	39.497200	-76.829817	659.22	10.39	669.60



PV Array Results

Hanover Array

Component	Green glare (min)	Yellow glare (min)
FP: Hanover Pike Approach	0	0

Hanover Array 2

Component

Green glare (min)

Yellow glare (min)

FP: Hanover Pike Approach

0

0

Assumptions

- Times associated with glare are denoted in Standard time. For Daylight Savings, add one hour.
- Glare analyses do not account for physical obstructions between reflectors and receptors. This includes buildings, tree cover and geographic obstructions.
- The glare hazard determination relies on several approximations including observer eye characteristics, angle of view, and typical blink response time. Actual values may differ.
- Hazard zone boundaries shown in the Glare Hazard plot are an approximation and visual aid. Actual ocular impact outcomes encompass a continuous, not discrete, spectrum.

KEVIN KAMENETZ
County Executive



VINCENT J. GARDINA, Director
Department of Environmental Protection
and Sustainability

May 1, 2017

Mr. Henry Leskinen
Eco-Science Professionals, Inc.
P.O. Box 5006
Glen Arm, MD 21057

RE: Woodensburg Solar
Revised Wetland and Stream Delineation
(Rev. 4/12/17)

Dear Mr. Leskinen:

Environmental Impact Review (EIR) received the above referenced submission for review and approval on April 12, 2017. The wetland and stream delineations as well as the steep slopes & erodible soils analysis (SSEA) were revised in response to EIR's March 8, 2017 comment letter.

EIR has reviewed the revised wetland, stream delineation and associated SSEA and determined all previous comments were properly addressed. Therefore, these delineations are now approved as are the resultant Forest Buffer limits (both good and bad vegetative cover). Any variance to reduce the Forest Buffer limit based on good vegetative cover must be requested and granted prior to EIR approval of any development plan, grading plan, or permit application.

If there are any questions regarding this review, please contact me at (410) 887-3980.

Sincerely,

A handwritten signature in cursive script, appearing to read "Glenn Shaffer".

Glenn Shaffer, Supervisor
Environmental Impact Review

c. Stacey McArthur, D.S. Thaler & Associates, Inc.

Woodensburg Solar WDV, SA FSD 5.1.17.docx/glenn/S

RECORDED

LIBER 9509 PAGE 139

DECLARATION OF RIGHTS OF WAY

This Declaration of Rights of Way is made this 14th day of December, 1992, by Charles C. Campbell, hereinafter referred to as ("Declarant").

Declarant is the owner in fee simple of certain real property situate in Baltimore County, Maryland including Parcels One, Two, Three and Four of the 1st Parcel and the remainder of Parcels One and Two of the 3rd Parcel of that land which by deed dated February 28, 1977 and recorded among the Land Records of Baltimore County in Liber E.H.K. JR. 5769, folio 876, was conveyed by Chris C. Campbell to Charles Campbell, and the land which by deed dated March 5, 1973 and recorded among the Land Records of Baltimore County in Liber E.H.K. JR. 5344, folio 519, was conveyed by Jane Elizabeth Dettler to Christopher C. Campbell and Charles C. Campbell, all shown on a plat entitled Rights of Way "A", "B" and "C" Campbell Property, a copy of which is attached hereto and made a part hereof; and

WHEREAS, Declarant wishes to establish certain Rights of Way for the mutual benefit of the owners of the parcels as hereinafter stated.

NOW, THEREFORE, it is covenanted and agreed for the mutual benefit of the owners of said parcels (hereinafter referred to as the "Parcel Owners"), as herein stated, the following Rights of Way are hereby established and created subject to the provisions hereof:

1. As to Right of Way "A": Beginning for the same at a point in the center line of Hanover Pike (Route 30) in the fourth or N 3 degrees 29' W 1858' line of the 4th Parcel of the land which by deed dated September 19, 1944 and recorded among the Land Records of

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
BALTIMORE COUNTY

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE
SIGNATURE CC DATE 12/15/92

BA CIRCUIT COURT (Liber 9509) 6656 (CE 62-8384) SM 9509, p. 0139. Printed 12/22/2005. Expiry Date 03/08/2005.

LIBER 9500 PAGE 40

Baltimore County in Liber R.J.S. 1364, folio 82 was conveyed by John Paul George et al. to Chris C. Campbell and Leona M. Campbell, his wife, at a distance of 1815.62' from the beginning of said line, thence leaving Hanover Pike (Route 30) and the aforesaid fourth line and running in or near the center of an existing lane through the lands of the Declarant and binding on the center line of a Right of Way now created for the use in common with Parcels One, Two, Three and Four of the 1st Parcel of land, and the remainder of Parcels One and Two of the 3rd Parcel of the land, which by deed dated February 28, 1977 and recorded among the Land Records of Baltimore County in Liber E.H.K. JR. 5769, folio 876 was conveyed by Chris C. Campbell to Charles Campbell, and the land which by deed dated March 5, 1973 and recorded among the Land Records of Baltimore County in Liber E.H.K. JR. 5344, folio 519 was conveyed by Jane Elizabeth Dettler to Christopher C. Campbell and Charles C. Campbell, running thence and binding on the center line of a 40' right of way the five following courses and distances: 1) N 69 degrees 37' 00" E 147.28', 2) N 74 degrees 00' 00" E 1025.86', 3) N 66 degrees 15' 30" E 297.26', 4) N 74 degrees 55' 37" E 282.52', 5) N 67 degrees 08' 00" E 52.02' running thence and binding on the center line of a 30' right of way the three following courses and distances: 1) N 3 degrees 33' 10" E 166.54', 2) N 12 degrees 45' 00" E 139.06', 3) N 3 degrees 24' 13" W 101.51' to intersect the last line of the 3rd Parcel of land in the first mentioned deed George, et al. to Campbell at a distance of 9.43' from the beginning of said line.

2. As to Right of Way "B": Beginning for the same at the end of the

4th or N 74 degrees 55' 37" E 282.52' line of Right of Way "A",

LIBER 9509 PAGE 41

running thence in or near the center of an existing lane through the lands of the Declarant and binding on the center line of a 30' Right of Way now created for the use in common with Parcel One and Parcel Two of the 1st Parcel of land which by deed dated February 28, 1977 and recorded among the Land Records of Baltimore County in Liber E.H.K. JR. 5769, folio 876 was conveyed by Chris C. Campbell to Charles Campbell, the two following courses and distances: 1) S 60 degrees 29' 16" E 56.19, 2) S 1 degree 09' 12" E 265.44' to the center line of a 20' Right of Way now created, for the use in common of said two parcels, running thence and binding on the center line of said 20' Right of Way the two following courses and distances: 1) S 50 degrees 31' 08" E 127.07' and 2) S 81 degrees 40' 52" E 385' to intersect the seventh or N 51-1/2 degrees E 42.6 perch line of the 2nd Parcel of land of the first mentioned deed, George, et al. to Campbell at a distance of 275.34' from the beginning of said line.

3. As to Right of Way "C": Beginning for the same at the beginning of the second or S 1 degree 09' 12" E 265.44' line of the above described Right of Way "B", running thence in or near the center of an existing lane through the lands of the Declarant and binding on the centerline of a 30' Right of Way now created for the use of Parcels One and Two of the 1st Parcel of land which by deed dated February 28, 1977 and recorded among the Land Records of Baltimore County in Liber E.H.K. JR. 5769, folio 876 was conveyed by Chris C. Campbell to Charles Campbell, the following course and distance: N 1 degrees 09' 12" W 47.91 to the end of the fifth or N 67 degrees 08' 00" E 52.02' line of the above described Right of Way "A".

4. The Rights of Way herein described and created shall be appurtenant to the parcels mentioned in the respective descriptions

LOG 9509 PAGE 42

and shall provide the means for ingress, egress and regress for pedestrian and vehicular traffic to and from the Hanover Pike (Route 30) and Frye Road for the respective parcels, and for the further purpose of installing, repairing, replacing and maintaining utilities in the Right of Way area including, but not limited to, electric, gas, telephone, water, sewer and cable lines.

5. The Rights of Way described herein shall run with the respective parcels and shall be binding on and inure to the benefit of the owners of said parcels and each of their respective personal representatives, heirs, successors and assigns.

AS WITNESS the Hand and Seal of the Declarant, the day and year first above written.

Witness:

Charles C. Campbell (SEAL)
CHARLES C. CAMPBELL, Declarant

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this 14th day of December, 1992, before me, the subscriber, a Notary Public for the State of Maryland, in and for the County of Baltimore, personally appeared Charles C. Campbell, the Declarant, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained and in my presence, signed and sealed the same.

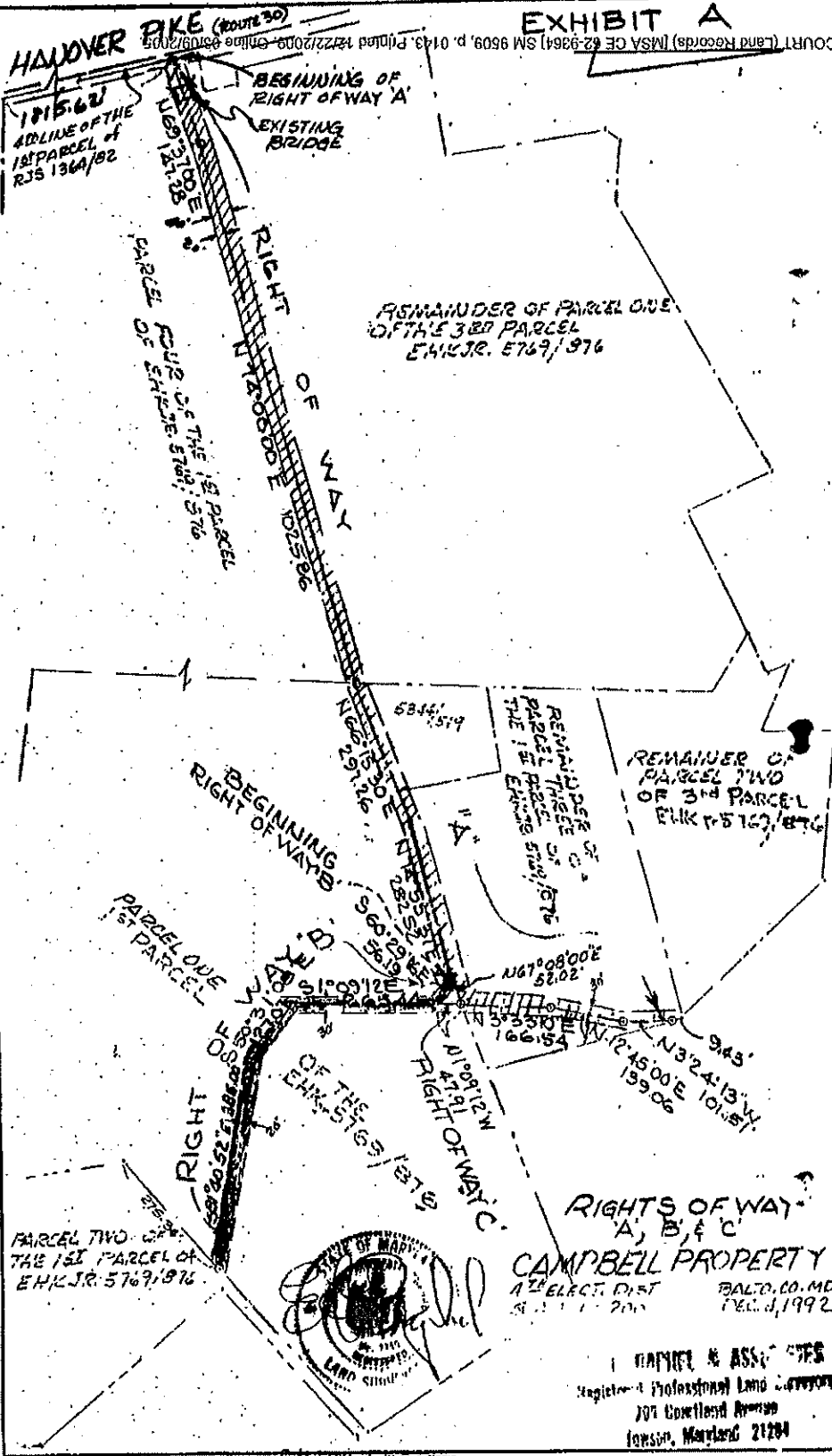
IN WITNESS WHEREOF, I hereunto set my hand and Notarial Seal.

Charles A. Knicker
NOTARY PUBLIC

My Commission Expires: July 1, 1993

-4-

EXHIBIT A



1815.62

Baltimore County, Maryland Land Instrument Intake Sheet

(Type or print in black ink only—all copies must be legible)

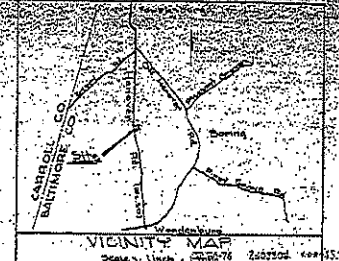
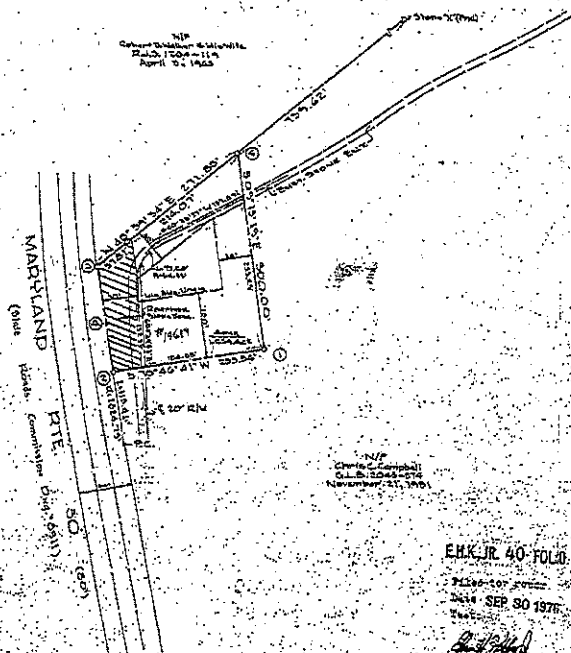
In compliance with Baltimore County Code, 1978, Title 33, Taxation, Article III, §§3-126 through 33-140, as amended, and the Annotated Code of Maryland, Tax-Property Article, §§2-101 through 12-113, as amended, and Tax-Property Article, §§3-101 through 13-108, as amended, it is certified that an instrument of writing dated _____ conveying title to, or creating liens or encumbrances upon, real or personal property is offered for record in the County. The property conveyed, or on which a lien or encumbrance is created, is identified as follows:

1	Description of Property (Check box(es) for item(s) to be indexed in land records)	Property Tax ID No. <u>R/W DECLARATION</u>	Lot/Block <u>Map/Lot/Parcel No.</u>	Subdivision/Tract <u>Various Parcels 4th ED</u>	Plat Acreage <u>Prior Deed Ref.</u>	Var. L.O.N. <u>VAR. L.O.N.</u>
2	Transferred From	Grantor(s) (check box if additional sheets are attached) <u>CHARLES C CAMPBELL</u>	Owner of record (if different from grantor) <u>CHARLES C CAMPBELL</u>			
3	Transferred To	Grantee(s) (check box if additional sheets are attached) <u>CHARLES C CAMPBELL</u>				
4	Type of Instrument	Deed Deed of Trust Mortgage Lease	Assignment of M/GDOT Contract Land Installment Con. Power of Attorney	Financing Statement Other (Specify) <u>R/W</u>		
5	Exemptions (Cite authority or explain briefly)	Baltimore County Exempt Status Claimed: <u>YES</u> Recordation Tax Exempt Status Claimed: <u>YES</u> State Exempt Status Claimed: <u>YES</u>				
6	Consideration and Tax Calculations Make check payable to Baltimore County, MD (410) 887-2418	Consideration Amount Purchase Price/Consideration (including any new mortgage) \$ Real Property Personal Property Balance of Assumed Mortgage Other Total Consideration \$ or Assessed Value \$		County Taxes to be Paid Transfer Tax Consideration $\$ \text{---} \times 1.6\% = \$ \text{---}$ Office of Finance Use Only Agent: <u>BE</u> Tax Due: <u>---</u> O.B. Credit: <u>---</u> Ap. Tax/Other: <u>---</u>		
7	Fee and Recording Instructions Make check payable to Clerk of the Circuit Court (410) 887-2850	Recording Fees Recording Charges \$ State Transfer Tax County Recordation Tax Surcharge Other Total \$		Special Recording Instructions (if any)		
8	Contact/Mail Information	Instrument Prepared By Name: Firm: Address: Phone:	Return Instrument To Name: <u>L.L. FLEURY, JR.</u> Address: <u>420 WOODBINE RD UNION MD 21084</u>	Mailing Address for Tax Bill Name: Address: Phone:		
9	Certification	I hereby certify under the penalties of perjury that the information given above is true to the best of my personal knowledge and belief. Signature: <u>John P. Keen</u> Date: <u>15 DEC 92</u>				
10	Assessment Information (410) 321-2299	IMPORTANT: BOTH THE ORIGINAL DEED AND A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER ☐ Yes ☐ No Will grantor be living at property conveyed? ☐ Yes ☐ No Is grantor currently receiving a homeowners' tax credit? ☐ Yes ☐ No Is property conveyed subject to agricultural transfer tax? If yes, enter amount: _____ ☐ Yes ☐ No If agricultural assessment on conveyance is to continue, have you attached a letter of intent? ☐ Yes ☐ No Partial conveyance? If yes, amount of acreage transferred: _____ List improvements conveyed: _____ If subdivision occurred after July 1, indicate former property tax ID number: _____				
TRANSFER TAX NOT REQUIRED DIRECTOR OF FINANCE BALTIMORE COUNTY, MARYLAND 410-321-2299		Optional Expedited Information ☐ Yes ☐ No A delay in processing may be incurred if a conveyance deed is not accompanied by an adequate property description, preferably a survey or area calculation. A partial conveyance may require additional processing time. ☐ Yes ☐ No Was property surveyed? If yes, attach copy of survey. If partial conveyance, balance of acreage: _____ Complete description of property conveyed (subdivision, lot, block, section, plat ref., acreage): _____ Location and improvement address: _____				
Assessment Use Only - Do Not Write Below This Line ☐ Terminal Verification ☐ Deed Plotter ☐ Trun. Process Verification ☐ Assigned Property No. Date Received: <u>03/09/2005</u>						

COORDINATES		
No.	NORTH	EAST
1	4246.61	4287.00
2	4253.16	4060.01
3	4215.17	4056.66
4	4246.73	4241.01

COORDINATES ARE APPROX

CURVE DATA		
1	2	3
1	252.74	100.01
2	100.01	100.01



GENERAL NOTES
 1. GROSS ACRES 1.0444
 2. NUMBER OF LOTS 1
 3. EXISTING ZONING R-1
 4. DENSITY 1

All requirements of the Maryland State Department of Health and Baltimore County Department of Health permitting to private water and/or sewerage systems must be complied with prior to approval of building applications.

TITLE REFERENCE
 BALTO. RAILROAD
 TO
 CURR. CAMPBELL & MARY LEONARD
 G.D. 1240 - 124
 NOVEMBER 21, 1931

EMK JR 40 FOLD 4

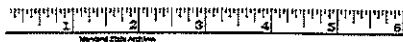
-CAMBELL PROPERTY-

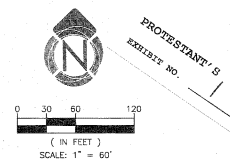
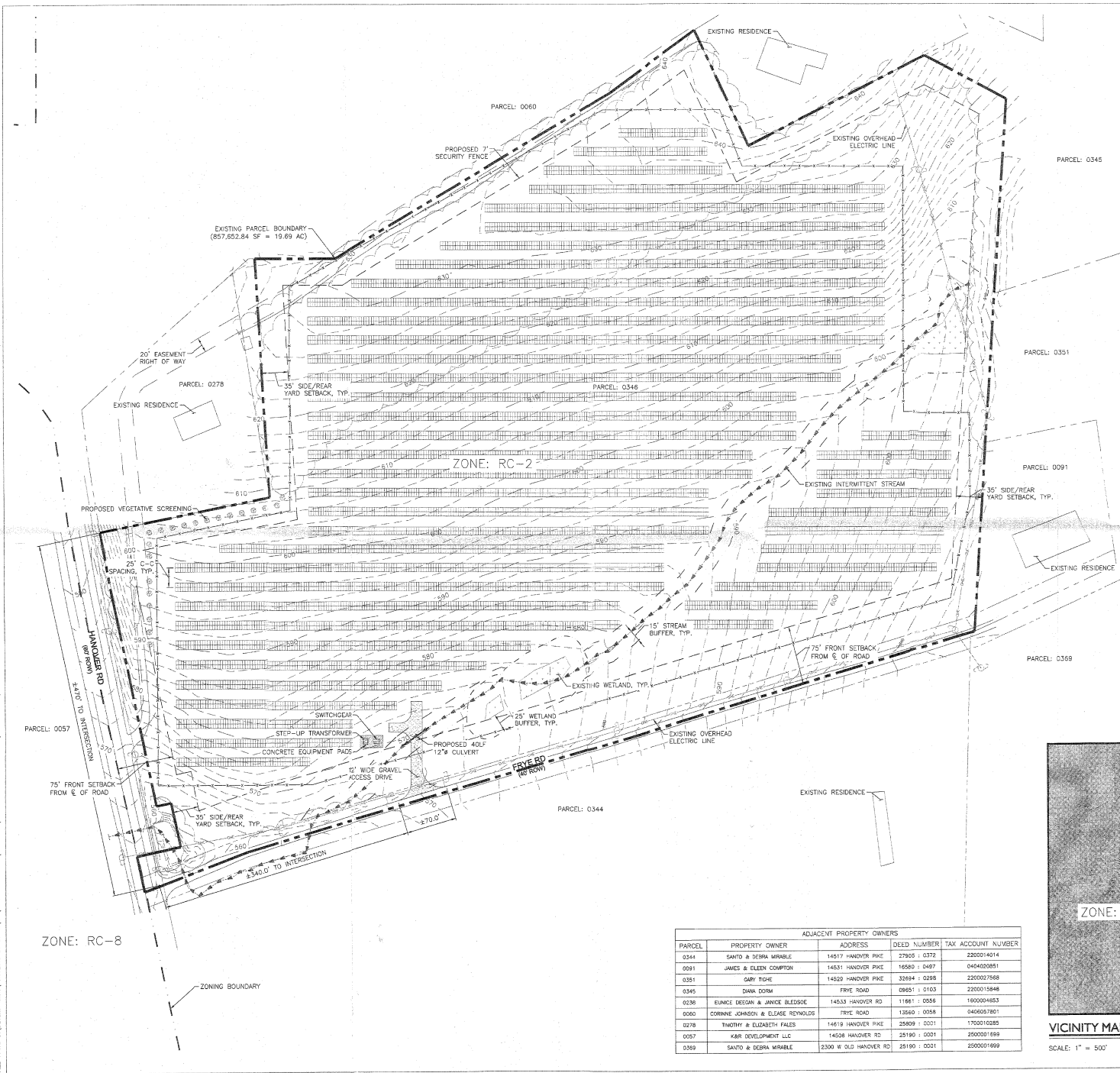
FILED FOR
 SEP 30 1976

ALANQUEST RECORDS
 BALTIMORE COUNTY, MD
 SCALE 1" = 100' DATE 9/22/76

P. W. A. Campbell **NONE DMC**
 Real Plot Owner
 Date 9/22/76
 State No. 120-1-54

APPROVED FOR BALTO. CO. HEALTH DEPT. <i>Donald J. Ruppel</i> 9/23/76 BALTO. STATE HEALTH OFFICE APPROVED FOR BALTO. CO. PLANNING BOARD <i>Thomas E. Baker</i> 9/23/76 DIRECTOR <i>John F. Hanning</i> 9/29/76	OWNER'S CERTIFICATE: The requirements of Section 55-20-22, ARTICLE 17 of the annotated Code of Maryland, 1957 edition (TITL. CLERK'S OF THE COURT SUB. TITL. CLERK'S OF THE COURT) 1-20 for as they relate to the making of this plat and the setting of markers have been complied with.	SURVEYOR'S CERTIFICATE: I, Robert J. Farnsworth, a duly licensed professional land surveyor of the State of Maryland, do hereby certify that the above shown plat has been laid out and the plat thereon prepared in accordance with the subdivision of land laws of the State of Maryland, 1957 edition (TITL. CLERK'S OF THE COURT) 1-20 for as they relate to the making of this plat and the setting of markers have been complied with.	R.F.F. INC. 100 EAST MAIN ST. WESTMINSTER, MARYLAND DRAWN BY: [Signature] CHECKED BY: [Signature]
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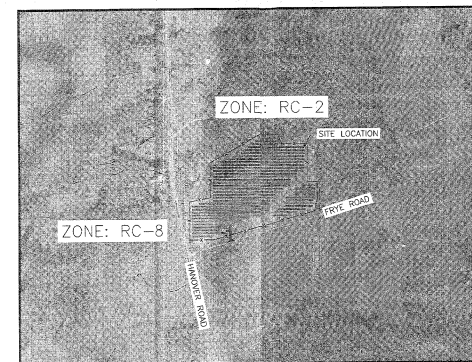
LEGEND AND ABBREVIATIONS:

- | | |
|---|-----------------------------------|
|  | EXISTING PROPERTY LINE |
|  | SETBACK LINE |
|  | ZONING BOUNDARY |
|  | EXISTING RIGHT OF WAY LINE |
|  | EXISTING MAJOR CONTOUR (10') |
|  | EXISTING MINOR CONTOUR (2') |
|  | EXISTING OVERHEAD ELECTRIC LINE |
|  | EXISTING TREELINE |
|  | EXISTING INTERMITTENT STREAM |
|  | EXISTING WETLAND BUFFER |
|  | EXISTING STREAM BUFFER |
|  | EXISTING WETLAND |
|  | PROPOSED GRAVEL ACCESS DRIVE |
|  | PROPOSED FIXED TILT SOLAR RACKING |
|  | PROPOSED EQUIPMENT PADs |
|  | PROPOSED STORM COLLECTOR |

GENERAL NOTES

1. OWNER
WOODBURNS LAND AND CATTLE COMPANY, LLC.
4423 MOUNT GILGAD RD
RISTERTSVILLE MO 21136
2. SITE AREA
857,453.34 SQ' = 19.668 ACRES
3. BUILDING AREA
NOT APPLICABLE
4. UTILITIES
OVERHEAD ELECTRIC
5. THE SITE DOES NOT LIE WITHIN THE FLOODPLAIN ON F.I.R.M.
#24001000SF DATED SEPTEMBER 26, 2008.
6. HAVING CALCULATIONS
NOT APPLICABLE
7. DIMENSIONS:

	REQUIRED	PROVIDED
FRONT	75'	75'
SIDE	35'	35'
REAR	25'	35'
8. % OF STRUCTURE
LAND PERMITTED: 35'
DEVELOP. PROPOSED: 45'
9. DEED REF. 0357, P. 77
10. TAX ACCOUNT #: 2200015847
11. COUNCILMANIC DISTRICT: 303
12. REGIONAL PLANNING CODE: 303
13. ZENITH TRACT: 40648
14. WATERSHED: RESERVOIR
15. ZONING: RC-2 AGRICULTURE
16. FAY MAP DIST. GRID 16, PARCEL 348
17. NO PERMITS ON FILE
18. NO PRIOR ZONING HISTORY
19. FLOOR AREA
NOT APPLICABLE
20. SIGNAGE
NOT APPLICABLE
21. THE SITE DOES NOT LIE WITHIN THE CHESAPEAKE BAY CRITICAL AREA
22. THERE ARE NO HISTORIC FEATURES ON THIS SITE NOR IS THE SITE A HISTORIC
23. NO PREVIOUS CRD MEETINGS
24. ZONE: RC-2 AGRICULTURE
25. ELECTION DISTRICT: 4TH
26. THE SITE DOES NOT LIE WITHIN ANY FAILED BASIC SERVICES MAP



VICINITY MAP

SCALE: 1" = 500'

ADJACENT PROPERTY OWNERS					
PARCEL	PROPERTY OWNER	ADDRESS	DEED NUMBER	TAX ACCOUNT NUMB	
0344	SANTO & DEBRA MIRABLE	14517 HANOVER PIKE	17050 / 0372	220001041	
0061	JAMES & ELLEN COMBLE	14518 HANOVER PIKE	26580 / 0447	0440240381	
0351	GARY TICHE	14529 HANOVER PIKE	32694 / 0325	2200017668	
0345	DANA DORN	FRYE ROAD	06818 / 0203	2200013448	
0236	EUNICE DEAN & JANICE BLEDISSE	14533 HANOVER RD	11911 / 0255	1600004643	
0003	CONNOR CHAMBERS & ELAINE REYNOLDS	14534 HANOVER RD	12560 / 0308	0400037601	
0278	THEFTY & ELIZABETH FALES	14619 HANOVER PIKE	25000 / 0001	1700102685	
0057	K&N DEVELOPMENT LLC	14506 HANOVER RD	25190 / 0001	2000000169	
0359	SANTO & DEBRA MIRABLE	23100 N OLD HANOVER RD	25190 / 0001	2500000499	



SoCore Engineering
225 West Hubbard St, Suite 200
Chicago, IL 60654
1-877-SOCORE1

[illegible]

PLAN TO ACCOMPANY PETITION FOR
SPECIAL EXCEPTION FOR
WOODENSBURG SOLAR PROJECT

DESIGNER	MSA	DATE	07.27.2016
DRAWN	MSA	SCALE	AS NOTED
CHECK	GCM	SHEET SIZE	24" X 36"



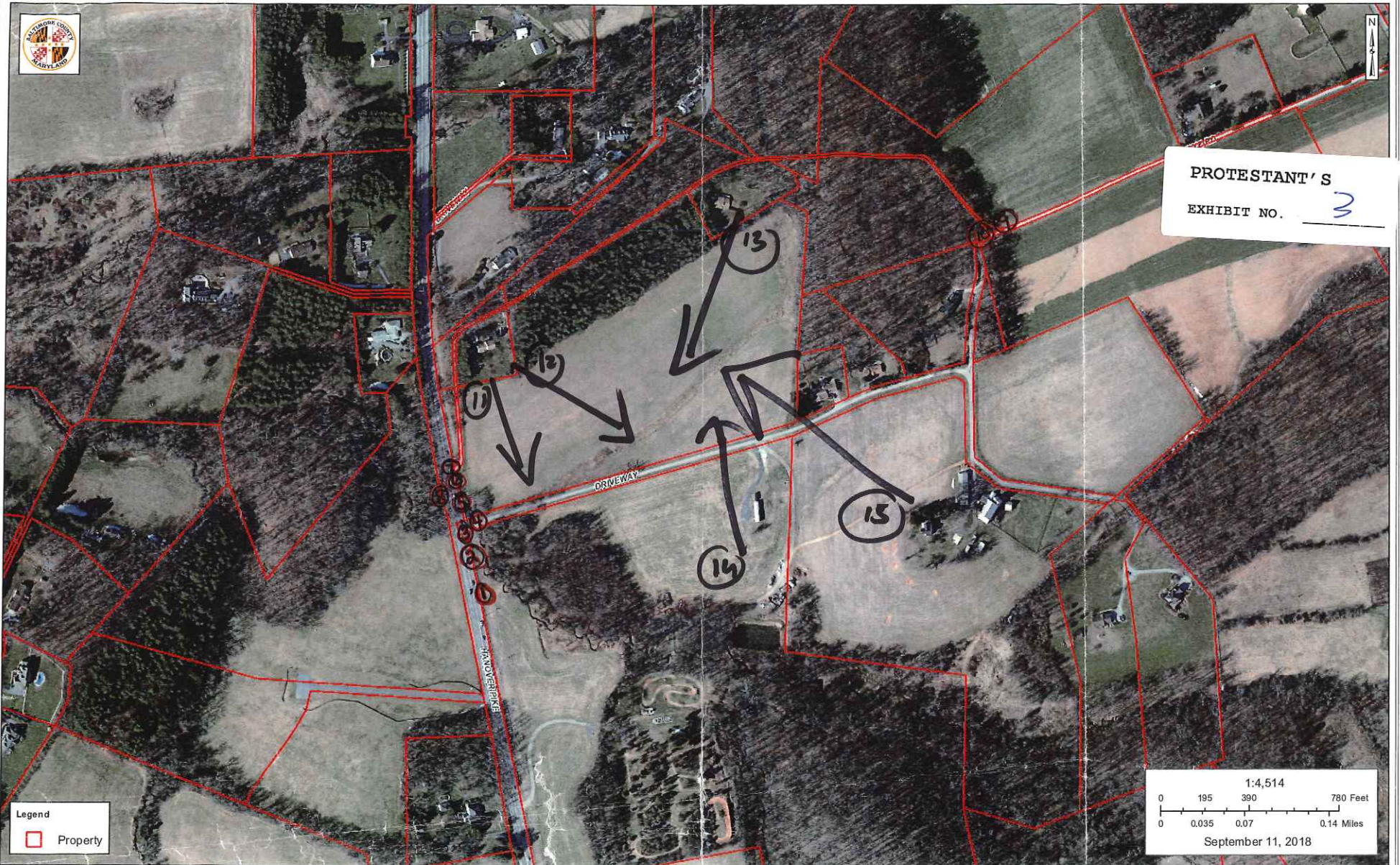
BOR: CIVIL
 GAVIN MEINSCHIN, PE
 SHEET NUMBER
 C2.00

C2.00



#7

Baltimore County - My Neighborhood



Legend
□ Property

PROTESTANT'S
EXHIBIT NO. 3

1:4,514
0 195 390 780 Feet
0 0.035 0.07 0.14 Miles
September 11, 2018





2



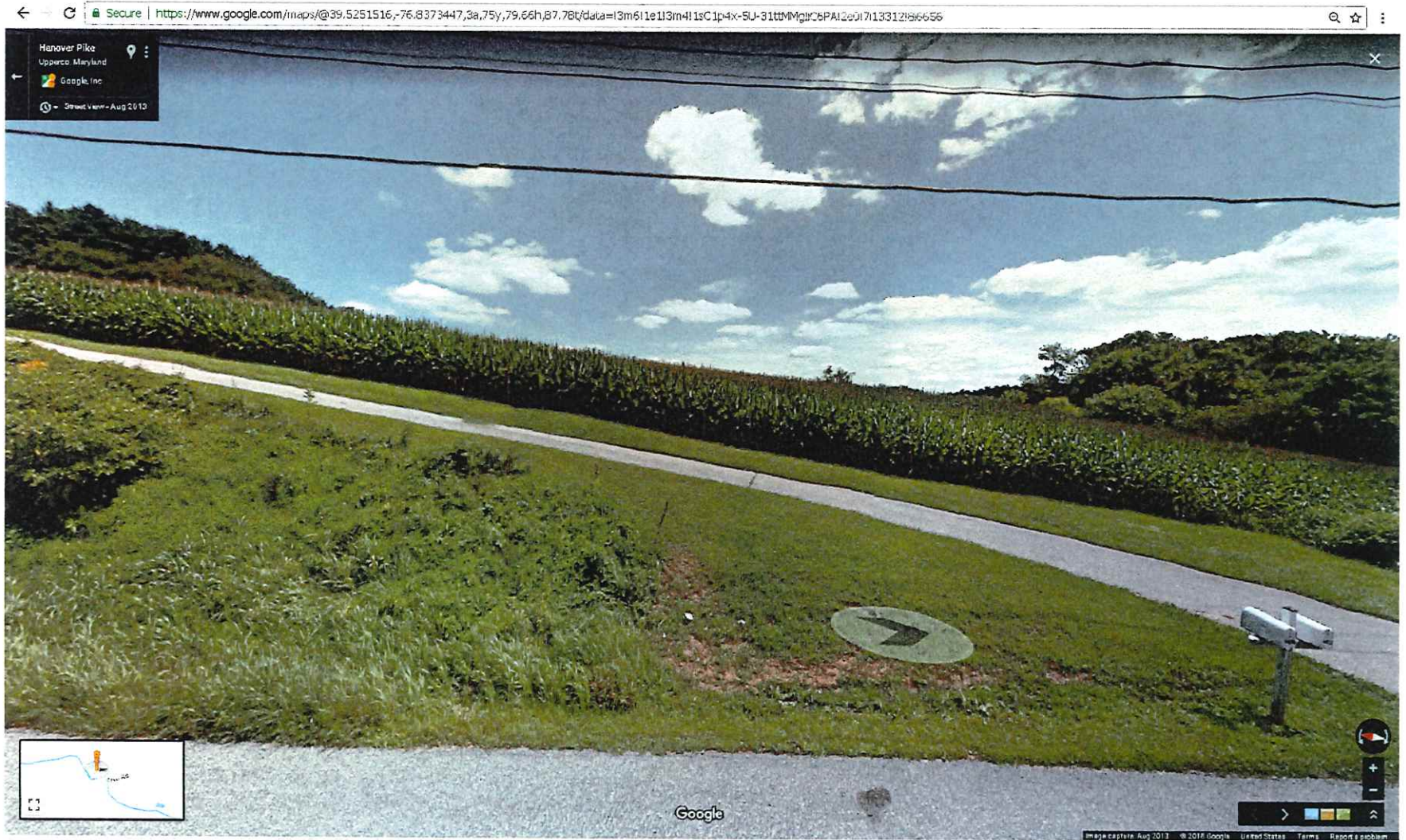


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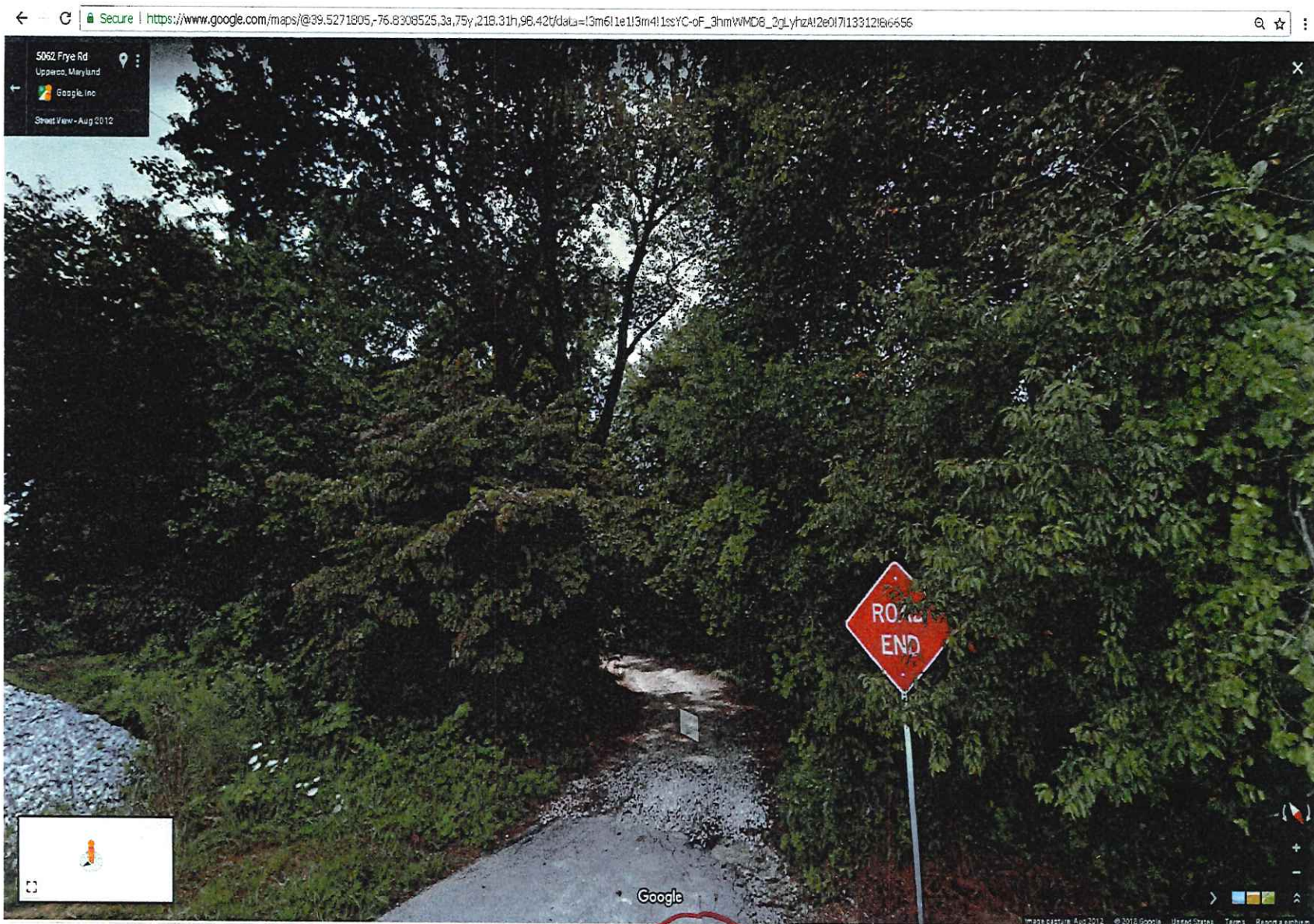
7



8

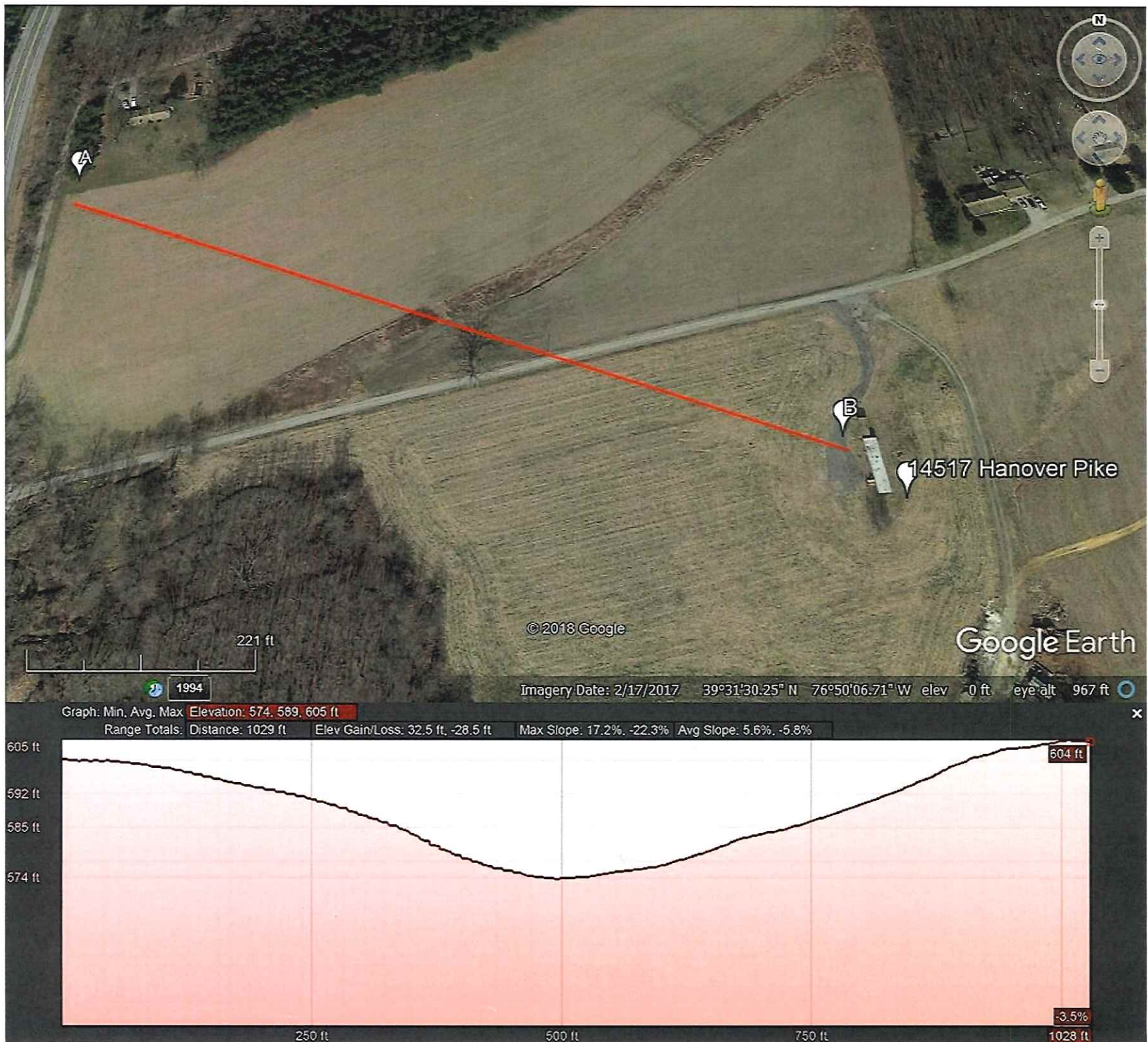


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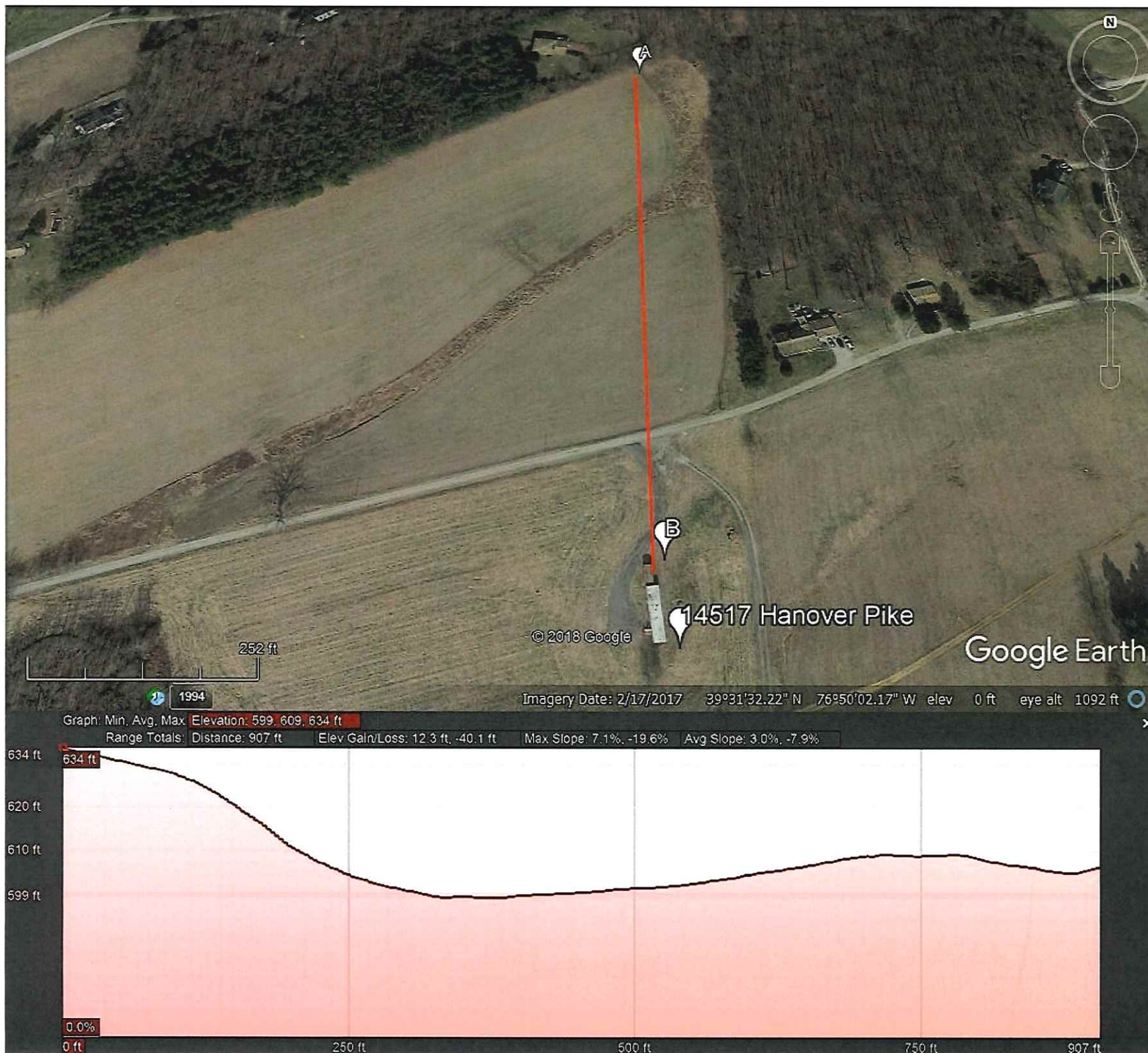


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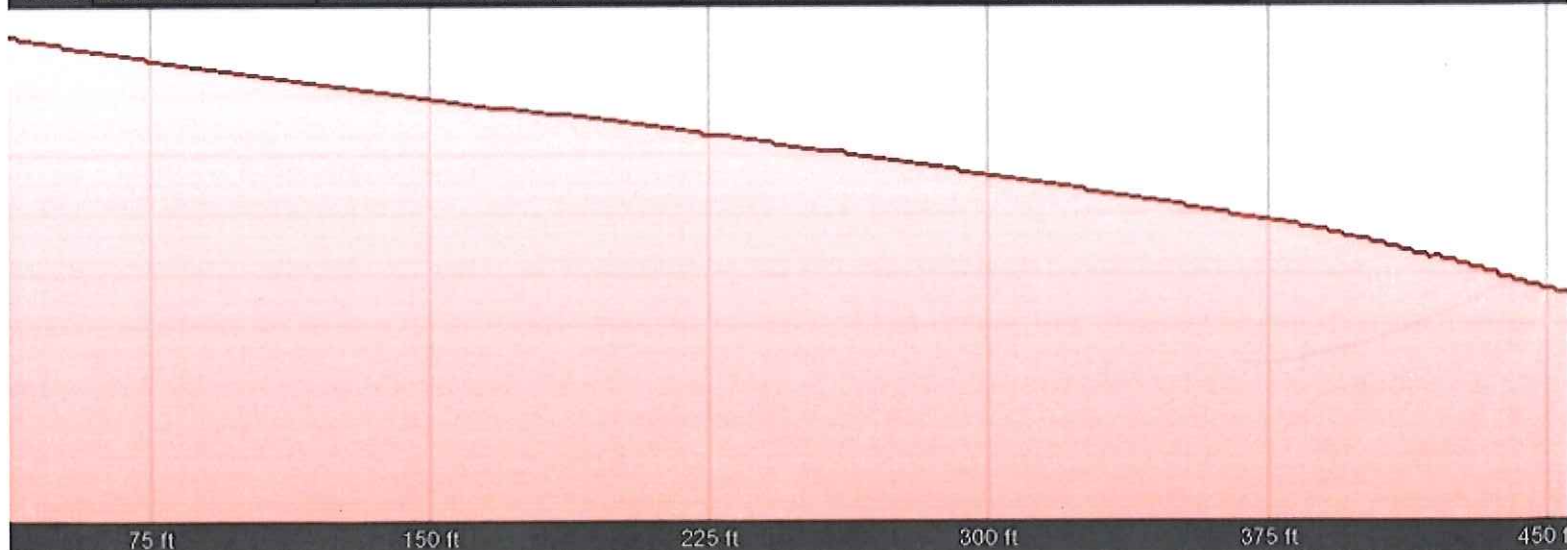
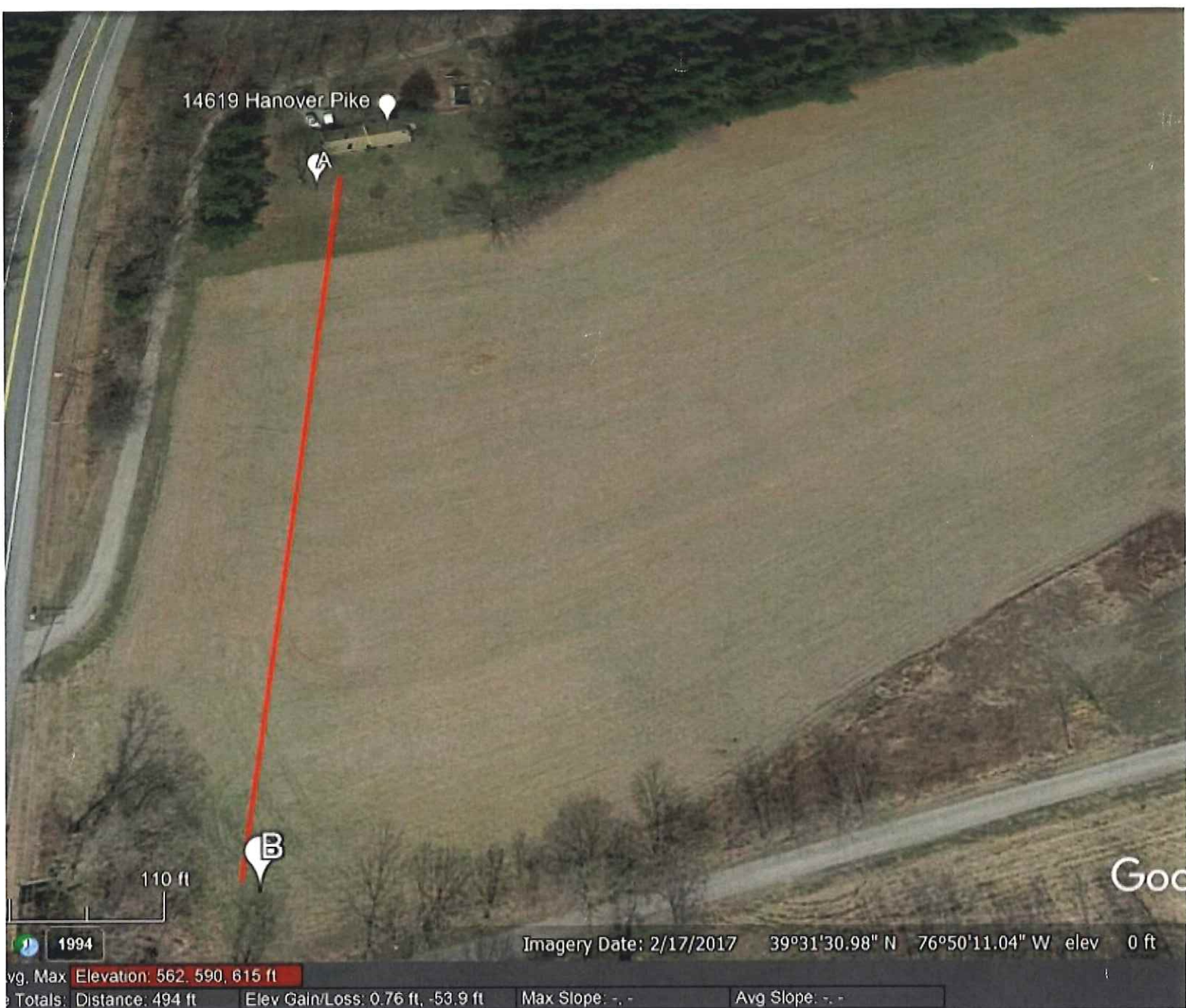
Prot. 4



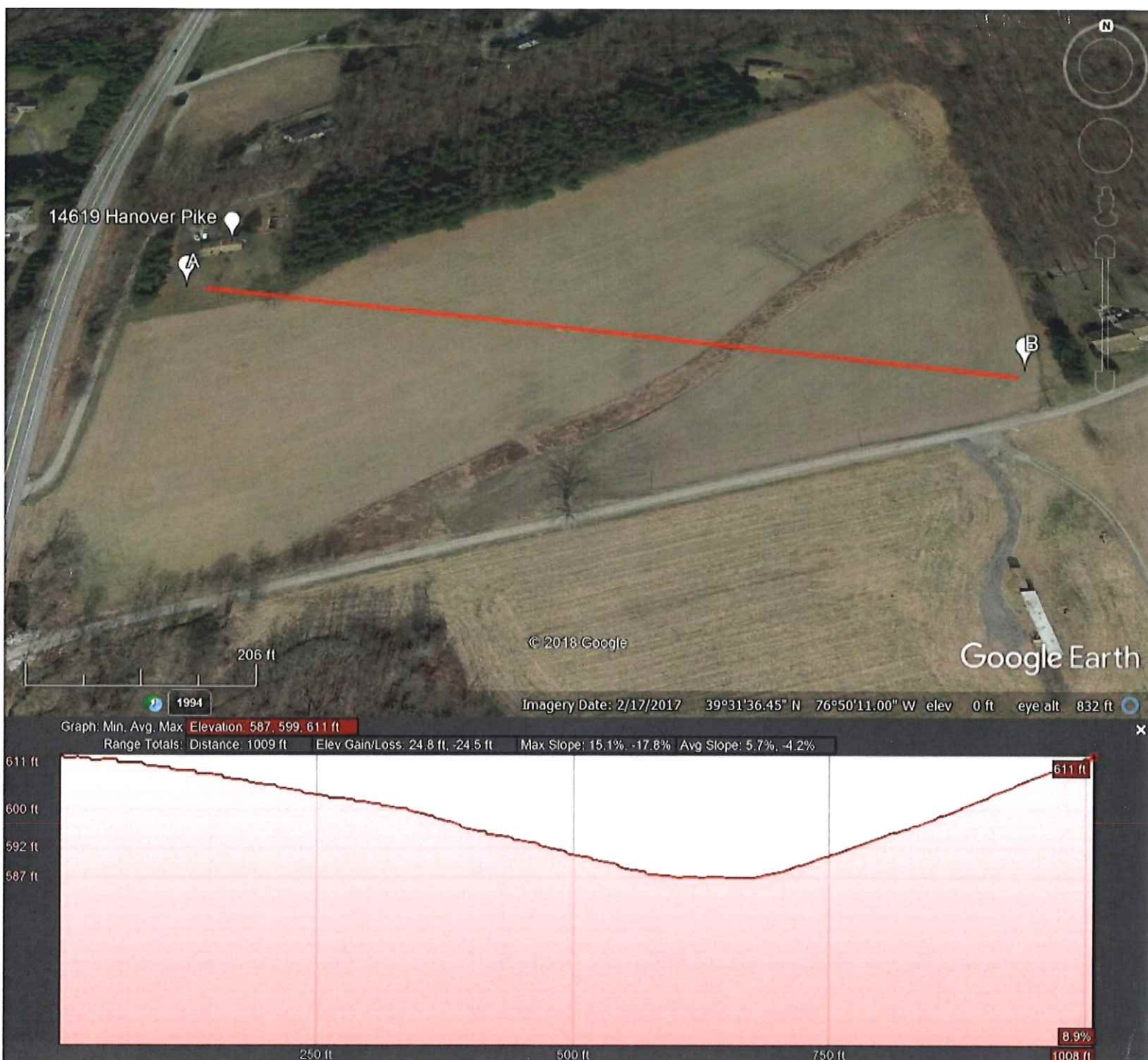
5
Prot,



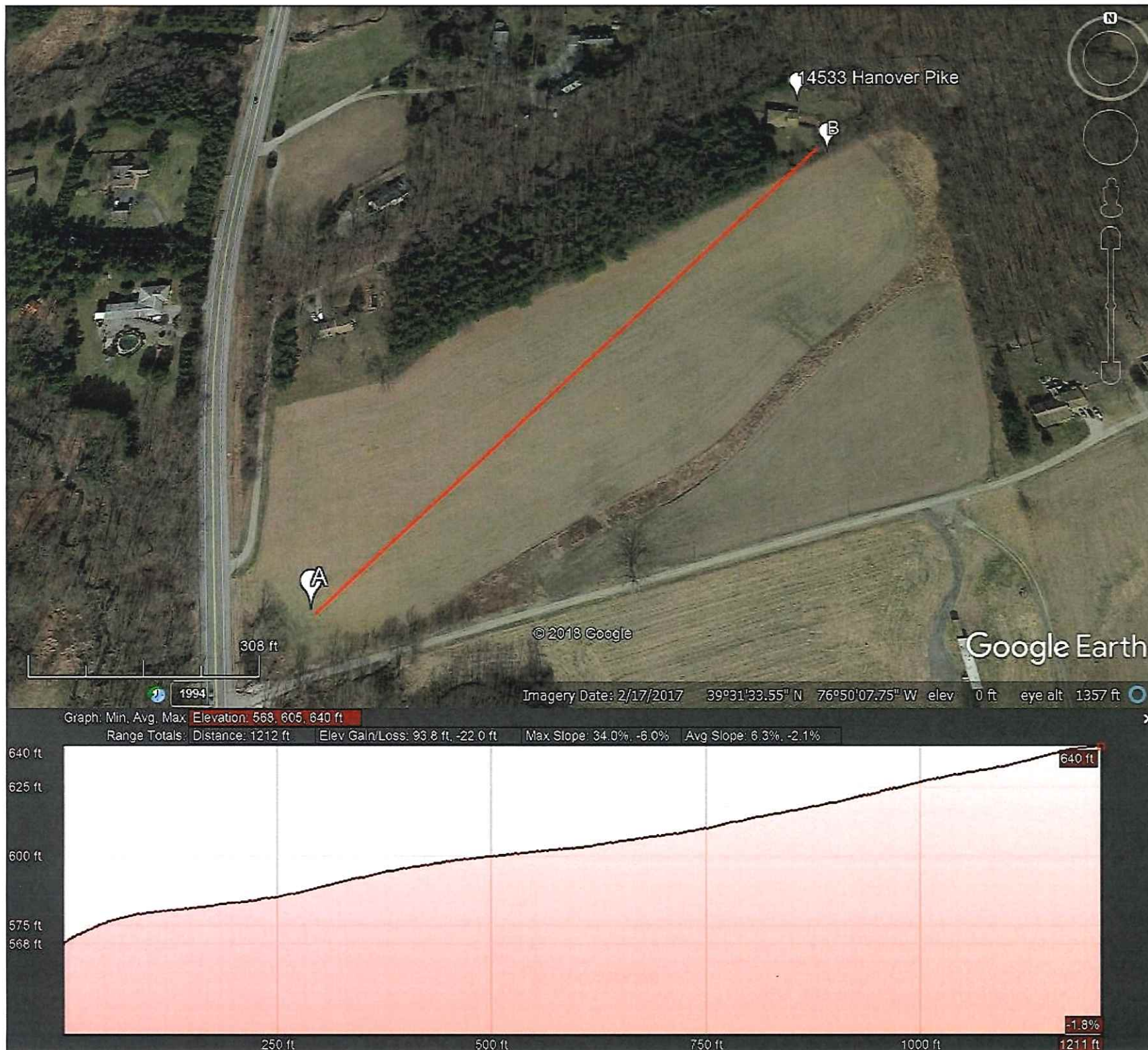
Prot. # 6



Plot # 7



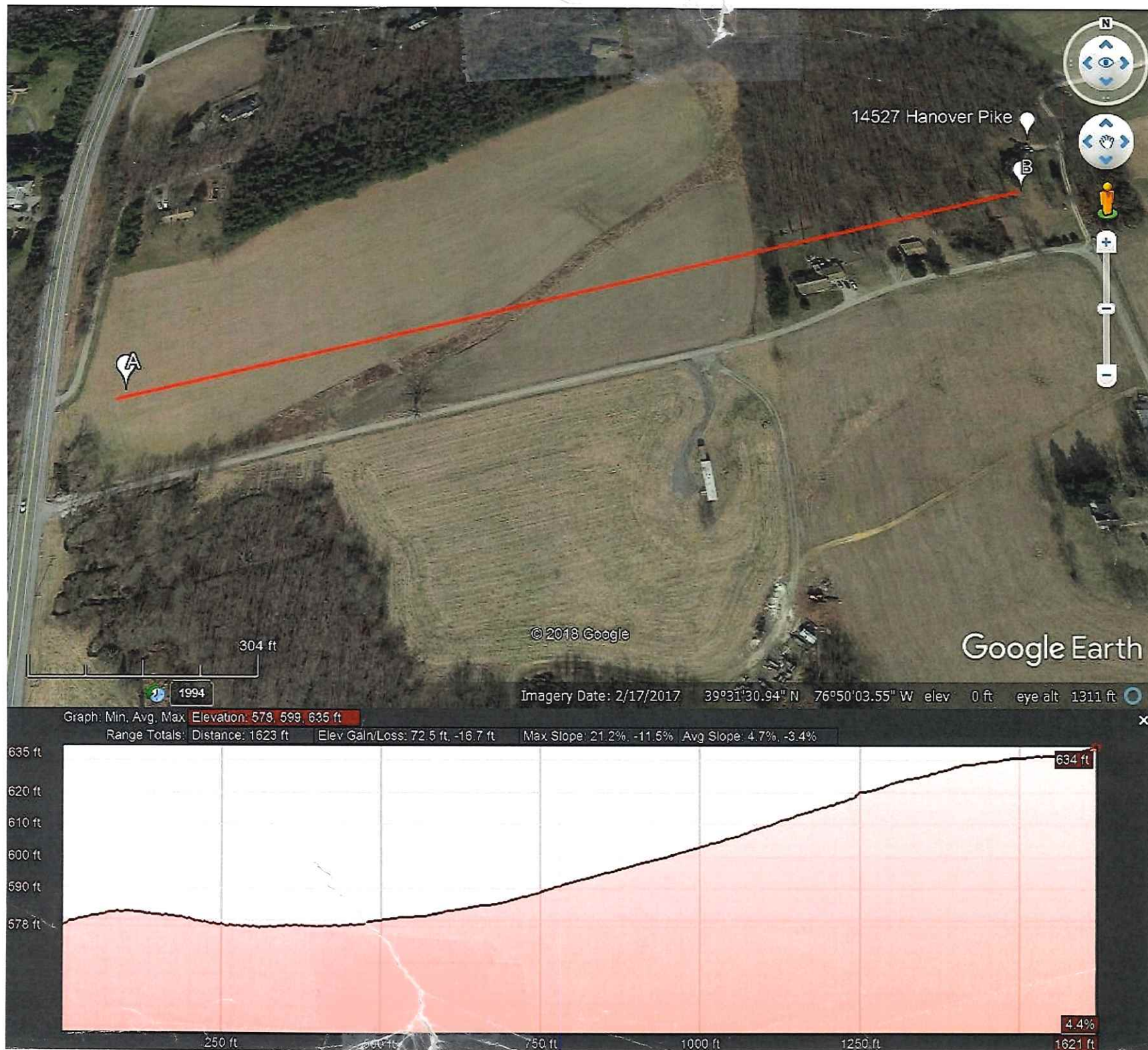
8
Prot.



89
Pnt.
#9



10
Prof.
No.
10



Board of Appeals

Case No: 17-107X

Case Name: Woodens burg Land & Cattle Co.

Exhibit List

Party: Petitioner

Date: 5/2/19

Exhibit No:	Description:
✓ 1 ✓	Site Plan
✓ 2 ✓	Schematic Landscape Plan
✓ 3 ✓	Aerial Photograph of the property
✓ 4 ✓	Ground Mount Fixed Racking Detail
✓ 5 ✓	Agricultural Fencing Detail
✓ 6 ✓	Photo of Agricultural Fence
✓ 7 ✓	CV of David S. Thaler
✓ 8 ✓	5/1/17 Ltr. from Thaler (E.I.R.) to Leskinen approving ^{Revised Wetland & Stream Delineation}
✓ 9 ✓	9/13/17 Ltr. from Byrne (E.R.C.) re: no delineated plant or animal species ^{DNR}
✓ 10 ✓	Landscape Plan submitted by Thaler to County
✓ 11 A-L ✓	Pictures of property
✓ 12 ✓	1/9/19 Ltr. from Dir. Nichler to Thaler re: provisional ^{approval of limited development}
✓ 13 ✓	Declaration of Rights of Way from 1992
✓ 14 ✓	Resume of Henry A. Leskinen
VERIFIED BY <u>KC</u> DATE: <u>7/26/19</u>	

KC
5/3/19

Board of Appeals

Case No: 17-107X

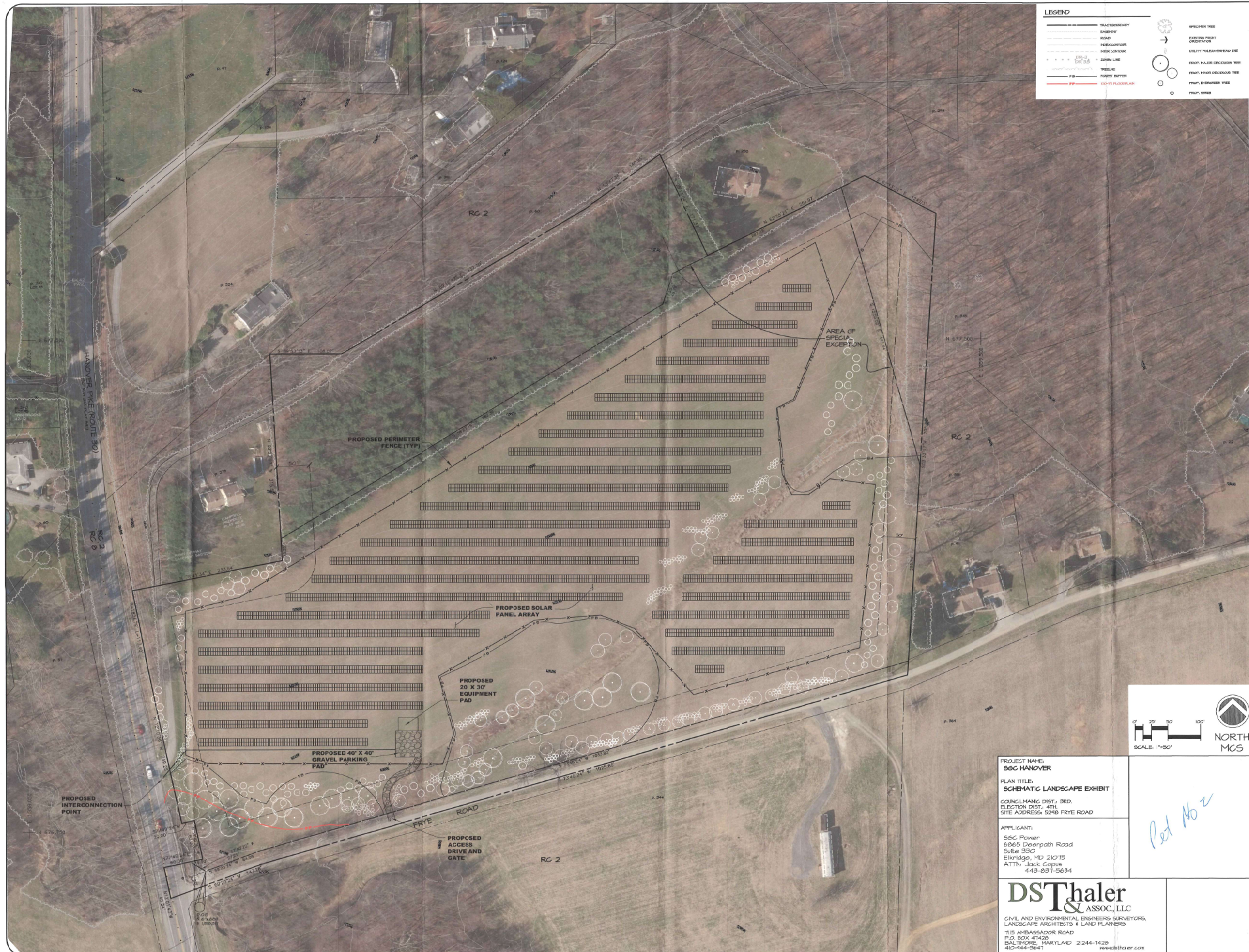
Case Name: Woodensburg Land & Cattle Co.

Exhibit List

Party: Petitioner

Date: 7/23/19

[illegible]



LEGEND

- TRACT BOUNDARY
- RAILROAD
- ROAD
- INTERSECTION
- INTERSECTION
- ZONE LINE
- TREELINE
- FOREST BUFFER
- 100-YR FLOODPLAIN

- SPECIES TREE
- EXISTING TREES
- UTILITY TOLERANCE/ROAD LINE
- PROPOSED MAJOR DECIDUOUS TREE
- PROPOSED MAJOR DECIDUOUS TREE
- PROPOSED BURDENING TREE
- PROPOSED BURDENING TREE

SCALE: 1"=50'

NORTH
MCS

PROJECT NAME:
SGC HANOVER

PLAN TITLE:
SCHEMATIC LANDSCAPE EXHIBIT

COUNCILMAN DIST. 3RD
ELECTION DIST. 4TH
SITE ADDRESS: 5240 FRYE ROAD

APPLICANT:
SGC Power
6860 Deerpath Road
Suite 330
Elkridge, MD 21075
ATTN: Jack Copus
443-631-5634

DSThaler
& ASSOC., LLC

CIVIL AND ENVIRONMENTAL ENGINEERS SURVEYORS,
LANDSCAPE ARCHITECTS & LAND PLANNERS

7115 AMBASSADOR ROAD
P.O. BOX 41420
BALTIMORE, MARYLAND 21244-1420
410-444-3641
www.dsthaler.com

SCHEMATIC LANDSCAPE EXHIBIT
SGC HANOVER

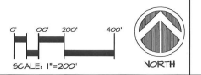
DATE: 04-24-14
SCALE: 1"=50'
SHEET: 2
PROJ. NO.: 4215
SHEET: 1 OF 1

2
Petitioner
City Exhibit

Pet No 2



AERIAL EXHIBIT
SGC HANOVER



PROJECT NAME:
SGC HANOVER

PLAN TITLE:
AERIAL EXHIBIT

COUNCILMANIC DIST. 3RD
ELECTION 2014 4TH
SITE ADDRESS: 5246 PRYE ROAD

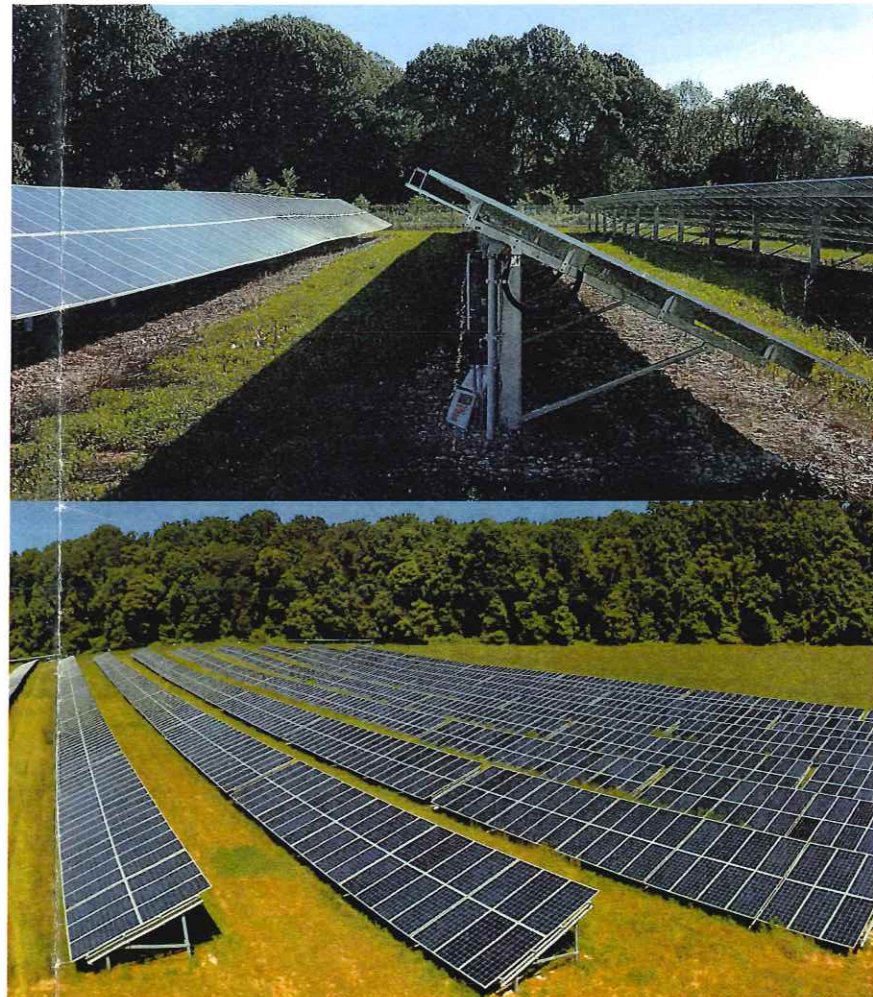
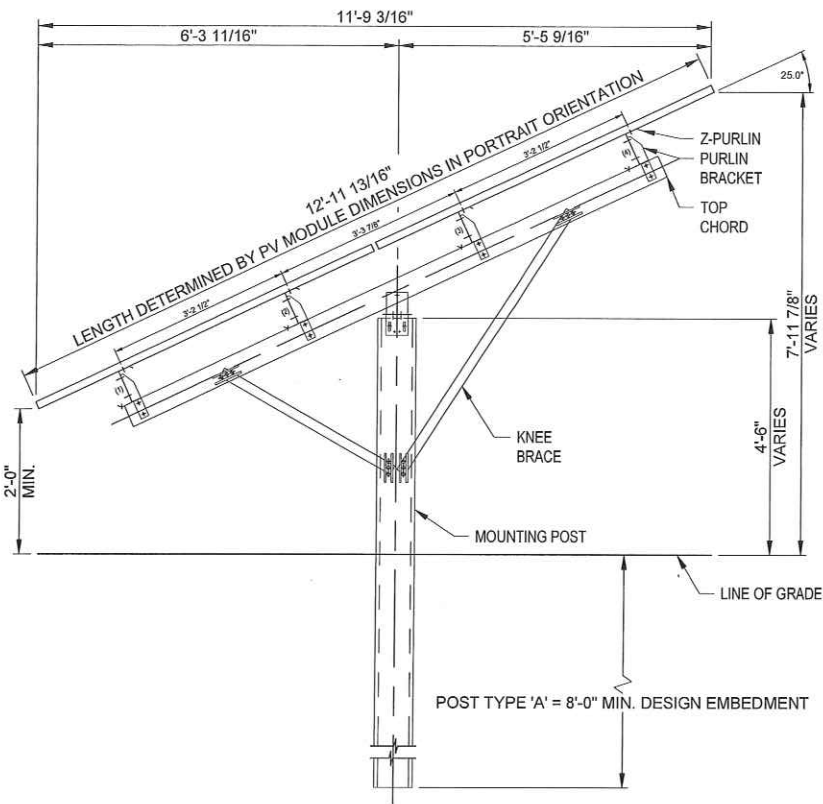
AFFILIANT:
SGC Power
6865 Dearboth Road
Suite 350
Elkridge, MD 21075
ATTN: Jack Copus
443-531-5634

Grab

3
Petitioner
CB4 EXHIBIT

DSThaler & ASSOC., LLC
CIVIL AND ENVIRONMENTAL ENGINEERS, SURVEYORS,
LANDSCAPE ARCHITECTS & LAND PLANNERS
715 AMBASSADOR ROAD
P.O. BOX 41428
BALTIMORE, MARYLAND 21244-1428
410-444-3641
www.dsthaler.com

DATE: 04-21-14
SCALE: 1"=200'
CJ:
PROJ. NO.: 4216
SHEET: 1 OF 1



1 GENERAL RACKING DETAILS

Scale: NTS

MODULE	SYSTEM SIZE (DC / AC)	SPECIFIC PRODUCTION	RACKING	WIND SPEED	EXPOSURE CATEGORY
--- MODULES @ STC	--- / ---	---	---	--- MPH	---
QUANTITY	INVERTER	ESTIMATED YIELD	TILT ANGLE	HIGH TEMP	LOW TEMP
--- MODULES (--- STRINGS OF ---)	[---] ---	---	---°	---°C	---°C

NOT FOR CONSTRUCTION - DRAWING FOR BID PURPOSES ONLY - EQUIPMENT SUBJECT TO CHANGE

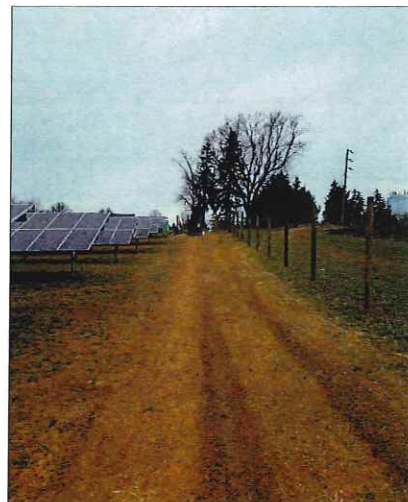
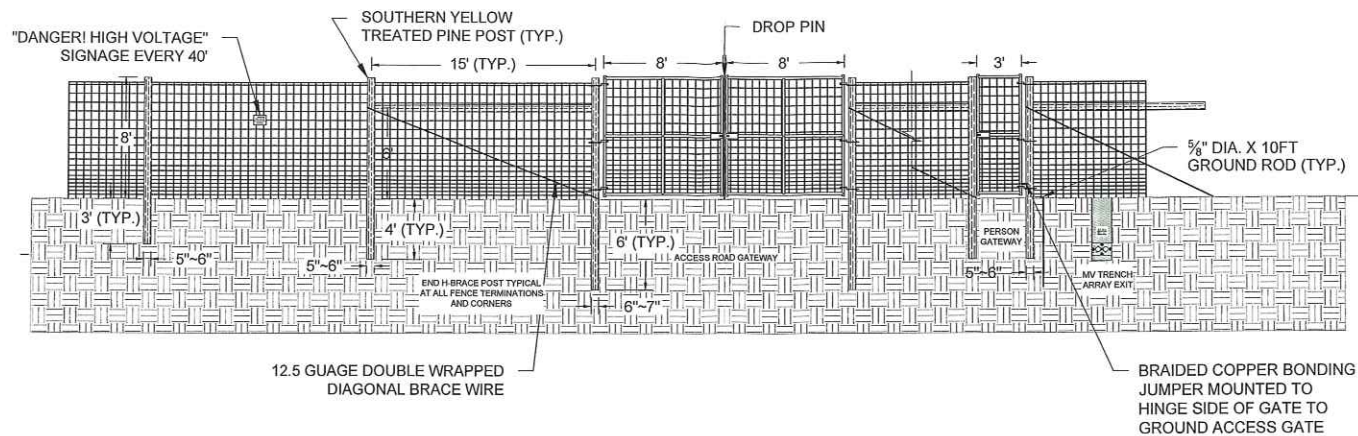
THIS DRAWING IS THE PROPERTY OF SGC POWER, LLC. THE INFORMATION CONTAINED IN THIS DOCUMENT SHALL NOT BE DISCLOSED TO OTHERS WITHOUT THE WRITTEN CONSENT OF SGC POWER, LLC.

GROUND MOUNT FIXED RACKING DETAIL

DRAWING SIZE
 11X17
 MEASURE 1/2"
 DRAWN BY
 AMLW
 DATE
 1/15/2019
 SCALE
 NONE



W1



1 AGRICULTURAL FENCING DETAILS

Scale: NTS

MODULE	SYSTEM SIZE (DC / AC)	SPECIFIC PRODUCTION	RACKING	WIND SPEED	EXPOSURE CATEGORY
---- MODULES @ STC	---- / ----	----	----	---- MPH	----
QUANTITY	INVERTER	ESTIMATED YIELD	TILT ANGLE	HIGH TEMP	LOW TEMP
---- MODULES (---- STRINGS OF ----)	[----] ----	----	----°	----°C	----°C

NOT FOR CONSTRUCTION - DRAWING FOR BID PURPOSES ONLY - EQUIPMENT SUBJECT TO CHANGE



W1



THIS DRAWING IS THE PROPERTY OF SEC POWER, LLC. THE INFORMATION CONTAINED IN THIS DOCUMENT SHALL NOT BE DISCLOSED TO OTHERS WITHOUT THE WRITTEN CONSENT OF SEC POWER, LLC.

AGRICULTURAL FENCING DETAIL

DRAWING SIZE
11X17
MEASURE 1/2"

DRAWN BY
AMLW

DATE
12/27/2018

SCALE
NONE

Petitioner
CBA Exhibit

Petitione

6
Petitioner
CBA Exhibit





PROFESSIONAL QUALIFICATIONS

DAVID S. THALER

PE, LS, DFE, D.WRE, FRGS, F.ASCE, F.NSPE

dsthaler@dsthaler.com

D.S. THALER & ASSOC., LLC

7115 Ambassador Road, PO Box 47428

Baltimore, Maryland 21244-7428

Tel: 410-944-3647

EDUCATION

Baltimore Polytechnic Institute	1966
Lehigh University—BS, Civil Engineering	1970
Lehigh University—MBA, Business Administration	1971
Lehigh University—MA, Economics	1978
Lehigh University—Ph.D., Business & Economics (completed all but dissertation)	

PROFESSIONAL ENGINEER—Maryland

REGISTERED LAND SURVEYOR—Maryland

LICENSED REAL ESTATE BROKER—Maryland

COLONEL, (MD ret.) —121ST Maryland Engineer Regiment—2008-2014

GUEST SCHOLAR—University of Baltimore School of Law – 2009-2016

MEMBERSHIP IN PROFESSIONAL OR TECHNICAL SOCIETIES

American Society of Civil Engineers, since 1970—**Fellow**.

National Society of Professional Engineers, since 1971—**Fellow**.

National Academy of Forensic Engineers—**Diplomate**.

American Academy of Water Resources Engineers—**Diplomate**.

Royal Geographical Society – **Fellow**.

National Society of Professional Surveyors—2014-2016.

Maryland Building Industry Association—**Life Director**—2014-

Professional Engineers in Construction Division—1972-2005—**Charter Member**

Maryland Society of Professional Engineers:

- **President** — 2007-2008
- President-Elect — 2006-2007
- Vice President — 2005-2006
- Director — 1985-1989
- Baltimore Chapter — **President** — 1985-1986

Engineering Society of Baltimore—1977-1995, 2010-

Editorial Board - Baltimore Engineer—1992.

Society of American Military Engineers—1972-1990.

Beta Gamma Sigma (National Business Honorary)—1975.

Maryland Society of Surveyors—1979-1992; 2008-2010. 2014-2016

Home Builders Association of Maryland, Inc., Baltimore County Chapter

— Board of Directors, 1978-1989, 1994-1995, 2000-

— Secretary/Treasurer, 1979.

— Vice President, 1980-1982.

Home Builders Association of Maryland, Inc.

Land Development Council

— **Founding President** 1990 —

— Vice President 1991-1996, 2004

Land Use Committee

— Chairman, 1987-1990.

Maryland Builder

— Chairman, Editorial Advisory Board 1988-1993.

Board of Directors 1988-1992.

Lamda Alpha International—(Land Economics Society) 1994, 2016

PROFESSIONAL AWARDS

- *2019 National Society of Professional Engineers Award*—Highest National Award of the National Society of Professional Engineers.
- *Professional Engineer in Private Practice Award*—National Society of Professional Engineers—2018
- Inaugural Recipient—*David S. Thaler Leadership Award*—Maryland Society of Professional Engineers—2014
- *Meritorious Service Award to the Engineering Profession*—The American Society of Civil Engineers, Maryland Section, 2013.
- *Icon of the Industry Award-Lifetime Achievement*—Home Builders Association of Maryland, 2011
- *Meritorious Service Award to the Engineering Profession*—Baltimore Engineers Week Council, 2011
- *Certificate of Appreciation*—Baltimore Police Department, 2003.
- *Lifetime Achievement Award*—Land Development Council of Maryland, 2000.
- *Consultant of the Year*—Land Development Council of Maryland, 1995.
- *Civil Engineer of the Year*—American Society of Civil Engineers, 1990.
- *Journalism Award*—Maryland Society of Professional Engineers - 1983/1984, 1984/1985.
- *Outstanding Young Engineer in Maryland*—Maryland Society of Professional Engineers, 1983/1984.
- *Engineer of the Year*—Engineers Week Council of Maryland, 1984/1985.
- *Outstanding Service Award*—National Society of Professional Engineers, 1984.

MILITARY DECORATIONS

- *The Maryland Distinguished Service Cross*—August 2013
- *The Maryland Commendation Medal*—September, 2012
- *The Maryland Meritorious Service Medal*—June, 2011
- *The Maryland Militia Medal with Bronze Star for Merit*—2010

APPOINTMENTS TO COMMITTEES OR COMMISSIONS OF THE STATE OF MARYLAND

- *Youth Apprenticeship Advisory Committee—Appointed by the Governor 2016 -*
- *Continuing Professional Competency Committee – MD Board for Professional Engineers, 2010, 2017*
- *Task Force on the Preservation of State Streams, 1990-1991*
- *Advisory Commission on Energy Utilization in New Building.*
- *Committee of the Maryland Building Code for the Handicapped.*
- *State Water Quality Advisory Committee, 1980 -1983*
- *Governor's Task Force on Independent Living, 1981.*
- *Maryland Storm Water Management Committee Work Group, 1983.*

BALTIMORE COUNTY

- *Builders for the Bay—2006.*
- *Historic Sites Advisory Committee—1998-2000, **Chairman.***
- *Master Plan Advisory Group—1997.*
- *Comprehensive Zoning Committee—1995.*
- *Commercial PUD Advisory Group—1994.*
- *Commercial Zoning Advisory Group—1992-1993.*
- *Critical Areas Advisory Committee—1988 and 1992.*
- *Master Plan Advisory Group—1990.*
- *Integrated Watershed Management Task Force—1981.*

BALTIMORE CITY: Public Works Museum—**Trustee**—1982-1987.

ENGINEERING AND TECHNICAL AFFAIRS EDITOR: *The Daily Record*—1983-1985.

OTHER

*Baltimore County Chamber of Commerce—**Chairman of the Board**—1996-1998.*

*Baltimore Chamber Orchestra—**Board of Directors**—1988-1994.*

*Catonsville Community College—**Lecturer, Real Estate**—1987-1997.*

*The Valley Academy—**Board of Directors**—1995-1999.*

*Jewish Museum of Maryland—**Trustee**—2000-2001.*

*Center for Organizational Performance - Towson University — **Board of Directors**—2000-2002.*

*Program in Historic Preservation - Goucher College—**Advisory Committee**—2000-2001.*

*Baltimore Police Department Ceremonial Unit—**Pipe Major**—2003-2005.*

Maryland Historical Society:

—**Trustee**—2004-2010.

—**Vice President**—2007–2008.

—**Senior Vice President**—2008-2010.

*Building Industry Foundation—**Trustee**—2004 - 2007.*

Frederick County Place of Assembly Work Group—2009

29th Division Association, 2012-2016

LECTURER

- *Lehigh University*—Senior Civil Engineering Seminar, 1977, 1978, 1979.
- *Lehigh University*—Short Course in Urban Hydrology and Storm Water Management, 1980-1982.
- Seminar sponsored by the Federal Emergency Management Agency for the Association of State and Local Floodplain Managers, November 1981.
- "Implementing Storm Water Management in Maryland," sponsored by *Maryland Chapter, American Planning Association*, November, 1983.
- Keynote address for the newly registered Professional Engineers, October 1984.
- Land Development for Commercial and Industrial Properties
Catonsville Community College - January 1987.
- "Investing in Raw Land"—Land Development and the Subdivision Process—1986-1994.
 - ☐ *Catonsville Community College*
 - ☐ *Anne Arundel Community College*
 - ☐ *Carroll County Community College*
 - ☐ *Home Builders Association of Maryland*
 - ☐ *Howard County Community College*
 - ☐ *Engineering Society of Baltimore*
 - ☐ *Property Owners Association of Maryland*
- "The Mystery of Surveying" Real Property Section, *Maryland Bar Association* 1985, 1989.
- "Zoning Trends"—*Greater Board of Realtors*—1989.
- "Surveying"—*University of Baltimore, School of Law* 1990, 1995, 1997.
- "Land Development"—*University of Maryland, School of Law* 1991.
- "Land Development Processing"—*Real Property Section of the Bar Association of Maryland* November 1992.
- "Land Development Processing"—*Land Development Council*—September 1992.
- "Land Development in Baltimore County"—*Engineering Society of Baltimore*—May 1993.
- "The Developer as an Endangered Species"—*National Association of Industrial and Office Parks* June 1993.
- "Rethinking the Suburbs"—*The Maryland Institute*—June 1993.
- "Land Development Processing"—*Johns Hopkins University*—1993-1997.
- "Value in Real Estate Through Zoning"—*Greater Baltimore Board of Realtors*—1995.
- "Value in Real Estate Through Zoning"—*Home Builders Association of Maryland*—1995.
- "A Pragmatic Approach to Traditional Neighborhood Design"—*Anne Arundel County Community College*—1996.
- "Flexible Design Standards"—*Harford County Council*—1996.
- "Designing For Livable Communities and Healthier Watersheds: Rewriting the Rules"—*Center For Watershed Protection*—February 1998.
- "Managing Growth in Maryland 2000 & Beyond"—*University of Maryland, College Park*—March 1998.
- "Master Planner Course"—*Lancaster County Planning Commission, Lancaster, PA*—July, 1998.
- "Building Better Communities: Rethinking the Development Model in Harford County" *The Task Force on the Future of Growth in Harford County*—August, 1998.
- "Slaying the Beast: Preventing and Curing Sprawl in Maryland" — *The Maryland Chapter of the American Planning Association*—October, 1998.
- "Rethinking the Suburbs, Creating a Non-Euclidian Model of Development" *The Maryland Institute for Continuing Professional Education of Lawyers, Inc., Advanced Real Property Institute,* April, 1999.
- "Rethinking the Rules—Unintended Consequences of Land Use Regulation" *Alliance for the Chesapeake Bay*—May, 1999.

- “Everything You Ever Wanted to Know About ALTA/ACSM Surveys, Boundary Surveys, Certifications and Global Positioning”—*The Mid-Atlantic Real Estate Corporate Counsel Discussion Group*—December, 1999.
- “Community Conservation & Historic Preservation”—*Keynote Speaker, Baltimore County Landmarks Preservation Commission, Preservation Breakfast* — June, 2000.
- “Trigonometry”—*St. Paul’s School for Girls*—February, 2001.
- “Cadastral Land Surveying, Documentation and Registration—Rule of Law Project, United States State Department”—*Northwest Cadastral Land Institute, and the Land Committees of the Leningrad Oblast, St. Petersburg, Russia*—November 2000.
- “Entrepreneurship”—*Towson University, College of Business & Economics*—October, 2001.
- “The Master Land Developer Course”—*Land Use Institute*—Fall 2003.
- “Secrets of Successful Land Development”—*Catonsville Community College*—November, 2005.
- *The Mencken Paradox*—*The George Peabody Library, The Johns Hopkins University* —September, 2006.
- *Mason and Dixon and the Defining of America*
 - Maryland Historical Society, December, 2008;
 - Goucher College, February, 2009;
 - Prince Georges County Historical Society, February, 2009.
 - Institute of Chemical Engineers, April, 2009.
 - Keynote Address, Society of Research Administrators, April, 2009
- *Penn v. Lord Baltimore: Resolving the greatest boundary dispute of them all*—*University of Baltimore School of Law*—January, 2009
- *The Transit in the Tower: The Mystery of America’s Most Historic Scientific Instrument*—*Independence National Historic Park, Philadelphia, PA*—April, 2009
- **Thaler on Land Use**—*Fall Lecture Series, University of Baltimore School of Law*—2009, 2011
- *My Take on Regulatory Takings*—*University of Maryland School of Architecture*—November, 2009
- *Boundary and ALTA Surveys*—*University of Baltimore School of Law*—November, 2009
- *Euclid v. Ambler Realty – How the Supreme Court Changed the Face of America*—*University of Maryland School of Architecture, College Park, MD*—March, 2010
- *Zoning for the 21st Century*—*Baltimore County Planning Board*—May, 2010
- *Smart Growth and Sustainability*—*Masters Program in Real Estate, John Hopkins University*—February, 2012
- *The Murder of the Suburbs: The Consequences of Euclidean Zoning*—*Baltimore County Bar Association*, April 2012.
- Keynote address, Maryland Society of Professional Engineers Conference, *Sprawlburbia: The American Dream?*—*Columbia, MD*—October, 2013
- *Thaler on Land Use—Sprawlburbia: The Unintended Consequences of Village of Euclid v. Ambler Realty Co.*, *The University of Baltimore School of Law*—November, 2013.
- Keynote address, Maryland Society of Professional Engineers, *Death of the Suburbs*—*Annapolis, Maryland*, October 2014
- Keynote address, *Suit Up and Be Civil*—*Clark School of Engineering, University of Maryland*—March, 2015
- *Fundamental Principles of Land Development* —*MBIA/Land Use Institute*—April, 2015, April 2017
- Keynote address, *The Preservation Alliance, The 250th Anniversary of the Mason Dixon Survey*—June, 2015.

- H. L. Mencken Memorial Lecture, *H. L. Mencken: Anti-Semite?* —Enoch Pratt Free Library, Baltimore: September 12, 2015
- *Advanced Principles of Land Development*—MBIA/Land Use Institute—April, 2016
- *The Mystery of the Transit in the Tower*, Serjeants' Inn, The Johns Hopkins University, Baltimore: October, 2016
- *How a Surveying Error by Capitan John Smith in 1608 Led to the Granddaddy of All Boundary Disputes*—Women's Club of Roland Park, Baltimore: December 2016
- *The Art and Science of Surveying and Everything You Ever Wanted to Know About ALTA/NSPS Land Title Surveys*—Real Estate Section Maryland State Bar Association—Baltimore: April, 2017
- *The Law of Title and Boundary Surveying*, Old Republic Title Company – Ellicott City, MD October 2017.
- *The Secrets of Surveying and Everything You Ever Wanted to Know About ALTA/NSPS Land Title Surveys* — Security Title Guarantee Corp., Crofton, MD — October, 2018.
- *Resolving the Granddaddy of All Boundary Disputes* — Maryland State Geographic Information Committee, Annual Meeting, Catonsville Community College — October, 2018
- *Boundary Surveying, Title Law, Precision and Accuracy*, Maryland Society of Professional Engineers Annual Conference, Linthicum, Maryland — November, 2018
- *The Mystery of the Transit in the Tower* — The Wednesday Law Club, Baltimore, Maryland — March, 2019
- *State of the State: Current Issues Affecting Land Development in Maryland*: Five sessions. Fulton, Maryland, March-April, 2019
- *The Interface Between Land Surveying and Geographic Information Systems*, Washington College, Chestertown, Maryland — April, 2019

EXPERT TESTIMONY

- Qualified as an Expert Witness before the Courts of Baltimore County, Baltimore City, Frederick County, Carroll County and Anne Arundel County.
- Qualified as an Expert Witness before the Boards of Appeal of Baltimore and Anne Arundel Counties.
- Expert testimony before the Maryland General Assembly, Environmental Matters Committee, Subcommittee on Sediment Control and Storm Water Management, July 1981.
- Expert testimony before the Congress of the United States, Joint Economic Committee, Subcommittee on Investment, Jobs and Prices, August 1981.

EMPLOYMENT HISTORY

President & Managing Principal—D.S. Thaler & Associates, Inc.—since October 1976
(Civil and Environmental Engineers, Landscape Architects, Surveyors and Land Planners,
see attachment A, Partial List of Planning and Engineering Projects)

PUBLICATIONS

Over 250 articles on a variety of subjects and five books:

Schrader, Richard J., Editor, *A New Census of H. L. Mencken's Ventures Into Verse*,
Baltimore: D.S. Thaler & Associates, Inc., 2005

Schrader, Richard J., Editor, *Erez Israel*: A facsimile reprint,
Baltimore: D.S. Thaler & Associates, Inc., 2005

Thaler, David S., *The Mencken Paradox*, Baltimore: Mercury House Press, 2006

Thaler, David S., Marion Elizabeth Rodgers, Roger Brunyate, *A Little Light Music: The Artist, A Drama Without Words*. Baltimore: Mercury House Press, 2007

Thaler, David S., Marion Elizabeth Rodgers, Larry Gibson, *Mencken's Prejudices Debunked*,
Baltimore: Mercury House Press, 2015.

KEVIN KAMENETZ
County Executive



rec 5/4/17
cc SAM, BLC
Brett, C.
(F)

VINCENT J. GARDINA, Director
Department of Environmental Protection
and Sustainability

8
Petitioner
CBA Exhibit

May 1, 2017

Mr. Henry Leskinen
Eco-Science Professionals, Inc.
P.O. Box 5006
Glen Arm, MD 21057

RE: Woodensburg Solar
Revised Wetland and Stream Delineation
(Rev. 4/12/17)

Dear Mr. Leskinen:

Environmental Impact Review (EIR) received the above referenced submission for review and approval on April 12, 2017. The wetland and stream delineations as well as the steep slopes & erodible soils analysis (SSEA) were revised in response to EIR's March 8, 2017 comment letter.

EIR has reviewed the revised wetland, stream delineation and associated SSEA and determined all previous comments were properly addressed. Therefore, these delineations are now approved as are the resultant Forest Buffer limits (both good and bad vegetative cover). Any variance to reduce the Forest Buffer limit based on good vegetative cover must be requested and granted prior to EIR approval of any development plan, grading plan, or permit application.

If there are any questions regarding this review, please contact me at (410) 887-3980.

Sincerely,

A handwritten signature in cursive script, appearing to read "Glenn Shaffer".

Glenn Shaffer, Supervisor
Environmental Impact Review

c. Stacey McArthur, D.S. Thaler & Associates, Inc.

Woodensburg Solar WDV, SA FSD 5.1.17.docx/glenn/S



Larry Hogan, Governor
Boyd Rutherford, Lt. Governor
Mark Belton, Secretary
Joanne Throwe, Deputy Secretary

9
Petitioner
CBA Exhibit

September 13, 2017

Mr. Bruce M. Wilson
SGC-Power LLC
6865 Deerpath Road
Suite 330
Elkridge, MD 21075

**RE: Environmental Review for Site on Frye Road, Woodensburg Land and Cattle Company LLC,
Upperco, Tax Map 31, Parcel 346, Baltimore County, Maryland.**

Dear Mr. Wilson:

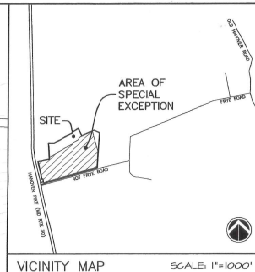
The Wildlife and Heritage Service has determined that there are no official State or Federal records for listed plant or animal species within the delineated area shown on the map provided. As a result, we have no specific concerns regarding potential impacts or recommendations for protection measures at this time. Please let us know however if the limits of proposed disturbance or overall site boundaries change and we will provide you with an updated evaluation.

Thank you for allowing us the opportunity to review this project. If you should have any further questions regarding this information, please contact me at (410) 260-8573.

Sincerely,

Lori A. Byrne,
Environmental Review Coordinator
Wildlife and Heritage Service
MD Dept. of Natural Resources

ER# 2017.1321.ba

[illegible][illegible][illegible]

Landscape Requirements:

Landscape requirements as specified in the Baltimore County Landscape Manual, adopted August 1, 2000, and as amended.

Note: Schematic Landscape Plan shown is preliminary in nature and is to show compliance with the Baltimore County Landscape Manual. The Schematic Landscape Plan is subject to a Final Landscape Plan. Final Landscaping Plan

[illegible]

Final Landscape Plan will be approved prior to grading permit application

PROJECT NAME:
565 HANOVER

PLAN TITLE:
LANDSCAPE COMPLIANCE PLAN

CONVINCING DIS.: BRD.
ELECTION DIS.: 4M
SITE ADDRESS: 3246 FRYE ROAD

APPLICANT:
565 Pover
6855 Deepwater Road
Suite 330
Elkridge, MD 21075
ATTN: Jack Copus
443-837-5634

NOTE:

This ardscape compliance plan has been prepared in accordance with ECZR 4F-04-Sec. 6 and other applicable requirements and standards. The required plantings, buffers and screening as shown hereon may be altered or amended as the project evolves to final design. A final landscape plan shall be approved by the Solihore County Landscape Architect prior to the issuance of permits for the construction of the lot or areas shown hereon.

Petitioner:
CSA Exhibit

DSThaler
& ASSOC., LLC
CIVIL AND ENVIRONMENTAL ENGINEERS, SURVEYOR
LANDSCAPE ARCHITECTS & LANE PLANNERS
715 AMBASSADOR ROAD
P.O. BOX 47426
CUMMERS, MARYLAND 21244-1426
410-344-3617 www.dsthaler.com



DATE: 06-28-
SCALE: 1"=50'
C.I.: 2
PROJECT NO.: 42P
SHEET 1 OF

LANDSCAPE COMPLIANCE PLAN SGC HANOVER



Petitioner
CBA Exhibit

11A



Petitioner
CBA Exhibit

11B



Petitioner
CBA Exhibit

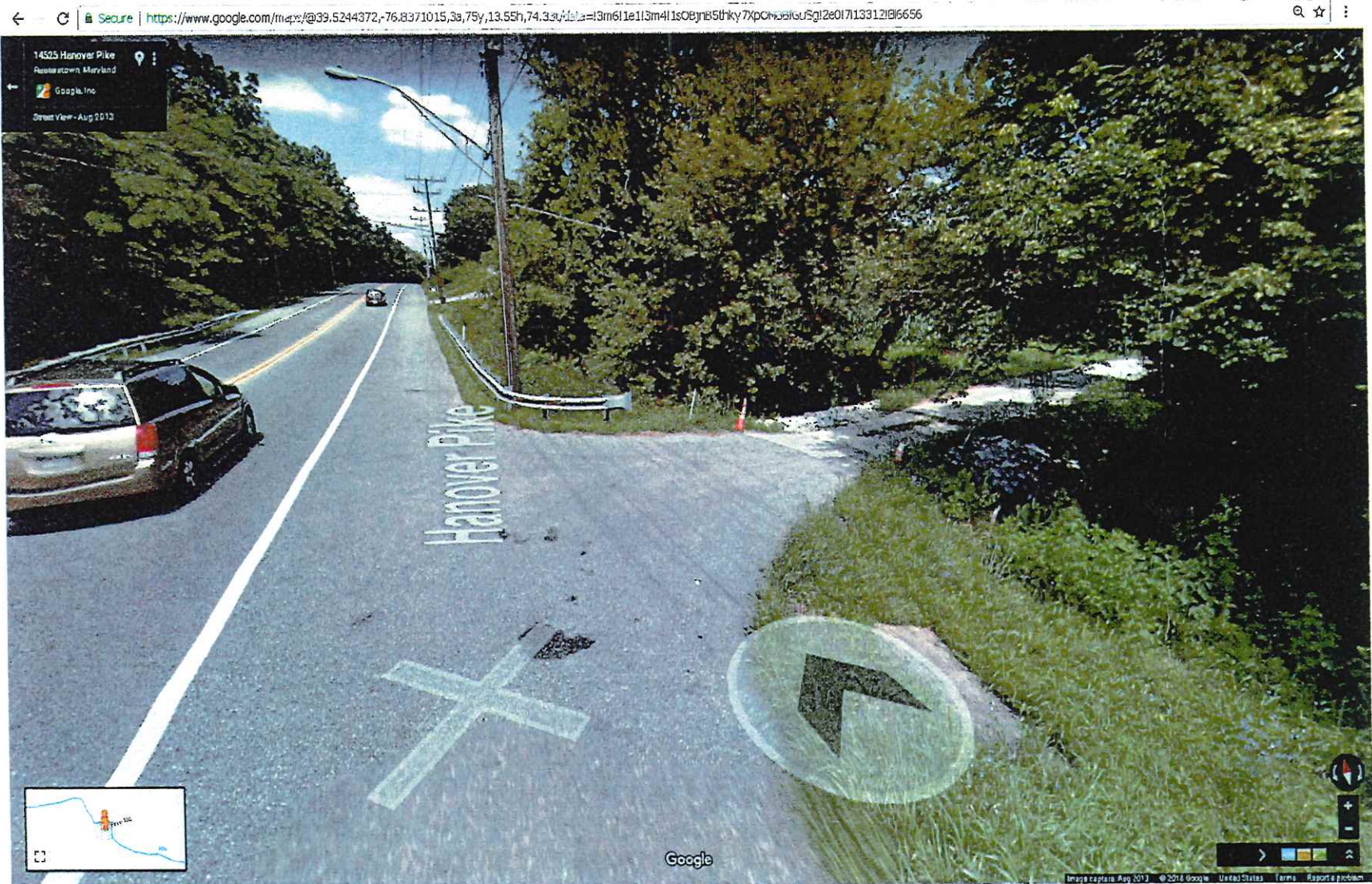
11C



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Petitioner
CBA Exhibit

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Petitioner
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Petitioner
CBA Exhibit

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CBA Exhibit

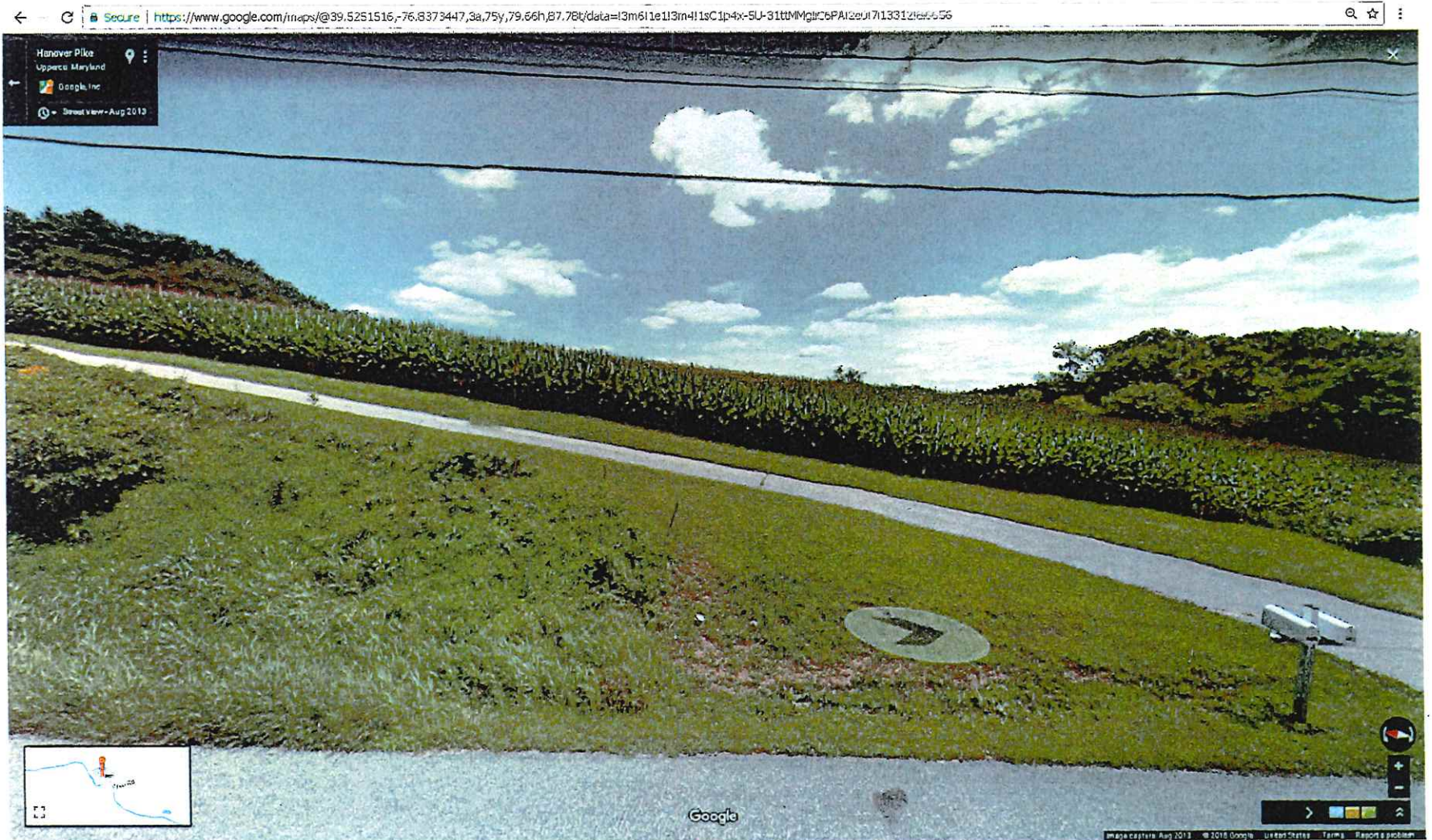
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Petitioner
CBA Exhibit

11 H



7

Petitioner
CBA Exhibit

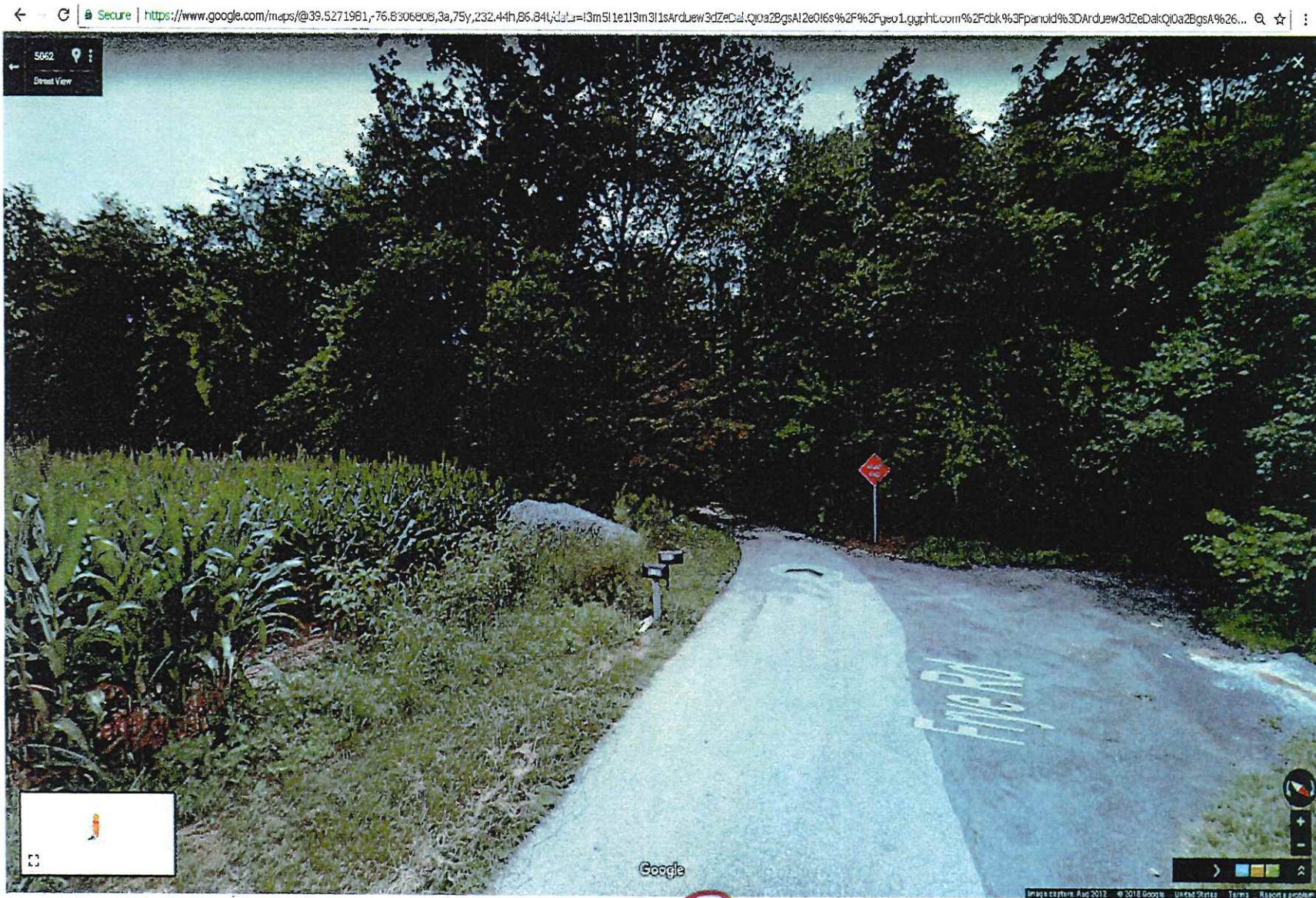
11 I



8

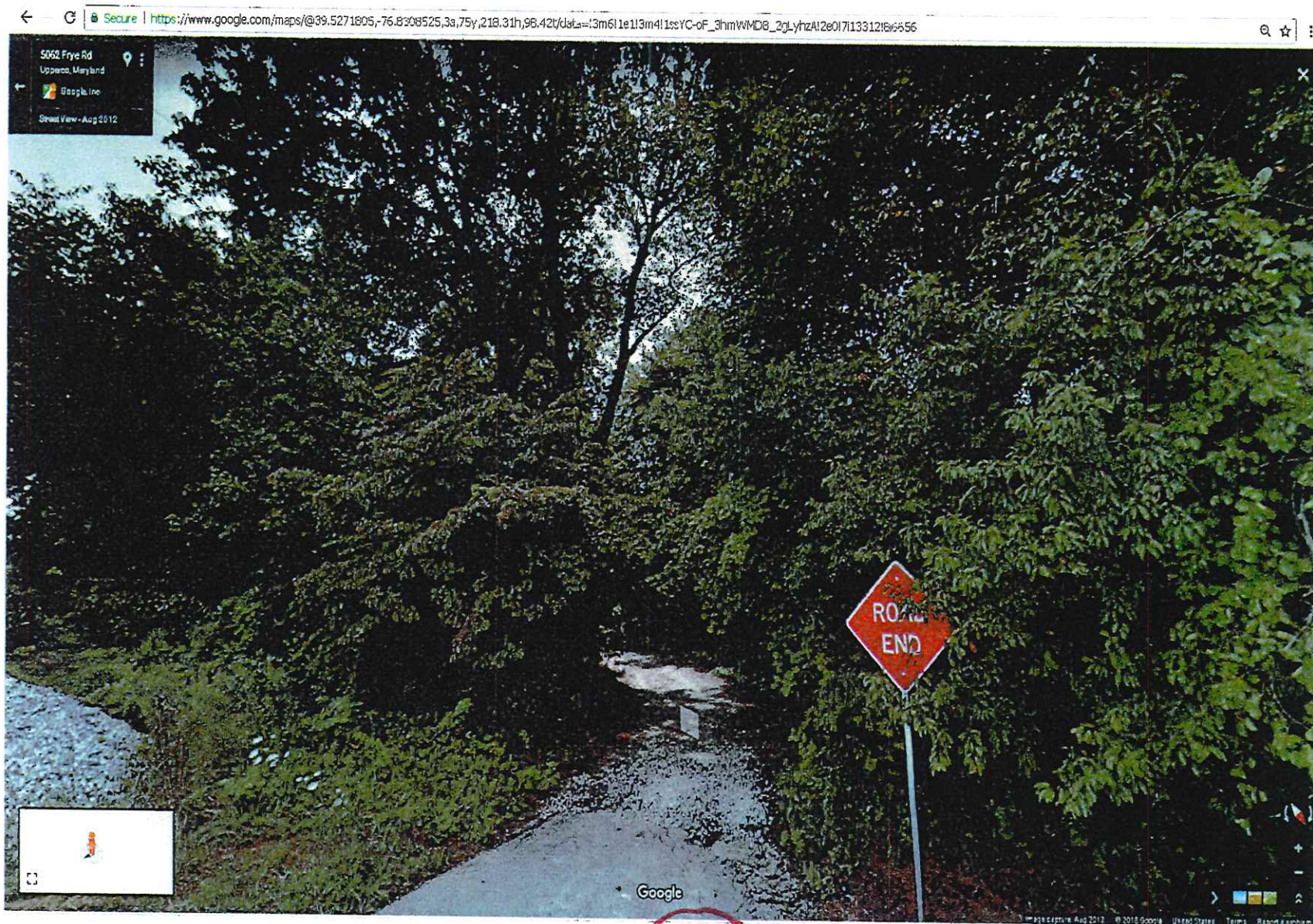
Petitioner
CBA Exhibit

115



9

Petitioner
CBA Exhibit
11K



10

Petitioner
CBA Exhibit

11L

Baltimore County Government
Department of Permits Approvals and Inspections
Development Management



Petitioner
CBA Exhibit

12

111 West Chesapeake Avenue
Towson, MD 21204

410-887-3335

January 9, 2019

D.S. Thaler & Assoc., LLC
Andrew Brown, P.E.
7115 Ambassador Road
Baltimore, MD 21244-7428

RE: SGC - Hanover
5298 Frye Road
Tracking Number: DRC-2018-00183
DRC Number: 010819B; Dist. 4C3

Dear Mr. Brown:

Pursuant to Article 25A, Section 5 (U) of the Annotated Code of Maryland, and as provided in Section 602 (d) of the Baltimore County Charter, and Sections 32-1-101, 32-3-401, and 32-3-517 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal, or modification of a license, permit, approval, exemption, waiver, or other form of permission you filed with this department.

Your request has been submitted for careful review and consideration to the Development Review Committee (DRC), which is composed of representatives from each of those departments involved in land-use decisions. These representatives are designees of the directors of these departments. The purpose of the DRC is to ensure compliance with Section 32-4-106 and Section 32-4-262 of the Baltimore County Code, and to make recommendations to the Director, Department of Permits Approvals and Inspections (PAI).

The DRC has, in fact, met in an open meeting on January 8, 2019, and made the following recommendations:

The DRC has determined, your project provisionally meets the requirements of a **limited exemption** under Section 32-4-106(a)(1)(vi).

Now that you have received this limited exemption, please proceed with building permit application.

D.S. Thaler & Assoc., LLC
SGC - Hanover
January 9, 2019
Page 2

A copy of this letter must be presented when submitting engineering/construction plans to this office, and/or when applying for a building permit.

Please note that compliance with subtitles 3, 4 and 5 of Title 4, Article 32, Baltimore County Code, is required, as is compliance with all applicable zoning regulations. Phase 2 review fees may apply, depending on the amount of site disturbance, and/or the requirement of a Public Works Agreement. Also, sidewalks are required whenever the site is within the Metropolitan District.

Herein find a Zoning Review Hearing Checklist that will serve as a guide when preparing plans for building permit applications. Please be advised, plans not meeting minimum checklist requirements will not be accepted for filing. This will consequently delay building permit approval. Please note, the "conceptual" plan required for DRC review, does not necessarily meet the checklist guidelines. Therefore, it should not be assumed that the DRC plan is acceptable for building permit applications. Should you have any questions regarding the above, please contact the Zoning Review Section at 410-887-3391.

I have reviewed the recommendations carefully, and I have determined to adopt the recommendations set forth above. It is this 9th day of January 2019, ordered and decided that the recommendations of the DRC are hereby adopted.

Should you submit an application for any permit that may be required for this project, your application will be processed subject to the conditions set forth above, and any plans, securities, or non-county permits that may be required in accordance with County, State, or Federal regulations.

Sincerely,



Mike Mohler
Director



MM: JMC:jmc

C: File

Larry Schmidt, Smith, Gildea & Schmidt LLC; 600 Washington Ave, Ste 200
SGC Power; 6865 Deerpath Road, Ste. 330, Elkridge, MD 21075

Visit the County's Website at www.baltimorecountymd.gov

LIBER 9509 PAGE 139

DECLARATION OF RIGHTS OF WAY

This Declaration of Rights of Way is made this 14th day of December, 1992, by Charles C. Campbell, hereinafter referred to as ("Declarant").

Declarant is the owner in fee simple of certain real property situate in Baltimore County, Maryland including Parcels One, Two, Three and Four of the 1st Parcel and the remainder of Parcels One and Two of the 3rd Parcel of that land which by deed dated February 28, 1977 and recorded among the Land Records of Baltimore County in Liber E.H.K. JR. 5769, folio 876, was conveyed by Chris C. Campbell to Charles Campbell, and the land which by deed dated March 5, 1973 and recorded among the Land Records of Baltimore County in Liber E.H.K. JR. 5344, folio 519, was conveyed by Jane Elizabeth Dettler to Christopher C. Campbell and Charles C. Campbell, all shown on a plat entitled Rights of Way "A", "B" and "C" Campbell Property, a copy of which is attached hereto and made a part hereof; and

WHEREAS, Declarant wishes to establish certain Rights of Way for the mutual benefit of the owners of the parcels as hereinafter stated.

NOW, THEREFORE, it is covenanted and agreed for the mutual benefit of the owners of said parcels (hereinafter referred to as the "Parcel Owners"), as herein stated, the following Rights of Way are hereby established and created subject to the provisions hereof:

1. As to Right of Way "A": Beginning for the same at a point in the center line of Hanover Pike (Route 30) in the fourth or N 3 degrees 29' W 1858' line of the 4th Parcel of the land which by deed dated September 19, 1944 and recorded among the Land Records of

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
of Baltimore County

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE
SIGNATURE CC DATE 12/15/92

Petit

Petitioner
CBA Exhibit

BA CIRCUIT COURT (Land Records) (MSA CE 62-9364) SM 9509, p. 0139. Printed 12/22/2019. Online 03/09/2005.

by CC Date 12/15/92

13

LIBER 9500 PAGE 140

Baltimore County in Liber R.J.S. 1364, Folio 82 was conveyed by John Paul George et al. to Chris C. Campbell and Leona M. Campbell, his wife, at a distance of 1815.62' from the beginning of said line, thence leaving Hanover Pike (Route 30) and the aforesaid fourth line and running in or near the center of an existing lane through the lands of the Declarant and binding on the center line of a Right of Way now created for the use in common with Parcels One, Two, Three and Four of the 1st Parcel of land, and the remainder of Parcels One and Two of the 3rd Parcel of the land, which by deed dated February 28, 1977 and recorded among the Land Records of Baltimore County in Liber E.H.K. JR. 5769, folio 876 was conveyed by Chris C. Campbell to Charles Campbell, and the land which by deed dated March 5, 1973 and recorded among the Land Records of Baltimore County in Liber E.H.K. JR. 5344, folio 519 was conveyed by Jane Elizabeth Datter to Christopher C. Campbell and Charles C. Campbell, running thence and binding on the center line of a 40' right of way the five following courses and distances: 1) N 69 degrees 37' 00" E 147.28', 2) N 74 degrees 00' 00" E 1025.86', 3) N 66 degrees 15' 30" E 297.26', 4) N 74 degrees 55' 37" E 282.52', 5) N 67 degrees 08' 00" E 52.02' running thence and binding on the center line of a 30' right of way the three following courses and distances: 1) N 3 degrees 33' 10" E 166.54', 2) N 12 degrees 45' 00" E 139.06', 3) N 3 degrees 24' 13" W 101.51' to intersect the last line of the 3rd Parcel of land in the first mentioned deed George, et al. to Campbell at a distance of 9.43' from the beginning of said line.

2. As to Right of Way "B": Beginning for the same at the end of the

4th or N 74 degrees 55' 37" E 282.52' line of Right of Way "A",

LIBER 9509 PAGE 141

running thence in or near the center of an existing lane through the lands of the Declarant and binding on the center line of a 30' Right of Way now created for the use in common with Parcel One and Parcel Two of the 1st Parcel of land which by deed dated February 28, 1977 and recorded among the Land Records of Baltimore County in Liber E.H.K. JR. 5769, folio 876 was conveyed by Chris C. Campbell to Charles Campbell, the two following courses and distances: 1) S 60 degrees 29' 15" E 56.19, 2) S 1 degree 09' 12" E 265.44' to the center line of a 20' Right of Way now created, for the use in common of said two parcels, running thence and binding on the center line of said 20' Right of Way the two following courses and distances: 1) S 50 degrees 31' 08" E 127.07' and 2) S 81 degrees 40' 52" E 385' to intersect the seventh or N 51-1/2 degrees E 42.6 perch line of the 2nd Parcel of land of the first mentioned deed, George, et al. to Campbell at a distance of 275.34' from the beginning of said line.

3. As to Right of Way "C": Beginning for the same at the beginning of the second or S 1 degree 09' 12" E 265.44' line of the above described Right of Way "B", running thence in or near the center of an existing lane through the lands of the Declarant and binding on the centerline of a 30' Right of Way now created for the use of Parcels One and Two of the 1st Parcel of land which by deed dated February 28, 1977 and recorded among the Land Records of Baltimore County in Liber E.H.K. JR. 5769, folio 876 was conveyed by Chris C. Campbell to Charles Campbell, the following course and distance: N 1 degrees 09' 12" W 47.91 to the end of the fifth or N 57 degrees 08' 00" E 52.02' line of the above described Right of Way "A".

4. The Rights of Way herein described and created shall be appurtenant to the parcels mentioned in the respective descriptions

LG669509 PAGE 42

and shall provide the means for ingress, egress and regress for pedestrian and vehicular traffic to and from the Hanover Pike (Route 30) and Frye Road for the respective parcels, and for the further purpose of installing, repairing, replacing and maintaining utilities in the Right of Way area including, but not limited to, electric, gas, telephone, water, sewer and cable lines.

5. The Rights of Way described herein shall run with the respective parcels and shall be binding on and inure to the benefit of the owners of said parcels and each of their respective personal representatives, heirs, successors and assigns.

AS WITNESS the Hand and Seal of the Declarant, the day and year first above written.

Witness:

Charles C. Campbell (SEAL)
CHARLES C. CAMPBELL, Declarant

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this 14th day of December, 1992, before me, the subscriber, a Notary Public for the State of Maryland, in and for the County of Baltimore, personally appeared Charles C. Campbell, the Declarant, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained and in my presence, signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and Notarial Seal.

Charles A. Kuebel
NOTARY PUBLIC

My Commission Expires: July 1993

-4-

EXHIBIT A

HAVERPIKE (ROUTE 30)

1815.62
ADLINE OF THE
1ST PARCEL OF
RJS 136A/82

BEGINNING OF
RIGHT OF WAY 'A'
EXISTING
BRIDGE

PARCEL FOUR OF THE 1ST PARCEL
OF EHKJR 5769/976

RIGHT
OF WAY
N 42°00'00"E 1025.86

REMAINDER OF PARCEL ONE
OF THE 3RD PARCEL
EHKJR 5769/976

BEGINNING
RIGHT OF WAY 'B'

PARCEL ONE
OF THE 1ST PARCEL

RIGHT
OF WAY 'B'

RIGHT OF WAY 'C'

REMAINDER OF
PARCEL THREE OF
THE 1ST PARCEL
EHKJR 5769/976

REMAINDER OF
PARCEL TWO
OF 3RD PARCEL
EHKJR 5769/976

PARCEL TWO OF
THE 1ST PARCEL OF
EHKJR 5769/976



RIGHTS OF WAY
'A', 'B', & 'C'
CAMPBELL PROPERTY
A SELECT DIST BALD CO. MD
DEC. 3, 1992

1 HAYTEL & ASSOC'S
Registered Professional Land Surveyors
201 Conelland Avenue
Towson, Maryland 21204

8411300 6056801

Baltimore County, Maryland Land Instrument Intake Sheet

(Type or print in black ink only—all copies must be legible)

In compliance with Baltimore County Code, 1978, Title 33, Taxation, Article III, §§3-126 through 33-140, as amended, and the Annotated Code of Maryland, Tax-Property Article, §12-101 through §12-113, as amended, and Tax-Property Article, §13-101 through §13-108, as amended, it is certified that an instrument of writing dated conveying title to, or creating liens or encumbrances upon, real or personal property is offered for record in the County. The property conveyed, or on which a lien or encumbrance is created, is identified as follows:

1	Description of Property (Check box(es) for item(s) to be indexed in land records)	Property Tax ID No.	Lot/Block	Map/Trid/Parcel No.	County Recorder's Office
		Subdivision/Tract	Lot Acreage	Prior Deed Ref.	
		Street Address (or description if partial conveyance)			
		VARIOUS PARCELS 4TH ED			
2	Transferred From	Grantor(s) (check box if additional sheets are attached)			
		CHALLES C CAMPBELL			
3	Transferred To	Grantor(s) (check box if additional sheets are attached)			
		CHALLES C CAMPBELL			
4	Type of Instrument	Deed	Assignment of Mfg/DOT	Financing Statement	Space Reserved for Circuit Court
		Deed of Trust	Contract	Other (Specify)	
5	Exemptions (Cite authority or explain briefly)	Baltimore County Exempt Status Claimed:	YES		
		Recordation Tax Exempt Status Claimed:	YES		
6	Consideration and Tax Calculations Make check payable to Baltimore County, MD (410) 867-2418	Consideration Amount		County Taxes to be Paid	
		Purchase Price/Consideration (including any new mortgage)	\$	Transfer Tax Consideration	\$ -0- x 1.6% = \$ -0-
7	Fee and Recording Instructions Make check payable to Clerk of the Circuit Court (410) 867-2650	Recording Fees		Special Recording Instructions (if any)	
		Recording Charges	\$		
8	Contact/Mail Information	Instrument Prepared By		Return Instrument To	
		Name:	Name:	Mailing Address for Tax Bill	
9	Certification	I hereby certify under the penalties of perjury that the information given above is true to the best of my personal knowledge and belief.			
		Signature: John P. Keadul Date: 15 Dec 92			
10	Assessment Information (410) 321-2299	IMPORTANT: BOTH THE ORIGINAL DEED AND A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER			
		☐ Yes ☐ No Will grantee be living at property conveyed? ☐ Yes ☐ No Is grantor currently receiving a homeowners' tax credit? ☐ Yes ☐ No Is property conveyed subject to agricultural transfer tax? If yes, enter amount: _____ ☐ Yes ☐ No If agricultural assessment on conveyance is to continue, have you attached a letter of intent? ☐ Yes ☐ No Partial conveyance? If yes, amount of acreage transferred: _____ List improvements conveyed: _____ If subdivision occurred after July 1, indicate former property tax ID number: _____			
		Optional Expedient Information ☐ Yes ☐ No Was property surveyed? If yes, attach copy of survey. If partial conveyance, balance of acreage: _____ Complete description of property conveyed (subdivision, lot, block, section, plat ref., acreage): _____ Location and improvement address: _____			
Assessment Use Only - Do Not Write Below This Line Terminal Verification ☐ Deed Proctor ☐ Recordation Fee 62-9364 SM 9509, p. 0138. Printed and Recorded 03/09/2005. Trans. Process Verification ☐ Assigned Property No. _____ ☐ Whole ☐ Desc. ☐ Part					

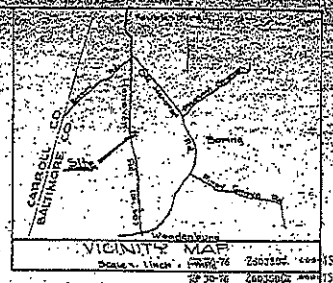
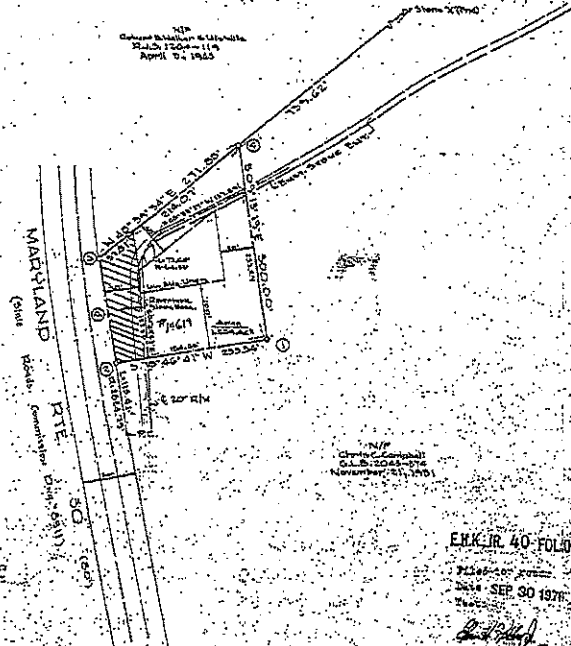
TRANSFER TAX NOT REQUIRED
BALTIMORE COUNTY ATTORNEY
Date 12/16/92
Doc. 110

0 RC/F 21.0
DC IMP 2.0
RECLAR
SH CLERK 23.0
H45720 0002 R02 T13
12/15

COORDINATES		
No.	NORTH	EAST
1	4295.61	4257.00
2	4295.10	4060.01
3	4415.17	4050.66
4	4574.75	4241.01

COORDINATES ARE APPROXIMATE

CURVE DATA			
L	R	Δ	L
1	225.79	27° 11'	163.61



GENERAL NOTES

1. GROSS AREA 125,000
2. NUMBER OF LOTS 1
3. EXISTING ZONING ZOT
4. DENSITY 1

All requirements of the Maryland State Department of Health and Baltimore County Department of Health pertaining to sewerage systems must be complied with prior to approval of building applications.

TITLE REFERENCE
SARUM CLAYROAD
TO
CHURCH CAMPBELL & MARY LEONARD
G.L.D. 2245 - 374
NOVEMBER 21, 1920

ENCLOSURE 40 FOLD 4

FILED 10 1000
SEP 30 1978

CLERK

CAMPBELL PROPERTY

MANUEL ROYAL CORP.
ELECTION DISTRICT, BALTIMORE COUNTY, MD.
SCALE 1/4" = 100' DATE 11/1/78

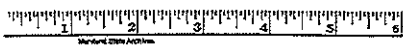
W. A. Campbell, None DM
Bal. Vol. Clerk
Plotted
Registered, Paul J. 2277
Exam. Master
Exam. Vol.

APPROVED FOR BALTO. CO. HEALTH DEPT.	APPROVED FOR BALTO. CO. PLANNING BOARD
<i>Desa...</i>	<i>Thomas E. Baker</i>
DATE: 11/2/78	DATE: 11/2/78

OWNER'S CERTIFICATE
The requirements of section 50 to 52, ARTICLE 17 of the annotated code of Maryland, 1957 edition COMPLY WITH THE COURT AND TITLE CLERKS OF THE CIRCUIT COURT OF BALTIMORE COUNTY in the making of this plat and the setting of markers have been complied with.
<i>James C. Campbell</i>
DATE: 11/2/78

SURVEYOR'S CERTIFICATE
I, Walter J. Finkbeiner, a Registered Professional Land Surveyor of the State of Maryland, do hereby certify that the above plat has been laid out and the plat names of lots have been ascertained in accordance with the subdivision of land laws of the State of Maryland and the laws of the State of Maryland.
<i>Walter J. Finkbeiner</i>
DATE: 11/2/78

RTF INC
111 EAST MAIN ST.
BALTIMORE, MD 21201
TELEPHONE: 333-1234



**Eco-Science
Professionals, Inc.**
Consulting Ecologists



P.O. Box 5006 Glen Arm, Maryland 21057

Telephone (410) 832-2480 Fax (410) 832-2488

Henry A. Leskinen

**Principal/Ecologist
Eco-Science Professionals, Inc.**

Active Registration: Year First Registered/Discipline

1993 - USACOE Certified Wetland Delineator Certification # WDCP93MD0310006A
1993 - MD DNR Forest Conservation Act - Qualified Professional

Education: Degree(s)/Year/Specialization

Bachelor of Science w/Honors/1983/Biology, St. Marys College of Maryland

Experience & Qualifications:

Mr. Leskinen, a U.S Army Corps of Engineers Certified Wetland Delineator, has worked as a natural resources consultant for 33 years, the last 27 years for Eco-Science Professionals, Inc. He has participated and managed over 1600 wetland delineations projects throughout the Mid-Atlantic region. He has obtained numerous Section 404 and Maryland Nontidal Wetlands permits for clients and maintains an excellent relationship with regulatory personnel. He has prepared wetland mitigation plans for both nontidal and tidal wetlands. Mr. Leskinen is certified to perform Wetland Evaluation Techniques by the Federal Highway Administration and is well-versed in the Rapid Bio-Assessment Protocol for Rivers and Streams II and the updated New England Wetland Functional Assessment techniques. In addition, Mr. Leskinen has completed over 650 Forest Stand Delineations and Conservation Plans and maintains a thorough knowledge of current environmental regulations. He has provided expert testimony before numerous regulatory forums.

Expert Testimony:

Mr. Leskinen has been accepted as an expert in wetland delineation, forest conservation, and wildlife issues. He has testified numerous times in the following forums: Baltimore County Zoning Commissioner, Baltimore County Board of Zoning Appeals, State Board of Public Works, Maryland Public Service Commission. Selected projects include:

1. Bartholme Property

Provided expert testimony on wetland, forest buffer, and forest conservation issues before Baltimore County Zoning Commissioner.

2. Kaufman-Holdridge Property

Provided expert testimony on wetland, forest buffer, and forest conservation issues before Baltimore County Zoning Commissioner.

**Petitioner
CBA Exhibit**

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3. Maryvale Preparatory School

Provided expert testimony on wetland, forest buffer, and forest conservation issues before Baltimore County Zoning Commissioner.

4. Galloway Creek Marina

Provided expert testimony on wetland and Chesapeake Bay Critical Area issues before Baltimore County Zoning Commissioner.

5. Aslan Realty Property

Provided expert testimony on forest conservation issues before Baltimore County Zoning Commissioner.

6. Holdridge Property

Provided expert testimony on wetland, forest buffer, and forest conservation issues before Baltimore County Zoning Commissioner.

7. Vernon Smith Property

Provided expert testimony on wetland, forest buffer, and forest conservation issues before Baltimore County Zoning Commissioner.

8. Beachwood North

Provided testimony for tidal wetlands permit before State Board of Public Works

9. Sutton Property

Provided expert testimony on wetland, forest buffer, and forest conservation issues before Baltimore County Board of Zoning Appeals.

Selected Additional Training:

Wetland Mitigation Banking Workshop. Sponsored by the Maryland Department of the Environment. February 2015.

Hydric Soils and Use of Field Indicators of Hydric Soils in the United States. Sponsored by the U.S. Army Corps of Engineers. March 2005

U.S. Army Corps of Engineers 2nd Maryland Consultants Workshop, March 2004

Hydrogeomorphic Wetland Classification and Assessment Techniques. U. S. Army Corps of Engineers, February, 1997.

Stream Restoration Workshop, Ecosystem Recovery Institute and Brightwater Consulting, October 1990.

Unified Federal Wetland Delineation Training Course, Wetland Training Institute, April 1989.

A New Tree Biology, Appalachian State University, November 1988.

Wetland Evaluation Techniques (WET II) Training Course, Federal Highway Administration, February 1989.

MD Department of Natural Resources Non-Tidal Wetlands Training Course, July 1987.

Affiliations:

Member, Town of Manchester, Maryland Planning and Zoning Commission, 2002-Present
Member, Town of Manchester, Maryland Tree Commission, 1999-Present
Member, Town of Manchester, Maryland Board of Zoning Appeals, 1999-2002
Member, Maryland Ornithological Society

Teaching Experience:

Wetland Identification and Forest Buffer Establishment, October 2017 - training workshop provided to in-house staff at Bohler Engineering

Basic Tree Identification. June 2005. Class taught to Carroll County Chapter of the Maryland Society of Land Surveyors.

Gunpowder Tours, 1994-1999 - Mr. Leskinen served as a nature guide, leading plant and bird identification walks through Gunpowder Falls State Park. This work was done in conjunction with Mr. Wally Vait of On The Fly fishing shop.

Selected Project Experience:

Fort George G. Meade, Anne Arundel County, MD. Performed rare, threatened, and endangered (RTE) survey of 1,600 acre military installation under contract to the Nature Conservancy. Flora and fauna lists and vegetative community assessments were performed for the entire installation. The survey identified a plant that was believed to have been extirpated in the State of Maryland.

MD DNR Wetland Mapping Interpretation, Maryland's Eastern Shore. Project manager for contract with the Maryland Water Resources Administration to provide services to groundtruth aerial photographic interpretations of 164 wetlands in five eastern shore counties of Maryland. Tasks performed included: dominant and co-dominant vegetative community identification by strata, soil boring interpretation and identification, and Cowardin wetland classification. Each of the 164 sites included a wetland and upland sample point.

Taneytown Transmission Line, Carroll County, MD. Project manager performing and overseeing services for a natural resource assessment and wetland delineation of proposed 5.5 mile overhead utility right of way. Issues of concern included wetlands, streams, regulated buffers, potential habitat impact and RTE survey. Work performed for Allegheny Power.

MD Route 25 Geometric Improvements, Baltimore County, MD. Performed wetland delineation and forest stand delineation adjacent to approximately 5 miles of highway. Resource assessment was needed to facilitate geometric improvements to highway. Work performed for MD State Highway Administration

Bishop's Meadows, Baltimore County, MD Performed wetland delineation and forest stand delineation for proposed residential subdivision site in eastern Baltimore County. Prepared forest conservation plan and obtained State and Federal wetland permits for proposed resource impacts.

Northwest Substation, Baltimore County, MD. Project manager performing and overseeing services for a natural resource assessment and wetland delineation of proposed substation expansion. Issues of concern included wetlands, streams, regulated buffers, and forest conservation. Work performed for BGE.

Mt. Washington Substation, Baltimore County, MD. Project manager performing and overseeing services for a natural resource assessment and wetland delineation of proposed substation expansion. Issues of concern included wetlands, streams, regulated buffers, and forest conservation. Work performed for BGE.

Jennings-Ridgely 138 kV Transmission Line Rebuild, WV-MD. Project manager performing and overseeing services for a natural resource assessment and wetland delineation within a 22 mile overhead utility right of way. Issues of concern included wetlands, streams, regulated buffers, potential habitat impact and RTE survey. Worked performed for Allegheny Power.

Shadow Knoll, Baltimore County, MD Performed wetland delineation and forest stand delineation and prepared forest conservation plan for proposed residential subdivision site in Baltimore County.



BARRETT ENERGY RESOURCES GROUP

PO Box 1004 | CONCORD, MA 01742 | 339-234-2696

www.barrettenergygroup.com

STEPHEN BARRETT, LEED Accredited Professional

Combining an extensive background in environmental policy with a pragmatic approach to developing sustainable energy projects, Stephen Barrett draws on 20+ years' experience to help identify, evaluate, and facilitate strategic environmental plans and renewable energy opportunities at airports in New England, across the United States, and beyond.

Steve presently serves a wide range of public and private sector clients including: supporting the United Nation's International Civil Aviation Organization (ICAO) as a technical advisor for airport solar projects being constructed in Kingston, Jamaica, and Mombasa, Kenya; advising the design team at Salt Lake City International Airport for integrating renewable energy into the 10-year, \$1 billion terminal redevelopment program; serving the Rocky Mountain Institute's team on the Airport Cooperative Research Program (ACRP) project the Airport Microgrid Toolkit; and serving solar developers proposing project at or near airports to comply with FAA design standards.

With a strong background in project siting, regulatory compliance, and financial analysis, Steve helps clients create commonsense solutions that meet environmental and economic objectives within a real-world framework.

REPRESENTATIVE PROJECT EXPERIENCE

- FAA Solar Guide, Federal Aviation Administration, 2010; Project Manager and Lead Author
- Seattle-Tacoma International Airport, Renewable Energy Feasibility for On-Site and Off-Site Projects, 2016-17,
- General Mitchell International Airport, Solar Feasibility Study for Milwaukee County, 2014; Project Manager
- Developing the Business Case for Renewable Energy at Airports, ACRP, 2016; Principal Investigator
- Siting and FAA approval, 25 MW Solar Project at Indianapolis International Airport, 2012



PROFESSIONAL EXPERIENCE

2016-Present	Barrett Energy Resources Group
2016-Present	United Nation's International Civil Aviation Organization
2003-Present	Minuteman Wind
2009-2016	HMMH Consultants
2006-2009	Blue Wave Strategies
1998-2006	Epsilon Associates
1995-1998	Massachusetts Coastal Zone Management

CERTIFICATION & AFFILIATION

- LEED-AP since 2008
- Environmental Business Council of New England, Board Director
- Marine Renewable Energy Collaborative of New England, Board President

EDUCATION

- BA, Union College, International Relations
- MA, University of Virginia, Environmental Science

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BARRETT ENERGY RESOURCES GROUP

STEPHEN B. BARRETT, PEER-REVIEWED ARTICLES AND PUBLICATIONS

- **Renewable Energy for Aviation: Practical Applications to Achieve Carbon Reductions and Cost Savings**, Barrett, S., et al. International Civil Aviation Organization. November 2017.
- **Financing Aviation Emissions Reductions**, Barrett, S., et al. International Civil Aviation Organization. November 2017.
- **Regulatory and Organizational Framework to Address Aviation Emissions**, Barrett, S., et al. International Civil Aviation Organization. November 2017.
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Solar Photovoltaic Glare Assessment

**MD Community Solar – Hanover Pike
5298 Frye Road, Reisterstown, MD**

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November, 2018

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July, 2019



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EXECUTIVE SUMMARY

Purpose of Report

SGC-Power is developing a community solar photovoltaic (PV) installation at 5298 Frye Road in Reisterstown, Maryland. This report details the potential impact of solar glare due to PV panel reflections on nearby homes and roadways. The results are based on a detailed annual geometric analysis of the PV installation configuration, observation point locations, and sun movement.

Glare Overview

While solar PV panels are designed to absorb as much light as possible, various factors can result in some amount of light reflected. The quantity of light reflected by a material depends on the amount of incoming sunlight, the position of the sun relative to the panel, and various panel materials and environmental properties. The relative positions of the sun to the panels to the observer tends to be the strongest determining factor. The farther a panel is tilted away from the sun, the greater its potential to reflect light.

This analysis considers two types of glare. Higher magnitude glare, hereafter termed "yellow glare", has the potential to cause a temporary after-image in the vision of observers. Lesser magnitude glare hereafter termed "green glare", may still be visible as a reflection but is unlikely to cause a temporary after-image or cause any impairment.

Components Under Consideration

- One photovoltaic ("PV") array with fixed-tilt modules oriented 180° (due south) and tilted 25°
- Twelve neighboring homes, each comprising a single discrete Observation Point (OP).
- Two roadways each comprising a "Route" in the analysis:
 - Hanover Pike
 - Frye Road
- A single discrete OP located at the break in the tree-line along Hanover Pike (OP13).

Assessment & Findings

The glare analysis was performed using ForgeSolar's online application GlareGauge. GlareGauge meets all glare analysis standards required by the U.S. Federal Aviation Administration. GlareGauge solely considers characteristics of the PV array, movement of the sun, and relative positions of observers. It does not account for terrain, vegetation or other structures positioned between the PV array and the observer that might obstruct the observer's view of the glare.

The findings were as follows:

- **Absent mitigation from vegetation and terrain, neighbors and motorists to East, South and West of the array may experience glare mid-February through late-October.**
 - Neighboring homes northwest of the array could experience morning glare between 6:00-7:00am early-March through mid-October (7:00-8:00am during daylight savings time).
 - Neighboring homes east of the array could experience evening glare between 4:45-6:30pm mid-February through late-October (5:45-7:30pm during daylight savings time).
 - Motorists on Frye Rd could experience evening glare from 5:00-6:15pm mid-March through early-October (6:00-7:15pm during daylight savings time).



- Motorists on Hanover Pike could experience morning glare only when directly west of the array from 5:30-6:50am late-March through mid-September (6:30-7:50am during daylight savings time).
- Four of the twelve neighboring residences have either no potential for glare, or less than five minutes total annual duration of potential glare, due to their relative position to the array and/or distance from the array.

Mitigation Strategies

- **Glare is heavily mitigated by existing tree cover and/or terrain.**
 - All residences with potential for glare, except for one, have existing trees fully obstructing their view of any glare.
 - Portions of the PV array situated at elevations above that of an observation point are obscured by terrain.
 - Landscaping will be planted along the perimeter of the site to mitigate any visibility of the array that is not already mitigated by existing site conditions. A Landscape Compliance Plan will be submitted to the county for approval to ensure this.
 - Solar panels used on this project will utilize anti-reflective coatings to further reduce the possibility of light reflection.

REFLECTIVITY & SOLAR GLARE

Overview of Reflectivity & Glare

Light can reflect from numerous natural and manmade surfaces. Common reflective surfaces include metal buildings, car windshields, water bodies like lakes and ponds, and snow. The amount of light reflected by a surface is dependent on the amount of incoming sunlight, the position of the sun relative to the surface, environmental conditions and various surface characteristics. For example, if the surface is smooth and shiny, the reflection is more concentrated and referred to as specular. If the surface is rough, the reflection is scattered or diffuse. This concept is illustrated by glare from a lake, where glare may be seen on a calm lake one day and not seen on a windy lake the next. The concept of specular and diffuse reflections is shown in Figure 1 below.

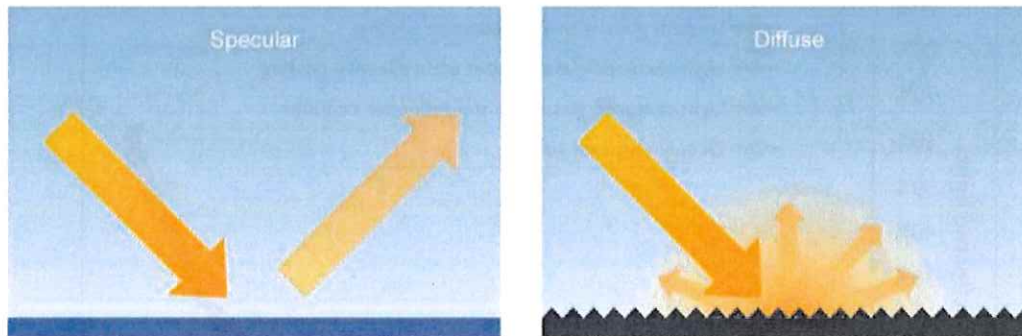


FIGURE 1 – SPECULAR VS DIFFUSE REFLECTIONS

Solar panels use photovoltaic (PV) technology which generates electricity from light, so the panels are designed to maximize absorption of light. Any light that is not absorbed and is reflected is wasted. This is different from concentrating solar power technology (CSP), which uses mirrors to reflect the sun's heat to a generator produce power. Figure 2 below illustrates the difference between these technologies. CSP is NOT being proposed for this project.

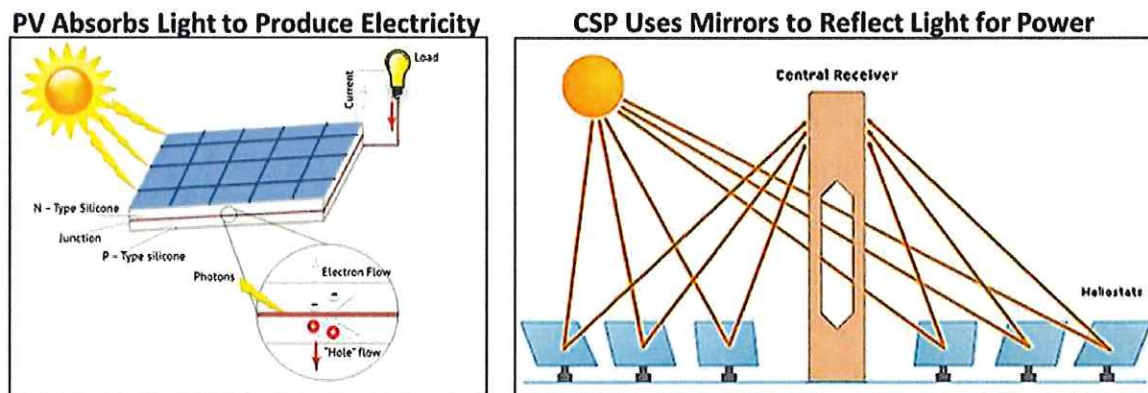


FIGURE 2 – PHOTOVOLTAIC VS CONCENTRATING SOLAR TECHNOLOGIES



The photovoltaic panels utilize smooth glass used to allow sunlight to pass through the glass into to the solar cells. This can, under certain conditions, increase the potential for glare. However, Figure 3 below shows that the relative position of the sun to the panels is the factor with the greatest impact. A panel that absorbs >90% of incoming sunlight may reflect light when the incidence angle between the panel normal and the sun is greater than 60°, such as during sunset and sunrise for panels with low tilt³. In other words, the farther a panel is tilted away from the sun, the greater the proportion of reflected light. This is no different from the many common reflective surfaces noted earlier. Anti-reflective coatings (ARC) and surface texturing can reduce the ocular impact of glare. ARC will be used on this project.

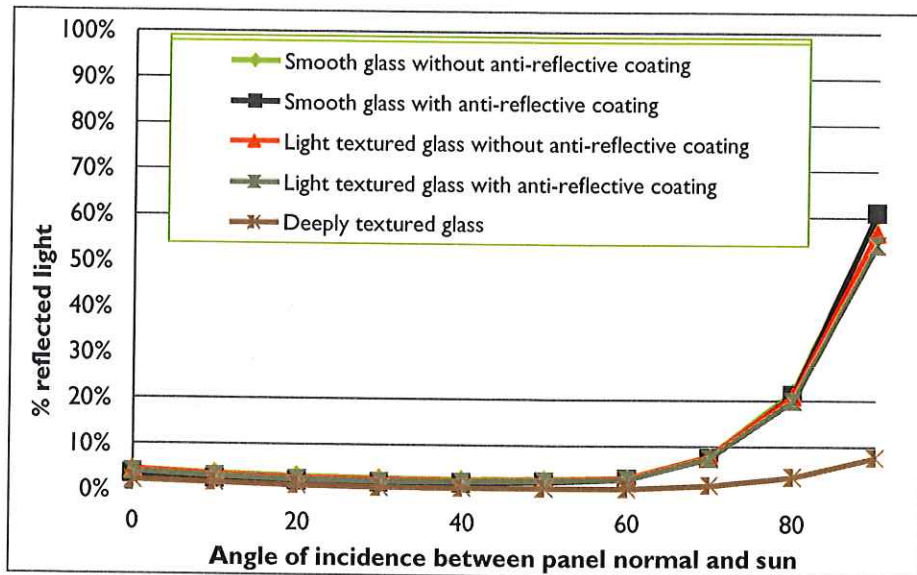


FIGURE 3 - PERCENT OF LIGHT REFLECTED AS A FUNCTION OF INCIDENCE ANGLE. INCIDENCE ANGLE LIES BETWEEN VECTOR TOWARD SUN AND PANEL NORMAL. PANELS WITH VERY LOW REFLECTIVITY CAN STILL CAUSE GLARE WHEN THE INCIDENCE ANGLE IS LARGE, SUCH AS IN THE MORNING AND EVENING.
SOURCE: [HTTPS://SHARE.SANDIA.GOV/PHLUX/SGHAT/REFLECTIVITY-DATA/](https://share.sandia.gov/phlux/sghat/reflectivity-data/)

² Ho, C. K., Ghanbari, C. M., and Diver, R. B., 2009, Hazard Analyses of Glint and Glare from Concentrating Solar Power Plants, SAND2009- 4131C, in proceedings of SolarPACES 2009, Berlin, Germany, Sept. 15-18.

³ <https://share.sandia.gov/phlux/sghat/reflectivity-data/>

Quantifying Glare

Glint is defined as a momentary flash of bright light often caused by sunlight reflecting off a moving source such as a passing car. On the other hand, glare is defined as a continuous source of bright light and is generally associated with stationary objects, which, due to the slow relative movement of the sun, will reflect light for a longer duration. Accordingly, this Assessment will use the term “glare” when discussing solar reflections. The magnitude of reflected irradiance (i.e. the amount of light reflected) determines the level of ocular (i.e. visual) impact.

Glint and glare are separated into three categories, based on their ocular impact:

- “Green” glare has low potential for after-image; when viewed for the average amount of time it takes the human eye to blink, the observer will not experience flash blindness⁴.
- “Yellow” glare has the potential to cause temporary after-image (flash blindness), which can impair or distract observers.
- “Red” glare has the potential to cause retinal burn and permanent eye damage. This requires a focusing of light and is not seen with solar panels, due to their lack of curvature.

The classifications correspond with the following figure:

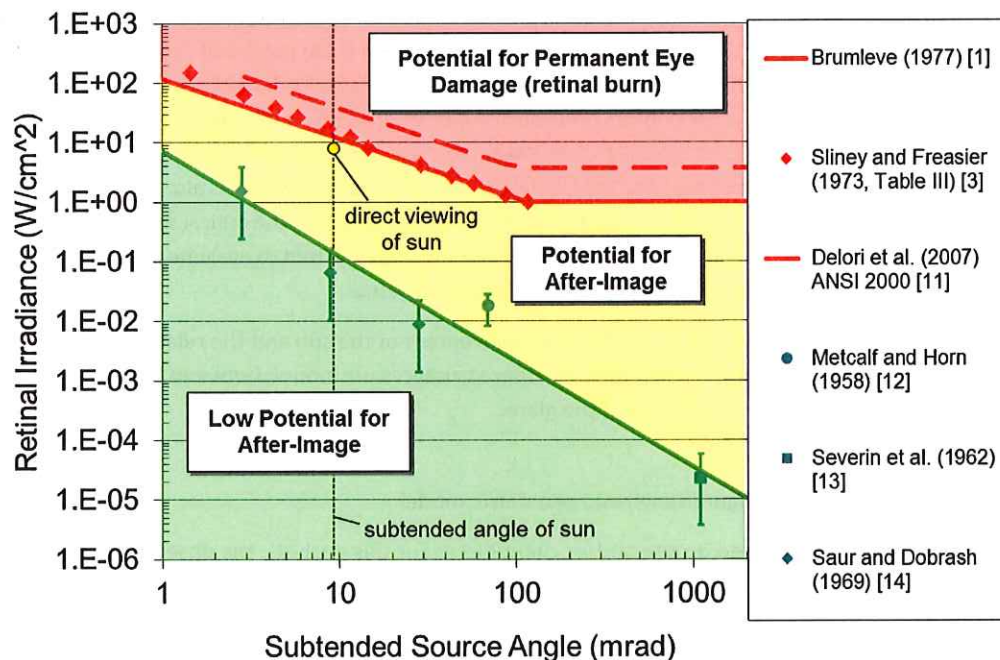


FIGURE 4 - GLARE HAZARD PLOT DEPICTING OCULAR IMPACT REGIONS⁵

⁴The Federal Aviation Administration defines flash blindness as “Generally, a temporary visual interference effect that persists after the source of illumination has ceased.” (FAA Order 7400.2f)

⁵Ho, C. K., Ghanbari, C. M., and Diver, R. B., 2011, Methodology to Assess Potential Glint and Glare Hazards from Concentrating Solar Power Plants: Analytical Models and Experimental Validation, *ASME J. Sol. Energy Eng.*, 133.



Note that these classifications serve only as a guide for quantifying glare. The ocular impact of solar glare can be influenced by environmental, physical and human factors such as eye size, humidity, etc. Consequently, green glare which causes no after-image in one observer, may adversely affect another observer with a temporary after-image under the right circumstances. Distance also plays a role in ocular impact. As shown in Figure 2 above, glare severity is dependent on the retinal irradiance and the subtended angle of the glare source (i.e. glare spot size). Retinal irradiance does not change with distance, but the subtended source angle decreases as distance increases. Accordingly, the further an observer is from the array, the lower the severity of glare experienced. For closer observers, the maximum value of the subtended source angle is limited by the overall size of the array.

ASSESSMENT METHODOLOGY

GlareGauge

This glare analysis was performed using ForgeSolar's online application GlareGauge, found at www.forgesolar.com and owned and operated by Sims Industries. GlareGauge relies on the Solar Glare Hazard Analysis Tool (SGHAT) technology built by Sandia National Laboratories (The app developer is a co-inventor of SGHAT). GlareGauge assesses potential glare for each minute of the year and provides quantified data on when and where glare occurs, as well as its ocular impact. GlareGauge meets all glare analysis standards required by the U.S. Federal Aviation Administration. In fact, in 2013, the Federal Aviation Administration (FAA) published "Interim Policy, FAA Review of Solar Energy System Projects on Federally-Obligated Airport," which sets forth methods for assessing glare and the standards for determining impact for projects proposed on airport property. It requires the use of modeling to assess glare and directs project proposers to the Solar Glare Hazard Analysis Tool (SGHAT) which was developed by the US Department of Energy at the request of the FAA. The US Department of Defense (DOD) has also adopted SGHAT and the associated requirements to analyze glare under Instruction (DODI) 4165.57. Given the critical safety issues associated with aviation, the model produces a highly credible result that is being used to evaluate other glare sensitive receptors. For this analysis, SGHAT version 3 (licensed as GlareGauge) was used.

GlareGauge solely considers characteristics of the PV array, movement of the sun and the relative positions of observers. It does not account for terrain, vegetation or other structures positioned between the PV array and the observer that might obstruct the observer's view of the glare.

Methodology

1. Define the PV array location, configuration(s) and geometric model.
2. Define key observation points based on site and/or client input. For this analysis, the observation points chosen include residences and businesses on all neighboring properties.
3. Perform quantitative geometric analysis to determine the timing and amount of glare for observation points.
 - a. Model the sun as a conical beam of light which is reflected across the solar panels. The model accounts for the size of the sun, since glare can occur if even a small portion of sunlight hits the panels.
 - b. Use site specific annual sun path data (discussed and defined in the Sun Movement section of this report) to calculate the position of this conical beam of light for each minute of the year.
 - c. Perform calculations to determine the amount of sunlight reflected by the PV array for each minute of the year.
 - d. Perform analysis to determine whether an observer at can "see" the reflected sunlight on the panels at the designated observation points.
 - e. Quantify which minutes of the year yield potential for glare at each observation point, as well as the amount/severity of this glare.



4. Review physical obstructions and other mitigating factors for affected observation points.
5. If necessary, perform sensitivity analysis on PV site to explore alternate configurations (azimuth orientation or tilt) to reduce glare.

Assumptions

The GlareGauge tool makes several assumptions worth noting (from the SGHAT technology User's Manual on the Sandia National Laboratories website):

1. "[GlareGauge] does not rigorously represent the detailed geometry of a system; detailed features such as gaps between modules, variable height of the PV array, and support structures may impact actual glare results. However, we have validated our models against several systems, including a PV array causing glare to the air-traffic control tower at Manchester-Boston Regional Airport and several sites in Albuquerque, and the tool accurately predicted the occurrence and ocular impact of glare at different times and days of the year."
2. "The ocular hazard predicted by the tool depends on many environmental, optical, and human factors including observer eye characteristics, angle of view, and typical blink response time, which are uncertain and vary. We provide input fields and typical ranges of values for these factors so that the user can vary these parameters to see if they have an impact on the results. The speed of SGHAT allows expedited sensitivity and parametric analyses."
3. Geo-coordinates rely on the WGS84 datum to represent the Earth.
4. Times associated with glare are denoted in Standard time. For Daylight Savings, add one hour.
5. Several calculations utilize the PV array centroid, rather than the actual glare spot location, due to algorithm limitations. This may affect results for large PV footprints.
6. Hazard zone boundaries shown in the Glare Hazard plot are an approximation and visual aid. Actual ocular impact outcomes encompass a continuous, not discrete, spectrum.

Further details on the methodology used in this assessment can be provided upon request.

PROJECT LOCATION & PATH OF SUN

Solar Array Footprint & Configuration

A single solar array is included in this assessment. The array has panels tilted 25° above horizontal, oriented 180° from true north (due south). It's tilt and orientation are fixed throughout the year. The array is located at 5298 Frye Road in Reisterstown, Maryland. The site ranges in elevation between 570 ft. and 635 ft. above mean sea level (amsl). The PV panels have a height above ground of 4 ft. which represents the panel centroid.

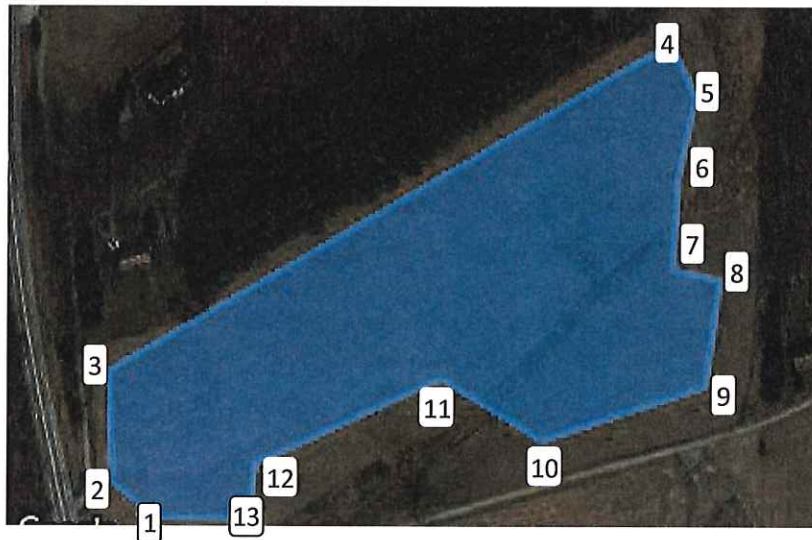


FIGURE 5 – PV ARRAY INSTALLATION FOOTPRINT

TABLE 1 –ARRAY VERTEX LOCATIONS

Vertex	Latitude deg	Longitude deg	Ground elevation ft	Height above ground ft	Total elevation ft
1	39.524967	-76.836785	577.80	4.00	581.80
2	39.525124	-76.837043	580.00	4.00	584.00
3	39.525629	-76.837064	599.27	4.00	603.27
4	39.527121	-76.833742	633.50	4.00	637.50
5	39.526881	-76.833591	623.03	4.00	627.03
6	39.526492	-76.833699	603.48	4.00	607.48
7	39.526094	-76.833720	598.38	4.00	602.38
8	39.526045	-76.833441	603.03	4.00	607.03
9	39.525565	-76.833527	607.18	4.00	611.18
10	39.525316	-76.834493	588.33	4.00	592.33
11	39.525598	-76.835093	585.90	4.00	589.90
12	39.525209	-76.836198	580.56	4.00	584.56
13	39.524961	-76.836231	570.40	4.00	574.40

The vertex locations and elevations were derived from data provided on Forge Solar's website.



Sun Movement

Analyzing glare on a minute-by-minute basis is an important step in ensuring the entirety of the sun's path is considered when predicting glare. Because the position of the sun changes daily as well as seasonally, glare not evident in the summer months could manifest in the winter, and vice versa. Figure 4 illustrates the range of movement of the sun throughout the year for the array location. The azimuth represents the horizontal angle between the sun and true north. For example, a sun position of due south has an azimuth of 180°. In the northern hemisphere, the sun rises and sets farther southward during the winter and farther northward during the summer. In the southern hemisphere, the reverse occurs.

TABLE 2 – RANGE OF SUN POSITION, BASED ON SOLSTICES

Date	Azimuth at Sunrise	Azimuth at Sunset	Elevation at Solar Noon
21 Jun.	58°	301°	73°
21 Dec.	121°	238°	27°

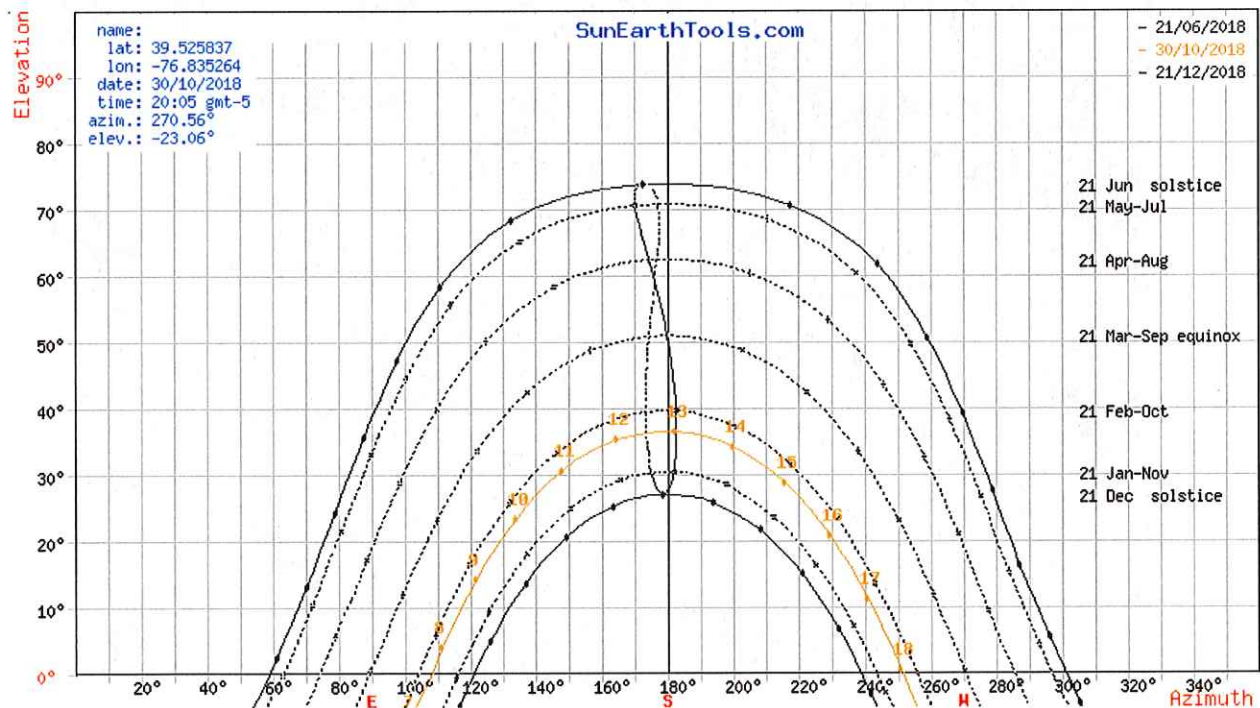


FIGURE 6 - RANGE OF AZIMUTH ANGLES FOR WINTER AND SUMMER SOLSTICES (SUNRISE TO SUNSET)

OBSERVATION POINTS

Nearby Structures & Roads

Various locations around the PV arrays were included in the analysis to determine if glare might be visible to neighbors and motorists at those locations. In total, 13 discrete observation points were chosen to model nearby structures encompassing neighboring homes and businesses. Barns and similar non-inhabited structures were not included in the analysis. Since reflected glare travels outward from the array in a linear fashion, observers farther away from the array, but aligned with a closer observer, will experience similar levels of glare as the closer observer although visibility may decrease with distance. As such, observation points represent and account for points farther away from the array, negating the need to include more distant structures within the same spoke-line. Two routes were also modeled to represent Hanover Pike and Frye Rd.

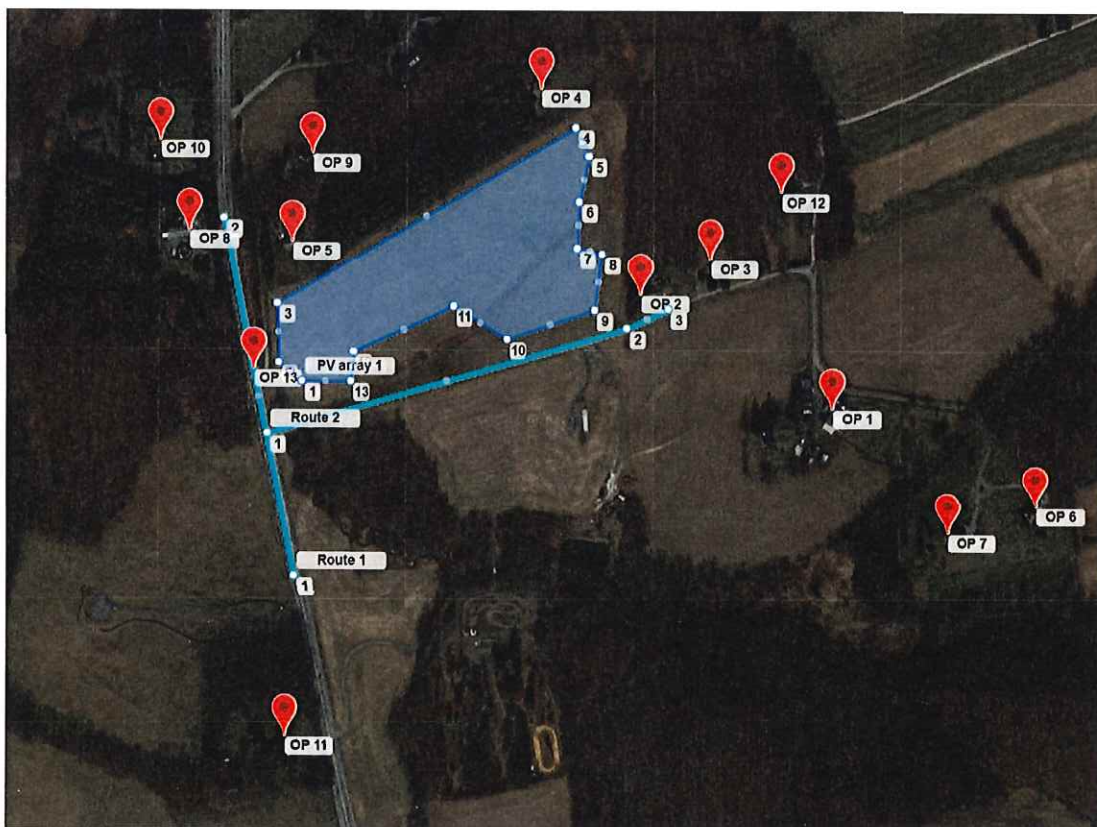


FIGURE 7 — OBSERVATION POINTS MODELING NEARBY STRUCTURES AND ROADWAYS

Mitigating Factors

Glare is mitigated by the relative position of the observer to the array. In its report "Evaluation of Glare as a Hazard for General Aviation Pilots on Final Approach (Rogers et al., 2015), the FAA states that sources of glare may be potentially mitigated if the angle of the glare is greater than 25° deg from the direction that the pilot is looking in. This analysis will indicate observation points for which their relative position to the array negates their view of reflected light. Glare is also mitigated when the view of the glare is blocked by an obstruction located in between an observation point and the array. Obstructions come in three primary forms; existing trees and vegetation, existing structures like buildings and signs, and terrain. Observers at lower elevations relative to the PV array may have their view of the array obstructed by the rising ground elevation and/or the array's support structure.



ASSESSMENT RESULTS

This section provides a review of the results for each observation point analyzed and then examines glare mitigating factors to determine whether the solar panels are visible from each observation point at the dates and times glare is expected. For full analysis data and results, please see Attachment 1.

1. "NSE006-HNVR Hanover (Glare Analysis) 20181116.pdf"

Specifically, Attachment 1 provides additional charts that elaborate on:

- The daily durations of predicted glare
- The glare severity prediction (based on retinal irradiance and subtended source angle)

Results Overview

A table summarizing the results from the glare analysis is below. It shows the total number of minutes per year of potential glare for each observation point. It is important to remember that these results do not consider whether view of this glare will be visible or is obstructed by existing trees, buildings and/or terrain.

Table 3 – Predicted Annual Glare Results

PV array 1 potential temporary after-image

Component	Green glare (min)	Yellow glare (min)
OP: OP 1	0	4419
OP: OP 2	0	12021
OP: OP 3	0	5528
OP: OP 4	0	0
OP: OP 5	0	3387
OP: OP 6	0	3123
OP: OP 7	0	2543
OP: OP 8	0	544
OP: OP 9	0	5
OP: OP 10	0	0
OP: OP 11	0	0
OP: OP 12	0	2390
OP: OP 13	0	3948
Route: Route 1	0	1505
Route: Route 2	0	6547

Table 3 shows that nine of the thirteen observation points have potential for glare (for longer than 5 minutes annually) that's within the range to cause temporary visual impairment in the form of an after-image. These correspond to one point along Hanover Pike west of the array, and two residences northwest of the array, and six residences east of the array. The residence located just east of the site on Frye Road (OP2) has the highest total annual minutes for potential glare. Residences and businesses north and south of the array yielded no potential for glare. The analysis shows that the relative angles between these observation points and the array are such that glare won't be visible. Table 3 also shows that both Hanover Pike and Frye Road have some potential for glare.

Detailed Results & Mitigating Factors Analysis

This section takes a deeper look at the nine observation points and two routes for which glare was predicted. It details the times of day and portions of the year for which glare may be an issue for each observation point. It also examines whether mitigating features such as trees, buildings and terrain, will obstruct the view of potential glare for an observer at that point.

Observation Point 1: House located at 39.524484, -76.831598 (driveway off Frye Rd SE of array).

Potential for Glare: Yes

Time of Year: Late-March through mid-September

Times of Day: Ranging between 5:15pm-6:15pm

View of Glare Obstructed: YES, partially by terrain.

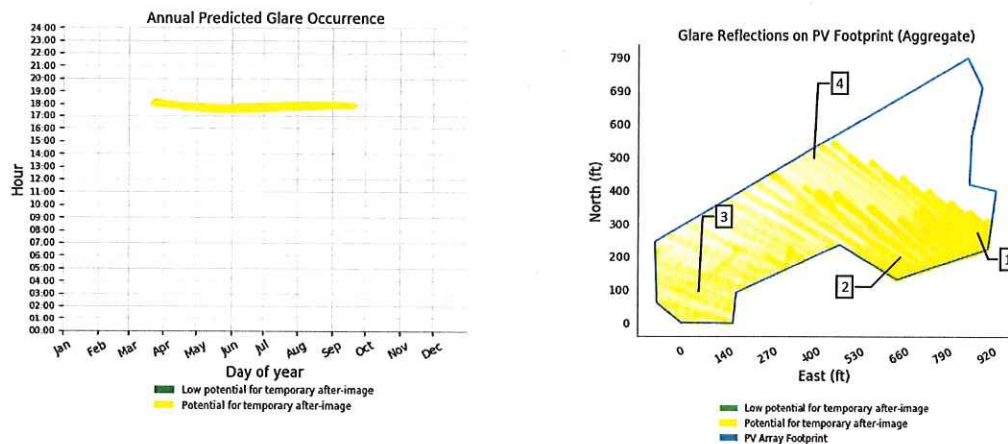


FIGURE 8 – GLARE OCCURRENCES (LEFT) AND PV-ARRAY GLARE SPOTS (RIGHT) FOR OP1

As can be seen in the Glare Reflections on PV Footprint diagram, glare is more highly concentrated in the southeast portion of the array and lessens as you move north and west across the array. Below are views of OP1 from the three points denoted on the footprint diagram.



FIGURE 9 – VISIBILITY OF OP1 FROM POINT 1 ON ARRAY



FIGURE 10 – VISIBILITY OF OP1 FROM POINT 2 ON ARRAY



FIGURE 11 – VISIBILITY OF OP1 FROM POINT 3 ON ARRAY

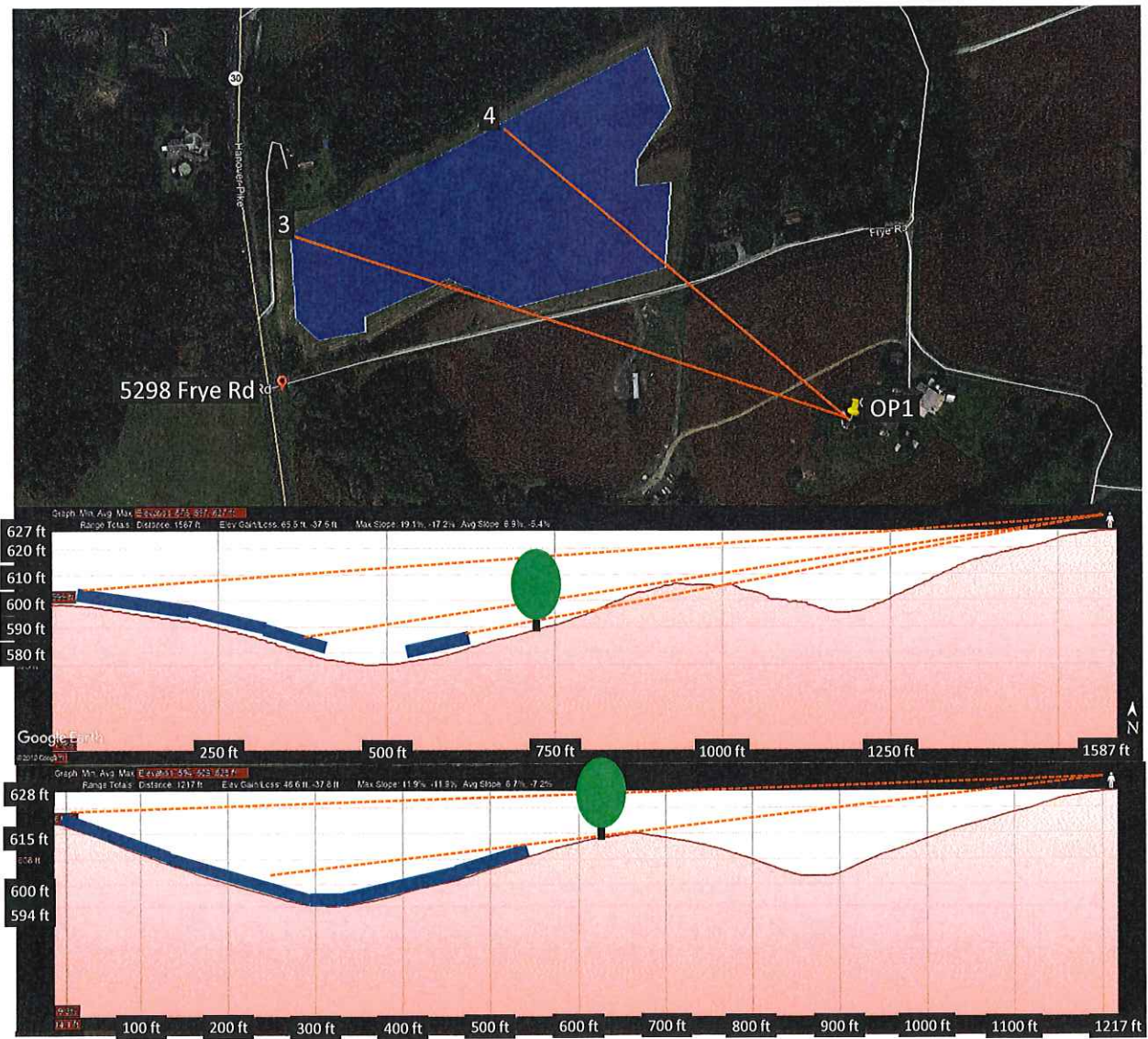


FIGURE 12 – LINES OF SIGHT FROM OP1 TO POINTS 3 AND 4 ON ARRAY



Figures 9 and 10 show that visibility from OP1 of the southeastern portion of the array, where potential for glare is greatest, is largely obstructed by the terrain. Visibility of the north and western portions of the array is higher, as shown in Figure 11, but potential for glare is less in these regions. Figure 12 shows elevation views for two lines of sight from OP1 to the array, showing how the topography impacts visibility. Validating the findings in Figures 9-11, it shows that terrain blocks view of the southern portions of the array, but allows view of the northern portions of the array. To ensure mitigation of any potential glare for OP1, a Landscape Compliance Plan has been developed by a licensed landscape architect in accordance with county requirements to screen visibility of the array from any vantage point. It is included as Attachment 2 to this report.

2. *"190321_Landscape Compliance Plan_20190403"*

The plan details the types and locations of vegetation to be planted for screening. It shows maturing landscaping will be planted along the southern edge of the property to mitigate potential visibility of glare for OP1. Figure 12 shows trees at 30ft height, the mature height of the trees specified on the landscape compliance plan, will screen the view of the entire array from OP1. This plan will be submitted to the county for approval as part of the permitting process.



Observation Points 2, 3 and 12: Houses located at or near 39.525716, -76.832821 (directly east of array on Frye Rd).

Potential for Glare: Yes. OP2 has the highest total time for potential glare of all OP's examined in this analysis.

Time of Year: Mid-February through late-October

Time of Day: Ranging between 4:45pm and 6:30pm

View of Glare Obstructed: YES, fully by tree cover.

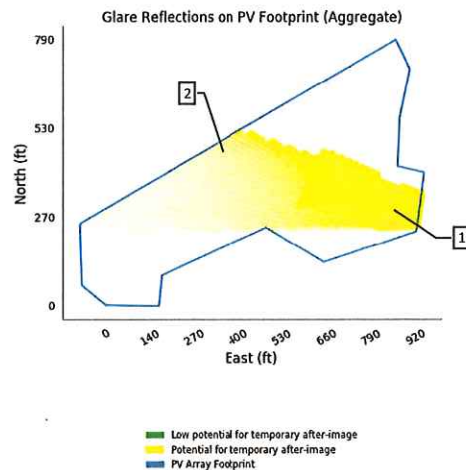
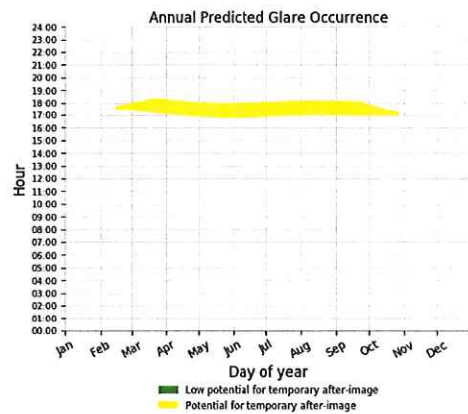


FIGURE 13— GLARE OCCURRENCES (LEFT) AND PV-ARRAY GLARE SPOTS (RIGHT) FOR OP2



FIGURE 14 – VISIBILITY OF OP's 2, 3 & 12 FROM POINT 1 ON ARRAY



FIGURE 15 – VISIBILITY OF OP's 2, 3 & 12 FROM POINT 2 ON ARRAY

Figures 14 and 15 show that visibility of any part of the array from OP's 2, 3 & 12 will be obstructed by trees lining the eastern edge of the property. Note that the southern-most trees in this line are evergreens, so they will continue to obstruct visibility of the southeastern portion of the array, where glare is anticipated to be greatest, even during late-Fall and late-winter months.



Observation Point 4: House located at 14533 Hanover Pike (NE of array).

Potential for Glare: No

The relative angles between the sun, the array and the observation points will not yield any glare at this location.

Observation Points 5, 8, 9 & 10: Houses located 14619 Hanover Pike and further NW of array.

Potential for Glare: Yes.

Time of Year: March through Mid-October

Times of Day: Ranging between 6:00am-7:00am

View of Glare Obstructed: YES, fully by tree cover.

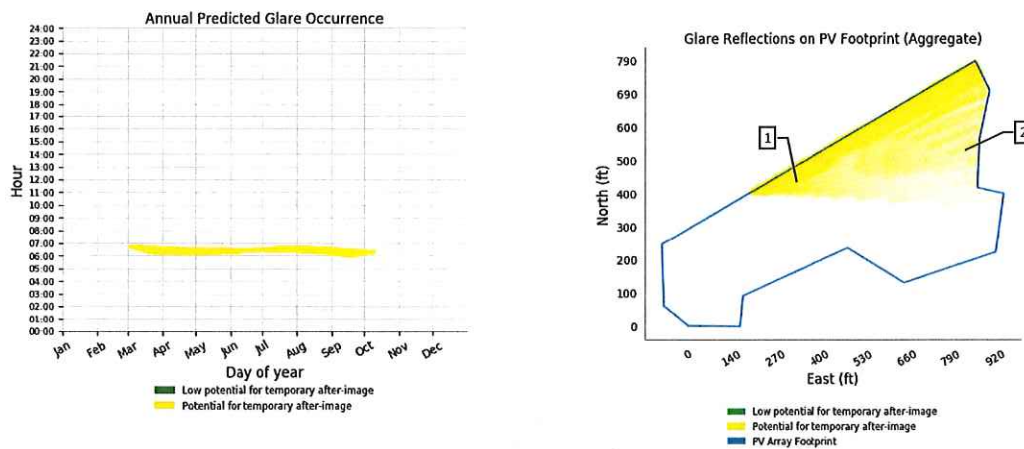


FIGURE 16 – GLARE OCCURRENCES (LEFT) AND PV-ARRAY GLARE SPOTS (RIGHT) FOR OP5



FIGURE 17 – VISIBILITY OF OP's 5, 8, 9 & 10 FROM POINT 1 ON ARRAY



FIGURE 18 – VISIBILITY OF OP's 5, 8, 9 & 10 FROM POINT 2 ON ARRAY

Figures 17 and 18 show that the trees lining the northern edge of the property will obstruct visibility of glare for houses northwest of the array. The figures also show that the trees are primarily evergreens, such that glare will continue to be obstructed during late-Fall and early-Spring when foliage is reduced on deciduous trees.

Observation Points 6 & 7: Houses located 5133 and 5135 Frye Rd (southeast of array)

Potential for Glare: Yes.

Time of Year: Early-April through Early-September

Times of Day: Ranging between 5:15pm-6:15pm

View of Glare Obstructed: YES, fully by terrain and tree cover.

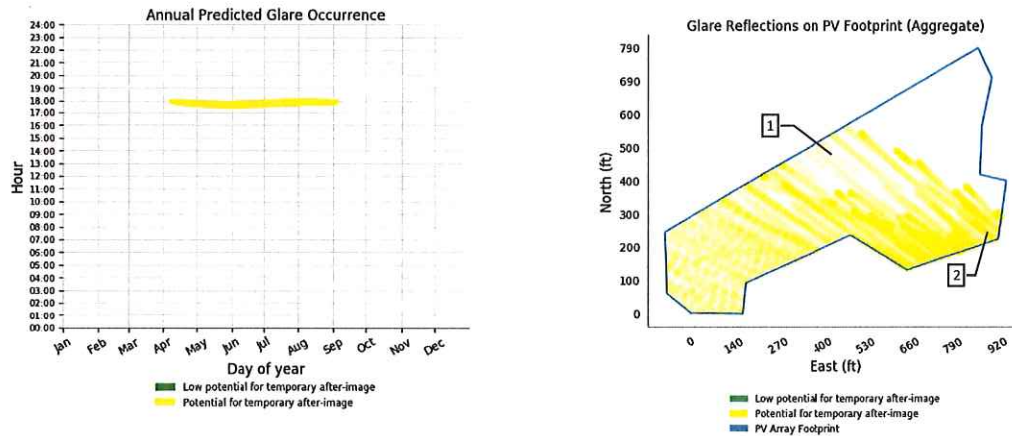


FIGURE 19 – GLARE OCCURRENCES (LEFT) AND PV-ARRAY GLARE SPOTS (RIGHT) FOR OP6



FIGURE 20 – VISIBILITY OF OP's 6 & 7 FROM POINT 1 ON ARRAY



FIGURE 21 – VISIBILITY OF OP's 6 & 7 FROM POINT 2 ON ARRAY

Although OP1 is visible in Figure 20, neither OP6 nor OP7 are visible in either Figure 20 or 21. Glare is blocked by terrain and will not be visible from either of these residences.

Observation Point 11: House at 14500 Hanover Pike (southwest of the array).

Potential for Glare: No

The relative angles between the sun, the array and the observation points will not yield any glare at these locations.

Route 1: Hanover Pike

Potential for Glare: Yes.

Time of Year: Mid-April through early-September

Times of Day: Ranging between 6:00am-6:50am

View of Glare Obstructed: Yes, partially by terrain and tree cover.

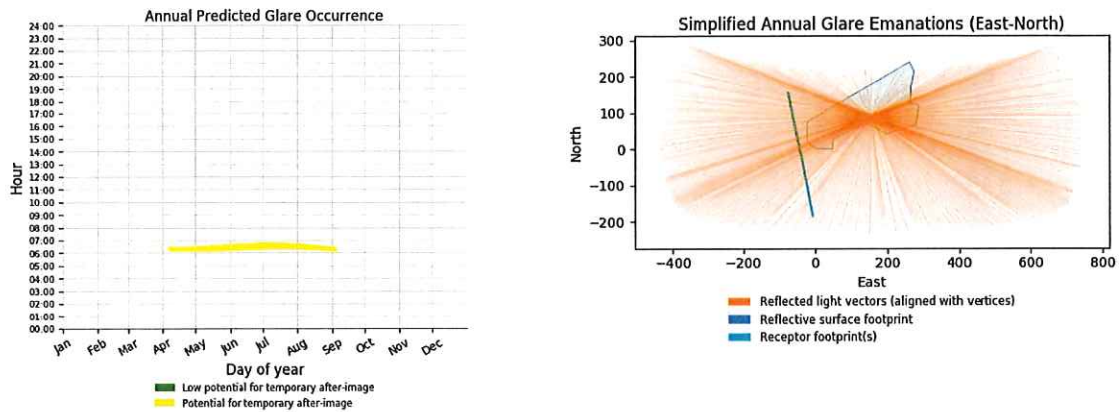


FIGURE 22 – GLARE OCCURRENCES (LEFT) AND PV-ARRAY GLARE SPOTS (RIGHT) FOR ROUTE 1

The Simplified Annual Glare Emanations shows two angles at which glare will be most concentrated along Hanover Pike – one northwest of the array and one almost directly west of the array. The point directly west of the array will be examined in detail in the next observation point. Below are views for motorists heading south on Hanover Pike from the northwest glare concentration angle.

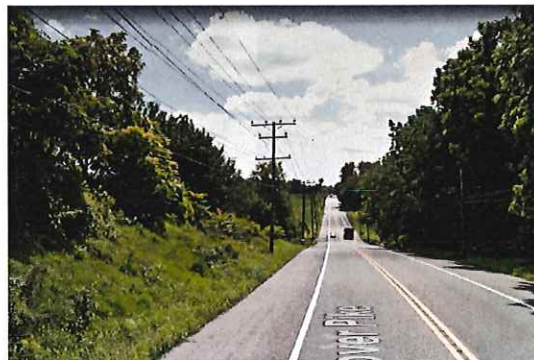


FIGURE 23 – VISIBILITY OF ARRAY FOR MOTORISTS HEADING SOUTH ON HANOVER PIKE

Figure 23 shows that trees lining Hanover Pike to the east obstruct the view of the array for motorist's heading south on Hanover Pike from the north. This mitigates any concern for glare at this northwestern location on Hanover Pike.

Observation Point 13: Point directly west of Hanover Pike where there is a gap in the trees lining the road to the east, allowing some visibility of the array.

Potential for Glare: Yes.

Time of Year: Late-March through Mid-September

Times of Day: Ranging between 5:30am-6:30am

View of Glare Obstructed: YES, partially by terrain and tree cover.

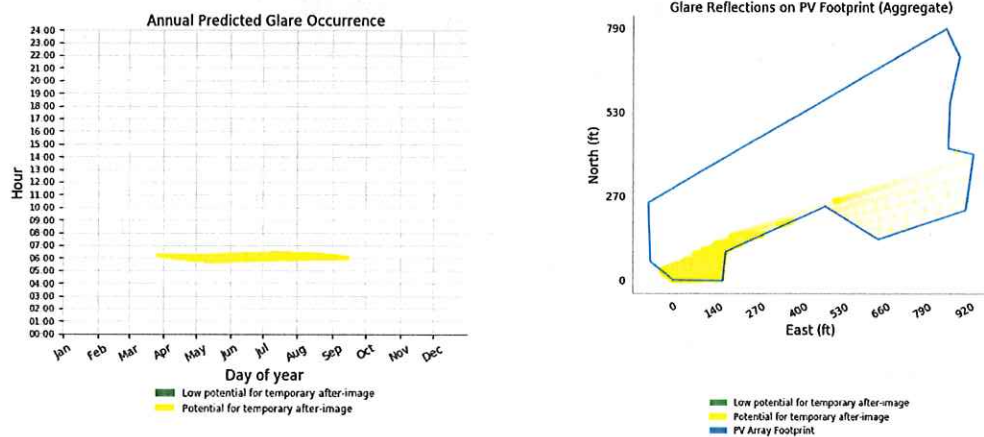


FIGURE 24 – GLARE OCCURRENCES (LEFT) AND PV-ARRAY GLARE SPOTS (RIGHT) FOR OP13

Below are views for motorists heading north and south on Hanover Pike at this location.



FIGURE 25 – VISIBILITY OF ARRAY FOR MOTORISTS HEADING NORTH AT OP13

Figure 25 shows that the southern portions of the array, which have potential to cause glare at OP13, are not visible to motorists heading north on Hanover Pike. The trees lining the street at the southwest corner of the property block the view of this portion of the array from the south. The break in this tree line occurs past the southern portion of the array. The relative angles of the sun, the array, and this observation point are such that northern portions of the array, which will be visible at this OP, will not cause any glare.



FIGURE 26 – VISIBILITY OF ARRAY FOR MOTORISTS HEADING SOUTH AT OP13

For motorists heading south on Hanover Pike, Figure 26 shows that the array is at a higher elevation than the road. This difference in elevation blocks visibility of most of the array. The southern portions of the array that have potential to cause glare are minimally visible due to the elevation difference and the trees lining the road at the southwest corner of the property. In addition to minimal visibility, motorists traveling on Hanover Pike will be facing north or south while driving and the glare from the solar project is perpendicular to their field of view. Recall that any potential glare greater than 25° from the field of view, per the FAA's report, will not produce an impact. Lastly, per the Landscape Compliance Plan (Attachment 2) and county requirements, maturing landscaping will be planted along this property line to further screen visibility of the array from Hanover Pike.

Route 2: Frye Road.

Potential for Glare: Yes.

View of Glare Obstructed: Yes, partially by terrain.

Time of Year: Mid-March through Early-October

Times of Day: Ranging between 5:00-6:15pm

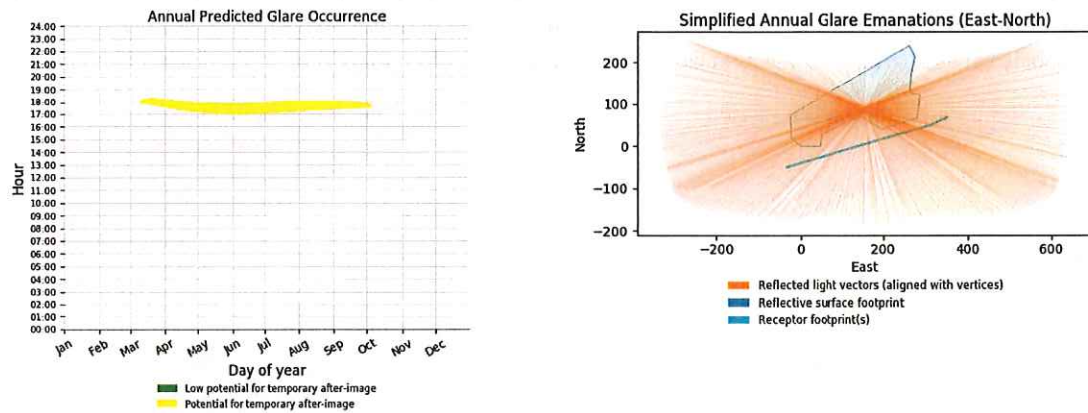


FIGURE 27 – GLARE OCCURRENCES (LEFT) AND PV-ARRAY GLARE SPOTS (RIGHT) FOR ROUTE 2

The Simplified Annual Glare Emanations diagram shows that glare will be most concentrated at the eastern end of Frye Rd that runs directly south of the array. Below are views of the array for a motorist heading west on Frye Rd at this location.



FIGURE 28 – VISIBILITY OF ARRAY FROM EASTERN POINTS ON FRYE ROAD

Figure 28 shows that the array will be visible to motorists heading west on Frye Rd from east of the array. There is potential for glare at this point. However, the section of Frye Rd directly south of the project site is not a public road. It is a private road, solely driven by the few residents whose houses are east of the array. As such, there is very minimal traffic for which this glare will be a concern. As per the Landscape Compliance Plan, maturing landscaping will be planted along this southern property line to further mitigate visibility of glare for these motorists.

Glare Magnitude

The glare analysis found no instances of glare within the “red” (permanent ocular damage) range. Only “yellow” glare, causing a temporary after-image, and green glare, causing low potential for temporary after-image, were found to be produced by the PV array for the observation points examined. The magnitude of this yellow and/or green glare was very similar for every observation point and therefore is not discussed in depth in this section. Figure 27 below examines the magnitude of glare at two points of interest – OP’s 1 and 13. OP1 is the residence, due to its elevation above the array, that may have the greatest view of the array. OP13 is a location along Hanover Pike where there is a break in the trees lining the road, directly west of the array. As can be seen, the amount of sunlight reflected from PV Array 1 is just above the boundary between green and yellow at worst, indicating that any after-image produced will likely be short in duration.

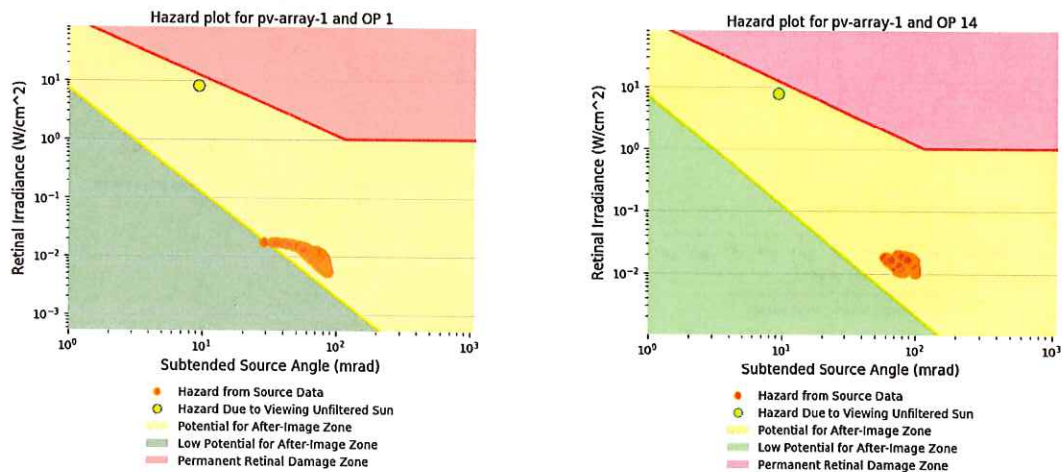


FIGURE 29 – GLARE HAZARD PLOTS FOR OP1 (LEFT) AND OP13 (RIGHT)



CONCLUSIONS

Potential for Glare

The analysis revealed that out of the twelve neighboring residences and businesses analyzed, two residences to the northwest of the array and six residences to the east and southeast of the array had potential for glare longer than 5 minutes annual duration. For observers at structures north and south of the array, the analysis shows that their relative angle to the array was such that they wouldn't experience glare. For the eight residences with potential for glare, this glare fell within the yellow range, meaning potential for temporary impairment of vision in the form of an after-image exists. However, the magnitude of this glare was very low within the yellow range, indicating that any after-image produced will likely be short in duration. Potential for glare at these observation points ranged from the hours of 5:30am to 7:30am and 4:45pm to 6:30pm between the months of mid-February to late October. Exact dates and times for each observation point vary. The house designated by OP2 showed the highest number of minutes for potential for glare annually at 12,021 minutes. That equates to only ~2% of total minutes in a year, and a maximum of 55 minutes per day for the months it is predicted.

There is also potential for glare on the two routes analyzed, Hanover Pike and Frye Road. Frye Road has the greater potential for glare at 6,547 total minutes annually. This glare will be strongest southeast of the array, peaking at a maximum of 40 minutes daily during the early evening hours in mid-summer. Hanover Pike has a lower potential for glare at only 1,505 total minutes annually, peaking at a maximum of 15 minutes daily during the early morning hours of mid-summer.

Mitigation of Glare

The 20-acre property proposed as the location for this solar array and examined in this analysis is populated with substantial tree cover at its eastern, northern and western property boundaries. This tree cover fully obstructs the actual visibility of glare for almost all observation points with potential for glare. This includes OP2, which had the highest potential for glare. The exceptions were OP's 1 and 13. OP1 is currently an uninhabited, deteriorating structure. Terrain and trees on OP1's property partially obstruct view of the array, but the analysis showed that some glare will be visible from this location. To help mitigate this potential view of glare, maturing landscaping is proposed along the southern boundary of the project site, as detailed in the Landscape Compliance Plan. It is important to also note that glare is not predicted at any observation point during winter months when foliage is reduced.

OP13 is a point on Hanover Pike where there is a break in the trees. The analysis showed that glare will only be emanating from the southern portion of the array at this location. Visibility of this portion of the array will be blocked by existing trees for motorists approaching the site from the south and largely blocked by terrain for motorists approaching the site from the north. To further mitigate any potential visibility of glare, landscaping is proposed along the eastern property boundary, as detailed in the Landscape Compliance Plan.

Frye Road is the sole location where glare was predicted but did not have existing obstructions or terrain to mitigate this glare. The affected section of Frye Rd directly south of the project site is not public, but private, solely driven by the few residents whose houses are east of the array. As such, there is very minimal traffic for which this glare will be a concern. The road is oriented to the site such that motorists will not be directly facing the panels but driving perpendicular to them. Recall that glare which is beyond 25° line-of-sight has a reduced impact and is completely negated beyond 50°. These two factors reduce the impact of any potential glare, but they do not reduce visibility. As such, maturing landscaping is proposed along the southern boundary of the property to screen visibility of the array, thereby mitigating this glare.

Examination of mitigating factors at each of the nine observation points and two routes that have potential for glare showed that glare will be fully mitigated, either by existing tree cover, terrain, or landscaping proposed for the site.

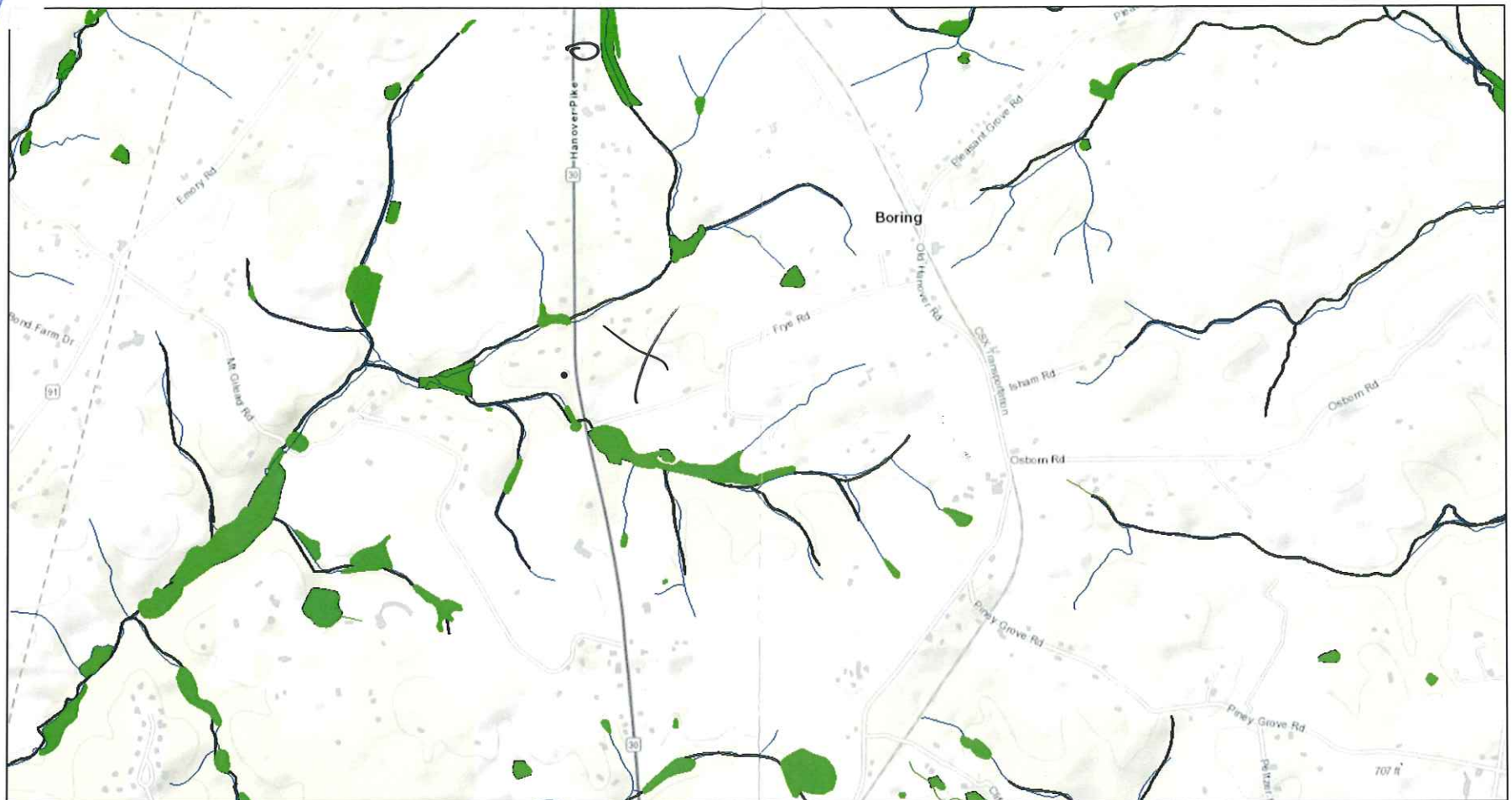


TRAILERS IN FIELD.

19

MERLIN Maryland's Environmental Resources and Land Information Network

Plot No 19



7/24/2019, 1:33:39 PM

Wetlands - National Wetlands Inventory

- Estuarine
- Lacustrine
- Marine
- Palustrine
- Riverine

Wetlands - Polygon - Special State Concern

- Estuarine
- Lacustrine
- Marine
- Palustrine
- Riverine

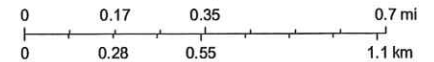
Wetlands - Linear - Department of Natural Resources

- Estuarine
- Palustrine
- Riverine
- Estuarine and Marine Deepwater
- Estuarine and Marine Wetland

National Wetlands Inventory (NWI)

- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond
- Lake
- Other
- Riverine

1:13,946



U.S. Fish and Wildlife Service, National Standards and Support Team, wetlands_team@fws.gov, MD IMAP, DNR, USFWS, Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap

Maryland Department of Natural Resources

Board of Appeals

Case No: 17-10 7X

Case Name: Woodensburg Land & Cattle Co.

Exhibit List

Party: Protestants

Date: 5/2/19

Exhibit No:	Description:
✓ 1 ✓	Plan to accompany Special Exception by Larsen Engineering
✓ 2 ✓	Plan to accompany Special Exception petition by D.S. Thaler
✓ 3 ✓	Aerial photo (Google) of existing & proposed house (Mirabilis)
✓ 4 ✓	Aerial photo (Google) from Phares residence
✓ 5 ✓	Pic of Home Site South of subject prop.
✓ 6 ✓	Google Earth of 4517 Hanover Pike (Eye alt 967ft)
✓ 7 ✓	Google Earth of 4517 Hanover Pike (Eye alt 1092ft)
✓ 8 ✓	Google Earth of Hanover Pike to Prop. (Eye Alt 9885ft)
✓ 9 ✓	Pic. of View driving North on Hanover Pike
✓ 10 ✓	Google Earth of Aerial Photo in 2018
✓ 11 ✓	Balt. Co. Staff Comments
✓ 12 ✓	Pic. of New House Site for Mirabilis (4517 Hanover Pike)
✓ 13 ✓	Google Earth 4525 Hanover Pike (Eye Alt 1286ft)
✓ 14 ✓	Pic of Hanover Pike East bound
VERIFIED BY <u>KC</u> DATE: <u>7/24/19</u>	

KC
5/3/19

7/23/19

Board of Appeals

Case No: 17-107X

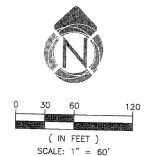
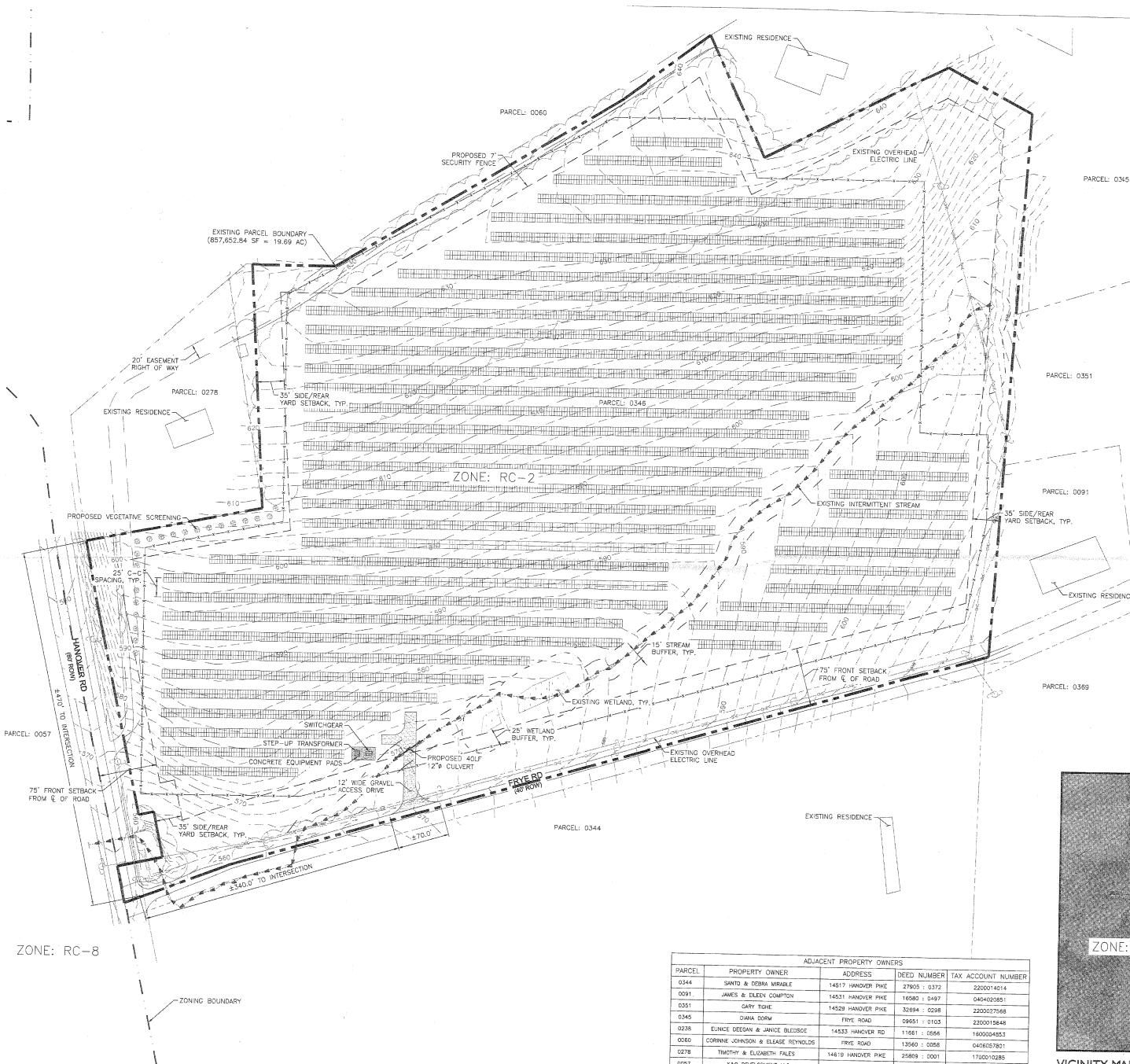
Case Name: Woodensburg Land & Cattle Co.

Exhibit List

Party: Protestants

Date: 7/25/19

Exhibit No:	Description:
✓ 15 ✓	8/1/08 letter from Van Arsdale to Councilman Jones re. B. 1137-17 Solar Facility
✓ 16 ID only	7/23/19 email from Kealy to Atty. Nelson w/ comments
✓ 17 ID only	10/5/17 Anne Arundel Co. Memo re: A.A. Co. 12 Solar Project
✓ 18 ✓	7/23/19 Materials from witness Patricia Fallon
✓ 19 ID only	Witness Fallon's internet research & notes
✓ 20 ✓	Balto. Co. Ordinance & decs. on prime & productive soils
✓ 21 ✓	Google Earth of 14619 Hanover Pike (Eye Alt. 446 ft.)
✓ 22 ✓	Google Earth of 14619 Hanover Pike (Eye Alt. 832 ft.)
✓ 23 ✓	Google Earth of 14533 Hanover Pike (Eye Alt. 1357 ft.)
✓ 24 ✓	Google Earth of 14533 Hanover Pike (Eye Alt. 1066 ft.)
✓ 25 ✓	Google Earth of 14527 Hanover Pike (Eye Alt. 1311 ft.)
✓ 26 ✓	Pic from Patrick Faleshome overlooking subject prop.
✓ 27 ✓	Bill No. 37-17
VERIFIED BY <u>KC</u> DATE: <u>7/26/19</u>	



LEGEND AND ABBREVIATIONS:

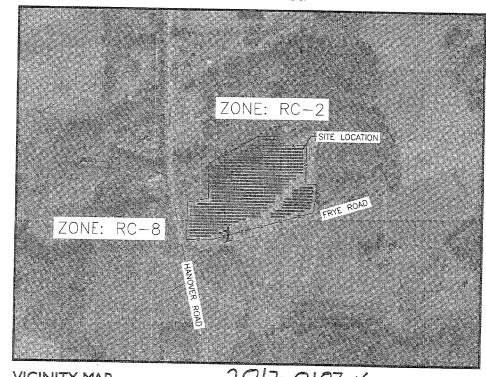
- EXISTING PROPERTY LINE
- SETBACK LINE
- ZONING BOUNDARY
- EXISTING RIGHT OF WAY LINE
- XXX EXISTING MAJOR CONTOUR (10')
- EXISTING MINOR CONTOUR (2')
- EXISTING OVERHEAD ELECTRIC LINE
- EXISTING TWEELINE
- EXISTING INTERMITTENT STREAM
- EXISTING WETLAND BUFFER
- EXISTING WETLAND
- PROPOSED GRAVEL ACCESS DRIVE
- PROPOSED FIXED TILT SOLAR RACKING
- PROPOSED EQUIPMENT PADS
- PROPOSED STORM CULVERT

GENERAL NOTES

1. OWNER: WOODENBURG LAND AND CATTLE COMPANY, LLC. 5423 MOUNT GILEAD RD. REISTERSTOWN, MD 21136
2. SITE AREA: 857,652.84 SF = 19.689 ACRES
3. BUILDING AREA: NOT APPLICABLE
4. UTILITIES: OVERHEAD ELECTRIC
5. THE SITE DOES NOT LIE WITHIN THE FLOODPLAIN ON F.I.R.M. #240100007 DATED SEPTEMBER 28, 2008.
6. PARKING CALCULATIONS: NOT APPLICABLE
7. SETBACKS:

	REQUIRED	PROVIDED
FRONT	75'	75'
SIDE	35'	35'
REAR	35'	35'
8. HEIGHT OF STRUCTURE: MAX. PERMITTED: 35' PROVIDED: PROPOSED: 49'
9. DEED REF: 29357, F. 77
10. TAX ACCOUNT: 2200015847
11. COUNCILMANC DISTRICT: 3RD
12. REGIONAL PLANNING CODE: 303
13. CONULS TRACT: 404400
14. WATERSHED: LIBERTY RESERVOIR
15. ZONING: RC-2 AGRICULTURE
16. TAX MAP: 0031; GRID 16; PARCEL 346
17. NO PERMITS ON FILE
18. NO PRIOR ZONING HISTORY
19. FLOOD AREA: NOT APPLICABLE
20. SIGNAGE: NOT APPLICABLE
21. THE SITE DOES NOT LIE WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
22. THERE ARE NO HISTORIC FEATURES ON THIS SITE NOR IS THE SITE TRSLP HISTORIC
23. NO PREVIOUS DRC MEETINGS
24. ZONING: RC-2 AGRICULTURE
25. THE SITE DOES NOT LIE WITHIN ANY FAILED BASIC SERVICES MAP AREAS.

ADJACENT PROPERTY OWNERS				
PARCEL	PROPERTY OWNER	ADDRESS	DEED NUMBER	TAX ACCOUNT NUMBER
0344	SANTO & DEBRA MIRABLE	14517 HANOVER PIKE	27905 : 0372	2200014014
0091	JAMES & EILEEN COMPTON	14031 HANOVER PIKE	16880 : 0497	0404000851
0351	GARY TIGHE	14029 HANOVER PIKE	30194 : 0598	2200017048
0345	DIANA DORM	FRYE ROAD	09051 : 0103	2200015848
0238	EUNICE DEEGAN & JANICE BLEDSOE	14533 HANOVER RD	11681 : 0556	1800004823
0060	CORINNE JOHNSON & ELEASE REYNOLDS	FRYE ROAD	13560 : 0058	0406057801
0278	TIMOTHY & ELIZABETH FALES	14619 HANOVER PIKE	25898 : 0001	1700010285
0057	KAR DEVELOPMENT LLC	14506 HANOVER RD	25190 : 0001	2500001699
0369	SANTO & DEBRA MIRABLE	2300 W OLD HANOVER RD	25190 : 0001	2500001699



VICINITY MAP
SCALE: 1" = 300'

2017-0107-X

Protestant
CRA Exhibit



SoCore Engineering
225 West Hubbard St. Suite 2
Chicago, IL 60654
1.877.500.0061



Larson Engineering, Inc.
10000 N. Meridian Rd.
Meridian, ID 83642

PROJECT NAME	DATE	DESCRIPTION
WOODENBURG SOLAR	07/27/2016	AS NOTED
5298 FRYE ROAD	07/27/2016	AS NOTED
REISTERSTOWN, MD 21136	07/27/2016	AS NOTED
(301)5253006 - 76.835469	07/27/2016	AS NOTED

PLAN TO ACCOMPANY PETITION FOR
SPECIAL EXCEPTION FOR
WOODENBURG SOLAR PROJECT

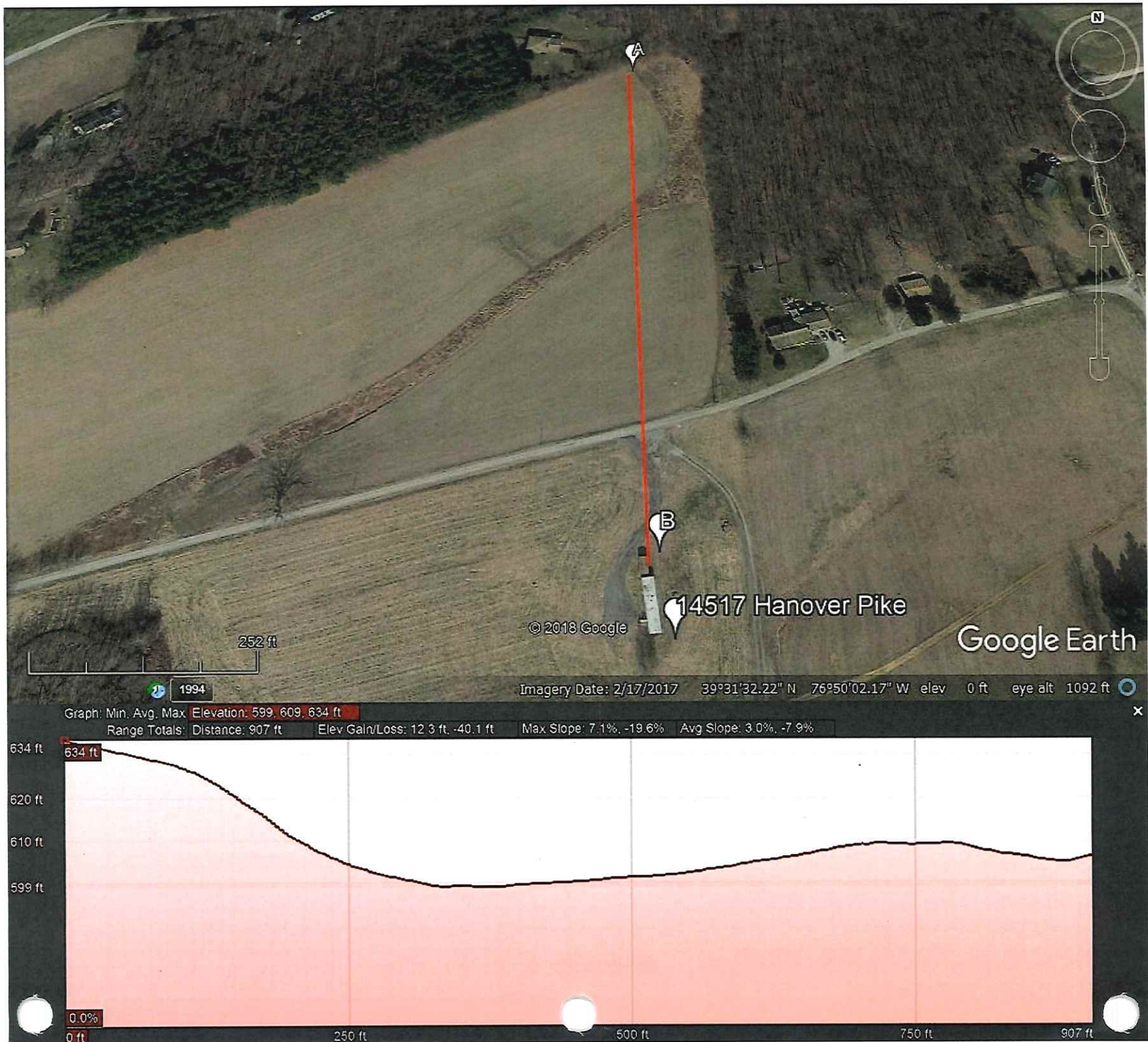
FORWARD: MSA
REVIEW: MSA
DATE: 07/27/2016
BY: GCM
SHEET SIZE: 24" X 36"



STATE OF MARYLAND
DEPARTMENT OF THE GENERAL LANDS
DIVISION OF PLANNING AND ZONING

Ex. 12/4/17
BY: GCM
GAVIN MEINSCHEIN, PE
SEAL NUMBER

C2.00

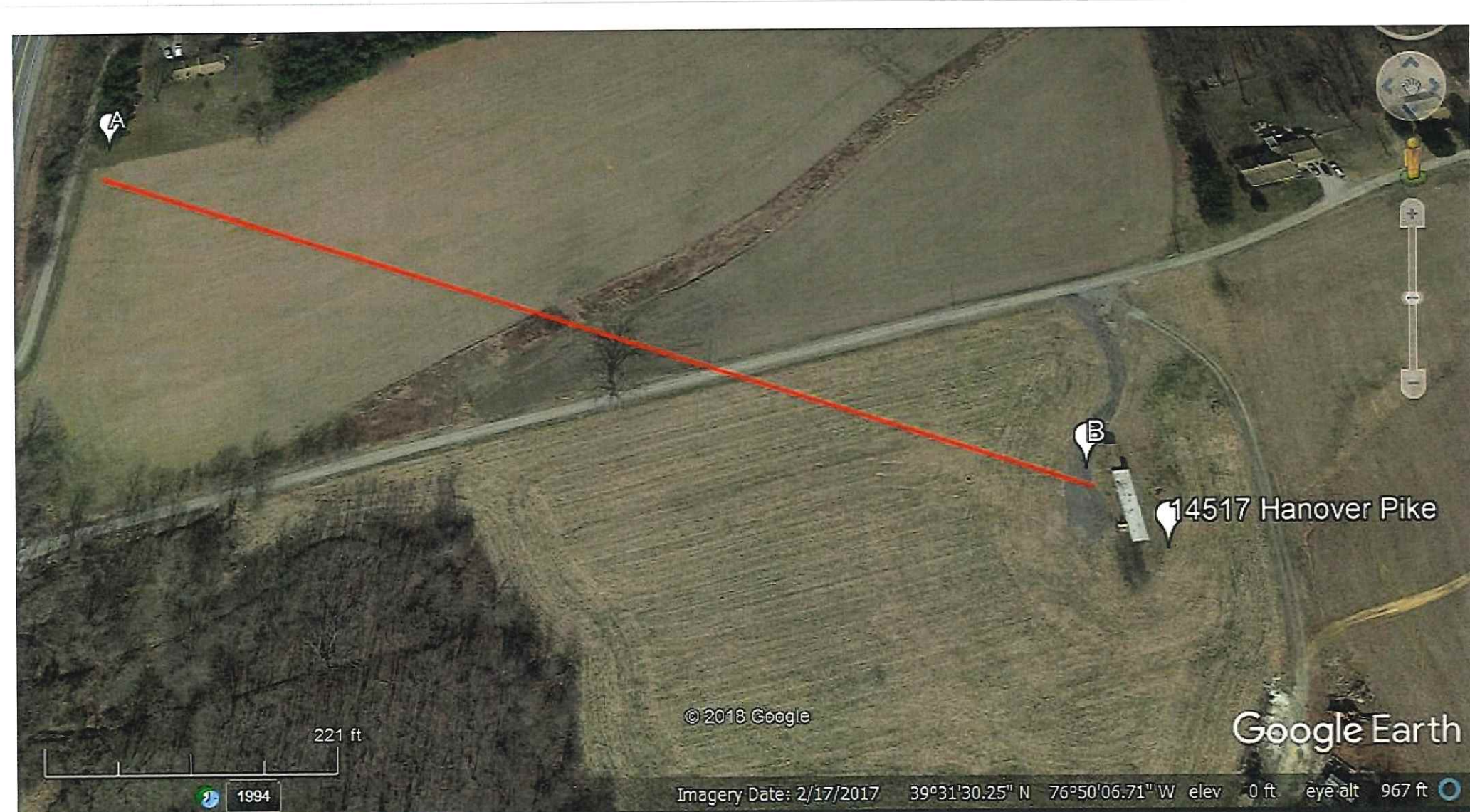






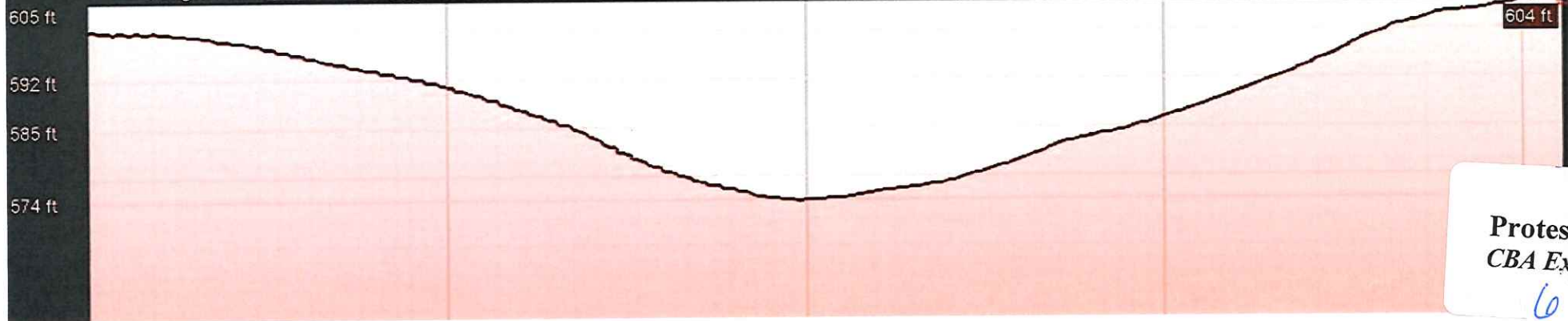
Protestant
CBA Exhibit

5



Graph: Min, Avg, Max Elevation: 574, 589, 605 ft

Range Totals: Distance: 1029 ft Elev Gain/Loss: 32.5 ft, -28.5 ft Max Slope: 17.2%, -22.3% Avg Slope: 5.6%, -5.8%



Protestant
CBA Exhibit

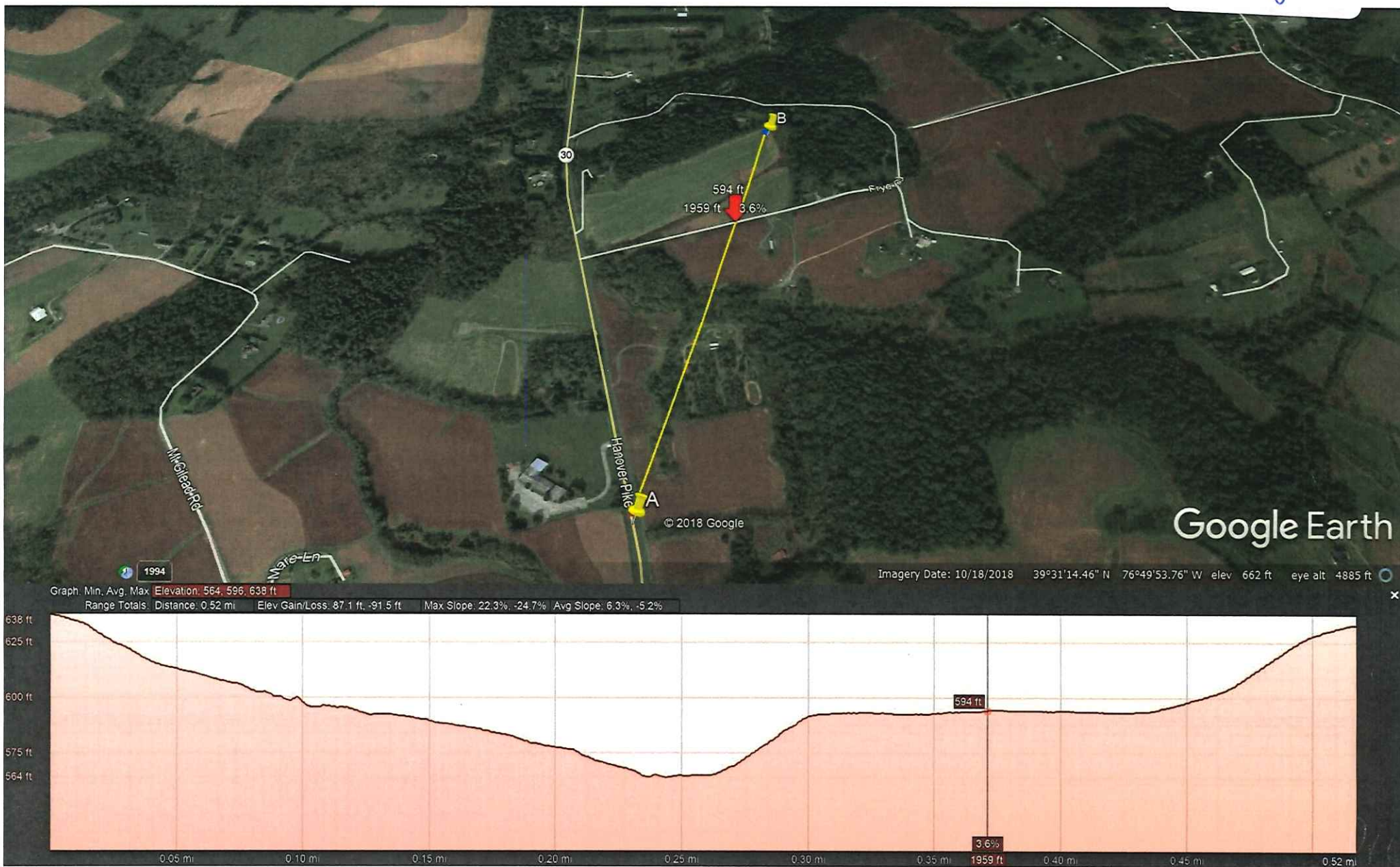
6



Protestant
CBA Exhibit

7

5







C.D.
P.W.

BALTIMORE COUNTY, MARYLAND

INTER OFFICE CORRESPONDENCE

TO: Arnold Jablon,
Deputy Administrative Officer and
Director, Department of Permits, Approvals and Inspections

ATTN: Kristen Lewis
MS 1105

FROM: Steven A. Walsh, Director *SAW*
Department of Public Works

DATE: November 18, 2016

SUBJECT: Case No: 2017-0107-X
5298 Frye Road, Upperco, Maryland 21155

The subject case is to determine whether or not the Administrative Law Judge should approve a Special Exception to use the herein described property for a solar array field as a public utility use.

During the review of this property the Department of Public Works has found that there is a riverine flood plain on the property that may impact the proposed development.

A flood plain study of the property must be submitted for verification of the flood plain boundary. Once the flood plain boundary has been established, the Building Code requirements for riverine flood plain and the Department of Public Works Design Manual Plate DF-1 requirements should be observed.

SAW/TWC/s

CC: Dennis Kennedy, Chief, Development Plans Review and Building Plan Review
Peter M. Zimmerman, People's Council

**Protestant
CBA Exhibit**
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BALTIMORE COUNTY, MARYLAND INTER-OFFICE MEMORANDUM

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: November 22, 2016

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 17-107

INFORMATION:

Property Address: 5298 Frye Road
Petitioner: Glen Elseroad, Woodensburg Land and Cattle Company, LLC
Zoning: RC 2
Requested Action: Special Exception

The Department of Planning has reviewed the petition for special exception to use the property for solar panel array field as a public utility use.

A site visit was conducted on November 2, 2016. Hanover Pike is a Baltimore County Scenic Route. The subject site is located within an Agricultural Priority Preservation Area and is also subject to the Hanover Pike Corridor Study, adopted by the Baltimore County Council April 19, 1993.

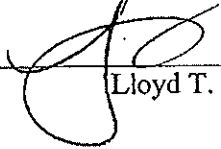
The Department has no objection to granting the petitioned zoning relief conditioned upon the following:

- Proposed signage and lighting to be limited to that necessary for safety and security purposes.
- Retain the existing woods between the location of the proposed solar panels and the residential property located at 14533 Hanover Pike.
- Provide a vegetative screening consisting of mixed indigenous hardwood and evergreen trees and shrubs between the security fence and the residential property located at 14619 Hanover Pike.
- 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.
- Protect the Hanover Pike Scenic Route by (a) planting a vegetative screening consisting of mixed indigenous hardwood and evergreen trees and shrubs along Hanover Pike to a depth that fully screens the solar panels and (b) retaining the woods on the top of the northern portion of the property to protect the distant scenic view from Hanover Pike.

The Hanover Pike Corridor Study identifies the retention of rural character as an issue of concern (Page 4) wherein a stated goal is to "Maintain the rural integrity and character of the Hanover Pike Corridor" (Page 5). The Study further lists specific design guidelines (Pages 34-41) for development along Hanover Pike. The Baltimore County Comprehensive Manual of Design Policies (CMDP) also establishes guidelines for development along Baltimore County Scenic Routes to include "maintain a buffer between the road and the new development" (Page 180) and to "site development in relation to the natural contours. Avoid placing structures on the tops of prominent ridges" (Page 182).

For further information concerning the matters stated herein, please contact Wally Lippincott at 410-887-3480.

Prepared by:



Lloyd T. Moxley

Division Chief:



Kathy Schlabach

AVA/KS/LTM/ka

c: Wally Lippincott
James Hermann, R.L.A., Department of Permits, Approvals and Inspections
David H. Karceski, Esquire
Office of the Administrative Hearings
People's Counsel for Baltimore County

Date: 6/18/18

Ms. Kristen Lewis
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
111 West Chesapeake Avenue
Towson, Maryland 21204

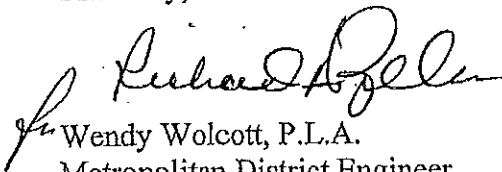
Dear Ms. Lewis:

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. *2017-0107-X*

*Special Exception
WLCC, Glena S. & Ruth L. Elseroad.
5298 Frye Road*

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,



Wendy Wolcott, P.L.A.
Metropolitan District Engineer
Maryland Department of Transportation
State Highway Administration
District 4 - Baltimore and Harford Counties

WW/RAZ

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

FROM: ^{For EFC}
Vishnu Desai, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For June 25, 2018
Item No. 2017-0107-X

DATE: July 12, 2018

The Bureau of Development Plans Review has reviewed the subject zoning items and we have the following comments.

If Special Exception is granted, a Landscape Plan is required per the requirements of the Landscape Manual, Bill No. 37-17 and the CMDP. Specific landscape comments:

1. Hanover Pike is a Baltimore County Scenic Route,
2. Perimeter landscape buffers are required,
3. Must minimize tree and vegetation removal,
4. Solar panels are considered a utility and should be designed and located to harmonize with the surroundings and to create the least visual impact. (See Comment # 8, 9, & 10 below),
5. Additional landscape buffers (including contour strip buffers) may be required to address existing topography changes, Scenic Views, Scenic Routes, etc. depending on a number of items including the subject properties topography,
6. More comments may be rendered during review of the landscape plan,
7. Proposed perimeter fence shall be black vinyl-coated chain-link fence,
8. Proposed landscape screening should begin at or near the intersection of Frye Road, north to the property line of 14619 Hanover Pike, consideration of existing topography should be considered to assure screening of the solar array field from Hanover Pike views.
9. 14525, 14531, 14533 and 14619 Hanover Pike are adjacent properties that need to be reviewed for possible landscape screening to be designed and installed between their properties and the proposed solar facility.
10. Additional landscape and screening may be needed to address adjacent properties views when it relates to the proposed solar facility.

During the review of this property the Department of Public Works has found that there is a riverine flood plain on this property that may impact the proposed development. A flood plain study of this property must be submitted for verification of the flood plain boundary. Once the flood plain boundary has been established, the Building Code requirements for riverine flood plain and the Department of Public Works Design Manual Plate DF-1 requirements should be observed.

* * * * *

VKD: cen
cc: file

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE MEMORANDUM

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: July 18, 2018

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 17-107

INFORMATION:

Property Address: 5298 Frye Road
Petitioner: Glen Elseroad, Woodensburg Land and Cattle Company, LLC
Zoning: RC 2
Requested Action: Special Exception

The Department of Planning has reviewed the petition for special exception to use the property for solar panel array field as a public utility use.

A site visit was conducted on November 2, 2016. Hanover Pike is a designated Baltimore County Scenic Route. The subject site is located within an Agricultural Priority Preservation Area and is also subject to the Hanover Pike Corridor Study, adopted by the Baltimore County Council April 19, 1993.

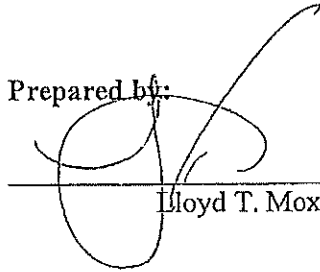
The Department has no objection to granting the petitioned zoning relief conditioned upon the following:

- Pursuant to BCZR §502.1.A, petitioners shall demonstrate to the satisfaction of the Administrative Law Judge that the facility will not be detrimental to the adjacent residential properties as a result of glare emanating from the facility.
- Petitioners shall note on the plan that the proposed solar facility will be subject to BCZR §4F-107.
- Petitioners shall certify by note on the plan that the proposed solar facility will not exceed the maximum permitted number of facilities allowed in its respective councilmanic district. If approved, Petitioners shall submit to this Department at the time of building permit application the final fixed location and area of the facility by coordinate data so that an inventory may be kept.
- Lighting shall be limited to what is required for security purposes only and will be sited in such a way as to have minimal spillage onto neighboring properties.
- Signage shall be limited to that which is necessary for safety and security purposes.
- No deliveries or outdoor maintenance which may generate excessive noise may occur on-site between the hours of 6 P.M. through 6 A.M.
- Indicate on the plan the means and location by which the solar facility connects to the power grid and whether grading or clearing will be involved.

- Protect the Hanover Pike Scenic Route by (a) planting a vegetative screening consisting of mixed indigenous hardwood and evergreen trees and shrubs along Hanover Pike to a depth that fully screens the solar panels and (b) retaining the woods on the top of the northern portion of the property to protect the distant scenic view from Hanover Pike.

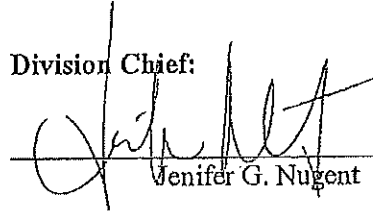
Be advised that the site is within an Agricultural Priority Preservation Area as designated in the Baltimore County Master Plan 2020 (MP2020). Said plan warns that *"incremental development continues to threaten the protection of resources and the viability of the agricultural industry."* (MP2020 pg.92). The Department recommends that the future viability of commercial agriculture in Baltimore County be weighed when considering this special exception proposal within the context of 502.1.G. For further information concerning the matters stated herein, please contact Wally Lippincott at 410-887-3480.

Prepared by:



Lloyd T. Moxley

Division Chief:



Jennifer G. Nugent

AVA/KS/LTM/ka

c: Wally Lippincott
James Hermann, R.L.A., Department of Permits, Approvals and Inspections
David H. Karceski, Esquire
Office of the Administrative Hearings
People's Counsel for Baltimore County



DONALD I. MOHLER III
County Executive

A handwritten signature in dark ink, appearing to read "Arnold Jablon".

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

September 5, 2018

Woodensburg Land and Cattle Company LLC
Glen Elsroad, Ruth L Elsroad
5423 Mt. Gilead Road
Reisterstown MD 21136

RE: Case Number: 2017-0107 X, Address: 5298 Frye Road

To Whom It May Concern:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on June 11, 2018. 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 dark ink, appearing to read "W. Carl Richards, Jr.".

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: jaw

Enclosures

c: People's Counsel
SGC Power LLC, Bruce Wilson, 6865 Deerpath Road, Elkridge MD 21075
Lawrence E Schmidt, Esquire, 600 Washington Avenue, Suite 200, Towson MD 21204

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: July 10, 2018

SUBJECT: DEPS Comment for Zoning Item # 2017-0107-X-AMENDED
Address 5298 Frye Road
(Woodensburg Land & Cattle
Company, LLC Property)

Zoning Advisory Committee Meeting of July 25, 2018

X The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

- X Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).
- X Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Additional Comments:

Reviewer: Glenn Shaffer

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

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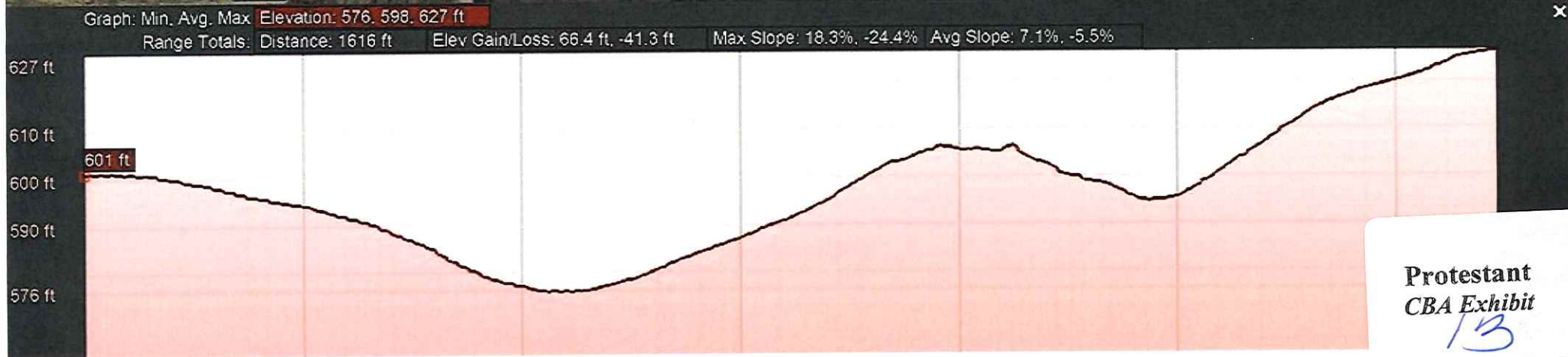
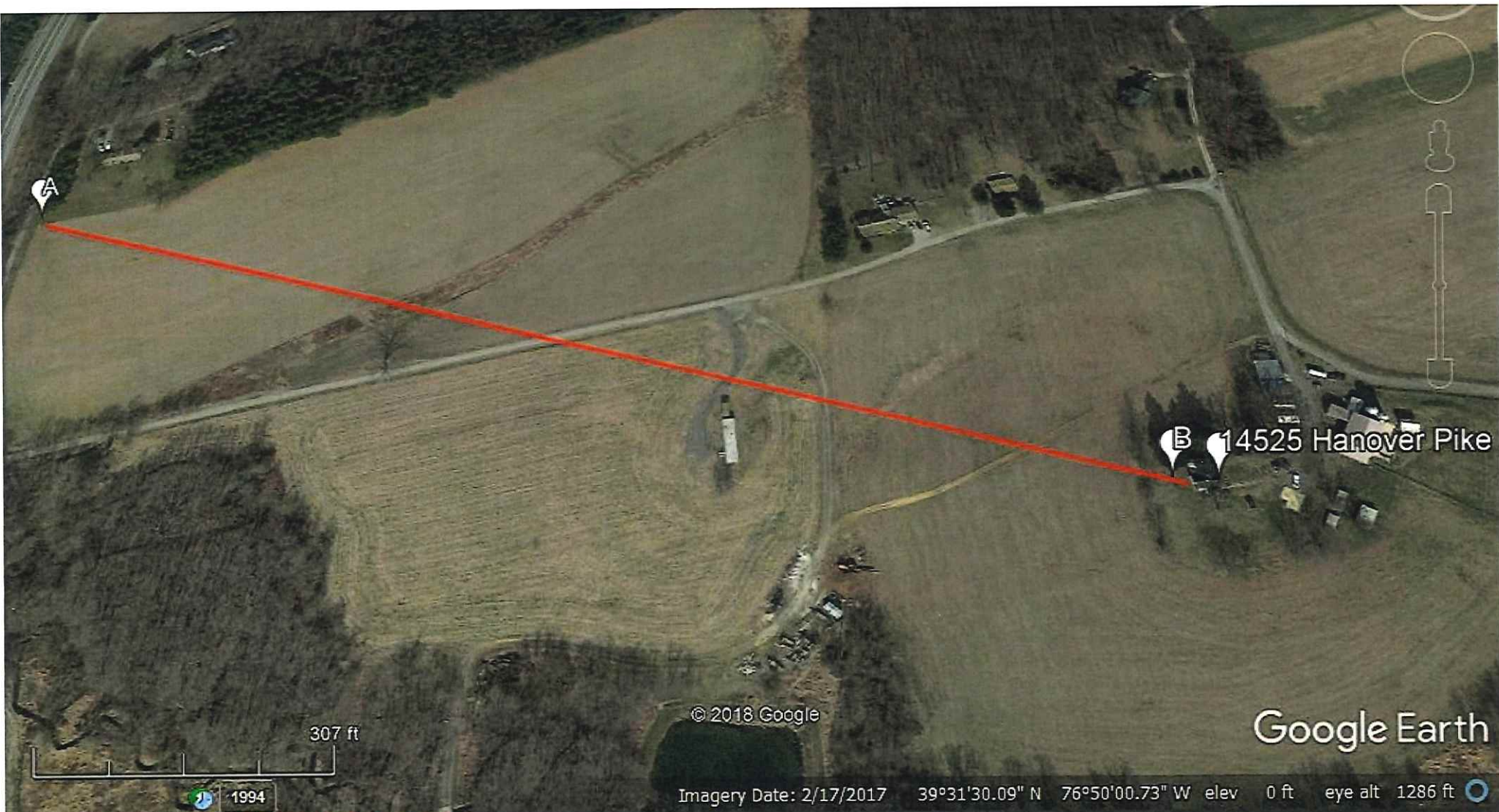
X Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Additional Comments:

Reviewer: Glenn Shaffer



Protestant
CBA Exhibit
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Protestant
CBA Exhibit

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DONALD I. MOHLER III
County Executive

ANDREA VAN ARSDALE, *Director*
Department of Planning

August 1, 2018

The Honorable Julian E. Jones, Jr.
Chairman, Baltimore County Council
Historic Courthouse
400 Washington Avenue
Towson, MD 21204

RE: County Council Bill 37-17: Solar Facilities

Dear Chairman Jones:

At the May 17, 2018 meeting of the Baltimore County Planning Board, an evaluation of the impacts of solar facilities in Baltimore County pursuant to County Council Bill 37-17 was presented by Department of Planning staff. A Public Hearing followed on June 7, 2018 and was well attended by the community. At its July 19, 2018 meeting, the Planning Board voted to forward these recommendations on solar facilities to the Baltimore County Council and to the County Executive.

The following recommendations are now offered by the Planning Board:

The Planning Board recognizes that the development of solar power and other renewable sources of energy is critical for our future, however;

- Solar facilities should not be permitted on prime and productive soils;
- Solar facilities should be directed into business and manufacturing zones, brownfields, rooftops and parking lots where financially feasible;
- Further in-depth study of how other similar jurisdictions have responded to the use should be considered in a review of the current law;
- The feasibility of establishing locational criteria to determine appropriate siting of solar facilities should be investigated;
- Solar facilities should not be detrimental to scenic views or routes; and
- Participation in future studies should be broadened to include stakeholders from each Councilmanic District.

Protestant
CBA Exhibit

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Date: July 30, 2018

If you have any questions regarding these recommendations please contact me at 410-887-3211.

Sincerely,



Andrea Van Arsdale
Secretary to the Planning Board

AVA:jdd

Enclosures

c: Members, Baltimore County Council
Members, Baltimore County Planning Board
Thomas Peddicord, Jr., Legislative Counsel/Secretary
Lauren M. Smelkinson, County Auditor
Fred Homan, Administrative Officer
Arnold Jablon, Deputy Administrative Officer and Director, Permits, Approvals, and Inspections
Donna Morrison, Deputy Administrative Officer
Mike Field, County Attorney

G. Macy Nelson

From: Abby Kealy <abbiekealy@icloud.com>
Sent: Tuesday, July 23, 2019 5:04 PM
To: G. Macy Nelson
Subject: Please forward my comments here to panel hearing Frye Road appeal

Dear Macy, it was a pleasure to meet you earlier today at the Frye Road appeal hearing, we can't thank you enough for your time and talent working on the case, it's very much appreciated. As promised, I'm sending you my comments (below) for you to forward to the panel hearing the appeal. Thanks again! My comments are:

Thank you so much for your time and consideration in this important matter. For nearly 25 years our family has lived within a half mile of this proposed utility site at 5298 Frye Road near Reisterstown. Like so many of the other area residents, my husband & I cherish the area's rural character – it's the #1 reason we live here. This area is the Poster Child for thoughtful zoning, implementing Best Practices that contain sprawl, benefit the community & touch everyone passing through

But all that is lost if an industrial project like this commercial utility is allowed, it's a classic slippery slope that leads to industrializing the area. The smart move is locating solar where other industrial projects *already* exist. That's exactly what strong zoning does.

After attending most of the July 23rd hearing, it's clear the area's residents who are most impacted and strongly oppose this solar project are up against big time resources, including the plaintiff's four-person legal team and their expert witnesses. Yes, the developer can make money by the industrializing this land, but that doesn't make it the *right* thing to do. With so many solar innovations on the horizon, it's not even *necessary* to sacrifice this farm land.

Full disclosure: I'm pro-solar: it's such a smart & valuable tool for an energy independent future. But what seems *less* than smart to me is sacrificing *limited* agricultural land for commercial utilities when *countless* rooftops & existing industrial areas are available for solar panels. It's not hard to be pro-solar, pro-preservation *and* pro-growth if it's done intelligently.

For years all the area neighbors and small businesses have been diligently working together to create an environment we're proud of now & setting up for a bright future. It's a long-term commitment benefiting the community & touches everyone passing through.

This commercial solar utility is a dark cloud looming over our community. If the zoning exception is granted, and this ag land is sacrificed, it's game over, it says that increased industrial development in a residential and agricultural setting is OK, but it's not.

By now we *know* what we've got, we don't have to wait until it's gone to appreciate it. I respectfully request that the existing zoning stands as is with *no* exception for a commercial solar facility. Your decision sets the stage for everything to come in our rural area. Thank you again.

My Best Always,

Abbie Kealy

Abbie Kealy
Writer-Producer-Director
5316 Glen Falls Rd, Reisterstown, MD 21136
abbiekealy@icloud.com
443-570-9482 www.abbiekealy.com

ID only
Protestant
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Philip R. Hager, Planning and Zoning Officer

MEMORANDUM

TO: Chris Soldano and Courtney Wilson, Development Division, OPZ, MS 6301

FROM: Jane Cox and Darian Beverungen, Cultural Resources Division, OPZ, MS 6401

SUBJECT: A.A.Co. 12 Solar Project (C17-0031 00 PP)

DATE: October 5, 2017

The Cultural Resources Division conducted a site visit to better assess the potential adverse impacts to four historic sites adjacent and near to the proposed development referenced above. This site visit sought to fully understand the potential visual impacts, and to identify what measures could feasibly be undertaken to mitigate adverse visual impacts as per Article 18-10-171 (7) and to comply with Article 17-6-504.

In this case, our recommendations evaluated if the proposed conditional use for installing a utility scale solar energy system on RA-zoned land can meet the requirements of Article 18, which in short, requires that *"...a solar energy system may not adversely affect historic sites,"* and *"placement of a solar energy system within sight of a resource...shall mitigate any adverse visual impact,"* AND requires *"compliance with the provisions set forth in Article 17-6-501 through 504 of this code."*

Of particular concern are direct visual impacts to the historic and environmental settings of four adjacent properties that are listed on the County Inventory of Historic Places. Those immediately adjacent to the proposed development include Boxwood Farm ca. 1740 (AA-293) with a shared property line on the east, Lancaster Hill ca. 1870 (AA-292) located 1/10th of a mile away from the property, across Sudley Road, the Franklin Agricultural Barn Complex ca 1930s (a County-owned parcel) (AA-2517) which shares a property line to the east, and the J. Crandell Company Store and old Sudley Post Office ca. 1840 (AA-67), located immediately across the street from the subject property, at the intersection of Sudley and Nutwell-Sudley Roads. Note that as is accepted practice in the historic preservation field, the entire "historic and environmental setting" is considered when evaluating an historic property, which includes the larger property and grounds that contribute to historic integrity, not just the footprint of the structure. The historic significance of the four historic properties potentially impacted (Boxwood Farm, the Franklin Barn Complex, Lancaster Hill, and Crandell's Store and Post Office) is in large part due to their pristine historic and environmental setting in a larger agrarian setting, their relationship to one another, and their relationship to roads that have been traversed for hundreds of years. Both Sudley and Nutwell-Sudley Roads were given the highest significance rating when they were designated as Scenic & Historic Roads in 2006.

Most relevant to this proposal is its ability to comply with Article 7-6-504 [(1), (2), (11), and (12) in particular] which are intended to *"preserve, maintain, and enhance the scenic or historic character of the landscape viewed from the road..."* The requirements under 17-6-504 does provide for sensitive use of vegetative buffers for development that is of an appropriate scale and character along a scenic & historic

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CBA Exhibit

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road, but given the industrial nature and large scale of this project, it is difficult to see how it can be accommodated under the code provisions. This field has been an open pasture or cropland since at least the 1930s, and was historically farmed by the Franklin Family in the 19th century. While in recent years, scrub brush has grown along the road edges, vistas of the open field are still visible from various vantage points along both the roads, and from the four adjacent historic buildings.

Article 18 requires that any adverse visual impact shall be mitigated, and conventionally, landscaping and vegetative buffers are a common tool to achieve this. The proposal calls for a 30 foot wide and 6 to 7 foot tall vegetative buffer around a majority of the site to block the view of the proposed solar array structures from the road and adjacent historic properties in what is currently an open agricultural field.

The proposed mitigation of establishing a continuous dense vegetative buffer to block from view the solar arrays on the gently sloping open farm field does not function to protect the agrarian view shed as seen from the Inventory Properties noted above (or from various vantage points along the two historic roads.) Introducing a new "forested" setting to this area will fundamentally change these historic properties' agrarian setting, and the open pasture/ cropland view sheds to and from the properties. It does not appear that the visual impacts of the 42 acres of solar arrays can be adequately mitigated with a dense vegetative buffer. In fact, the introduction of the new 30 foot wide vegetative buffer is counter and in opposition to the goal of preserving, maintaining and enhancing the scenic or historic character of the landscape viewed from the road... ", specifically protecting the "...*foreground meadow, pasture, [and] cropland,*" 17-6-504 (12).

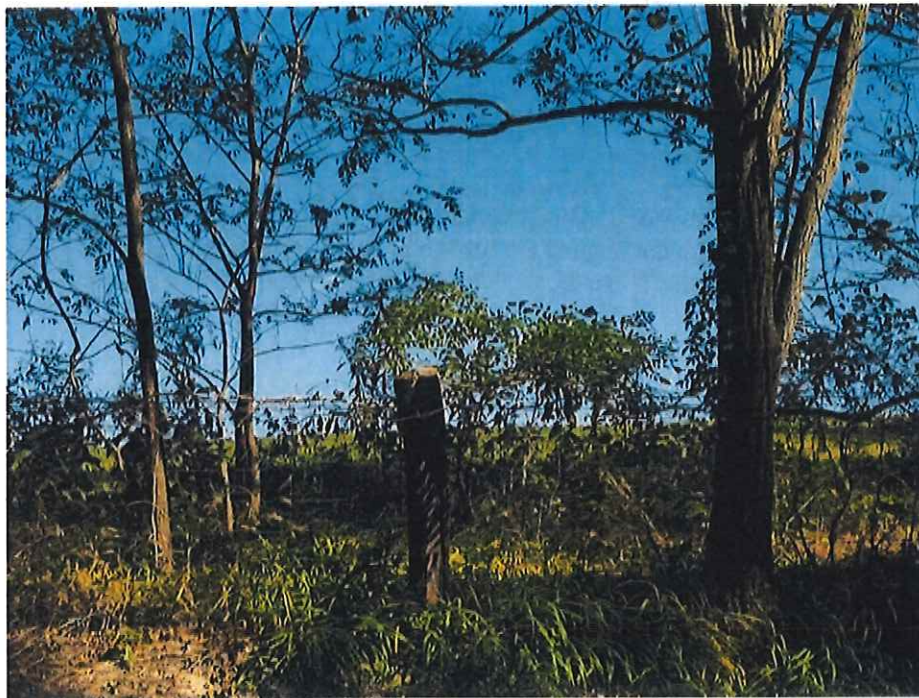
A closer evaluation of the project under other portions of Article 17-6-504 reinforces the goal and intent of this code section for preservation of the roads scenic and historic character. This proposal would in its effort to block the view of the solar array structures, also block the extant view of the open farm field. Furthermore, it introduces a forested landscape onto what has been for at least 100 years been an open field.



View shed from Nutwell Sudley Road, looking east southeast



View shed from Sudley Road at Lancaster Hill driveway, looking west, across Boxwood Farm's hay field. (Subject property is the rear field.)



View shed from Sudley Road near intersection of Nutwell Sudley Road at the historic Crandall Store, looking east.

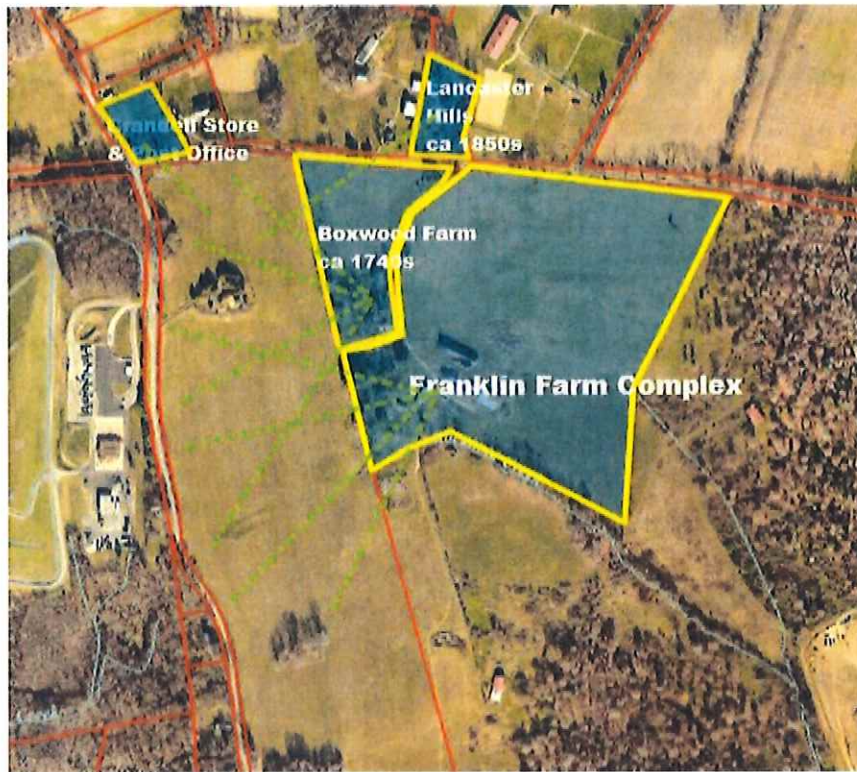
17-6-504 (1) requires that "... structures shall be designed to retain the open character of the site and minimize the impact of the development from views from the road." In this case, while adding a dense vegetative screen, lined on its interior with a 6 foot tall chain link fence will achieve the goal of blocking the view of the solar array structures from the most vantage points along the roads, doing so fundamentally changes the open field perspective and agrarian view sheds from both the surrounding historic properties, and from the two scenic and historic roads. We do not believe the wall of vegetative screening would function to preserve, maintain or enhance existing scenic and historic character.

17-6-504 (2) requires that "...structures and uses shall be located away from the road right-of-way unless sufficiently screened by topography or vegetation;" The proposed vegetative buffer, fencing, and grass path surround the solar arrays, are located within about 100 feet of Nutwell Sudley road frontage, and 15 to 20 feet along the edge of Sudley Road. We find that the coverage of much of the parcel with 6 ft tall solar arrays may not be able to meet this part of the code. To locate this use appropriately to protect the view shed from the roads, the scale of coverage would have to be dramatically reduced and utilize the natural topography to achieve compliance with this part of the code. Locating an array of solar panels across so much of the agricultural property does not function to preserve, maintain or enhance existing scenic and historic character.

17-6-504 (11) requires that " new structures shall be located to the extent practical behind natural screening or in or along the edges of forests, at the edges of fields and hedgerows, or near existing buildings;" The solar panel array structures are proposed to cover 42 acres of the 60 acre parcel, a majority of which is currently open agricultural field, and does not comply with this part of the code. A notable reduction of the number of solar arrays may allow the applicant to achieve compliance with this part of the code, though understandably, the nature of solar power generation makes siting them near the edges of the parcel, or along naturally wooded areas challenging.

The open field appearance present today, (and historically back to at least the 1930s and likely to the 19th century given the historical records), is a key part of the local environmental and historic setting that allows the scenic and historic roads to convey their significance. 17-6-504 (12) also requires that "*the development shall preserve existing foreground meadow, pasture, cropland, ...and shall be designed to place development in the background as viewed from the road.*" Again, the proposal to introduce a new 30 foot vegetative buffer around a majority of the field to block the solar array development from these scenic and historic roads does not achieve the requirement to preserve the existing pasture and cropland.

To fully assess the view sheds, and potential visual impacts, we identified several key "line of sight" views from the four adjacent historic properties. The topography plays an important role in the relationship between this parcel and the surrounding historic properties, as it is a large gently sloping farm with an elevation of 130 (top or west) to 80 feet (bottom or east) above mean sea level, that overlooks three of the four historic sites which in turn, have a critical view shed back to the open farm field.



Findings and Potential Alternatives

As proposed, we do not believe a project of this scale, that is industrial in nature, can comply with 18-10-141(7) or with the provisions in 17-6-504, due to the close proximity of not one, but four historic resources listed on the County Inventory of Historic Properties, and given the unique topography of the parcel which allows for agrarian vistas across open farmland to and from the historic resources and two scenic historic roads. A reduction to the scale of the proposal, to perhaps focus solar arrays in only the southernmost 8 to 10 acres of the property may offer a viable alternative that might be able to meet the relevant code sections.

Given the existing scrub brush growth along the north side of the parcel, and the elevation change between the agricultural field and the current road grade, it is possible to envision that the proposed 30 foot wide and eventually 6 to 7 foot tall vegetative buffers along a road might protect the view shed as seen from the corner of Sudley and Nutwell-Sudley Road at the Crandell Store from direct visual impacts. (This corner is still visible from the adjacent historic properties on the east however, thus would not be in compliance with other elements of Article 18 as discussed above, and there are documented structures that once stood, so archaeological considerations will need to be taken in to account as well.) The current view shed from further east, down Sudley Road, and from much of the parcels road frontage on Nutwell-Sudley does not have a similar elevation variation, and is more open, making the introduction of a new forested buffer vocabulary to block existing views contrary to the code requirement.

Based on our site visit, the southern-most quarter of the field does have some limited tree clusters, and does not have direct line of sight impacts to the four historic properties. If solar arrays can be sited only on that part of the property, the site's natural topography with limited vegetative screening would be adequate to mitigate the proposed development. If utilizing the southern part of the field could be a viable alternative location for a small cluster of solar arrays, we believe that between the natural vegetation and the natural topography present today, this area could be developed in a fashion that may meet the requirements under both Article 18 and 17-6-504.

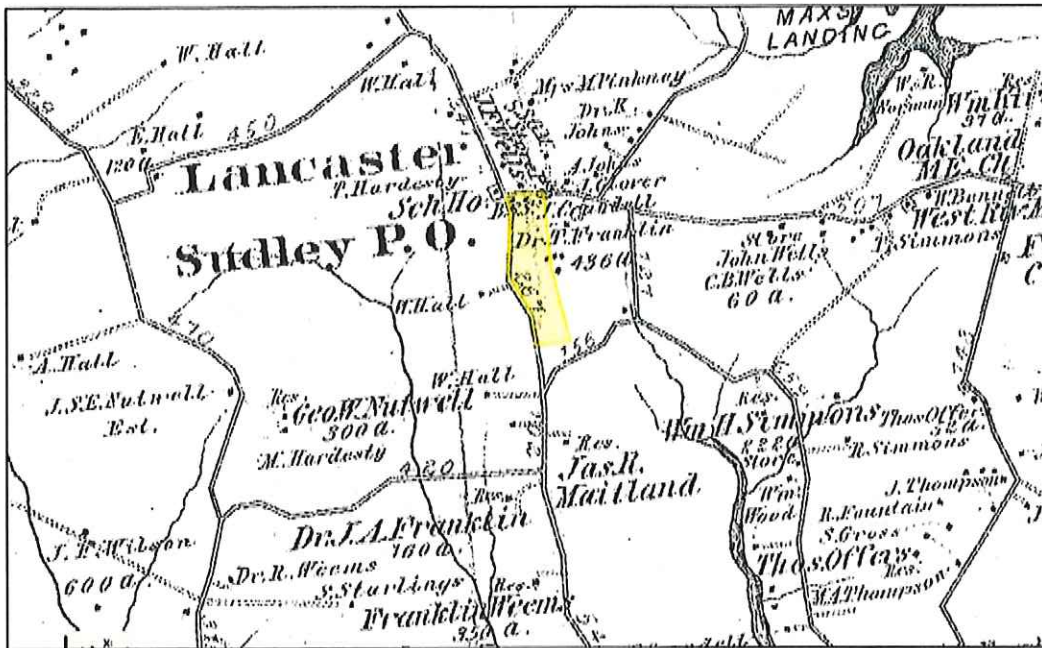
Additional Notes

Sudley (AA-229)

The historic home known as Sudley ca 1720 (AA-229 and listed on the National Register,) is located 1/3 of a mile to the northeast of the project location. While currently, summer vegetation minimizes direct visual adverse effects, as one of the oldest, and perhaps the most important historic buildings in Anne Arundel County, thus great care should be taken to ensure that the buildings surrounding historic and environmental setting is protected. Such a large industrial complex so near to the historic Sudley House, which is approached from points south and west on Sudley Road, would alter ones sense of the agrarian and rural environment that contributes to the integrity of Sudley, as well as the other adjacent historic buildings. As the current tree line along Sudley Road is currently in full summer foliage, much of which is deciduous and will soon lose their leaves, a full assessment of potential visual impact during the winter cannot be completed at this time. We remain concerned that once leaves have fallen, there may be a direct line of site to the field of solar panels from the front and west yard of historic Sudley. Additional study in the later Fall may be needed.

Article 17-6-502: Archaeological Resources

Additional research has found that this intersection was once a bustling local crossroads community in the 19th century known as *Sudley* in the 18th and early 19th century, and as *Lancaster* in the later 19th and early 20th century. Below is a excerpt of the 1878 Hopkins Atlas, showing some of the family names and features such as a schoolhouse, a blacksmith shop and the Crandell Store. Though only the Crandell Store survives today, there were buildings associated with the crossroads community that once stood on the subject property, including a reported African-American Church, a wheelwright shop and a blacksmiths shop (BSS on map below). This further heightens the potential that significant archaeological resources that could warrant preservation in place. A Phase I survey will identify where these resources are located so that plans can address their preservation or mitigation as per the code.



Excerpt of the 1878 Hopkins Atlas. Subject property shown in yellow.



View from North corner of Boxwood Farm formal yard, looking at subject property to the north northwest.



View from Boxwood Farm at the property line looking south over subject property



View looking southwest from Boxwood Farm lawn



View looking west from north side of Boxwood Farm structure



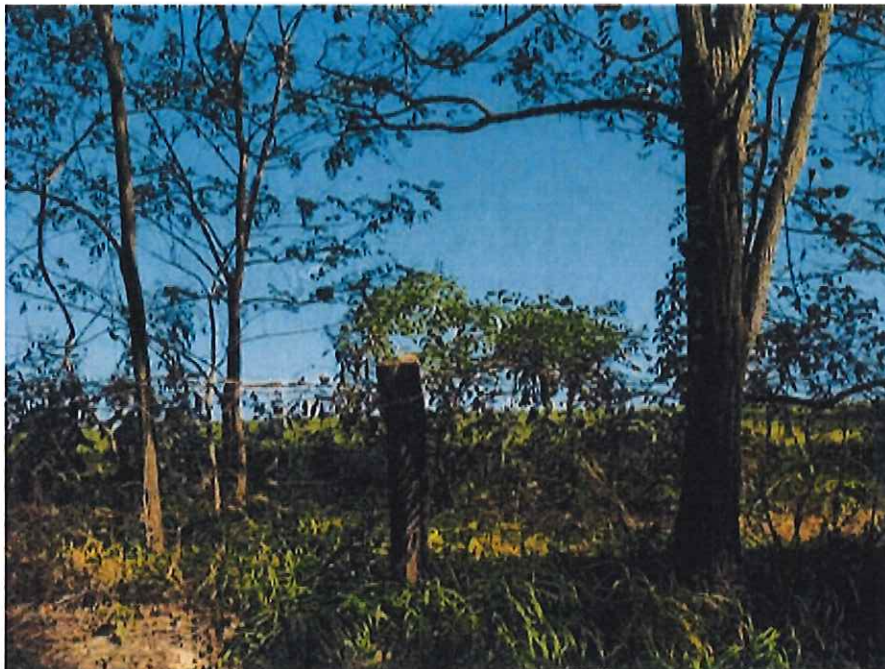
View looking west, from Boxwood Farm Front Lawn



View of Subject property from Boxwood Farms active agricultural field, looking west northwest



View looking west southwest, across Sudley Road, from entrance to Lancaster Hills.
Subject property in rear field



View looking south from Sudley Road, near intersection and in front of Crandell Store



View looking west across Franklin Barn Complex, with subject property in rear



Subject Property as viewed from field that is part of the Franklin Agricultural Complex (AA-2514)
Looking west. (Photo Taken 2011)

**Special Exception Hearing
17-107-X**

SGC Hanover Solar Farm

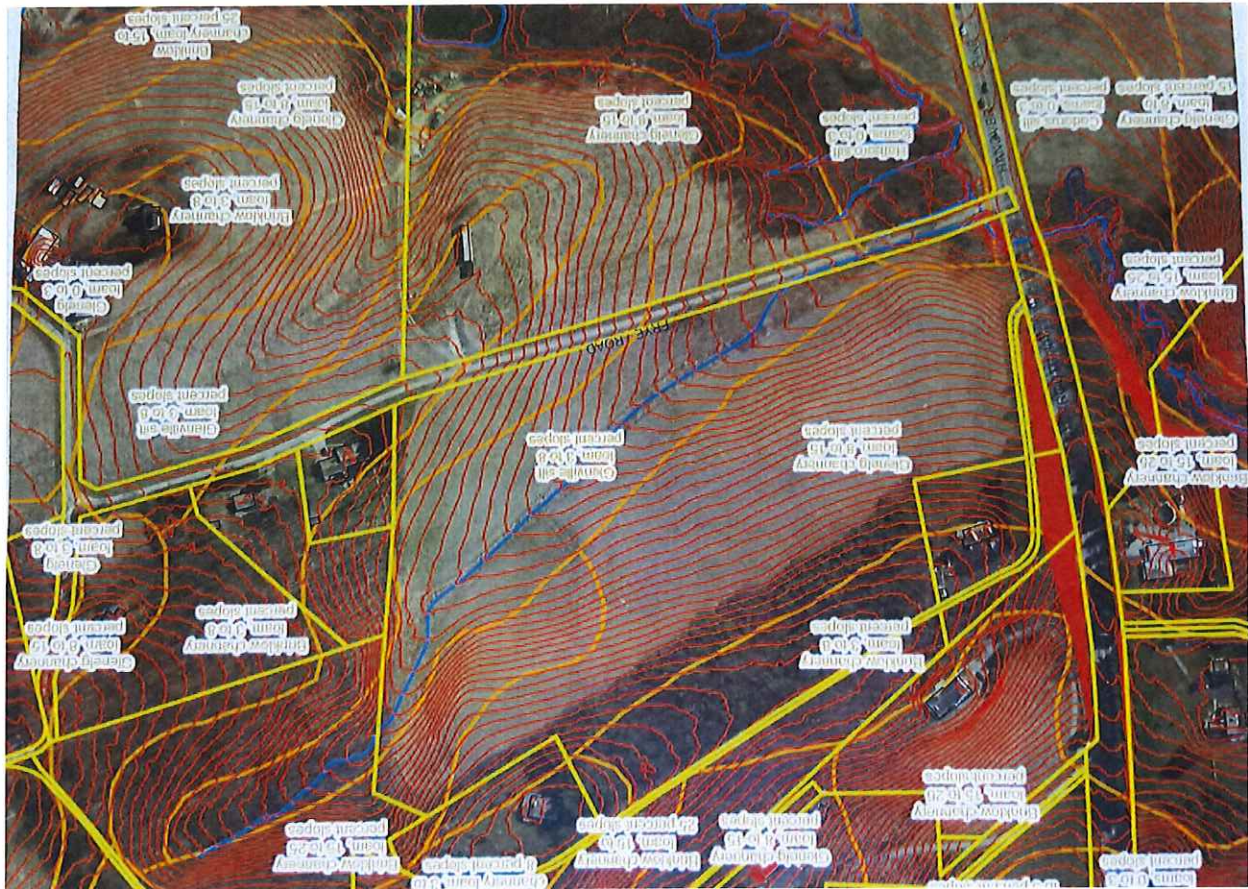
**Patricia Fallon
14823 Hanover Pike**

July 23, 2019

**Protestant
CBA Exhibit**

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**SGC Drawing from the Baltimore County Dept of the Environment
Dated July19, 2019**



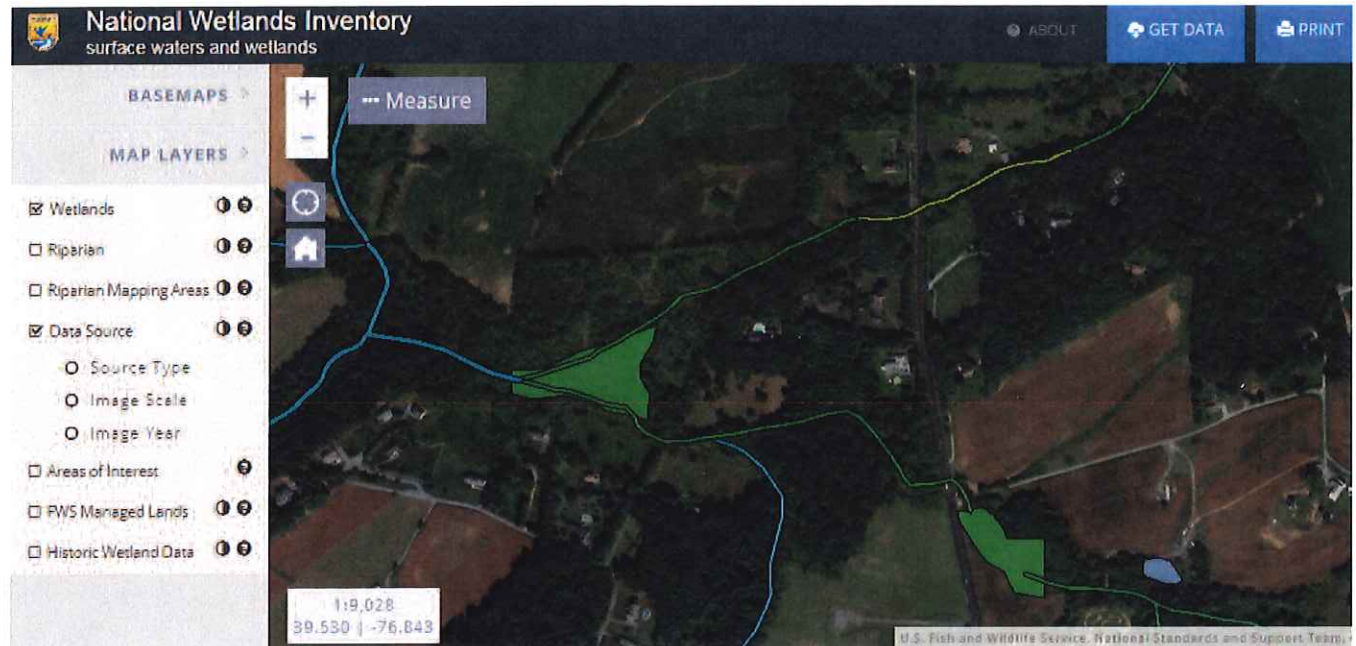
Stream at Base of SGC Solar Farm July 21, 2019



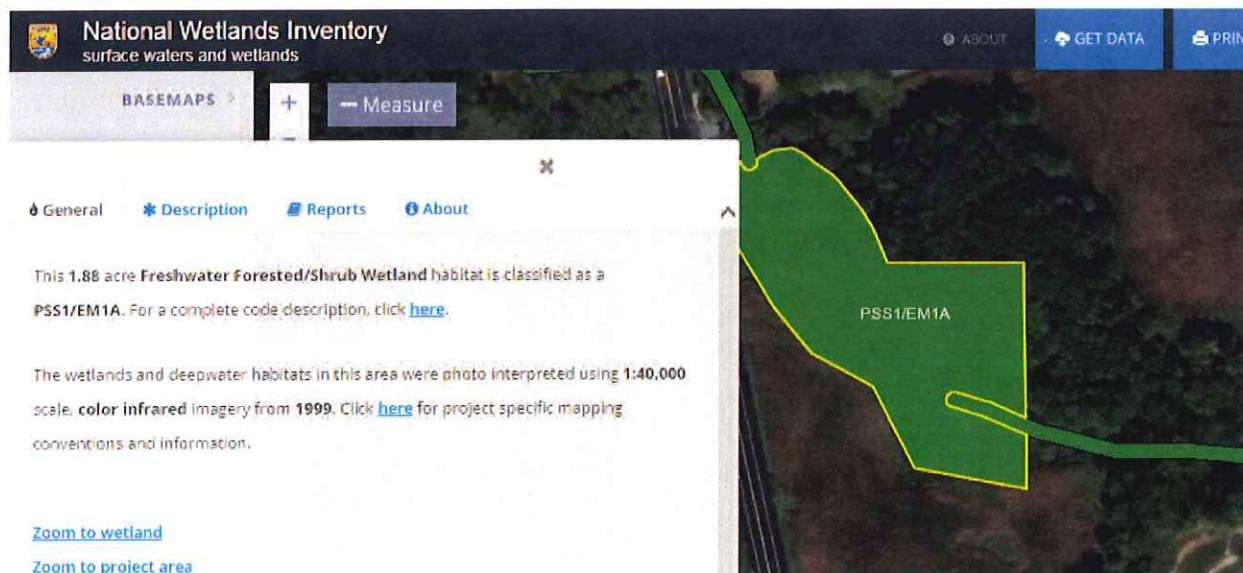
SGCSolar Farm Stream then feeds a 1.88 acre PSSI_EMIA Freshwater Forested Shrub Land.

Source: Federal Wetlands Inventory.

UMASS Natural Resources Assessment Group



Hanover Pike and Frye Road PSSI_EMIA Wetland



Classification code: PSS1/EM1A

System **Palustrine (P)** : The Palustrine System includes all nontidal wetlands dominated by trees, shrubs, persistent emergents, emergent mosses or lichens, and all such wetlands that occur in tidal areas where salinity due to ocean-derived salts is below 0.5 ppt. It also includes wetlands lacking such vegetation, but with all of the following four characteristics: (1) area less than 8 ha (20 acres); (2) active wave-formed or bedrock shoreline features lacking; (3) water depth in the deepest part of basin less than 2.5 m (8.2 ft) at low water; and (4) salinity due to ocean-derived salts less than 0.5 ppt.

Class **Scrub-Shrub (SS)** : Includes areas dominated by woody vegetation less than 6 m (20 feet) tall. The species include true shrubs, young trees (saplings), and trees or shrubs that are small or stunted because of environmental conditions.

Subclass **Broad-Leaved Deciduous (1)** : Woody angiosperms (trees or shrubs) with relatively wide, flat leaves that are shed during the cold or dry season; e.g., black ash (*Fraxinus nigra*).

Split Class **Emergent (EM)** : Characterized by erect, rooted, herbaceous hydrophytes, excluding mosses and lichens. This vegetation is present for most of the growing season in most years. These wetlands are usually dominated by perennial plants.

Split Subclass **Persistent (1)** : Dominated by species that normally remain standing at least until the beginning of the next growing season. This subclass is found only in the Estuarine and Palustrine systems.

Water Regime **Temporary Flooded (A)** : Surface water is present for brief periods (from a few days to a few weeks) during the growing season, but the water table usually lies well below the ground surface for the most of the season.

Source for National Wetland Data

UMASS Natural Resources Assessment Group

Project ID: 2003 MD NWI Updates, R05Y04P24

Project Title or Area: MD Bog Turtle Habitat

PHOTOINTERPRETATION – Contractor

Map Name (1:100K): Baltimore NW, Baltimore SW, Baltimore NE,
Baltimore SE, Wilmington NW, and Wilmington SW

Personnel: Lauren S. M. Whitaker (PI), Meaghan Shaffer (PI), Irene Huber (PIQC), and
Todd Nuerminger (PIQC)

UMASS Natural Resources Assessment Group

Date Started: 09/04/03 Date Completed: 02/20/04

Number of quads: 31

Source Imagery (type, scale and date): 1980-1990 eras 1:40K CIR for enhancement
of missing wetlands. 1998-1999 1:40K B&W for changes

Collateral Data (include any digital data used as collateral):

Data Sets Number of Quads

1:24K USGS DLG 31 of 31

1:24K USGS DRG 31 of 31

1:24K "Old" NWI 31 of 31

Digital SSURGO Soil Data 5 of 31

US Census Tiger Roads 31 of 31

Inventory Method (original mapping, map update, techniques used):

USGS DLG polygon delineations were used in place of existing NWI polygons to
update NWI layers

Alignment of linears/polygons was made to the USGS DRG topo maps as a base
layer

Classification (Cowardin wetlands, riparian, uplands, hydrogeomorphic, etc.):

Cowardin System

Additional Concerns

Solar Panel Contaminants

- The PV cell manufacturing process includes a number of hazardous materials, for the semiconductor components.
- Chemicals used are similar to those used in the general semiconductor industry and include:
 - hydrochloric acid
 - sulfuric acid
 - nitric acid
 - hydrogen fluoride
 - 1,1,1-trichloroethane
 - Acetone
- Thin-film PV cells contain a number of even more toxic materials than those used in traditional silicon photovoltaic cells to include:
 - gallium arsenide
 - copper-indium-gallium-diselenide
 - cadmium-telluride
 - lead
- Solar panels contain toxic metals to include:
 - Lead
 - Chromium (known carcinogen)
 - Cadmium, (known carcinogen)
- These components leach out of the solar panels through:
 - Degradation
 - Damage
- The market has been flooded with cheaply made Chinese panels that can break down in as few as five years, according to *Solar Power World* editor-in-chief Kelly Pickerel.

Solar panels are classified as toxic, hazardous electronic "e-waste".

Same materials used in manufacturing semiconductors and Printed Wire Circuit Boards.

DAMAGED SOLAR PANELS

Solar Panels can be damaged by:

Trees and debris

Trees and debris from high winds can scratch solar panels and lower the amount of energy produced.

Hail Storms:



Water Damage:

Water damage can occur if the seal is broken.

Solar Panel contain high voltages that travel through them and into the surrounding water with certain types of damage.

Shattered glass

Solar panels have tempered glass glued to the front side the panel, with the solar cells and tinned strips of metal for connecting the cells together immediately behind the glass. Tempered glass is designed to shatter in many small pieces instead of large dangerous shards as you get with normal window glass.

Because the tempered glass has glue on the inside face, the small pieces may stay in place. But not nearly as much light can get to them due to the misshapen glass.

Lightning Damage

Lightning strikes often damage the electronics in the box in the back of the panel where the connecting wires are and the high electrical current can cause melting in the box.

https://rimstar.org/renewnrg/broken_solar_panels_lightning_shattered_glass.htm

<http://EnvironmentalProgress.org/big-news/2017/6/21/are-we-headed-for-a-solar-waste-crisis/>

https://www.ucsusa.org/green_energy/our-energy-choices/renewable-energy/environmental-impacts-solar-power.html#references

http://svtc.org/wp-content/uploads/silicon_valley_toxics_coalition_-_toward_a_just_and_sust.pdf

<https://Hardware.slashdot.org/story/17/07/01/0442203/study-claims-disgrarded-solar-panels-create-more-toxic-waste-than-nuclear-plants/>

<https://www.forbes.com/sites/micjael-schellenberger/2018/05/23/if-solar-panels-are-so-clean-why-do-they-produce-so-much-toxic-waste/>

<https://www.theverge.com/2018/10/25/18018820/solar-panel-waste-chemicals-energy-environment-recycling>

<https://www.sunrun.com/go-solar-center/solar-articles/can-solar-panels-break>

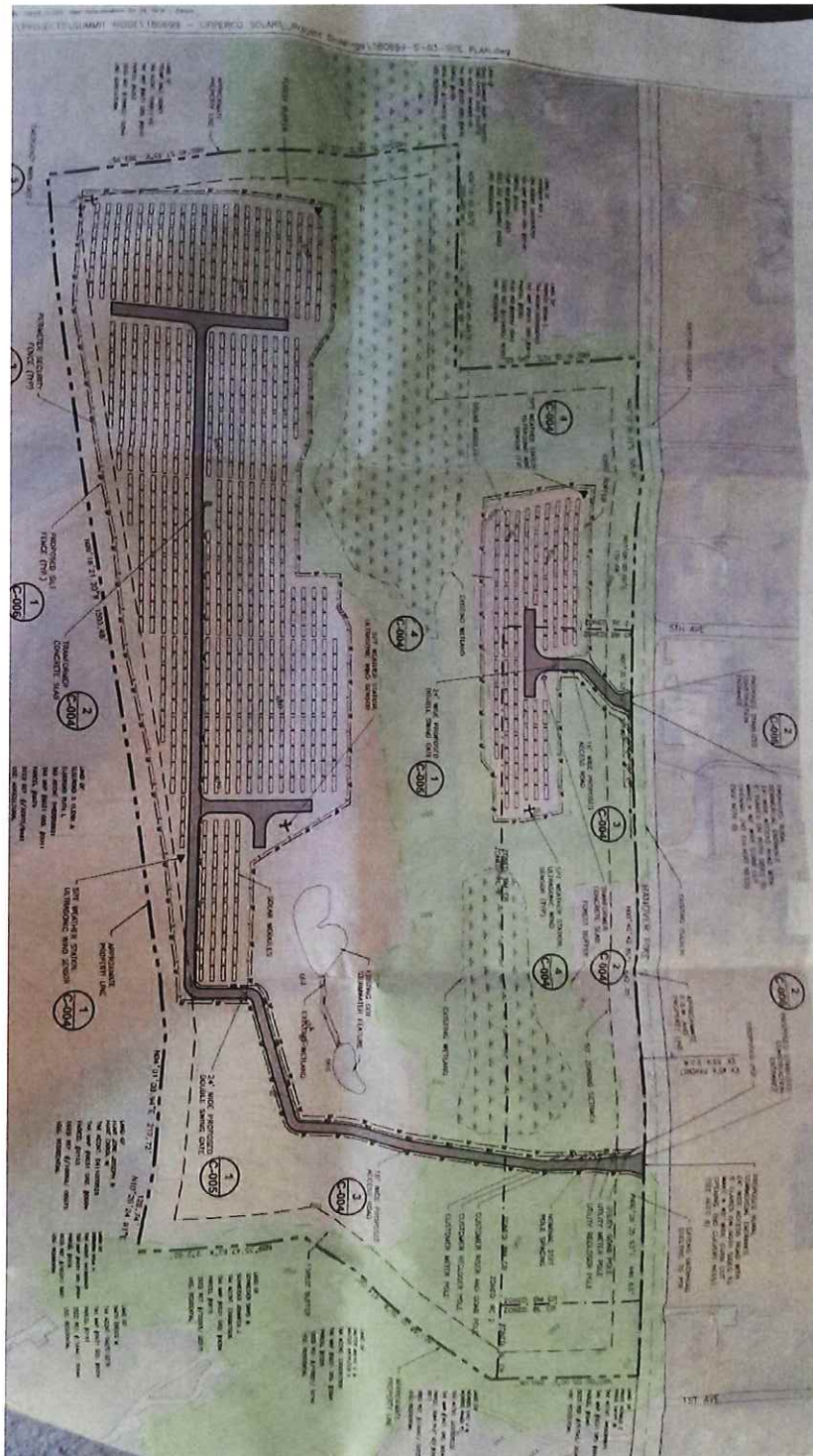
Disposal of Damaged Solar Panels

According to the Forbes article referenced above

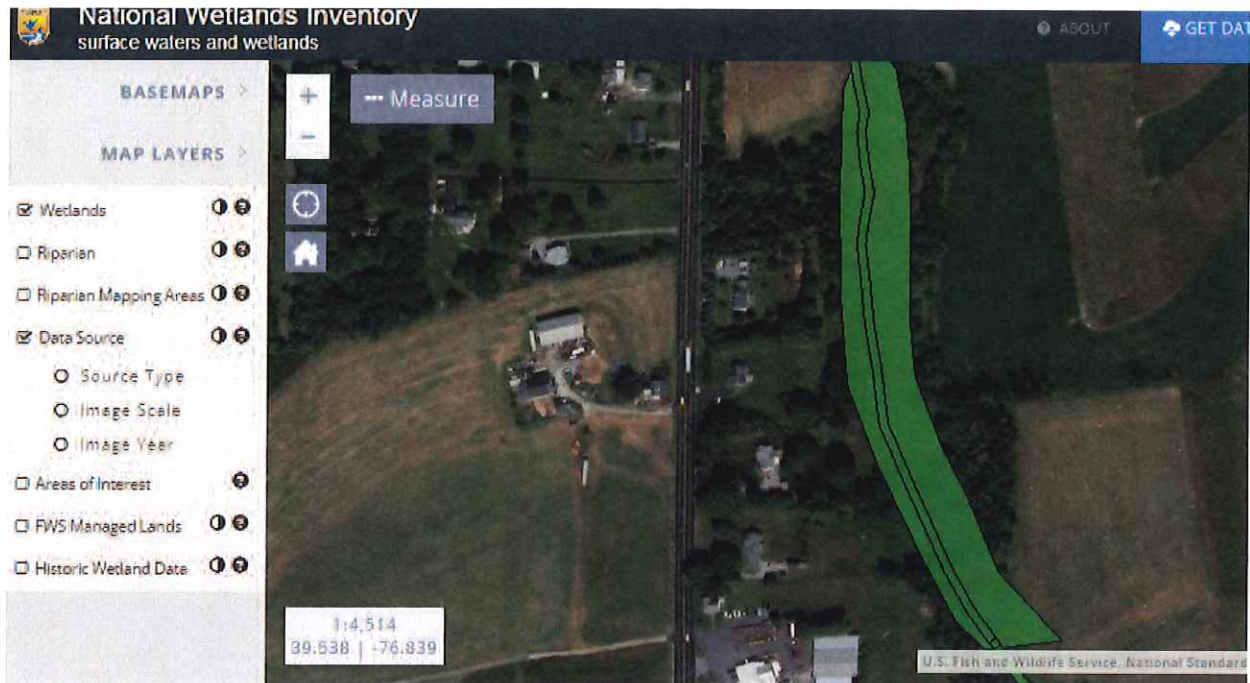
- Hazardous Waste Facilities Have Been Unable to Handle the Volume of Damaged and Re-Cycled Solar Panels
- Companies who manage solar re-cycling dump them in developing countries using these country as toxic land fills.
- First Solar Company says its policy is the customer is responsible for proper disposal of damaged or re-cycled and aged solar panels.
- Insurance industry says it is too costly and risky for manufacturers to pay the cost of disposing of damaged panels and take responsibility.

There is Not Just One But TWO Solar Farms Proposed on Hanover Pike Within One Mile of Each Other

Shofi Hanover Solar Farm One mile north of SGC Solar Farm.



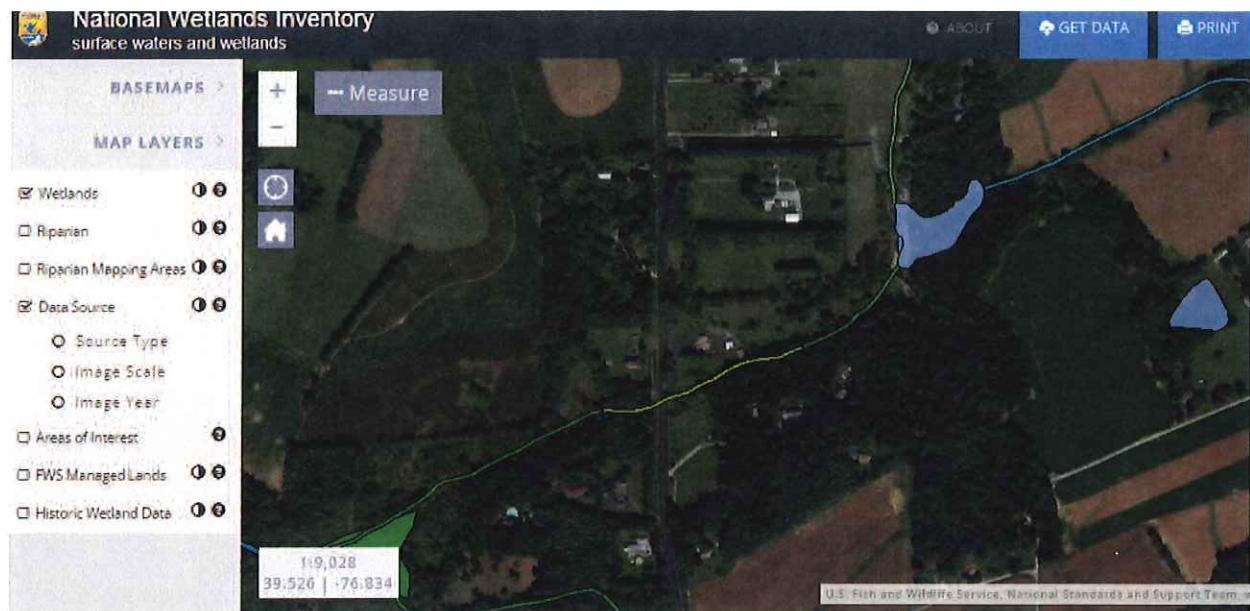
Shofi Hanover Solar Farm located with the wetlands and is alongside of
PSS1b Freshwater Forested Shrub Wetland



PSS1b feeds the waterways on Hanover Pike and
runs through the properties behind my house and neighbors ½ mile south of Shofi farm.



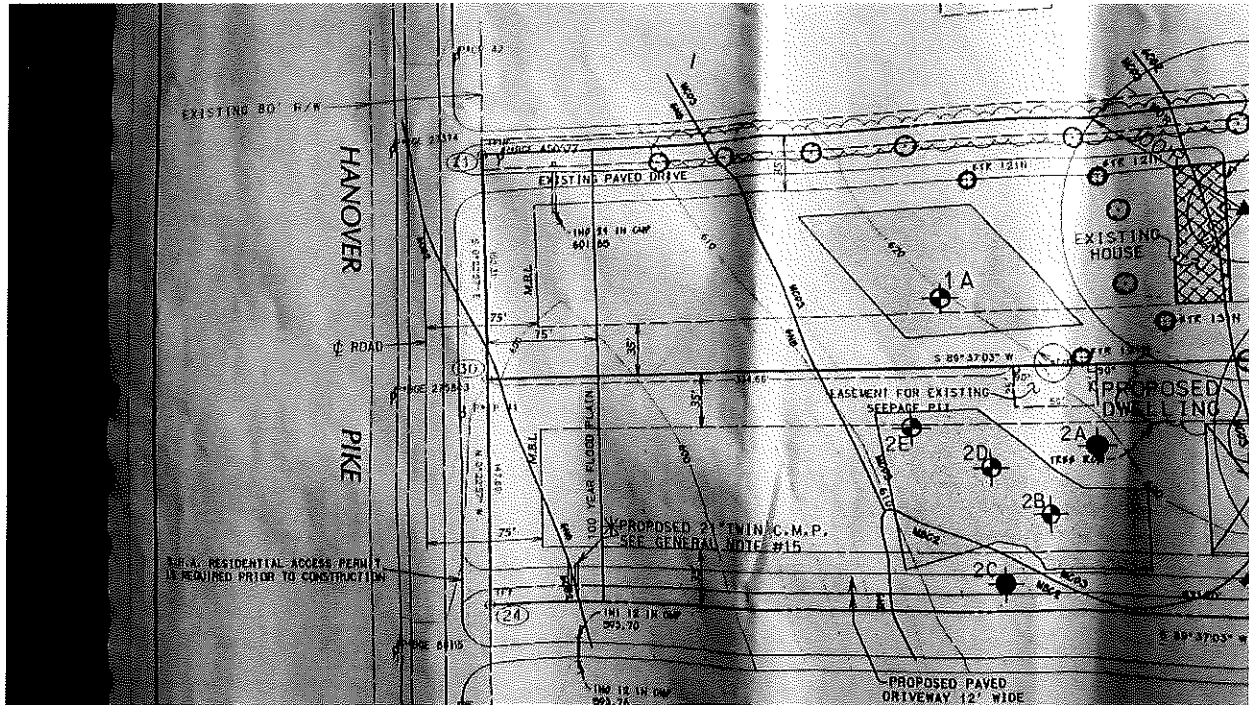
Waterflow proceeds south towards SGC Solar farm.



SGC Solar Farm Stream converges with waterway system and PSSI_EMIA wetland.



Half mile in between the two Solar Farms is the 100 Year Flood Plain which runs through 14821, 14823, and 14825 Hanover Pike properties.



Environmental Laws Protecting the Federal and County Wetlands and Flood Plains include:

- (1) National Environmental Policy Act (NEPA),
- (2) Endangered Species Act,
- (3) Clean Water Act.
- (4) Section 101(a) of the Federal Water Pollution Control Act Amendments of 1972 (P.L.92-500), as amended by the Clean Water Act of 1977 (P.L. 95-217), declares that the objective of this Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters.
- (5) Baltimore County enacted Section 26-276 of this Code, entitled Floodplain and Wetland Protection,
 - restricts construction in or alteration of any floodplain
 - prohibits dredging, filling, or construction in any wetland;
 - requires that any wetland must be adequately protected from contamination.

Thank You!

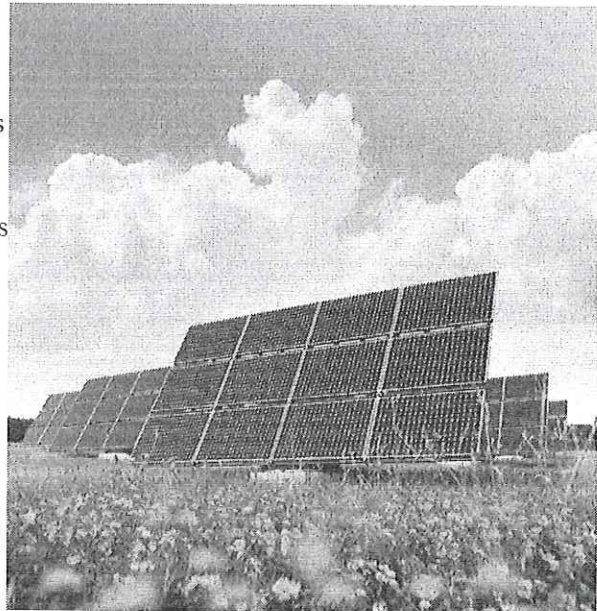
[https://dtsc.ca.gov/photovoltaic-modules-pv-modules-universal-waste-management-regulations/Solar Panels Information and FAQs](https://dtsc.ca.gov/photovoltaic-modules-pv-modules-universal-waste-management-regulations/Solar%20Panels%20Information%20and%20FAQs)

Introduction

This informal guidance serves to make available on the web, answers to frequently asked questions about solar panels. This guidance was prepared by the Regulatory Assistance Office of the Department of Toxic Substances Control (DTSC) and answers frequently asked questions received by the DTSC electronic waste enforcement team. Regulatory Assistance Officers respond to inquiries from the regulated community, environmental firms, other agencies, and the public at large about Department issues.

This guidance includes a brief description about solar panel design and is followed by answers to frequently asked questions (FAQ) about solar panels.

To make it easier, questions and answers in the FAQ document are grouped into the broad categories below:



This document does not address disassembling the solar panels into individual photovoltaic modules. This page and the FAQ document may be updated to reflect the passing of recent legislation.

[Click here to read the FAQ document](#) (You must have Adobe Acrobat Reader or compatible reader to view).

Information on Solar Panel (PV Modules) Regulations

Recently passed legislation authorizes DTSC to adopt regulations to designate used/spent solar panels that are hazardous wastes as universal waste. Until the new regulations are adopted, solar panels that exhibit characteristics of hazardous waste must be managed as hazardous wastes and not as universal wastes.

DTSC has a web page dedicated to information on the development of PV module regulations. Please visit our [Photovoltaic Modules \(PV\) – Universal Waste Management Regulations](#) page for information on the workshops and materials related to this process.

If you have further questions regarding the regulation development process, please send an email to PVMODULES@dtsc.ca.gov.

Only
Protestant
CBA Exhibit
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Brief Description of Solar Panel Design

A solar panel converts the sun's radiant energy into electricity using photovoltaic cells commonly known as solar cells. Key ingredients in a solar panel include solar cells, photovoltaic modules, and semiconductors.

The solar cell is the first building block of a solar panel. Within each solar cell are semiconductors that perform an important role in the overall function of the solar panel. Semiconductors contained beneath the antireflective surface absorb photons of sunlight energy and turn that energy into electric current. Each cell is soldered together in series into one large unit called a photovoltaic module. Multiple photovoltaic modules are soldered together to form a larger unit called a solar panel. Electrons leaving the solar panel require an inverter to convert the electron flow from DC current into usable AC current to power devices such as TVs, computers or hair dryers.

Cadmium

<https://www.atsdr.cdc.gov/csem/csem.asp?csem=6&po=7>

ATSDR

Agency for Toxic Substances and Disease Registry

Cadmium one of top 33 toxic substances

Limits for water, air, soil, food are listed.

cadmium.

The OSHA limits are

- Permissible Exposure Limit- TWA (PEL): 5 $\mu\text{g}/\text{m}^3$ (fumes).

The National Institute of Occupational Safety and Health (NIOSH) has set an:

- Immediately Dangerous to Life and Health level (IDLH) which is 9 mg/m^3 (NIOSH 2006; NTP 2004).

Health Standards

Many health agencies have set exposure standards designed to protect the general public from excess cadmium exposure from various sources.

FDA

- Maximum limit of cadmium in bottled water: 0.005 mg/L.

ATSDR

- Chronic durational oral minimal risk level (MRL) of 0.1 µg/kg/day of cadmium based on its renal effects.
- This MRL standard states how much cadmium can be taken in orally chronically without risk of adverse health effects (ATSDR 1999).

EPA

- Food - Reference dose is 1×10^{-3} mg/kg/day (ATSDR 1999).
- Water - Reference dose for human exposure is 5×10^{-4} mg/kg/day.
- Reference dose (Rfd) is an estimate of a daily exposure to the general population (including sensitive subgroups) that is likely to be without appreciable risk of deleterious effects during a lifetime (IRIS 2006).

World Health Organization (WHO)

- Tolerable weekly intake for cadmium at $7 \mu\text{g}/\text{kg}/\text{body weight}/\text{week}$

Carcinogenicity

Positions on carcinogenicity of cadmium by U.S. and international health organizations.

- EPA classifies cadmium as a probable human carcinogen (Group B1).

- International Agency for Research on Cancer (IARC) classifies cadmium as a known human carcinogen.
- American Conference of Industrial Hygienists (ACGIH) classifies cadmium as a suspected human carcinogen.
- National Toxicology Program (NTP) classifies cadmium as known to be a human carcinogen (NTP 2004).

Environmental Standards

EPA

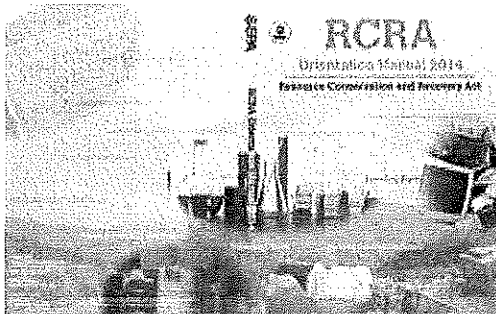
- Drinking water - maximum contaminant level for cadmium in drinking water is 0.005 mg/L. (ATSDR, 1999)
- Air - Cadmium is on the EPA National Emission Standards for Hazardous Air Pollutants (NESHAP) list of 189 hazardous air pollutants. Cadmium is listed as one of 33 hazardous air pollutants that present the greatest threat to public health in urban areas (ATSDR 1999).
- Soil – EPA biosolids rule states that the ceiling for the amount of cadmium that can be applied to land is 85 mg/kg fill material (NTP 2004).

Key Points

- Because much is known about the human health effects of cadmium, there is a large database from which to set standards.
- With increasing evidence of its toxicity, both national and international agencies have sought to regulate cadmium exposure

<https://www.epa.gov/rcra/resource-conservation-and-recovery-act-rcra-regulations> Resource Conservation and Recovery Act (RCRA) Regulations Resources

- [Non-hazardous Secondary Materials](#)
- [Hazardous Waste Identification](#)
- [RCRA Orientation Manual](#)



The RCRA regulations are contained in title 40 of the Code of Federal Regulations (CFR) parts 239 through 282. The CFR is a collection of all federal regulations codified and enforced by all federal agencies. [Title 40 – Protection of the Environment](#) - contains all of the regulations governing EPA's programs.

In any given state, EPA or the state's hazardous waste regulatory agency enforces hazardous waste laws. EPA encourages states to assume primary responsibility for implementing a hazardous waste program through state adoption, authorization and implementation of the regulations.

On this page:

- [Non-hazardous Waste](#)
- [Hazardous Waste](#)
- [Other RCRA Regulations](#)

Hazardous Waste

Additional Resources

- [EPA's Hazardous Waste website](#) provides an overview of the cradle-to-grave hazardous waste management system.
- [The Unified Agenda of Regulatory and Deregulatory Actions](#) reports on the actions U.S. EPA plans to issue in the near and long term.

The regulations governing hazardous waste identification, classification, generation, management and disposal are found in title 40 CFR parts 260 through 273.

- [Part 260 – Hazardous Waste Management System: General](#)
- [Part 261 – Identification And Listing Of Hazardous Waste](#)
- [Part 262 – Standards Applicable To Generators Of Hazardous Waste](#)
- [Part 263 – Standards Applicable To Transporters Of Hazardous Waste](#)
- [Part 264 – Standards For Owners And Operators Of Hazardous Waste Treatment, Storage, And Disposal Facilities](#)
- [Part 265 – Interim Status Standards For Owners And Operators Of Hazardous Waste Treatment, Storage, And Disposal Facilities](#)
- [Part 266 – Standards For The Management Of Specific Hazardous Wastes And Specific Types Of Hazardous Waste Management Facilities](#)
- [Part 267 – Standards For Owners And Operators Of Hazardous Waste Facilities Operating Under A Standardized Permit](#)
- [Part 268 – Land Disposal Restrictions](#)
- [Part 270 – EPA Administered Permit Programs: The Hazardous Waste Permit Program](#)
- [Part 271 – Requirements For Authorization Of State Hazardous Waste Programs](#)
- [Part 272 – Approved State Hazardous Waste Management Programs](#)
- [Part 273 – Standards For Universal Waste Management](#)

Solar farm Monitoring and Control

<https://www.solarpowerworldonline.com/2018-solar-software-monitoring-products/>

Nextractor true Capture Smart Control System

Power Standards Labs PCube3

Tigo Smart Monitoring Website

<https://www.sciencedirect.com/science/article/pii/S0160412014002487?via%3Dihub>

The photovoltaic industry on the path to a sustainable future — Environmental and occupational health issues

Highlights

-

The photovoltaic (PV) industry is discussed from a sustainability point of view.

-

Potentially toxic materials can be released during the PV systems life cycle.

-

Information gaps remain in PV systems life cycle assessments and need to be addressed.

-

Chemical and physical hazards threatening PV workers are still poorly documented.

-

Prevention of potential risks requires concerted action from all stakeholders.

<https://www.sciencedirect.com/topics/earth-and-planetary-sciences/photovoltaics>

The PV industry uses toxic and flammable substances, although in smaller amounts than many other industries, and use of hazardous chemicals can involve occupational and environmental hazards. Addressing EHS concerns is the focus of numerous studies of the National Photovoltaic EHS Assistance Center at Brookhaven National Laboratory, which operates under the auspices of the US Department of Energy (DOE). More than 150 articles highlighting these studies are posted in the Center's website

(www.pv.bnl.gov). This work has been done in cooperation with the US DOE PV Program and the US PV industry, which takes EHS issues very seriously and reacts proactively to concerns. Below is a summary of EHS issues pertaining to the manufacture of crystalline silicon (x-Si), amorphous silicon (a-Si), copper indium diselenide (CIS), copper indium gallium diselenide (CGS), gallium arsenide (GaAs), and cadmium telluride (CdTe), which are currently commercially available.

MONITOR & CONTROL SYSTEM

Science Direct, com → hazardous materials

NEXT TRACER

TCUBES

TOXIC MATERIAL + DAMAGE + CONDUCTING ELECTRIC

↓
DISABLE REMOTE
+
REMOVE QUICKLY

3-4 layer buffer, needs to show

PETED CARTER

DEGRADING 3% per week

(hh) *Person.*

Code of Ordinances



mc

(1) "Person" means an individual, partnership, all partners in a partnership, corporation, joint venture, all participants in a joint venture, trustee, personal representative or other legal entity.

(2) "Person" does not include Baltimore County unless expressly stated in this title.

(ii) *Person aggrieved.* "Person aggrieved" means a person:

(1) Who is a participant in the community input meeting, the Development Plan conference, or the proceedings by the Hearing Officer under Subtitle 2 of this title; and

(2) Whose personal or property rights are specially and adversely affected by final action on a Development Plan in a manner different than that of the public generally.

(jj) *Planned industrial park.* "Planned industrial park" means an industrial development:

(1) For which a Development Plan has been approved; and

(2) Which is under common ownership or control.

(kk) *Plat.* "Plat" means the graphic representation of a development prepared in accordance with the approved Development Plan for the purpose of recording in the land records of the county.

(ll) *Prime and productive soils.*

(1) "Prime and productive soils" means soil types defined as having agricultural capability by the U.S.D.A. Soil Survey of Baltimore County.

(2) "Prime and productive soils" include class I, II, or III or woodland class 1 or 2 soils.

(mm) *Private improvements.* "Private improvements" means improvements required by the county as a condition of development that are not intended to be dedicated to the county.

(nn) *Public improvement.* "Public improvements" means improvements required by the county as a condition of development that are intended to be dedicated to the county in fee simple or by other interest in title.

(oo) *Public works agreement.* "Public works agreement" means an agreement

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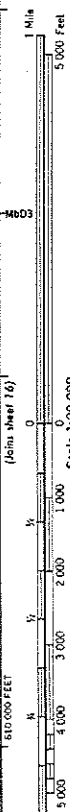
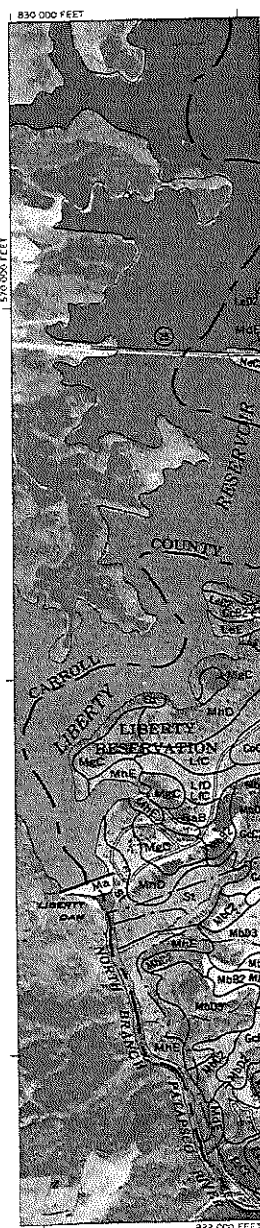
GUIDE TO MAPPING UNITS--Continued

Map symbol	Mapping unit	Described on page	Capability unit Symbol	Woodland subclass Symbol	Page
HsC	Hollinger and Conestoga very rocky loams, 3 to 15 percent slopes-----	37	VIe-2	2r	81
Iu	Iuka silt loam-----	38	IIW-7	1a	80
JpB	Joppa gravelly sandy loam, 2 to 5 percent slopes-----	39	IIe-4	3f	84
JpC2	Joppa gravelly sandy loam, 5 to 10 percent slopes, moderately eroded-----	39	IIIe-33	3f	84
JpD2	Joppa gravelly sandy loam, 10 to 15 percent slopes, moderately eroded-----	39	IVe-5	3f	84
JuD	Joppa-Urban land complex, 5 to 15 percent slopes-----	39	---	---	---
KeB2	Kelly silt loam, 3 to 8 percent slopes, moderately eroded-----	40	IVW-3	4w	84
KcC2	Kelly silt loam, 8 to 15 percent slopes, moderately eroded-----	40	IVW-3	4w	84
KaC	Kelly very stony silt loam, 0 to 15 percent slopes-----	40	VIIe-4	4w	84
KuB	Kelly-Urban land complex, 0 to 8 percent slopes-----	40	---	---	---
LaB2	Lagore silt loam, 3 to 8 percent slopes, moderately eroded-----	41	IIe-10	2a	81
LeC2	Lagore silt loam, 8 to 15 percent slopes, moderately eroded-----	41	IIIe-10	2a	81
LoD2	Lagore silt loam, 15 to 25 percent slopes, moderately eroded-----	41	IVe-10	2r	81
LeE	Lagore silt loam, 25 to 45 percent slopes-----	41	VIe-3	2r	81
LfC	Lagore very stony silt loam, 3 to 15 percent slopes-----	41	VIIe-3	2a	81
LfD	Lagore very stony silt loam, 15 to 25 percent slopes-----	41	VIe-3	2r	81
LfE	Lagore very stony silt loam, 25 to 45 percent slopes-----	41	VIIe-3	2r	81
LgC3	Lagore silty clay loam, 8 to 15 percent slopes, severely eroded-----	41	IVe-10	2a	81
LgB3	Lagore silty clay loam, 15 to 25 percent slopes, severely eroded-----	41	VIe-3	2r	81
LhB	Lagore-Urban land complex, 0 to 8 percent slopes-----	41	---	---	---
LhC	Lagore-Urban land complex, 8 to 15 percent slopes-----	42	---	---	---
LlB	Lenoir loam, 0 to 5 percent slopes-----	43	IIIW-5	3w	84
LmB	Lenoir silt loam, 0 to 5 percent slopes-----	43	IIIW-5	3w	84
LmC2	Lenoir silt loam, 5 to 12 percent slopes, moderately eroded-----	43	IIIe-34	3w	84
LnC3	Lenoir silty clay loam, 5 to 12 percent slopes, severely eroded-----	43	IVe-9	3w	84
LoB	Lenoir-Urban land complex, 0 to 5 percent slopes-----	43	---	---	---
Lr	Leonardtown silt loam-----	44	IVW-3	3w	84
Ls	Lindside silt loam-----	45	IIW-7	1w	80
LyB	Loamy and clayey land, 0 to 5 percent slopes-----	45	IIIe-42	3c	84
LyD	Loamy and clayey land, 5 to 15 percent slopes-----	45	VIe-2	3c	84
LyE	Loamy and clayey land, 15 to 40 percent slopes-----	45	VIIe-2	3c	84
Ma	Made land-----	45	---	---	---
MbB2	Manor loam, 3 to 8 percent slopes, moderately eroded-----	46	IIe-25	2a	81
MbC2	Manor loam, 8 to 15 percent slopes, moderately eroded-----	46	IIIe-25	2r	81
MbC3	Manor loam, 8 to 15 percent slopes, severely eroded-----	46	IVe-25	2r	81
MbD2	Manor loam, 15 to 25 percent slopes, moderately eroded-----	46	IVe-25	2r	81
MbD3	Manor loam, 15 to 25 percent slopes, severely eroded-----	46	VIe-3	2r	81
MbE2	Manor channery loam, 3 to 8 percent slopes, moderately eroded-----	46	IIIe-25	2r	81
McC2	Manor channery loam, 8 to 15 percent slopes, moderately eroded-----	46	IVe-25	2r	81
McC3	Manor channery loam, 8 to 15 percent slopes, severely eroded-----	46	VIe-3	2r	81
McD2	Manor channery loam, 15 to 25 percent slopes, moderately eroded-----	47	---	---	---
McD3	Manor channery loam, 15 to 25 percent slopes, severely eroded-----	47	---	---	---
MeE	Manor soils, 25 to 50 percent slopes-----	47	---	---	---
MeD	Manor-Urban land complex, 15 to 25 percent slopes-----	47	---	---	---
MgC	Manor and Glenelg very stony loams, 3 to 15 percent slopes-----	47	VIIe-3	2r	81
MhD	Manor and Brandywine very stony loams, 15 to 25 percent slopes-----	47	VIIe-3	2r	81
MhE	Manor and Brandywine very stony loams, 25 to 65 percent slopes-----	47	---	---	---
MkA	Matapex silt loam, 0 to 2 percent slopes-----	48	I-4	3a	83
MkB	Matapex silt loam, 2 to 5 percent slopes-----	48	IIe-4	3a	83

Map symbol	Mapping unit	Described on page	Capability unit Symbol	Woodland subclass Symbol	Page
MkC2	Matapex silt loam, 5 to 12 percent slopes, moderately eroded-----	48	IIIe-4	3a	83
MLA	Matapex silt loam, 0 to 2 percent slopes-----	49	IIW-1	3a	83
MLB	Matapex silt loam, 2 to 5 percent slopes-----	49	IIe-16	3a	83
MnB	Matapex-Urban land complex, 0 to 5 percent slopes-----	49	---	---	---
Mn	Melvin silt loam-----	50	IIIW-3	1w	80
Mo	Melvin silt loam, local alluvium-----	50	IIIW-3	1w	80
Mr	Mine dumps and quarries-----	50	VIIIe-4	---	---
McB2	Montalto silt loam, 3 to 8 percent slopes, moderately eroded-----	51	IIe-4	2c	82
McC2	Montalto silt loam, 8 to 15 percent slopes, moderately eroded-----	51	IIIe-4	2c	82
McB2	Mt. Airy channery loam, 3 to 8 percent slopes, moderately eroded-----	52	IIIe-10	3f	84
McC2	Mt. Airy channery loam, 8 to 15 percent slopes, moderately eroded-----	52	IVe-10	3f	84
MtD2	Mt. Airy channery loam, 15 to 25 percent slopes, moderately eroded-----	52	VIe-3	3f	84
MtD3	Mt. Airy channery loam, 15 to 25 percent slopes, severely eroded-----	52	VIIe-3	3f	84
NaB2	Neshaminy silt loam, 3 to 8 percent slopes, moderately eroded-----	52	IIe-4	2a	81
NaC2	Neshaminy silt loam, 8 to 15 percent slopes, moderately eroded-----	52	IIIe-4	2a	81
Ot	Othello silt loam-----	54	IIIW-7	1w	83
Po	Pocomoke sandy loam-----	54	IIIW-6	2w	82
RcC2	Relay silt loam, 8 to 15 percent slopes, moderately eroded-----	55	IIIe-10	2a	81
RcD2	Relay silt loam, 15 to 25 percent slopes, moderately eroded-----	55	IVe-10	2r	81
RcD	Relay very stony silt loam, 3 to 25 percent slopes-----	55	VIIe-3	2r	81
RaE	Relay very stony silt loam, 25 to 65 percent slopes-----	55	VIe-3	2r	81
RyD3	Relay clay loam, 15 to 25 percent slopes, severely eroded-----	55	VIIe-4	---	---
Sg	Sand and gravel pits-----	55	I-5	3a	83
ShA	Sassafras sandy loam, 0 to 2 percent slopes-----	56	IIe-5	3a	83
ShB	Sassafras sandy loam, 2 to 5 percent slopes-----	56	IIIe-5	3a	83
ShC2	Sassafras sandy loam, 5 to 10 percent slopes, moderately eroded-----	56	IVe-5	3a	83
ShC3	Sassafras sandy loam, 5 to 10 percent slopes, severely eroded-----	56	IVe-5	3a	83
ShD2	Sassafras sandy loam, 10 to 15 percent slopes, moderately eroded-----	56	I-4	3a	83
SLA	Sassafras loam, 0 to 2 percent slopes-----	56	IIe-4	3a	83
SLB	Sassafras loam, 2 to 5 percent slopes-----	57	IIIe-4	3a	83
SLC2	Sassafras loam, 5 to 10 percent slopes, moderately eroded-----	57	---	---	---
SnB	Sassafras-Urban land complex, 0 to 5 percent slopes-----	57	---	---	---
SoD3	Sassafras and Joppa soils, 5 to 15 percent slopes, severely eroded-----	57	VIe-2	3a	83
SeE	Sassafras and Joppa soils, 15 to 30 percent slopes-----	57	VIIe-2	3r	83
St	Stony land, steep-----	57	VIIIe-1	5x	85
SuB2	Sunnyside fine sandy loam, 0 to 5 percent slopes, moderately eroded-----	58	IIe-5	2a	81
Sw	Swamp-----	58	VIIIW-1	---	---
Tm	Tidal marsh-----	58	---	---	---
WaA	Watchung silt loam, 0 to 3 percent slopes-----	59	VW-1	1w	80
WaB	Watchung silt loam, 3 to 8 percent slopes-----	59	VIIW-2	1w	80
WaB	Watchung very stony silt loam, 0 to 8 percent slopes-----	59	VIIIe-4	1w	80
WaA	Woodstown sandy loam, 0 to 2 percent slopes-----	60	IIW-5	2a	81
WaB	Woodstown sandy loam, 2 to 5 percent slopes-----	60	IIe-36	2a	81
WoA	Woodstown loam, 0 to 2 percent slopes-----	60	IIW-1	2a	81
WoB	Woodstown loam, 2 to 5 percent slopes-----	60	IIe-16	2a	81

GUIDE TO MAPPING UNITS--Continued

Map symbol	Mapping unit	Described on page	Capability unit Symbol	Woodland subclass Symbol	Page	Map symbol	Mapping unit	Described on page	Capability unit Symbol	Woodland subclass Symbol	Page
HsC	Hollinger and Conestoga very rocky loams, 3 to 15 percent slopes-----	37	VIa-2	2r	81	McC2	Matapex silt loam, 5 to 12 percent slopes, moderately eroded-----	48	IIIa-4	3c	83
Iu	Iuka silt loam-----	38	IIW-7	1a	80	MLA	Matapex silt loam, 0 to 2 percent slopes-----	49	IIW-1	3c	83
JpB	Jopps gravelly sandy loam, 2 to 5 percent slopes-----	39	IIa-4	3f	84	MLB	Matapex silt loam, 2 to 5 percent slopes-----	49	IIa-16	3c	83
JpC2	Jopps gravelly sandy loam, 5 to 10 percent slopes, moderately eroded-----	39	IIIa-33	3f	84	MLB	Matapex-Urban land complex, 0 to 5 percent slopes-----	49	---	---	---
JpD2	Jopps gravelly sandy loam, 10 to 15 percent slopes, moderately eroded-----	39	IVa-5	3f	84	Mn	Melvin silt loam-----	50	IIW-3	1w	80
JuD	Jopps-Urban land complex, 5 to 15 percent slopes-----	39	---	---	---	Mo	Melvin silt loam, local alluvium-----	50	IIW-3	1w	80
KeB2	Kelly silt loam, 3 to 8 percent slopes, moderately eroded-----	40	IVa-5	4w	84	Mr	Mine dumps and quarries-----	50	VIIIa-4	---	---
KeC2	Kelly silt loam, 8 to 15 percent slopes, moderately eroded-----	40	IVa-3	4w	84	McB2	Montalto silt loam, 3 to 8 percent slopes, moderately eroded-----	51	IIa-4	2c	82
KaC	Kelly very stony silt loam, 0 to 15 percent slopes-----	40	IVa-3	4w	84	McC2	Montalto silt loam, 8 to 15 percent slopes, moderately eroded-----	51	IIIa-4	2c	82
KuB	Kelly-Urban land complex, 0 to 8 percent slopes-----	40	VIIa-4	4w	84	McC2	Mt. Airy channery loam, 3 to 8 percent slopes, moderately eroded-----	52	IIIa-10	3f	84
LeB2	Légore silt loam, 3 to 8 percent slopes, moderately eroded-----	41	---	---	---	---	eroded-----	52	IVa-10	3f	84
LeC2	Légore silt loam, 8 to 15 percent slopes, moderately eroded-----	41	IIa-10	2a	81	McD2	Mt. Airy channery loam, 15 to 25 percent slopes, moderately eroded-----	52	VIa-3	3f	84
LeD2	Légore silt loam, 15 to 25 percent slopes, moderately eroded-----	41	IIIa-10	2a	81	McD3	Mt. Airy channery loam, 15 to 25 percent slopes, severely eroded-----	52	VIIa-3	3f	84
LeE	Légore silt loam, 25 to 45 percent slopes-----	41	IVa-10	2r	81	McB2	Mesuminy silt loam, 3 to 8 percent slopes, moderately eroded-----	52	IIa-4	2a	81
LrC	Légore very stony silt loam, 3 to 15 percent slopes-----	41	VIa-3	2r	81	McC2	Mesuminy silt loam, 8 to 15 percent slopes, moderately eroded-----	52	IIIa-4	2a	81
LrD	Légore very stony silt loam, 15 to 25 percent slopes-----	41	VIa-3	2r	81	McC2	Mesuminy silt loam, 8 to 15 percent slopes, moderately eroded-----	54	IIW-7	1w	83
LrE	Légore very stony silt loam, 25 to 45 percent slopes-----	41	VIa-3	2r	81	Ot	Othello silt loam-----	54	IIW-6	2w	82
LgC3	Légore silty clay loam, 8 to 15 percent slopes, severely eroded-----	41	VIa-3	2r	81	Po	Pocomoke sandy loam-----	54	IIIa-10	2a	81
LgD3	Légore silty clay loam, 15 to 25 percent slopes, severely eroded-----	41	IVa-10	2a	81	ReC2	Relay silt loam, 8 to 15 percent slopes, moderately eroded-----	55	IVa-10	2r	81
LhB	Légore-Urban land complex, 0 to 8 percent slopes-----	41	VIa-3	2r	81	ReD2	Relay silt loam, 15 to 25 percent slopes, moderately eroded-----	55	VIIa-3	2r	81
LhC	Légore-Urban land complex, 8 to 15 percent slopes-----	41	---	---	---	RaD	Relay very stony silt loam, 3 to 25 percent slopes-----	55	VIIa-3	2r	81
LlB	Lenoir loam, 0 to 5 percent slopes-----	42	---	---	---	RaE	Relay very stony silt loam, 25 to 65 percent slopes-----	55	VIa-3	2r	81
LlC	Lenoir loam, 0 to 5 percent slopes-----	43	IIW-5	3w	84	RyD3	Relay clay loam, 15 to 25 percent slopes, severely eroded-----	55	VIIa-4	---	---
LmB	Lenoir silt loam, 0 to 5 percent slopes-----	43	IIW-5	3w	84	Sg	Sand and gravel pits-----	55	VIIa-4	---	---
LmC2	Lenoir silt loam, 5 to 12 percent slopes, moderately eroded-----	43	IIIa-34	3w	84	Sha	Sassafras sandy loam, 0 to 2 percent slopes-----	56	I-5	3a	83
LmD3	Lenoir silty clay loam, 5 to 12 percent slopes, severely eroded-----	43	IVa-9	3w	84	ShB	Sassafras sandy loam, 2 to 5 percent slopes-----	56	IIa-5	3a	83
LoB	Lenoir-Urban land complex, 0 to 5 percent slopes-----	43	---	---	---	ShC2	Sassafras sandy loam, 5 to 10 percent slopes, moderately eroded-----	56	IIIa-5	3a	83
Lr	Leonardtown silt loam-----	44	IVa-3	3w	84	ShC3	Sassafras sandy loam, 5 to 10 percent slopes, severely eroded-----	56	IVa-5	3a	83
La	Lindside silt loam-----	45	IIW-7	1w	80	ShD2	Sassafras sandy loam, 10 to 15 percent slopes, moderately eroded-----	56	I-4	3a	83
LyB	Loamy and clayey land, 0 to 5 percent slopes-----	45	IIIa-42	3c	84	SLA	Sassafras loam, 0 to 2 percent slopes-----	56	IIa-4	3a	83
LyD	Loamy and clayey land, 5 to 15 percent slopes-----	45	VIa-2	3c	84	SLB	Sassafras loam, 2 to 5 percent slopes-----	57	IIIa-4	3a	83
LyE	Loamy and clayey land, 15 to 40 percent slopes-----	45	VIIa-2	3c	84	SLC2	Sassafras loam, 5 to 10 percent slopes, moderately eroded-----	57	---	---	---
Ma	Made land-----	45	---	---	---	SnB	Sassafras-Urban land complex, 0 to 5 percent slopes-----	57	---	---	---
McB2	Manor loam, 3 to 8 percent slopes, moderately eroded-----	46	IIa-25	2a	81	SnD3	Sassafras and Jopps soils, 5 to 15 percent slopes, severely eroded-----	57	VIa-2	3a	83
McC2	Manor loam, 8 to 15 percent slopes, moderately eroded-----	46	IIIa-25	2r	81	SeE	Sassafras and Jopps soils, 15 to 30 percent slopes-----	57	VIa-2	3r	83
McC3	Manor loam, 8 to 15 percent slopes, severely eroded-----	46	IVa-25	2r	81	St	Stony land, steep-----	57	VIIa-1	5x	85
McD2	Manor loam, 15 to 25 percent slopes, moderately eroded-----	46	IVa-25	2r	81	SuB2	Sunnyside fine sandy loam, 0 to 5 percent slopes, moderately eroded-----	58	IIa-5	2a	81
McD5	Manor loam, 15 to 25 percent slopes, severely eroded-----	46	VIa-3	2r	81	---	---	58	VIIa-1	---	---
McB2	Manor channery loam, 3 to 8 percent slopes, moderately eroded-----	46	IIa-25	2a	81	Sw	Swamp-----	58	VIIIa-1	---	---
McC2	Manor channery loam, 8 to 15 percent slopes, moderately eroded-----	46	IIIa-25	2r	81	Tn	Tidal marsh-----	58	---	---	---
McC3	Manor channery loam, 8 to 15 percent slopes, severely eroded-----	46	IVa-25	2r	81	WaA	Watchung silt loam, 0 to 3 percent slopes-----	59	Va-1	1w	80
McD2	Manor channery loam, 15 to 25 percent slopes, moderately eroded-----	47	VIa-3	2r	81	WaB	Watchung silt loam, 3 to 8 percent slopes-----	59	VIIa-2	1w	80
McD3	Manor channery loam, 15 to 25 percent slopes, severely eroded-----	47	VIa-3	2r	81	WaB	Watchung very stony silt loam, 0 to 8 percent slopes-----	59	VIIa-4	1w	80
MeE	Manor soils, 25 to 50 percent slopes-----	47	---	---	---	WaA	Woodstown sandy loam, 0 to 2 percent slopes-----	60	IIW-5	2a	81
MeD	Manor-Urban land complex, 15 to 25 percent slopes-----	47	---	---	---	WaB	Woodstown sandy loam, 2 to 5 percent slopes-----	60	IIIa-36	2a	81
MgC	Manor and Glenelg very stony loams, 3 to 15 percent slopes-----	47	VIa-3	2r	81	WoA	Woodstown loam, 0 to 2 percent slopes-----	60	IIW-1	2a	81
MhD	Manor and Brandywine very stony loams, 15 to 25 percent slopes-----	47	VIIa-3	2r	81	WoE	Woodstown loam, 2 to 5 percent slopes-----	60	IIIa-16	2a	81
MhE	Manor and Brandywine very stony loams, 25 to 65 percent slopes-----	47	I-4	3a	83	---	---	---	---	---	---
MxA	Matapex silt loam, 0 to 2 percent slopes-----	48	IIa-4	3a	83	---	---	---	---	---	---
MxB	Matapex silt loam, 2 to 5 percent slopes-----	48	---	---	---	---	---	---	---	---	---



(Join sheet 14)

(Join sheet 20)

(Join sheet 11)

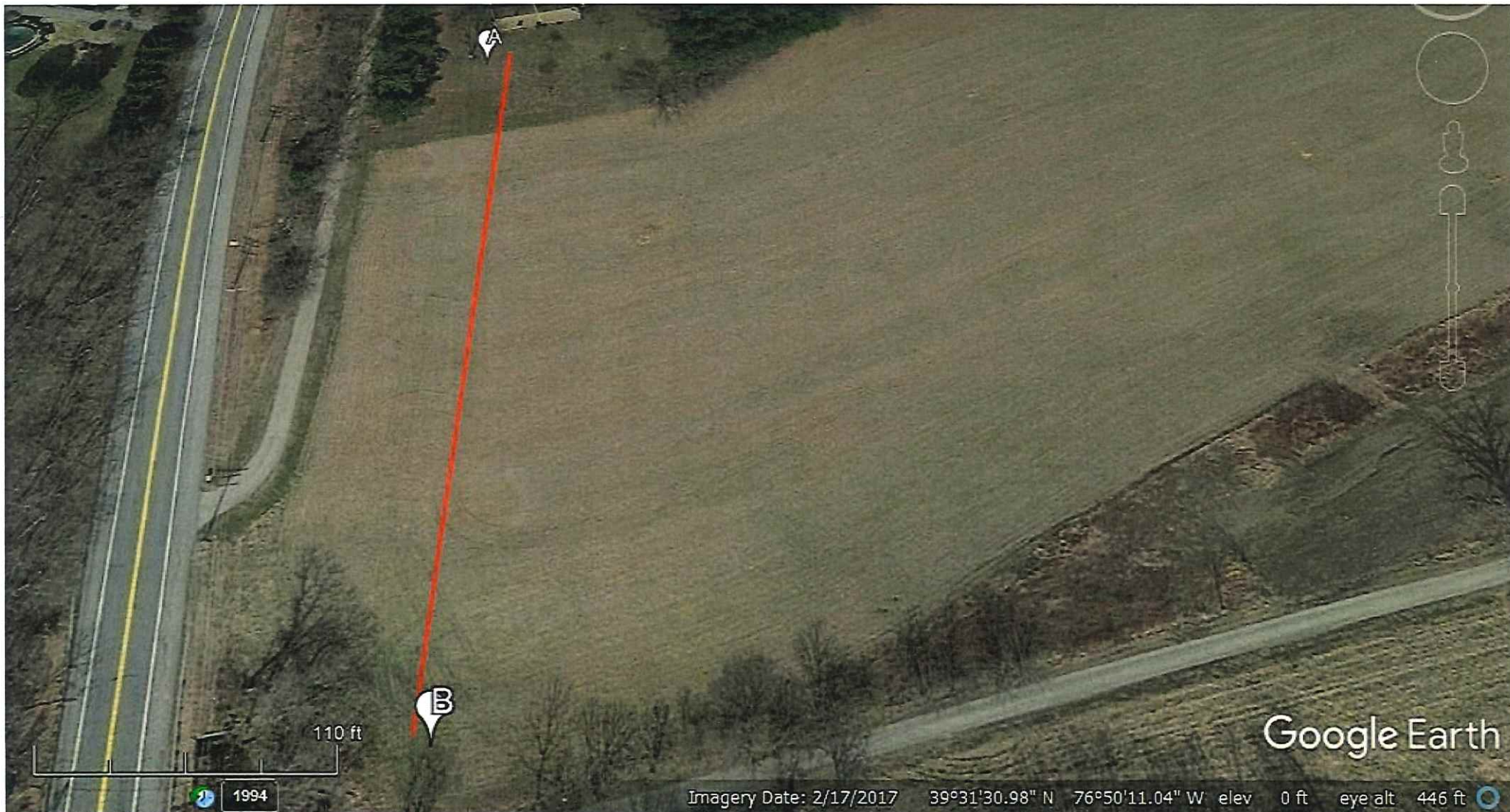


A A A

Area of Interest (AOI)	Soil Map	Soil Data Explorer	Download Soils Data	Shopping Cart (Free)
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Search
Area of Interest
Import AOI
Quick Navigation
Address
View
Address 14619 Hanover Pike, Upperco, MD
Show location marker ☒
View
State and County
Soil Survey Area
Latitude and Longitude or Current Location
PLSS (Section, Township, Range)
Bureau of Land Management
Department of Defense
Forest Service
National Park Service
Hydrologic Unit

Area of Interest Interactive Map	
	View Extent Contiguous U.S. Scale (not to scale)

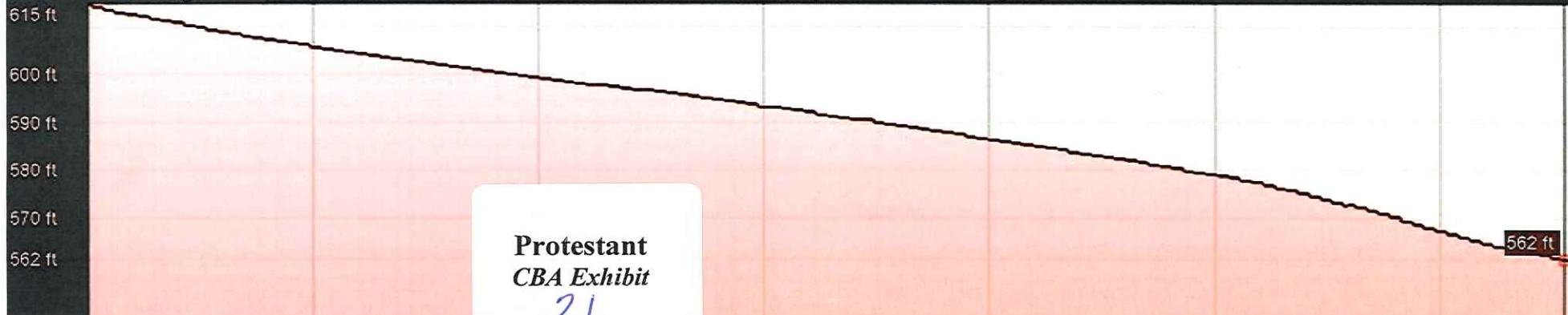


1994

Imagery Date: 2/17/2017 39°31'30.98" N 76°50'11.04" W elev 0 ft eye alt 446 ft

Graph: Min. Avg. Max Elevation: 562, 590, 615 ft

Range Totals: Distance: 494 ft Elev Gain/Loss: 0.76 ft, -53.9 ft Max Slope: -, - Avg Slope: -, -



Protestant
CBA Exhibit

21

14619 Hanover Pike

A

B

© 2018 Google

Google Earth

206 ft



1994

Imagery Date: 2/17/2017 39°31'36.45" N 76°50'11.00" W elev 0 ft eye alt 832 ft

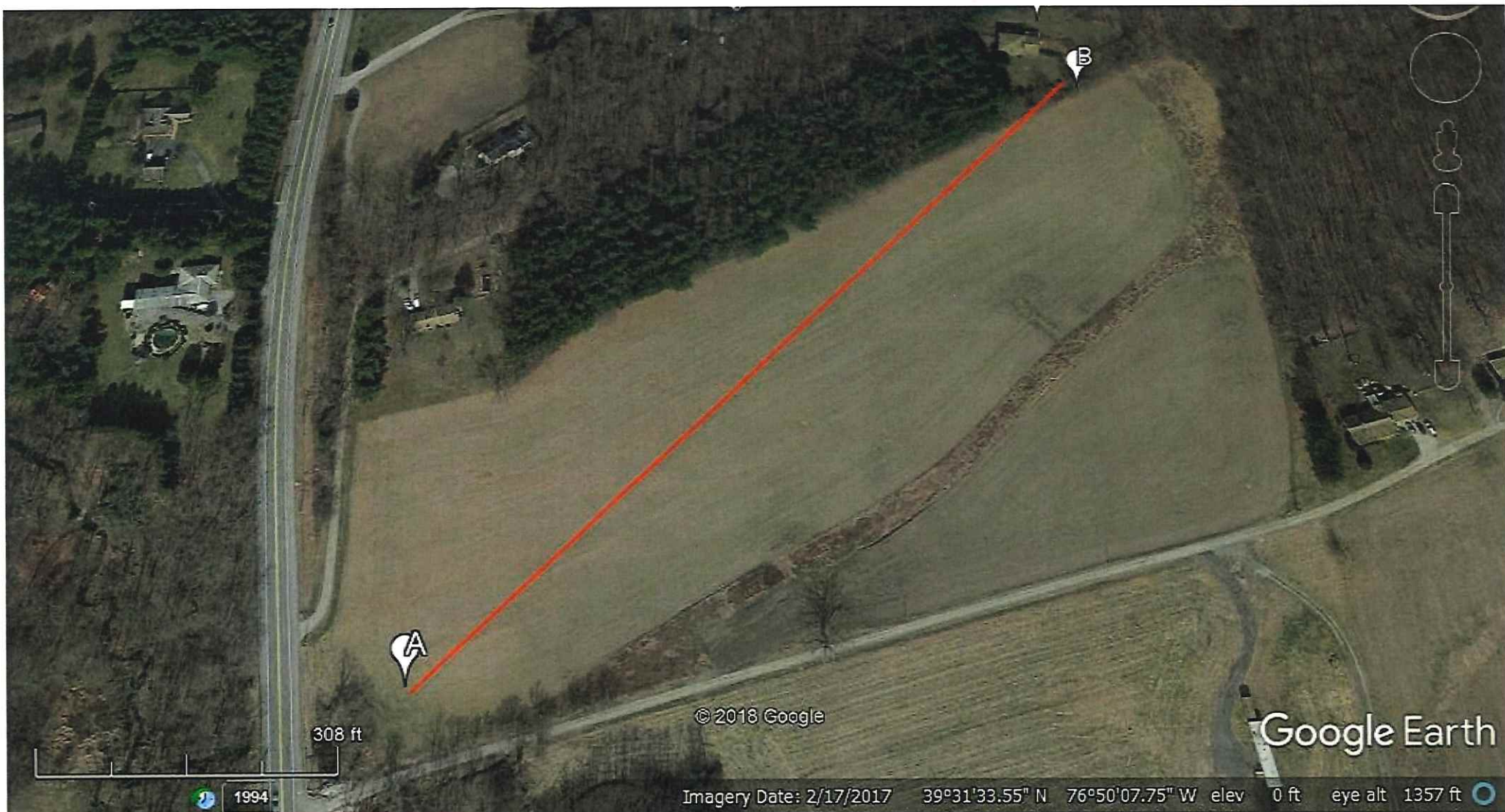
Graph: Min. Avg. Max Elevation: 587. 599. 611 ft

Range Totals: Distance: 1009 ft Elev Gain/Loss: 24.8 ft, -24.5 ft Max Slope: 15.1%, -17.8% Avg Slope: 5.7%, -4.2%



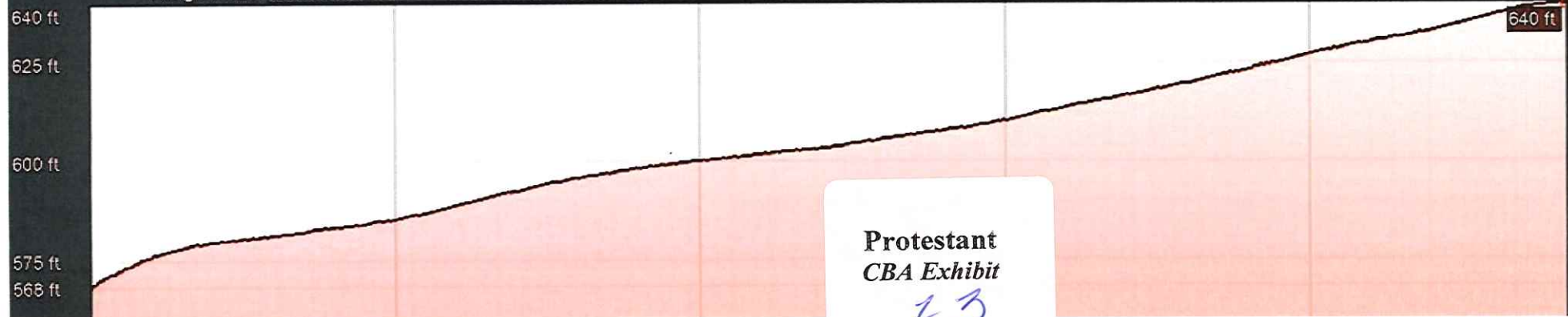
Protestant
CBA Exhibit

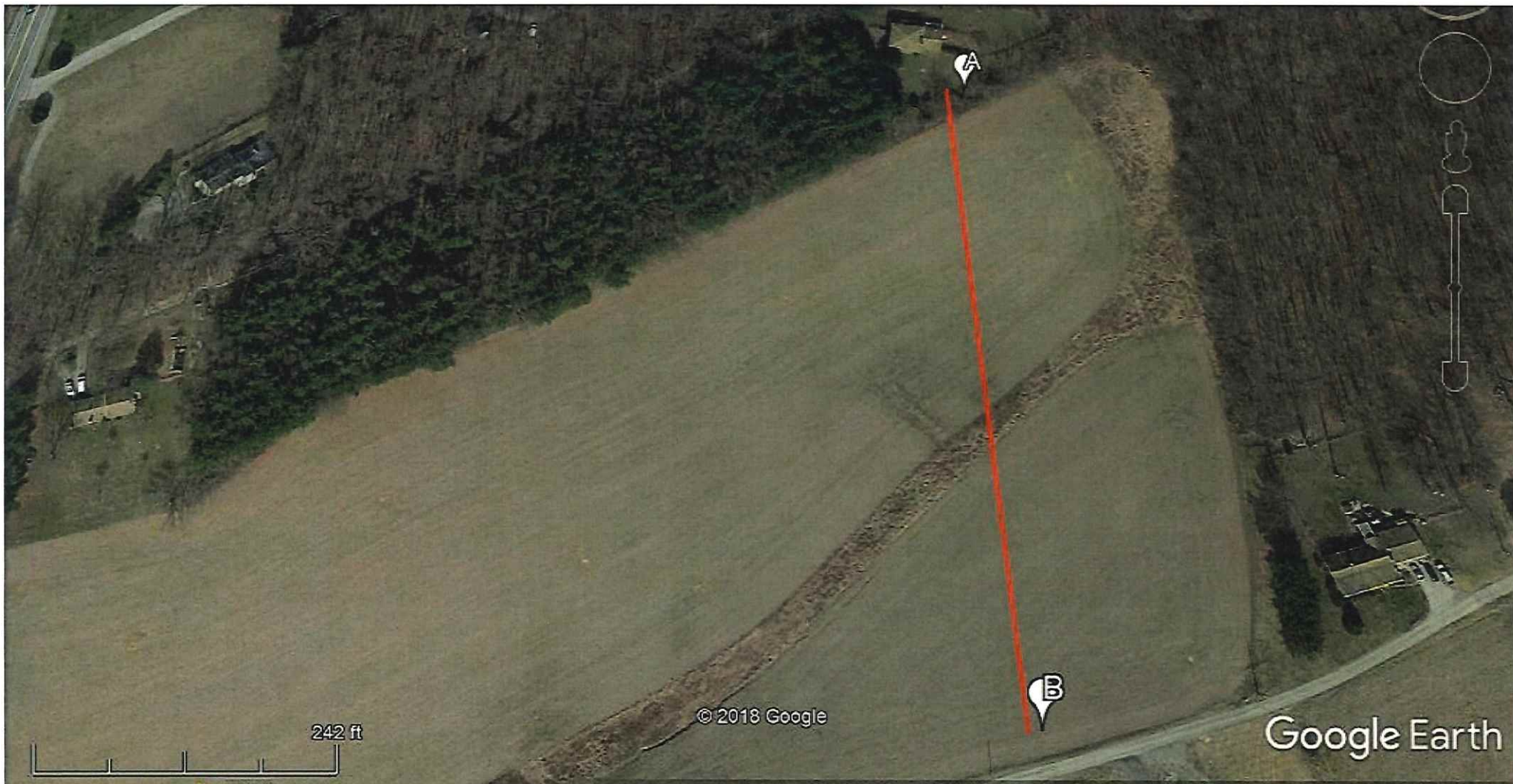
22



Graph: Min. Avg. Max. Elevation: 568, 605, 640 ft

Range Totals: Distance: 1212 ft Elev Gain/Loss: 93.8 ft, -22.0 ft Max Slope: 34.0%, -6.0% Avg Slope: 6.3%, -2.1%





Google Earth

Imagery Date: 2/17/2017 39°31'34.70" N 76°50'05.09" W elev 0 ft eye alt 1066 ft

Graph: Min, Avg, Max Elevation: 594, 608, 642 ft

Range Totals: Distance: 721 ft Elev Gain/Loss: 6.88 ft, -47.7 ft Max Slope: 10.4%, -23.6% Avg Slope: 2.0%, -12.5%



14527 Hanover Pike



A

B

© 2018 Google

Google Earth

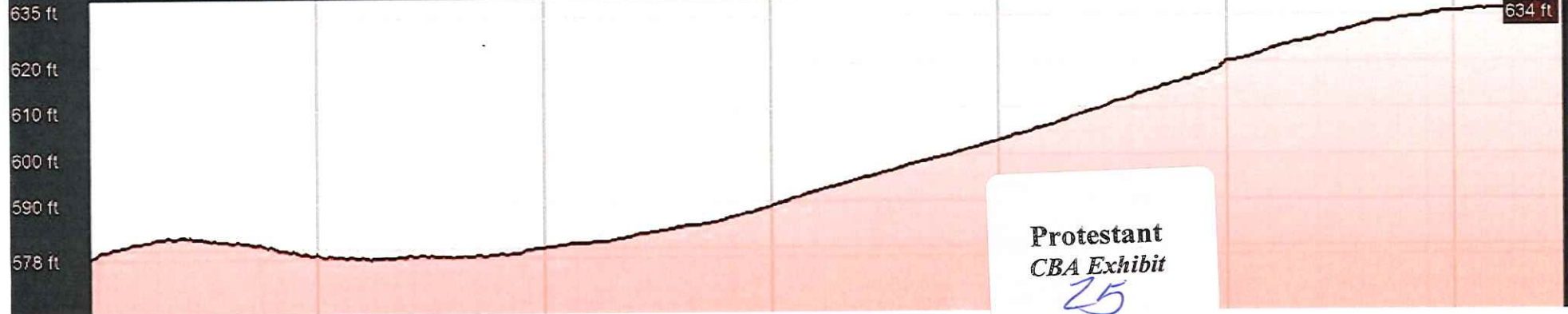
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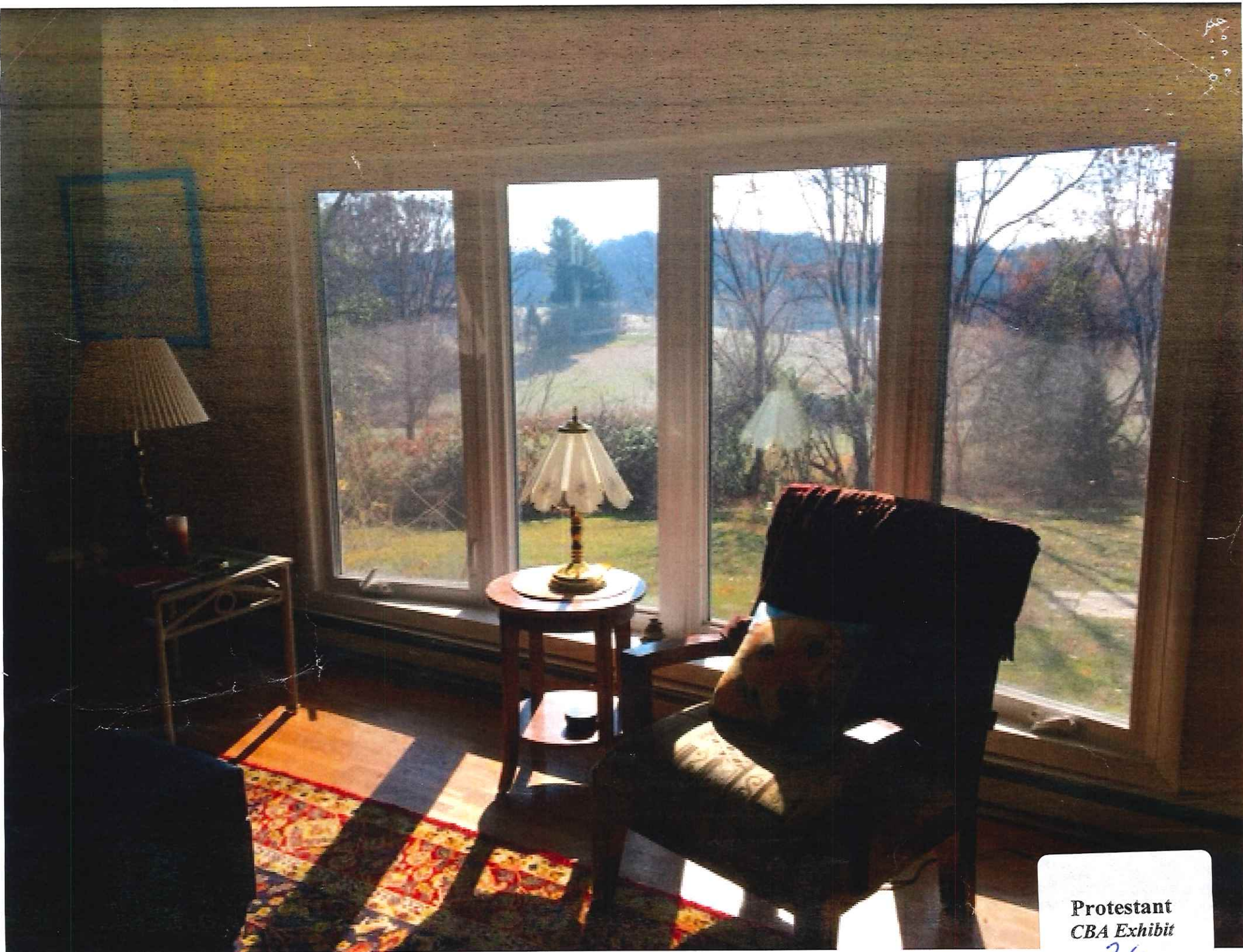


Imagery Date: 2/17/2017 39°31'30.94" N 76°50'03.55" W elev 0 ft eye alt 1311 ft

Graph: Min. Avg. Max. Elevation: 578, 599, 635 ft

Range Totals: Distance: 1623 ft Elev Gain/Loss: 72.5 ft, -16.7 ft Max Slope: 21.2%, -11.5% Avg Slope: 4.7%, -3.4%





Protestant
CBA Exhibit

26

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2017, Legislative Day No. 11

Bill No. 37-17

Mrs. Vicki Almond, Councilwoman

By the County Council, June 5, 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; providing for a statement of purpose and defining terms; providing exceptions; 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 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 502.1.1.
Baltimore County Zoning Regulations, as amended

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

ARTICLE 4E

SOLAR FACILITIES

§4E-101. PURPOSE AND DEFINITIONS.

§4E-101.1. PURPOSE.

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, AND PRODUCE
CLEAN, RENEWABLE ENERGY AND REDUCE AIR AND WATER POLLUTION CAUSED
BY THE BURNING OF TRADITIONAL FOSSIL FUELS. THE PURPOSE AND INTENT OF
THIS ARTICLE IS TO PERMIT SOLAR FACILITIES IN PARTS OF THE RURAL AND
COMMERCIAL AREAS OF THE COUNTY BY SPECIAL EXCEPTION, AND TO BALANCE
THE BENEFITS OF SOLAR ENERGY PRODUCTION WITH ITS POTENTIAL IMPACT
UPON THE COUNTY'S LAND USE POLICIES BY ENSURING SUFFICIENT
SAFEGUARDS ARE IN PLACE TO PROTECT THE COUNTY'S COMMUNITIES AND ITS
AGRICULTURAL LAND, FORESTS, WATERWAYS AND OTHER NATURAL
RESOURCES.

1 §4E-101.2. DEFINITIONS.

2 AS USED IN THIS ARTICLE, THE FOLLOWING TERMS HAVE THE MEANINGS
3 INDICATED:

4 A. "SOLAR FACILITY" MEANS A FACILITY THAT INCLUDES A SERIES OF ONE OR
5 MORE SOLAR COLLECTOR PANELS OR SOLAR ENERGY SYSTEMS THAT ARE
6 PLACED IN AN AREA ON A TRACT OF LAND FOR THE PURPOSE OF GENERATING
7 PHOTOVOLTAIC POWER FOR COMMERCIAL USE. THE TERM INCLUDES A SOLAR
8 POWER PLANT OR SOLAR PHOTOVOLTAIC FARM.

9 B. "COMMERCIAL USE" MEANS THE TRANSFER TO THE ELECTRICAL POWER GRID
10 OF ENERGY PRODUCED BY A SOLAR FACILITY FOR SALE BY ENERGY SUPPLIERS
11 TO CONSUMERS.

12
13 §4E-102. LOCATION OF SOLAR FACILITIES.

14 A. SUBJECT TO PARAGRAPH B, A SOLAR FACILITY IS PERMITTED ONLY BY
15 SPECIAL EXCEPTION IN THE R.C.2, R.C.3, R.C.4, R.C.5, R.C.6, R.C.7, R.C.8, B.L., B.M.,
16 M.R., M.L.R., AND M.H. ZONES OF THE COUNTY.

17 B. THE ALLOCATION OF LAND FOR SOLAR FACILITIES IN THE COUNTY IS
18 LIMITED TO THE FOLLOWING:

19 1. THE MAXIMUM AREA PERMITTED FOR A SINGLE SOLAR FACILITY IS
20 THE AMOUNT OF ACREAGE THAT PRODUCES NO MORE THAN TWO MEGAWATTS
21 ALTERNATING CURRENT (AC) OF ELECTRICITY.

22 2. NO MORE THAN TEN (10) SOLAR FACILITIES MAY BE LOCATED IN A
23 COUNCILMANIC DISTRICT.

1 3. THE DIRECTOR OF PERMITS, APPROVALS AND INSPECTIONS SHALL
2 MAINTAIN A RECORD OF ALL PERMITS ISSUED FOR A SOLAR FACILITY IN THE
3 COUNTY, INCLUDING THE LOCATION AND COUNCILMANIC DISTRICT FOR EACH
4 SUCH FACILITY, AND SHALL KEEP A CURRENT ACCOUNTING OF THE NUMBER OF
5 FACILITIES IN EACH COUNCILMANIC DISTRICT UNDER THIS PARAGRAPH.

6 4. UPON REACHING THE THRESHOLD OF TEN (10) SOLAR FACILITIES IN A
7 COUNCILMANIC DISTRICT, NO ADDITIONAL PERMITS SHALL BE ISSUED FOR A
8 SOLAR FACILITY IN THAT DISTRICT UNLESS AN EXISTING FACILITY PREVIOUSLY
9 APPROVED UNDER THIS ARTICLE HAS BEEN REMOVED PURSUANT TO SECTION 4E-
10 107.

11
12 §4E-103. EXCEPTION.

13 THIS ARTICLE DOES NOT APPLY TO THE FOLLOWING SOLAR FACILITY
14 INSTALLATIONS:

15 1. A GROUND-MOUNTED SOLAR FACILITY LOCATED IN A YARD AREA,
16 BUILDING, OR STRUCTURE THAT IS ACCESSORY TO A PRINCIPAL RESIDENTIAL,
17 AGRICULTURAL, COMMERCIAL OR INSTITUTIONAL USE THAT IS ACCESSORY TO
18 A PRINCIPAL RESIDENTIAL OR AGRICULTURAL USE (SUBJECT TO SECTIONS 400.1
19 AND 400.2 OF THESE REGULATIONS APPLICABLE TO ACCESSORY BUILDINGS), OR
20 ACCESSORY TO A PRINCIPAL COMMERCIAL, INDUSTRIAL, OR INSTITUTIONAL
21 USE;

22 2. A ROOFTOP SOLAR FACILITY;

1 2 3. A SOLAR FACILITY ON FEDERAL, STATE OR LOCAL GOVERNMENT-
2 OWNED OR LEASED LAND THAT PRODUCES ENERGY FOR GOVERNMENT USE; OR

3 3 4. A SOLAR FACILITY LOCATED ON THE SAME PROPERTY OR TRACT AS
4 A FARM THAT USES AT LEAST 66% OF THE ENERGY GENERATED BY THE
5 FACILITY FOR AGRICULTURAL USES ON THE FARM.

6
7 §4E-104. REQUIREMENTS.

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

10 1. THE LAND ON WHICH A SOLAR FACILITY IS PROPOSED MAY NOT BE
11 ENCUMBERED BY AN AGRICULTURAL PRESERVATION EASEMENT, AN
12 ENVIRONMENTAL PRESERVATION EASEMENT, OR A RURAL LEGACY EASEMENT.

13 2. THE LAND ON WHICH A SOLAR FACILITY IS PROPOSED MAY NOT BE
14 LOCATED IN A BALTIMORE COUNTY HISTORIC DISTRICT OR ON A PROPERTY
15 THAT IS LISTED ON THE BALTIMORE COUNTY FINAL LANDMARKS LIST.

16 3. THE PORTION OF LAND ON WHICH A SOLAR FACILITY IS PROPOSED
17 MAY NOT BE IN A FOREST CONSERVATION EASEMENT, OR BE IN A DESIGNATED
18 CONSERVANCY AREA IN AN R.C.4 OR R.C.6 ZONE.

19 4. ABOVEGROUND COMPONENTS OF THE SOLAR FACILITY, INCLUDING
20 SOLAR COLLECTOR PANELS, INVERTERS, AND SIMILAR EQUIPMENT, MUST BE
21 SET BACK A MINIMUM OF 50 FEET FROM THE TRACT BOUNDARY. THIS
22 SETBACK DOES NOT APPLY TO THE INSTALLATION OF THE ASSOCIATED
23 LANDSCAPING, SECURITY FENCING, WIRING, OR POWER LINES.

1 5. A STRUCTURE MAY NOT EXCEED 20 FEET IN HEIGHT.

2 6. A LANDSCAPING BUFFER SHALL BE PROVIDED AROUND THE
3 PERIMETER OF ANY PORTION OF A SOLAR FACILITY THAT IS VISABLE FROM AN
4 ADJACENT RESIDENTIALLY USED PROPERTY OR A PUBLIC STREET. SCREENING
5 OF STATE AND LOCAL SCENIC ROUTES AND SCENIC VIEWS IS REQUIRED IN
6 ACCORDANCE WITH THE BALTIMORE COUNTY LANDSCAPE MANUAL.

7 7. SECURITY FENCING SHALL BE PROVIDED BETWEEN THE LANDSCAPING
8 BUFFER AND THE SOLAR FACILITY.

9 8. A SOLAR COLLECTOR PANEL OR COMBINATION OF SOLAR COLLECTOR
10 PANELS SHALL BE DESIGNED AND LOCATED IN AN ARRANGEMENT THAT
11 MINIMIZES GLARE OR REFLECTION ONTO ADJACENT PROPERTIES AND
12 ADJACENT ROADWAYS, AND DOES NOT INTERFERE WITH TRAFFIC OR CREATE A
13 SAFETY HAZARD.

14 9. A PETITIONER SHALL COMPLY WITH THE PLAN REQUIREMENTS OF
15 SECTION 33-3-108 OF THE COUNTY CODE.

16 10. IN GRANTING A SPECIAL EXCEPTION, THE ADMINISTRATIVE LAW
17 JUDGE, OR BOARD OF APPEALS ON APPEAL, MAY IMPOSE CONDITIONS OR
18 RESTRICTIONS ON THE SOLAR FACILITY USE AS NECESSARY TO PROTECT THE
19 ENVIRONMENT AND SCENIC VIEWS, AND TO LESSEN THE IMPACT OF THE
20 FACILITY ON THE HEALTH, SAFETY, AND GENERAL WELFARE OF SURROUNDING
21 RESIDENTIAL PROPERTIES AND COMMUNITIES, TAKING INTO ACCOUNT SUCH
22 FACTORS AS THE TOPOGRAPHY OF ADJACENT LAND, THE PRESENCE OF
23 NATURAL FOREST BUFFERS, AND PROXIMITY OF STREAMS AND WETLANDS.

1 B. THE REQUIREMENTS OF SUBPARAGRAPHS A.6, A.7, A.8 AND A.10 SHALL
2 APPLY TO A SOLAR FACILITY LOCATED IN A BUSINESS OR MANUFACTURING
3 ZONE.

4
5 § 4E-105. REQUIRED SECURITY.

6 A. AN APPLICANT FOR A BUILDING PERMIT FOR A SOLAR FACILITY SHALL
7 PROVIDE A SECURITY BOND OR EQUIVALENT FINANCIAL SECURITY IN THE FORM
8 AND AMOUNT DETERMINED BY THE COUNTY ADMINISTRATIVE OFFICER.

9 B. THE CODE OFFICIAL MAY USE THE BOND TO PROCURE THE REPAIR OF ANY
10 UNSAFE OR HAZARDOUS CONDITIONS UNDER SECTION 4E-106 OR REMOVAL OF A
11 SOLAR FACILITY UNDER SECTION 4E-107, IN ACCORDANCE WITH SECTION 3-6-402
12 OF THE COUNTY CODE.

13
14 §4E-106. MAINTENANCE.

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

17 B. MAINTENANCE SHALL INCLUDE PAINTING, STRUCTURAL REPAIRS,
18 LANDSCAPE BUFFERS AND VEGETATION UNDER AND AROUND SOLAR PANEL
19 STRUCTURES, AND INTEGRITY OF SECURITY MEASURES. ACCESS TO THE
20 FACILITY SHALL BE MAINTAINED IN A MANNER ACCEPTABLE TO THE FIRE
21 DEPARTMENT. THE OWNER, OPERATOR, OR LESSEE ARE RESPONSIBLE FOR THE
22 COST OF MAINTAINING THE FACILITY AND ANY ACCESS ROADS.

23 C. APPROPRIATE VEGETATION IS PERMITTED UNDER AND AROUND THE SOLAR

1 COLLECTOR PANELS, AND THE TRACT MAY BE USED FOR ACCESSORY
2 AGRICULTURAL PURPOSES, INCLUDING GRAZING OF LIVESTOCK, APICULTURE,
3 AND SIMILAR USES.

4 D. THE PROVISIONS ON THIS SECTION SHALL BE ENFORCED IN ACCORDANCE
5 WITH ARTICLE 3, TITLE 6 OF THE COUNTY CODE.

6
7 §4E-107. ABANDONMENT; REMOVAL.

8 A. A SOLAR FACILITY THAT HAS REACHED THE END OF ITS USEFUL LIFE OR HAS
9 BEEN ABANDONED SHALL BE REMOVED. THE OWNER OR OPERATOR SHALL
10 PHYSICALLY REMOVE THE INSTALLATION NO MORE THAN 150 DAYS AFTER THE
11 DATE OF DISCONTINUED OPERATIONS. THE OWNER OR OPERATOR SHALL
12 NOTIFY THE COUNTY BY CERTIFIED MAIL OF THE PROPOSED DATE OF
13 DISCONTINUED OPERATIONS AND PLANS FOR REMOVAL.

14 B. REMOVAL SHALL CONSIST OF THE:

- 15 1. PHYSICAL REMOVAL OF ALL SOLAR ENERGY SYSTEMS, STRUCTURES,
16 EQUIPMENT, SECURITY BARRIERS AND TRANSMISSION LINES FROM THE SITE;
17 2. DISPOSAL OF ALL SOLID AND HAZARDOUS WASTE IN ACCORDANCE
18 WITH LOCAL, STATE, AND FEDERAL WASTE DISPOSAL REGULATIONS; AND
19 3. STABILIZATION OR RE-VEGETATION OF THE SITE AS NECESSARY TO
20 MINIMIZE EROSION.

21 C. IF THE OWNER OR OPERATOR FAIL TO REMOVE THE FACILITY WITHIN 150
22 DAYS OF ABANDONMENT, THE COUNTY RETAINS THE RIGHT TO ENTER AND
23 REMOVE THE FACILITY. AS A CONDITION OF SPECIAL EXCEPTION APPROVAL.

1 THE PETITIONER AND LANDOWNER AGREE TO ALLOW ENTRY TO REMOVE AN
2 ABANDONED FACILITY.

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

5 1. THE CODE OFFICIAL DETERMINES THAT THE SOLAR FACILITY HAS NOT
6 BEEN IN ACTUAL AND CONTINUOUS USE FOR 12 CONSECUTIVE MONTHS;

7 2. THE OWNER OR OPERATOR FAILED TO CORRECT AN UNSAFE OR
8 HAZARDOUS CONDITION OR FAILED TO MAINTAIN THE SOLAR FACILITY UNDER
9 SECTION 4E-106 WITHIN THE TIME PRESCRIBED IN A CORRECTION NOTICE
10 ISSUED BY THE CODE OFFICIAL; OR

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

13
14 §502.1. Conditions Determining Granting of Special Exception.

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

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

21
22 SECTION 2. AND BE IT FURTHER ENACTED, that the Planning Board shall, in
23 consultation with the Departments of Planning and Environmental Protection and Sustainability,

1 and with participation of the Baltimore County Commission on Environmental Quality,
2 representatives of the Solar Industry, the Sierra Club's Greater Baltimore Group, and the Valleys
3 Planning Council, study and evaluate the impact of Solar Facilities in Baltimore County and the
4 effect of Article 4E of these Regulations, and by July 1, 2018 submit recommendations to the
5 County Council and the County Executive regarding potential changes to current law.

6 SECTION 3. AND BE IT FURTHER ENACTED, that this Act, having been passed by
7 the affirmative vote of five members of the County Council, shall take effect on July 17, 2017 and
8 shall apply retroactively to any zoning petition filed after October 18, 2016.



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 16, 2020

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

G. Macy Nelson, Esquire
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204

RE: Petition for Judicial Review
Circuit Court Civil Action No.: C-03-CV-20-000175
In the Matter of: Woodensburg Land and Cattle Co., LLC – Legal Owner
SGC Power, LLC – Lessee
Board of Appeals Case No.: 17-107-X

Dear Counsel:

Kindly note that the Proceedings before the Administrative Law Judge and the Board of Appeals of Baltimore County have been filed with the Circuit Court for Baltimore County via the Maryland Electronic Courts and E-filing system. Enclosed is a copy for your records.

If you have any questions, please do not hesitate to contact us.

Sincerely,

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

Tammy A. Zahner
Legal Secretary

Duplicate Original Cover Letter
Enclosure

c: Glenn S. and Ruth L. Elseroad/Woodensburg Land and Cattle Co., LLC
Bruce Wilson/SGC Power, LLC
Timothy and Elizabeth Fales
Santo and Debra Mirabile
Patrick and Thanikan Fales
Paul Merritt
Melissa A. Depinho
Patrick and Eileen Little
Curtis and Sandra M. Brown
James C. and Juli R. Wolf

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

*

*

PETITION OF:
Timothy Fales, *et al.*

*

FOR JUDICIAL REVIEW OF THE DECISION
OF THE BOARD OF APPEALS
FOR BALTIMORE COUNTY
Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204

*

CIVIL ACTION
NO.: C-03-CV-20-000175

*

*

*

IN THE MATTER OF:
WOODENSBURG LAND AND
CATTLE CO., LLC – LEGAL OWNER
SGC POWER, LLC – LESSEE

*

*

BOARD OF APPEALS CASE NO.: 17-107-X

*

* * * * *

**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 11, 2018 Amended Petition for Special Exception filed by Lawrence E. Schmidt, Esquire on behalf of Woodensburg Land and Cattle Company, Legal Owner, and SGC Power, LLC, Lessee, for a solar facility pursuant to BCZR § 4F-102 (as established by Bill 37-17); and for such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

June 19, 2018 Entry of Appearance filed by People's Counsel for Baltimore County.

July 6, 2018	Notice of Zoning Hearing.
July 26, 2018	Entry of Appearance filed by G. Macy Nelson, Esquire on behalf of Paul B. Merritt, Melissa A. DePinho, Timothy and Elizabeth Fales, Patrick and Thanikan Fales, Santo and Debra Mirabile, and James C. and Juli R. Wolf, Protestants.
August 1, 2018	New Notice of Zoning Hearing
August 19, 2018	Certificate of Posting
August 22, 2018	Certificate of Publication in newspaper
August 26, 2018	E-mail in opposition received from Abbie Kealy
September 5, 2018	ZAC Comments
September 7, 2018	Second Certificate of Posting
September 10, 2018	E-mail in opposition received from Bill Bealmear
September 11, 2018	Administrative Law Judge convened for a hearing.
November 16, 2018	Administrative Law Judge convened for a hearing.
November 29, 2018	Memorandum of Protestants filed by G. Macy Nelson, Esquire.
November 30, 2018	Written Memorandum in Lieu of Closing Argument filed by Lawrence E. Schmidt, Esquire on behalf of Woodensburg Land and Cattle Company, LLC and SGC Power, LLC, Petitioners.
December 5, 2018	Opinion and Order issued by the Administrative Law Judge wherein the Petition for Special Exception was GRANTED, with conditions.
December 28, 2018	Notice of Appeal filed by G. Macy Nelson, Esquire on behalf of Timothy Fales, Elizabeth Fales, Santo Mirabile, Debra Mirabile, Patrick Fales, Thanikan Fales, Paul Merritt, Melissa A. DePinho, Patrick Little, Sandra M. Brown, James C. Wolf and Juli R. Wolf, Citizen-Protestants.
January 2, 2019	Appeal received by the Board.
February 26, 2019	Notice of Assignment issued by the Board.

February 28, 2019	Letter to Board from Lawrence E. Schmidt, Esquire requesting that the zoning case and the limited exemption case be consolidated.
March 19, 2019	Letter to Board from G. Macy Nelson, Esquire requesting a postponement of Day 1 only.
March 21, 2019	Letter to Board from Lawrence E. Schmidt, Esquire regarding Mr. Nelson's postponement request, and amending petition to identify Chesapeake Energy One, LLC as the business entity that will lease and manage the proposed solar facility.
March 22, 2019	Notice of Postponement and Reassignment issued by the Board.
April 1, 2019	Letter to Board from Lawrence E. Schmidt, Esquire requesting a postponement due to pre-paid and pre-planned trip.
April 16, 2019	Notice of Second Postponement and Reassignment issued by the Board.
April 26, 2019	Letter to Board from Lawrence E. Schmidt, Esquire requesting a fourth day be scheduled in the event it is needed.
May 1, 2019	Motion for Summary Disposition to Deny the Application for Special Exception filed by G. Macy Nelson, Esquire on behalf of Citizen-Protestants.
May 2, 2019	Board convened for a Hearing, Day 1.
July 23, 2019	Board convened for a Hearing, Day 2.
July 25, 2019	Board convened for a Hearing, Day 3.

Exhibits submitted at Hearings before the Board of Appeals:

Petitioner's Exhibit No.

- 1 – Site Plan (Plat to Accompany Petition for Special Exception)
- 2 – Schematic Landscape Plan
- 3 – Aerial photograph of the property
- 4 – Ground Mount Fixed Racking Detail
- 5 – Agricultural Fencing Detail
- 6 – Photo of agricultural fence
- 7 – Curriculum Vitae of David S. Thaler
- 8 – 5/1/17 letter from Shaffer (EIR) to Leskinen approving Revised Wetland and Stream Delineation

- 9 – 9/13/17 letter from Byrne (DRN ERC) regarding no delineated plant or animal species
- 10 – Landscape Plan submitted by Thaler to County
- 11A-L – Pictures of the property
- 12 – 1/9/19 letter from Director Mohler to Thaler regarding provisional approval of limited exemption
- 13 – Declaration of Rights of Way from 1992
- 14 – Resume of Henry A. Leskinen
- 15 – Revised Wetland and Forest Stand Delineation Plan
- 16 – Resume of Stephen Barrett
- 17 – SGC Power Solar Photovoltaic Glare Assessment
- 18 – Picture of trailer on Mirabale property
- 19 – 7/24/19 MERLIN map 1:13,946

Protestants Exhibit No.

- 1 – Plan to Accompany Petition for Special Exception by Larson Engineering
- 2 – Plat to Accompany Special Exception Petition by D.S. Thaler
- 3 – Aerial photo (Google) of existing and proposed house (Mirabile)
- 4 – Aerial photo (Google) from Phales residence
- 5 – Picture of home site south of subject property
- 6 – Google Earth photo of 4517 Hanover Pike (eye alt 967 ft.)
- 7 – Google Earth photo of 4517 Hanover Pike (eye alt 1092 ft.)
- 8 – Google Earth photo of Hanover Pike to property (eye alt 4885 ft.)
- 9 – Picture of view driving North on Hanover Pike
- 10 – Google Earth of Aerial Photo in 2018
- 11 – Baltimore County Staff Comments
- 12 – Picture of new house site for Mirabile (4517 Hanover Pike)
- 13 – Google Earth photo of 4525 Hanover Pike (eye alt 1286 ft.)
- 14 – Picture of Hanover Pike east bound
- 15 – 8/1/18 letter from Van Arsdale to Councilman Jones regarding Bill 37-17: Solar Facilities
- 16 – Email from Kealy to attorney Nelson with comments
IDENTIFICATION ONLY
- 17 – 10/5/17 Anne Arundel County memo regarding A.A.Co. 12 Solar Project IDENTIFICATION ONLY
- 18 – 7/23/19 Materials from witness Patricia Fallon
- 19 – Witness Fallon's internet research and notes
IDENTIFICATION ONLY
- 20 – Baltimore County Ordinance and documents on prime and productive soils

- 21 – Google Earth photo of 14619 Hanover Pike (eye alt 446 ft.)
- 22 – Google Earth photo of 14619 Hanover Pike (eye alt 832 ft.)
- 23 – Google Earth photo of 14533 Hanover Pike (eye alt 1357 ft.)
- 24 – Google Earth photo of 14533 Hanover Pike (eye alt 1066 ft.)
- 25 – Google Earth photo of 14527 Hanover Pike (eye alt 1311 ft.)
- 26 – Picture from Patrick Fales home overlooking subject property
- 27 – County Council Bill No. 37-17

- August 23, 2019 Letter to Board from Lawrence E. Schmidt, Esquire enclosing Petitioner's Closing Memorandum and two letters of support which were delivered to him instead of directly to the Board.
- August 23, 2019 Written Memorandum in Lieu of Closing Argument filed by Lawrence E. Schmidt, Esquire on behalf of Petitioners.
- August 23, 2019 Citizen-Protestants' Post-Hearing Memorandum filed by G. Macy Nelson, Esquire.
- September 26, 2019 Board convened for Public Deliberation.
- December 19, 2019 Opinion and Order issued by the Board wherein the Protestants' Motion for Summary Disposition to Deny the Application for Special Exception was DENIED; the Petition for Special Exception for a solar facility pursuant to BCZR Article 4F was GRANTED, with conditions; and the Petitioner's request for a limited exemption under BCC §32-4-106(a)(1)(vi) was DENIED.
- January 15, 2020 Petition for Judicial Review of the decision of the Board of Appeals in special exception case 17-107-X filed in the Circuit Court for Baltimore County by G. Macy Nelson, Esquire on behalf of Timothy Fales, Elizabeth Fales, Santo Mirabile, Debra Mirabile, Patrick Fales, Thanikan Fales, Paul Merritt, Melissa A. DePinho, Patrick Little, Eileen Little, Curtis Brown, Sandra M. Brown, James C. Wolf, and Juli R. Wolf. The decision of the Board of Appeals regarding the limited exemption case CBA-19-018 is not appealed.
- January 17, 2020 Copy of Petition for Judicial Review received from the Circuit Court for Baltimore County by the Board of Appeals.
- January 22, 2020 Certificate of Compliance and notification letter sent to all parties.

In the Matter of: Woodensburg Land and Cattle Co., LLC – Legal Owner
SGC Power, LLC – Lessee
Board of Appeals Case No.: 17-107-X
Circuit Court Civil Action No.: C-03-CV-20-000175

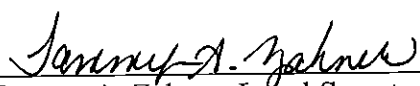
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February 17, 2020 Response to Petition for Judicial Review filed by Lawrence E. Schmidt,
Esquire on behalf of Woodensburg Land and Cattle Co., LLC, Legal
Owner, and SGC Power, LLC, Lessee.

March 16, 2020 Transcript of testimony filed.

March 16, 2020 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: Woodensburg Land and Cattle Co., LLC – Legal Owner
SGC Power, LLC – Lessee
Board of Appeals Case No.: 17-107-X
Circuit Court Civil Action No.: C-03-CV-20-000175

7

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of March, 2020 a copy of the foregoing was mailed first class mail, postage prepaid, or inter-office mail to the following:

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

Glenn S. and Ruth L. Elseroad
Woodensburg Land and Cattle Co., LLC
5423 Mt. Gilead Road
Reisterstown, MD 21136

Bruce Wilson
SGC Power, LLC
6865 Deerpath Road
Elkridge, MD 21075

Timothy and Elizabeth Fales
14619 Hanover Pike
Upperco, MD 21155

Santo and Debra Mirabile
4312 Windy Hill Road
Randallstown, MD 21133

Patrick and Thanikan Fales
14533 Hanover Pike
Upperco, MD 21155

G. Macy Nelson, Esquire
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, MD 21204

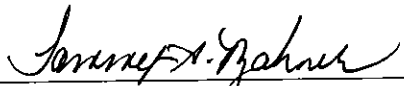
Paul Merritt
14527 Hanover Pike
Upperco, MD 21155

Melissa A. Depinho
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Patrick and Eileen Little
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Curtis and Sandra M. Brown
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Upperco, MD 21155

James C. and Juli R. Wolf
6133 Frye Road
Upperco, MD 21155



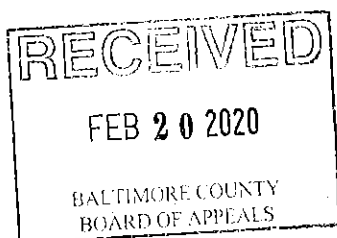
Tammy A. Zahner

PETITION OF:		
TIMOTHY FALES, et al	*	IN THE
FOR JUDICIAL REVIEW OF THE OPINION OF	*	CIRCUIT COURT
THE BOARD OF APPEALS OF		
BALTIMORE COUNTY DATED 12/19/2019	*	FOR
IN THE MATTER OF:	*	BALTIMORE COUNTY
WOODENSBURG LAND AND		
CATTLE CO., LLC – LEGAL OWNER	*	
and		
SGC POWER, LLC – LESSEE	*	
BOARD OF APPEALS	*	Case No. C-03-CV-20-000175
CASE NO. 17-107-X		
* * * * * * * *		

RESPONSE TO PETITION FOR JUDICIAL REVIEW

Woodensburg Land and Cattle Co., LLC, Legal Owner and SGC Power, LLC, Lessee, by and through their attorneys, Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC, pursuant to Maryland Rule 7-204, submits this response to Petition for Judicial Review filed by Timothy Fales, Elizabeth Fales, Santo Mirabile, Debra Mirabile, Patrick Fales, Thanikan Fales, Paul Merritt, Melissa A. Depinho, Patrick Little, Eileen Little, Curtis Brown, Sandra M. Brown, James C. Wolf and Juli R. Wolf, and hereby gives notice of their intent to participate in the above-captioned petition for judicial review. The undersigned participated in the proceeding before the County Board of Appeals.

Respectfully Submitted,



/s/
 LAWRENCE E. SCHMIDT, ESQUIRE
 CPF No. 7905010152
 Smith, Gildea & Schmidt, LLC
 600 Washington Avenue, Suite 200
 Towson, MD 21204
 (410) 821-0070
lschmidt@sgs-law.com

PETITION OF:		
TIMOTHY FALES, et al	*	IN THE
FOR JUDICIAL REVIEW OF THE OPINION OF	*	CIRCUIT COURT
THE BOARD OF APPEALS OF		
BALTIMORE COUNTY DATED 12/19/2019	*	FOR
IN THE MATTER OF:	*	BALTIMORE COUNTY
WOODENSBURG LAND AND		
CATTLE CO., LLC – LEGAL OWNER	*	
and		
SGC POWER, LLC – LESSEE	*	
BOARD OF APPEALS	*	Case No. C-03-CV-20-000175
CASE NO. 17-107-X		
* * * * *	*	

Certificate of Service

I hereby certify that on this 17th day of February, 2020, a copy of the foregoing Response to Petition for Judicial Review was emailed via MDEC to:

G. Macy Nelson, Esquire
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, MD 21204

Board of Appeals
The Jefferson Building, Suite 203
105 West Chesapeake Avenue
Towson, MD 21204

Respectfully Submitted,

/s/

LAWRENCE E. SCHMIDT, ESQUIRE
CPF No. 7905010152
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
lschmidt@sgs-law.com

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
Timothy Fales, *et al.*

FOR JUDICIAL REVIEW OF THE DECISION
OF THE BOARD OF APPEALS
FOR BALTIMORE COUNTY
Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204

IN THE MATTER OF:
WOODENSBURG LAND AND
CATTLE CO., LLC – LEGAL OWNER
SGC POWER, LLC – LESSEE

BOARD OF APPEALS CASE NO.: 17-107-X

CIVIL ACTION
NO.: C-03-CV-20-000175

* * * * *

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

Glenn S. and Ruth L. Elseroad
Woodensburg Land and Cattle Co., LLC
5423 Mt. Gilead Road
Reisterstown, MD 21136

Bruce Wilson
SGC Power, LLC
6865 Deerpath Road
Elkridge, MD 21075

G. Macy Nelson, Esquire
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, MD 21204

Timothy Fales
14619 Hanover Pike
Upperco, MD 21155

Elizabeth Fales
14619 Hanover Pike
Upperco, MD 21155

In the Matter of: Woodensburg Land and Cattle Co., LLC – Legal Owner
SGC Power, LLC – Lessee
Board of Appeals Case No.: 17-107-X
Circuit Court Civil Action No.: C-03-CV-20-000175

2

Santo Mirabile
4312 Windy Hill Road
Randallstown, MD 21133

Patrick Little
14531 Hanover Pike
Upperco, MD 21155

Debra Mirabile
4312 Windy Hill Road
Randallstown, MD 21133

Eileen Little
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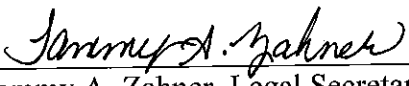
James C. Wolf
6133 Frye Road
Upperco, MD 21155

Melissa A. Depinho
14527 Hanover Pike
Upperco, MD 21155

Juli R. Wolf
6133 Frye Road
Upperco, MD 21155

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

I HEREBY CERTIFY that on this 22nd day of January 2020, a copy of the foregoing was mailed first class mail, postage prepaid, to the individuals listed above.



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



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

January 22, 2020

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

G. Macy Nelson, Esquire
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204

RE: Petition for Judicial Review
Circuit Court Civil Action No.: C-03-CV-20-000175
In the Matter of: Woodensburg Land and Cattle Co., LLC – Legal Owner
SGC Power, LLC – Lessee
Board of Appeals Case No.: 17-107-X

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed by G. Macy Nelson, Esquire on behalf of Timothy and Elizabeth Fales, Santo and Debra Mirabile, Patrick and Thanikan Fales, Paul Merritt, Melissa A. Depinho, Patrick and Eileen Little, Curtis and Sandra M. Brown, and James C. and Juli R. Wolf, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. The County Board of Appeals received written notification of acceptance from the Circuit Court for Baltimore County on January 17, 2020. 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. G. Macy Nelson, Esquire, having taken the appeal on behalf of his clients, has ordered the transcript and is responsible for the cost. 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.

Please be advised that the ORIGINAL transcript must be provided to the Board of Appeals no later than MARCH 12, 2020 so that it may be transmitted to the Circuit Court with the record of proceedings, pursuant to the Maryland Rules.

In the Matter of: Woodensburg Land and Cattle Co., LLC – Legal Owner
SGC Power, LLC – Lessee
Board of Appeals Case No.: 17-107-X
Circuit Court Civil Action No.: C-03-CV-20-000175

2

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

Very truly yours,



Tammy A. Zahner
Legal Secretary

Duplicate Original Cover Letter
Enclosure

c: Glenn S. and Ruth L. Elseroad/Woodsburg Land and Cattle Co., LLC
Bruce Wilson/SGC Power, LLC
Timothy and Elizabeth Fales
Santo and Debra Mirabile
Patrick and Thanikan Fales
Paul Merritt
Melissa A. Depinho
Patrick and Eileen Little
Curtis and Sandra M. Brown
James C. and Juli R. Wolf

PETITION OF:

TIMOTHY FALES

14619 Hanover Pike

Upperco, Maryland 21155

ELIZABETH FALES

14619 Hanover Pike

Upperco, Maryland 21155

SANTO MIRABILE

4312 Windy Hill Road

Randallstown, Maryland 21133

DEBRA MIRABILE

4312 Windy Hill Road

Randallstown, Maryland 21133

PATRICK FALES

14533 Hanover Pike

Upperco, Maryland 21155

THANIKAN FALES

14533 Hanover Pike

Upperco, Maryland 21155

PAUL MERRITT

14527 Hanover Pike

Upperco, Maryland 21155

MELISSA A. DEPINHO

14527 Hanover Pike

Upperco, Maryland 21155

PATRICK LITTLE

14531 Hanover Pike

Upperco, Maryland 21155

EILEEN LITTLE

14531 Hanover Pike

Upperco, Maryland 21155

* IN THE

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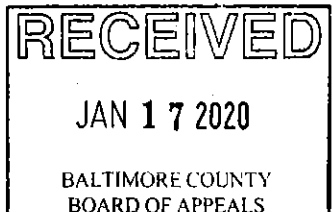
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*

CIRCUIT COURT

FOR

BALTIMORE COUNTY

CASE NO. C-03-CV-20-000175

CURTIS BROWN *

5135 Frye Road *

Upperco, Maryland 21155 *

SANDRA M. BROWN *

5135 Frye Road *

Upperco, Maryland 21155 *

JAMES C. WOLF *

6133 Frye Road *

Upperco, Maryland 21155 *

JULI R. WOLF *

6133 Frye Road *

Upperco, Maryland 21155 *

Petitioners *

v. *

FOR A PETITION FOR JUDICIAL *

REVIEW PERTAINING TO THE *

DECISION OF THE BOARD OF *

APPEALS FOR BALTIMORE COUNTY *

DATED DECEMBER 19, 2019 *

IN THE MATTER OF *

WOODENSBURG LAND AND *

CATTLE CO., LLC – Legal Owner *

5423 Mount Gilead Road *

Reisterstown, Maryland 21136 *

and *

SGC POWER, LLC – Lessee *

5298 Frye Road *

Reisterstown, Maryland 21136 *

Special Exception *

Case No. 2017-0107-X *

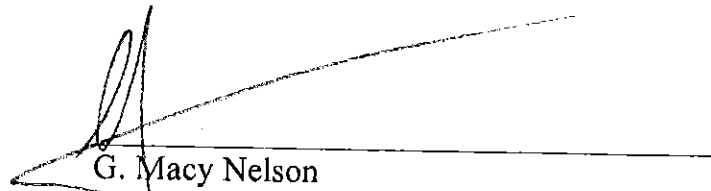
Respondents *

PETITION FOR JUDICIAL REVIEW

Petitioners, Timothy Fales, Elizabeth Fales, Santo Mirabile, Debra Mirabile, Patrick Fales, Thanikan Fales, Paul Merritt, Melissa A. DePinho, Patrick Little, Eileen Little, Curtis Brown, Sandra M. Brown, James C. Wolf and Juli R. Wolf, by their attorney, G. Macy Nelson, file this Petition for Judicial Review pertaining to the Opinion dated December 19, 2019 issued by the Baltimore County Board of Appeals regarding the application of Woodensburg Land and Cattle Co. LLC for a special exception for a solar facility. The case number for the special exception case is 2017-0107-X. (Opinion is attached as Exhibit A.) Petitioners were parties to the proceeding before the Board of Appeals.

Petitioners are not appealing the decision of the Board of Appeals regarding the application of Woodensburg Land and Cattle Co. LLC for a limited exemption under Baltimore County Code, Section 32-4-106(a)(1)(vi). The case number for the limited exemption case is CBA-19-018.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'G. Macy Nelson', is written over a horizontal line.

G. Macy Nelson

CPF No. 8112010268

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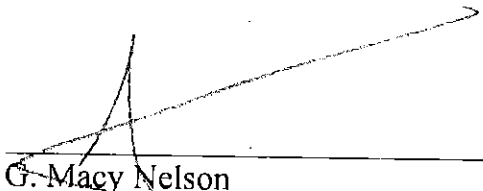
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of January, 2020, a copy of the foregoing Petition for Judicial Review was mailed first-class, postage pre-paid to:

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

Board of Appeals
The Jefferson Building, Suite 203
105 West Chesapeake Avenue
Towson, Maryland 21204



G. Macy Nelson
CPF No. 8112010268

PETITION OF:

TIMOTHY FALES
14619 Hanover Pike
Upperco, Maryland 21155

ELIZABETH FALES
14619 Hanover Pike
Upperco, Maryland 21155

SANTO MIRABILE
4312 Windy Hill Road
Randallstown, Maryland 21133

DEBRA MIRABILE
4312 Windy Hill Road
Randallstown, Maryland 21133

PATRICK FALES
14533 Hanover Pike
Upperco, Maryland 21155

THANIKAN FALES
14533 Hanover Pike
Upperco, Maryland 21155

PAUL MERRITT
14527 Hanover Pike
Upperco, Maryland 21155

MELISSA A. DEPINHO
14527 Hanover Pike
Upperco, Maryland 21155

PATRICK LITTLE
14531 Hanover Pike
Upperco, Maryland 21155

EILEEN LITTLE
14531 Hanover Pike
Upperco, Maryland 21155

* IN THE

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* CIRCUIT COURT

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* FOR

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* BALTIMORE COUNTY

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* CASE NO. _____

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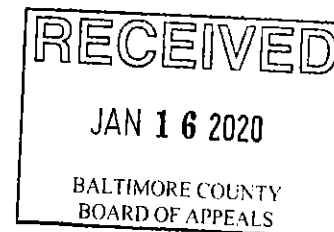
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CURTIS BROWN *

5135 Frye Road *

Upperco, Maryland 21155 *

SANDRA M. BROWN *

5135 Frye Road *

Upperco, Maryland 21155 *

JAMES C. WOLF *

6133 Frye Road *

Upperco, Maryland 21155 *

JULI R. WOLF *

6133 Frye Road *

Upperco, Maryland 21155 *

Petitioners *

v. *

FOR A PETITION FOR JUDICIAL *

REVIEW PERTAINING TO THE *

DECISION OF THE BOARD OF *

APPEALS FOR BALTIMORE COUNTY *

DATED DECEMBER 19, 2019 *

IN THE MATTER OF *

WOODENSBURG LAND AND *

CATTLE CO., LLC – Legal Owner *

5423 Mount Gilead Road *

Reisterstown, Maryland 21136 *

and *

SGC POWER, LLC – Lessee *

5298 Frye Road *

Reisterstown, Maryland 21136 *

Special Exception *

Case No. 2017-0107-X *

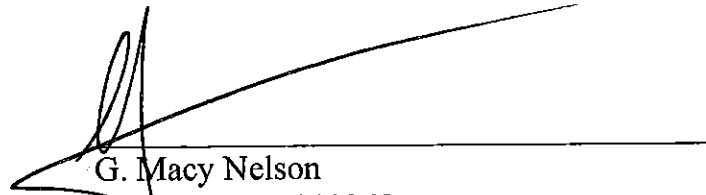
Respondents *

PETITION FOR JUDICIAL REVIEW

Petitioners, Timothy Fales, Elizabeth Fales, Santo Mirabile, Debra Mirabile, Patrick Fales, Thanikan Fales, Paul Merritt, Melissa A. DePinho, Patrick Little, Eileen Little, Curtis Brown, Sandra M. Brown, James C. Wolf and Juli R. Wolf, by their attorney, G. Macy Nelson, file this Petition for Judicial Review pertaining to the Opinion dated December 19, 2019 issued by the Baltimore County Board of Appeals regarding the application of Woodensburg Land and Cattle Co. LLC for a special exception for a solar facility. The case number for the special exception case is 2017-0107-X. (Opinion is attached as Exhibit A.) Petitioners were parties to the proceeding before the Board of Appeals.

Petitioners are not appealing the decision of the Board of Appeals regarding the application of Woodensburg Land and Cattle Co. LLC for a limited exemption under Baltimore County Code, Section 32-4-106(a)(1)(vi). The case number for the limited exemption case is CBA-19-018.

Respectfully Submitted,

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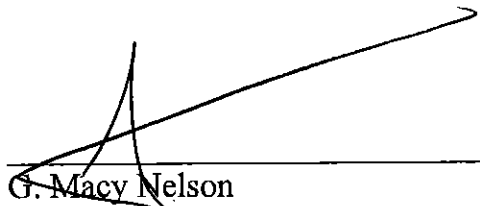
G. Macy Nelson
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Attorney for Petitioners

Board of Appeals
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105 West Chesapeake Avenue
Towson, Maryland 21204



G. Macy Nelson
CPF No. 8112010268

IN THE MATTER OF
WOODENSBURG LAND and CATTLE CO., LLC
- Legal Owner
SGC POWER, LLC - Lessee
5298 Frye Road
Reisterstown, MD 21136

RE: Petition for a Solar Facility and
Request for Limited Exemption

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case Nos. 17-107-X
and CBA-19-018

* * * * *

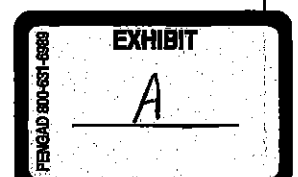
OPINION

This case comes before the Board on appeal of the final decision of the Administrative Law Judge ("ALJ") in which the ALJ granted a Petition for a Solar Facility, with conditions, by Opinion and Order dated December 5, 2018. Protestants, Timothy and Elizabeth Fales, Santo and Debra Mirabile, Patrick and Thanikan Fales, Paul Merritt and Melissa DePinho, Patrick Little, Sandra Brown, James and Juli Wolf (collectively the "Protestants") filed an appeal.

A public hearing was held before this Board on May 2, 2019, July 23, 2019 and July 25, 2019. The Petitioners, Woodensburg Land and Cattle Company, LLC and SGC Power, LLC (the "Petitioners") were represented by Lawrence E. Schmidt, Esquire and Smith, Gildea & Schmidt, LLC. The Protestants were represented by G. Macy Nelson, Esquire. A public deliberation was held on September 26, 2019.

Factual Background

The subject property is located at 5298 Frye Road in the Reisterstown area of Baltimore County, Maryland. It is unimproved and consists of 19.68 acres+/- on the east side of Hanover Pike, Maryland Route 30 (the "Property"). It is zoned RC2. Hanover Pike has been designated by Baltimore County as a "scenic route" and runs in a north-south direction. The Property was



previously used as a farm but no farming activities presently take place there. On the southern end of the Property is a private driveway known as Frye Road.

The Petitioners are proposing to use 15 acres of the 19.68 acres for a solar facility pursuant to Baltimore County Zoning Regulations ("BCZR"), Article 4F. The solar facility will generate less than 2.0 Mw of alternating current (AC) electricity. There are floodplain areas as marked on Petitioners' Site Plan (Pet. Ex. 1). A forest buffer was delineated and approved by Department of Environmental Protection and Sustainability (EPS). (Pet. Ex. 8).

Petitioners are also requesting a limited exemption from the development process under BCC, §32-106(a)(1)(vi) for a "minor commercial structure."

Solar Facilities Law

On July 17, 2017, the County Council enacted Bill 37-17 permitting solar facilities by special exception in certain zones, including RC2, RC4, RC5, and RC8. BCZR, §4F-102.A. The County Council imposed limits on the number of facilities per councilmanic district (*i.e.* 10 per district), and on the maximum area for each facility (*i.e.* the amount of acreage that produces no more than 2 megawatts alternating current (AC) of electricity). (BCZR, §4F-102.B.1 and two.)

In addition to the special exception factors, there are 10 requirements set forth in BCZR, §4F-104.A:

1. The land on which a solar facility is proposed may not be encumbered by an agricultural preservation easement, an environmental preservation easement, or a rural legacy easement.
2. The land on which a solar facility is proposed may not be located in a Baltimore County historic district or on a property that is listed on the Baltimore County Final Landmarks List.
3. The portion of land on which a solar facility is proposed may not be in a forest conservation easement, or be in a designated conservancy area in an RC 4 or RC 6 Zone.

4. Aboveground components of the solar facility, including solar collector panels, inverters, and similar equipment, must be set back a minimum of 50 feet from the tract boundary. This setback does not apply to the installation of the associated landscaping, security fencing, wiring, or power lines.

5. A structure may not exceed 20 feet in height.

6. A landscaping buffer shall be provided around the perimeter of any portion of a solar facility that is visible from an adjacent residentially used property or a public street. Screening of state and local scenic routes and scenic views is required in accordance with the Baltimore County Landscape Manual.

7. Security fencing shall be provided between the landscaping buffer and the solar facility.

8. A solar collector panel or combination of solar collector panels shall be designed and located in an arrangement that minimizes glare or reflection onto adjacent properties and adjacent roadways, and does not interfere with traffic or create a safety hazard.

9. A petitioner shall comply with the plan requirements of § 33-3-108 of the County Code.

10. In granting a special exception, the Administrative Law Judge, or Board of Appeals on appeal, may impose conditions or restrictions on the solar facility use as necessary to protect the environment and scenic views, and to lessen the impact of the facility on the health, safety, and general welfare of surrounding residential properties and communities, taking into account such factors as the topography of adjacent land, the presence of natural forest buffers, and proximity of streams and wetlands.

There are also provisions regarding maintenance of the facilities:

§ 4F-106. - Maintenance.

A. All parties having a lease or ownership interest in a solar facility are responsible for the maintenance of the facility.

B. Maintenance shall include painting, structural repairs, landscape buffers and vegetation under and around solar panel structures, and integrity of security measures. Access to the facility shall be maintained in a manner acceptable to the Fire Department. The owner, operator, or lessee are responsible for the cost of maintaining the facility and any access roads.

C. Appropriate vegetation is permitted under and around the solar collector panels and the tract may be used for accessory agricultural purposes, including grazing of livestock, apiculture, and similar uses.

D. The provisions on this section shall be enforced in accordance with Article 3, Title 6 of the County Code.

A solar facility which has reached the end of its useful life must be removed in accordance with §4F-107.

In order to grant a request for a special exception under BCZR, §502.1, 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.

In *Schultz v. Pritts*, 291 Md. 1, 22-23, 432 A.2d at 1331 (1981), the Court of Appeals held that "the 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 the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone."

The Court of Appeals in *People's Counsel for Baltimore County v. Loyola College in Md.* 406 Md. 54, 106, 956 A.2d 166 (2008) upheld that longstanding *Schultz* analysis, explaining that a special exception use has "certain [inherent] adverse effects....[which] are likely to occur". In its analysis, the *Loyola* Court observed, "[t]he special exception adds flexibility to a comprehensive legislative zoning scheme by serving as a 'middle ground' between permitted use and prohibited uses in a particular zone." *Id.*, 406 Md. at 71, 956 A.2d at 176 (2008).

The *Schultz* and *Loyola* Courts, and more recently in *Attar v. DMS Tollgate, LLC*, 451 Md. 272, 285 (2017) have expressly recognized that "[a] special exception is presumed to be in the interest of the general welfare, and therefore a special exception enjoys a presumption of validity." (See also *Loyola*, 406 Md. at 84, 88; 105 *Schultz*, 291 Md. at 11). Based on this standard, once an applicant puts on its *prima facie* evidence in support of a special exception, the opponents must then "set forth sufficient evidence to indicate that the proposed [use] would have any adverse effects above and beyond those inherently associated with such use under the *Schultz* standard." *Attar*, 451 Md. at 287. (See *Montgomery County v. Butler*, 417 Md.271, 276-77 (2010) (opponent must show "non-inherent adverse effects" to "undercut the presumption of compatibility enjoyed by a proposed special exception use"). (See also, *Clarksville Residents Against Mortuary Defense Fund, Inc. v. Donaldson Properties*, 453 Md. 516, 543 (2017) ("there is a presumption that the [special exception] use is in the interest of the general welfare, a presumption that may only be overcome by probative evidence of unique adverse effects").

Protestants' Motion to Dismiss

On May 1, 2019, Protestants filed a motion styled "Motion for Summary Disposition to Deny the Application for Special Exception" as well as an accompanying Memorandum of Law. It was the Protestants' position that the County Council, in enacting Special Regulation 4F – Solar

Facilities, failed to add solar facilities to the list of special exception uses in RC2 zones found in BCZR, §1A01.2(C). Because of this alleged error, they contend that Section 4F cannot independently authorize a solar facility by special exception use.

This Board unanimously denies the Motion. We read BCZR, §1A01.2(C) as being a general regulation whereas BCZR, §4F is a special regulation. Accordingly, we interpret Section 4F as taking precedent over BCZR, §1A01.2(C). In addition, we accept Petitioner's argument that the County Council may have deliberately decided not to amend the list of uses permitted in the RC2 zone because the number of solar facilities is limited to 10 per councilmanic district. We are persuaded by this logic because, after permits for 10 facilities per district have been issued, solar facilities will no longer be permitted. We also find persuasive Petitioners' response that when the County Council amended BCZR, Article 4B to provide regulations for tattoo businesses, the list of uses permitted in a MH zone was not amended to add these businesses.

As a result, the Motion to Dismiss is denied.

Evidence

Petitioner's case

The Petitioner had several witnesses who testified on its behalf in the merits of the case:

1. Samuel Glenn Elseroad.

Glenn Elseroad lives at 5423 Mount Gilead Road in Reisterstown. He is a member of Woodensburg Land & Cattle Company, LLC, which company holds title to the Property. Mr. Elseroad is a farmer and he, and/or his associated entities, own approximately 500 acres of farmland in Baltimore County, of which 375 is in an agricultural land preservation program. His grandfather owned the Property in 1923. Subsequently, Mr. Elseroad and his wife repurchased

the Property. They had been renting it out for farming until 3 years ago when it became apparent to Mr. Elseroad that deer were eating the crops.

Mr. Elseroad noted that the Property gets a southern exposure and has rolling hills which makes it suitable for a solar facility. He described a farm swale located in the center of the Property which is thick with fescue grass. This grass creates a mat through which storm water flows. He testified that the water is clear in color as it flows off the farm, without sediment.

2. Jack Copus- SGC Power, LLC.

Jack Copus testified as the representative of SGC Power, LLC ("SGC") which is the holding company of Chesapeake Energy I, LLC ("Chesapeake Energy"). SGC is located at 6865 Deer Path Road, Elkridge, Md. Chesapeake Energy was formed to develop and operate the proposed solar facility. Mr. Copus acknowledged that neither SGC nor Chesapeake Energy will own this facility. It will be sold before permission is given to operate.

Mr. Copus has been employed with SGC for 4 ½ years where he works as an engineer. With a geography degree from Towson University, Mr. Copus holds a Leed certification. He has been involved with over 30 solar facility projects in Maryland. As part of his job duties, he is familiar with the Maryland Community Solar Energy Program. SGC has applied, and been accepted as, a subscriber entity in that program.

Mr. Copus explained that a lease of the Property would run for 20 years. Mr. Copus described that a prospective site must be located within the BGE area and must be cleared of trees in the area of the solar array in order to maximize energy production. In this case, the land was previously cleared for farming. (Pet. Ex. 2 and 3). As such, there will be no tree removal or grading.

He explained that the solar panels, which are proposed here, are fixed tilt panels, angled toward the southern exposure, requiring little maintenance. (Pet. Ex. 4). These particular panels do not rotate with the sun and thus, there are no moving parts. As a result, no noise will be generated. The height of the panels at full tilt is less than 8 feet. Each solar panel (1 module) measures 3.5 feet by 6.5 feet. There will be a 1-inch gap between each of the panels.

The sun's rays are absorbed by the silicone material on the panel to create direct current (DC) energy that is then converted into alternating current (AC) energy by an inverter. The energy from the inverter is then distributed to a grid connected to the existing distribution power lines along Hanover Pike. The proposed interconnection from the solar facility to the power lines is as shown on the Site Plan. (Pet. Ex. 1). Mr. Copus testified that this facility would generate 1.75 megawatts of AC electricity. This amount of AC electricity is projected to supply 250-300 homes with energy.

This facility will be unmanned. A team of two people will inspect the Property every 6 months to check the panels and cut the grass if needed. Neither traffic nor congestion will be generated by this use. (BCZR, §502.1.B). Rainwater cleans the panels so no chemicals will be applied. The panels are coated with a non-reflective glare substance to absorb the sun's rays while minimizing glare and reflection. There are no flammable materials contained within the parts of the solar facility. (BCZR, §502.1.C).

An 8-foot agricultural fence with pressure treated wood posts and steel wire will be erected around the facility as a security measure. (Pet. Ex. 5 and 6). The fence will not have barbed wire. The fence will be locked and marked as private property.

3. David Thaler, P.E.

David Thaler was qualified and accepted as a professional engineer and land surveyor with expertise in the requirements for solar facilities and BCZR, §502.1 - special exception factors. Mr. Thaler testified that the proposed special exception area for the solar facility would encompass 10 of the total 19.69 acre Property (the "Site Plan"). (Pet. Ex. 1, 2 and 3).

Mr. Thaler described the Property as gently sloping with the highest slope in the northwest corner measuring under 5%. He confirmed a drainage swale or agricultural channel in the middle of the Property and that this is a storm water management technique used by the farmer. The swale is not a wetland. Mr. Thaler walked the swale and it was dry. On two site visits, he took soil samples from the Property.

He explained that the diagnostic features for detecting a wetland are: (1) hydric soil which turns gray or black; (2) growth of specific plants (hydrophytes); and (3) hydrology present which make feet wet. Mr. Thaler opined that soil takes 30-50 years to demonstrate a wetland. It was Mr. Thaler's opinion that a solar facility is a good use for this soil because pesticides and herbicides used in farming will not be applied.

A floodplain was identified by Mr. Thaler on the Site Plan. (Pet. Ex. 1). Consequently, a forest buffer delineation was then setback from the floodplain and was marked on the Site Plan. (Pet. Ex. 1). The solar array area will not be located within the floodplain or within any environmental sensitive areas on the Property. On May 1, 2017, EPS approved the delineation (aka the 'Wetlands Delineation'). (Pet. Ex. 8). Access to the facility will be by way of Frye Road pursuant to a Declaration of Rights of Way filed in Land Records of Baltimore County, Liber 9509, page 139. (Pet. Ex. 13).

As to the requirements in BCZR, §4F-104.A, Mr. Thaler testified that there are no agricultural preservation, environmental or rural legacy easements on this Property under Subsection A.1. Additionally the Property is not located in a Baltimore County historic district or on the Baltimore County Final Landmarks List under Subsection A.2. Likewise, there is no forest conservation easement on the Property under Subsection A.3.

The Site Plan indicates that the 50-foot setback from the track boundary has been met under Subsection A.4. (Pet. Ex. 1). The height of the facility will be less than 8 feet in the back and no taller than 2 feet in front. Thus, the maximum height of 20 feet will not be exceeded as required under Subsection A.5.

With regard to Subsection A.6., a Schematic Landscape Plan was prepared under Mr. Thaler's supervision and was filed with the County. (Pet. Ex. 2). The installation of the solar facility in this case will not require grading or clearing of land as that area has already been cleared. No trees or existing vegetation will be removed. Mr. Thaler explained that there are three separate legal requirements for landscaping of solar facilities: (1) Section 4F-104A.6; (2) the Baltimore County Landscape Manual; and (3) the Comprehensive Manual of Development Policies ("CMDP").

The northern end of the Property is tree lined. In accordance with §4F-104A.6, the Petitioner will plant a landscaping perimeter buffer around the remainder of the Property as shown on the Landscaping Plan. (Pet. Ex. 2). Existing deciduous trees and those to be planted will soften the view of the facility from Hanover Pike and Frye Road.

The Landscape Manual dictates the number of planting units based on street frontage along Hanover Pike and Frye Road as well as the adjacent residential communities. Based on this, Mr. Thaler calculated 170 planting units are required and those plantings are represented on the Site

Plan. The Landscape Manual refers to the CMDP which requires landscaping screening along "scenic views." Although Hanover Pike is not a scenic view, it is designated by Baltimore County as a "scenic route." (Prot. Ex. 11). Nevertheless, the Landscape Plan provides a buffer along Hanover Pike in areas, which do not currently have vegetation in accordance with the CMDP.

Landscape is also proposed within the agricultural swale. In doing so, Mr. Thaler stated that one floodplain will be visually connected to the other. The Landscape Plan was designed to create a filter or diffused view of the facility to soften it. While the Landscape Plan was submitted to the County, it has not yet been approved. Notwithstanding the Zoning Advisory Comments (ZAC) dated July 18, 2018, Mr. Thaler stated that there was no requirement to fully screen the solar array but only to soften the view. (Prot. Ex. 11).

With regard to Subsection A.9, Mr. Thaler opined that the Site Plan contains all the information required under BCC, §33-3-108(c). (Pet. Ex. 1, 2 and 3).

As to the special exception factors, Mr. Thaler testified that the solar facility is a benign use in that it helps farm soil regenerate which is, in turn, useful to the health, safety or general welfare of the locality. Further, it is beneficial because it provides renewable, sustainable energy. He explained that any aesthetic complaints are inherent in solar facilities. (BCZR, §502.1.A).

As with Mr. Copus, Mr. Thaler stated that the facility will not create congestion in the roads, streets or alleys as there is no traffic generated by this use, save periodic maintenance. (BCZR, §502.1.B). Additionally, the facility will not create a fire hazard or other danger as solar facilities are regulated by the Fire Code and National Electric Code. There are four fire stations in the area namely: Upperco, Boring, Glyndon and Reisterstown. (BCZR, §502.1.C).

There is no overcrowding of the land or undue concentration of population because this use does not generate people in or out of the Property. (BCZR, §502.1.D). Likewise, Mr. Thaler

confirmed that there is no impact from this use on schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements because it is located outside the URDL. (BCZR, §502.1.E). Additionally, there is no interference with adequate light and air as the solar facility measures 8 feet at full tilt. It will not cast shadows over the adjacent residences. (BCZR, §502.1.F).

Mr. Thaler opined that the solar facility will not be inconsistent with the purpose of the Property's zoning classification nor in any other way inconsistent with the spirit and intent of the BCZR because the County Council has decided that solar facilities are permitted uses in the RC2 zones and it is important to offer solar power to residents. (BCZR, §502.1.G). This use does not prevent future farming of this Property as the racking system installed on steel poles are simply lifted out of the ground after it ceases to operate.

As to the consistency between solar facility and impermeable surface and vegetative retention provisions, Mr. Thaler reiterated that there will be no impermeable surfaces other than the panels. When rainwater falls onto the panels, it soaks into the grass between and beneath the panels. The Petitioner will submit a storm water management plan to the County. At that point, the County may or may not require additional storm water management techniques including level spreaders or dissipaters. (BCZR, §502.1.H).

Finally, Mr. Thaler testified that the solar facility will not be detrimental to the environmental or natural resources of the Property or vicinity, including forests, streams, wetlands, aquifers and floodplains. (BCZR, §502.1.I). The solar facility will not be located in the designated forest buffer areas or within floodplains. There are no forest conservation easements, wetlands or streams on the Property. The special exception area is the cleared area which was previously used for farming. There is only temporary disturbance of the soil by the solar array because, after

removal of the poles supporting the solar panels at the end of the lease, the land may be returned to farming or other purposes. Accordingly, this use will not be detrimental or impact nearby farms.

With regard to the Petitioner's request for a limited exemption from the development process under BCC, 32-4-106(a)(1)(vi), Mr. Thaler's opinion was that this use qualifies as a "minor commercial structure." It was his opinion that the proposed facility is small or minor, and is commercial in nature. He stated that it should qualify for a full exemption under subsection (a)(1)(vi) because it would be pointless to have a development plan or a Hearing Officer's hearing. On cross-examination, Mr. Thaler admitted that BCC does not define "minor commercial structure".

4. Henry Leskinen – Landscape Architect.

Henry Leskinen, a landscape architect with Eco-Science Professionals, Inc., was admitted as an expert in the area of landscape architecture, ecology and wetland delineations. (Pet. Ex. 14). Mr. Leskinen was retained to study whether wetlands exist on the Property. To do so, he visited the Property to determine whether three (3) factors indicating that hydrology was present: (1) the presence of wetland species grasses/plants; (2) surface water ponding; and (3) gray-colored soil. Mr. Leskinen's opinion was consistent with Mr. Thaler's in that no wetlands existed on the Property.

Mr. Leskinen submitted his findings to EPS and the wetlands/streams delineations were approved by the County. (Pet. Ex. 8). Mr. Leskinen prepared an environmental plan summarizing his finding. (Pet. Ex. 15). The bank of trees on the north end of the Property consist of white pine and white oak. When he visited the Property, no water was flowing in the swale. He saw Kentucky fescue and blue grass growing in the swale. There were a few areas of junkis grass on the southern end of the Property but it was not dominant. Given that the water table was at a seasonal high in

2019, it was Mr. Leskinen's opinion that if a wetland existed, ground water would have been present.

Further, Mr. Leskinen explained that there is no need for a second wetlands study as the State of Maryland and Baltimore County regulations (as well as the US Army Corp of Engineers) provide that the delineations are valid for 5 years. He testified that in his 33 years as an ecologist, he has never seen a wetland emerge where none previously existed.

5. Stephen Barrett – Glare Study.

The Petitioner contracted with Stephen Barrett, owner of Barrett Energy Resource Group located in Concord, MA to conduct a study on whether the proposed solar facility panels will produce glare from the sun's rays. (§4F-104.A.8). Mr. Barrett was accepted as an expert in glare analysis. Toward that end, he prepared a glare study report using computer software known as GlareGauge which is accepted by the U.S. Federal Aviation Administration, and is now considered the industry standard. (Pet. Ex. 17). Mr. Barrett was involved in the development of the model tool which became part of the 2013 FAA Guidance document for solar projects at airports and is now applied as effective in residential communities. The program only considers the solar array, the movement of the sun and the position of observers; it does not take into account terrain, vegetation, or other structures which might obstruct the observer's view of glare. *Id.* The program determines the path of the sun throughout the year.

Mr. Barrett testified that the FAA glare model includes a 3-step process which he analyzed in this case. The first step is to identify the receptors (adjacent properties, roads, motor vehicles) where glare from the proposed solar panels could potentially reflect the sun's rays. Without considering terrain, vegetation or structures, he located 13 receptors and discovered that nine of the 13 receptors have the potential for glare (for longer than 5 minutes annually). He emphasized

that this step is not the same as being able to observe the solar panels. He is concerned only with whether glare is produced from a selected location, as glare is a function of where the sun is in the sky in relation to the time of year. The selection of receptor sites was from Google Earth and the focus was on potential glare from locations due to sun rising in the east and setting in the west, while recognizing that the panels will be fixed toward the south.

The study indicated that the home of Patrick Little at 14531 Hanover Pike, Upperco, MD had the highest total annual minutes for potential glare (12,021 minutes). The potential for glare would be between 5:15pm-6:15 pm during late March through mid-September.

The second step of the model factors in the existing trees, vegetation and terrain. Mr. Barrett opined that the existing natural features on this Property obstruct the glare at the receptors. In particular, the shape of the Property is that of a bowl which will minimize and diffuse any glare produced. The third step considers the additional landscaping proposed. In this case, the potential for glare is further minimized by the proposed landscaping.

In summary, Mr. Barrett opined that no glare will be produced because the proposed design of the tracking system causes the panels to continuously move while tracking the sun. As a result, in his opinion, no glare of low or high intensity will be created.

Protestants' Case

1. Ted Carter.

Mr. Carter was accepted as an expert in landscaping, having a Master's degree in landscape architecture with work experience at Pinehurst Landscape Company since 2009. Pinehurst Landscape Company is a Baltimore County landscape company which has been in business for 54 years. Part of Mr. Carter's job duties includes analyzing a site and designing landscaping which will thrive.

As part of his review of the landscaping proposed here, Mr. Carter examined the Hanover Pike Corridor Study which is part of the Baltimore County Master Plan; the CMDP; the Landscape Manual; and the ZAC Comments. Mr. Carter opined that driving northbound on Hanover Pike, a driver could see the northeast corner of the Property. The plantings proposed (deciduous trees or evergreens) would need more than 12 years to grow tall enough to block the view.

Additionally, the proposed spacing of the 12-foot trees at 10-12 feet apart will not screen the view. Toward this end, Mr. Carter opined that more dense plants, arranged in several layers, are needed. Mr. Carter recommended three (3) lines of fast growing mature trees such as Sycamores and Poplars along with lower shrubbery to fully screen the view. Although conceding that the Landscape Manual does not require the plan to "fully screen" but rather to "minimize the visual impact," Mr. Carter highlighted the ZAC Comments which noted that the view from Hanover Pike should be "fully screened." (Prot. Ex. 11). The Landscaping Plan, in his view, fail in this regard.

Mr. Carter also acknowledged that the CMDP does not require the facility to be "fully screened" but rather requires the "least visual impact." Furthermore, while conceding that the Hanover Pike Study does not require the landscape to "fully screen," he opined that it is the best practice to minimize the site lines.

Along Frye Road, Mr. Carter also opined that the proposed landscaping screening was ineffective. Relying on the photos taken along Frye Road, he testified that the plantings would need to be 25 feet tall. (Prot. Ex 5 and 12). Mr. Carter again proposed denser plantings in rows of three (rather than one row), 10 feet on center. In his view, the proposed shrubs were not a good species to create depth. He also advocated for the use of contour strip buffers placed every 50 ft.

on the contour lines between the solar panels. He advised that this type of landscaping would require the solar panels to be moved farther apart such that fewer panels would be installed.

2. James Wolf.

Mr. Wolf purchased the lot at 5133 Frye Road in 1992 and built his home in 1994. He explained that Frye Road running along the southern end of the Property is a private driveway by which he uses to gain accesses to his property. Frye Road also services eight homes, the owners of which paid for part of the driveway to be paved.

Mr. Wolf opposes the installation of solar facilities generally in the RC2 zone and finds this one particularly objectionable because it is located at the entrance to the residential community. He feels that this solar facility will negatively impact the property values. He voiced his concern that because the final landscape plan is an integral part of the project, it should be approved before the solar facility is approved. Because of the bowl-shape to the Property, it is not suitable for a solar facility because it will never be sufficiently landscaped to provide an adequate screen.

3. Patricia Fallon.

Ms. Fallon lives at 14823 Hanover Pike which is located ½ mile north of the Property. She testified that she has observed water flowing as a stream through the Property. Additionally, the front of her property, which is located south of the solar panels, is in a 100-year Floodplain. She described water flowing off the Property and into the 100-year Floodplain.

Ms. Fallon also testified that given her work experience in making chemical components for manufacturing systems at Westinghouse, she researched and discovered that the same chemical components are generally used in solar panels, although she did not know what type of material would make up these particular panels. It was her opinion that, because of this, the solar panels

should be monitored remotely 24 hours per day and 7 days per week. Solar panels, she explained could be damaged by hail, fallen power lines, or fallen tree limbs. If this occurs, the chemicals used in the solar panels could seep into the ground water.

4. Linda Barker.

Ms. Barker lives at 14813 Old Hanover Pike. She did not file an appeal in this case as a protestant but does reside near the Property and had concerns to share with the Board. Toward that end, Ms. Barker is a retired landscape contractor. She cannot see the site from her property, only when she drives on Hanover Pike. Her concern is erosion of the soil due to rain coming off the impervious surface of the solar panels. The erosion will negatively impact farming and the stream which flows on the west end of the Property.

5. Santo Mirabile.

Mr. Mirabile owns two parcels of land at 14517 and 14525 Hanover Pike. Although he does not live there now, he is planning to build a home for his family and move there upon completion. He described that the trees located at the intersection of Hanover Pike and Frye Road which can be seen while driving north on Hanover Pike belong to him. He explained the problems with maintaining Frye Road which washes away when there is a heavy rain. Water flows off the Property and onto Frye Road which has no guardrails. A hurricane displaced the culvert. All of the neighbors (except Mr. Elseroad) contributed to the repair which Mr. Mirabile himself performed.

Using the photographs of the northerly view from his properties toward the site, Mr. Mirabile explained that no landscape screening will be effective and he will have an unobstructed view of the solar facility, particularly from his proposed 2-story home. Mr. Mirabile has financially invested in building his home in this community which he bought for its rural views.

He noted that the Petitioner's Glare Report did not consider the glare to his properties as it was not selected by Mr. Barrett as a receptor.

6. Debra Mirabile.

Mrs. Mirabile is the spouse of Santo Mirabile and co-owner of 14525 and 14527 Hanover Pike. Mrs. Mirabile echoed the testimony of other Protestants about the rural nature of the area, the bowl-shape topography of the Property, the higher elevations of the adjacent residential homes, her general opposition to Bill 37-17, the ineffectiveness of the proposed landscape screen, how this solar facility will negatively impact her investment, and the Hanover Pike rush hour traffic peaks. She described that the front of her new home will face the Property and would be at a higher elevation such that glare will be a problem for them. She is suspicious of the Petitioner's glare study as she recounted a motor vehicle collision which she caused due to glare from a solar panel.

7. Timothy Fales.

Mr. Fales lives at 14619 Hanover Pike, which is located at the northwest end of the Property, at a higher elevation. His house looks down onto the Property. The access to Mr. Fales' property is from Hanover Pike through a driveway on the western edge of the Property. There is a group of existing white pine trees to the east and some trees south of his property which will remain and thus partially block the view of the solar facility when he looks east. There is landscaping proposed south of his home to provide a screen. (Pet. Ex. 2). Mr. Fales is generally opposed to Bill 37-17 because he feels it is installing an industrial product into a rural setting. If the solar facility will be granted on this Property, Mr. Fales desires to have the panels moved down from the highest point on the Property.

8. Patrick Fales.

Mr. Fales is the brother of Timothy Fales and resides at 14533 Hanover Pike. He has lived there for 15 months. This home is located on northeast end of the Property. The bank of white pine trees to remain are located west of his home. Similar to his brother, Mr. Fales' home looks down into the site. He testified that the topography of this Property disqualifies it for use as a solar facility because it cannot be effectively screened by landscaping. If the solar facility is approved, he believes that the size of it should be reduced. He estimated that 100 feet of solar panels will be installed outside his front door.

9. Paul Merritt.

Mr. Merritt lives at 14527 Hanover Pike which is located east of the Property on Frye Road. As with the Fales' brothers, his home also looks down onto the site. In the winter, the deciduous group of trees between his home and the Property do not block the view. Mr. Merritt assisted Mr. Mirabile with the repair of the culvert on Frye Road. He testified that the water from the swale flows off the Property, across Frye Road and into a ditch on the Mirabile property. This flow of water has caused the ditch to erode. Mr. Merritt is opposed to Bill 37-17 as it brings a use which is inconsistent with RC2 zone. He further believes that a solar facility will negatively affect the value of his home and will increase the cost to maintain Frye Road.

10. Sandra Brown.

Ms. Brown lives at 5135 Frye Road where she has lived for 20 years. Ms. Brown is opposed to the facility because she can see it from her home. She is actively involved in the Hanover Improvement Association. She believes this Property is not appropriate for a solar facility. The uniqueness, she explained, stems from its location in a neighborhood with families

and this use will affect their lives. She repeated the ineffectiveness of screening a bowl-shaped parcel without using tiered buffering which requires the removal of panels from the Site Plan. She reasoned that if panels are installed at a lower point on the Property, it would reduce the glare.

Rebuttal

In rebuttal, the Petitioner called Andria Weber, a solar engineer with SGC to testify. She was admitted by the Board as an expert in solar panels. Addressing some of the Protestants' concerns, she emphasized that there would be 24/7 monitoring of the site along with a camera wherein the data can be viewed from anywhere, anytime, such that if there is a failure, there is an instant email notice and the system is shut down. Additionally, there are onsite inspections 2 times per year and surplus inverters and parts are stored by SGC for instant repair. She explained that the panels consists of Tier 1 silicon (not cadmium) modules which have been found reliable after 25 years of testing. The panels meet US standards and testing guidelines.

The modules which will be used here are designed not to leak. The panels have an anti-reflective coating designed to absorb the sun's energy, not to reflect the sun's rays. Any tiered landscaping would cast shadows onto the panels and would result in less energy produced.

Decision

As set forth above in BCZR, §4F-102.A, solar facilities are only permitted by special exception under the factors set forth in BCZR §502.1. In this case, each of the nine (9) special exceptions factors was addressed through the testimony of Mr. Copus, Mr. Thaler and Mr. Leskinen and through the documents and photographs accepted into evidence which supports the Petitioner's position that the proposed solar facility would not be detrimental to the health, safety or general welfare of the locality involved. BCZR, §502.1.A. To the contrary, the Protestants' collective concerns are impacts which are inherent with this particular use. The Protestants'

complaints center on their dissatisfaction with the County Council's enactment of Bill 37-17 which is codified in BCZR, Article 4F. (Prot. Ex. 27). Understandably, the Protestants want land in RC zones to remain as farmland without non-agricultural uses.

However, it is beyond the jurisdiction of this Board to rewrite Bill 37-17 or Article 4F. Applying the standard in *Schultz*, *Loyola* and *Attar*, the Protestants were required to present evidence that the adverse effects stemming from this solar facility, at this particular location, are unique and different than the inherent impacts associated with this use in general. We did not have such evidence here.

As described in detail above, and without repeating the same testimony here, we find persuasive the testimony of Petitioner's expert and lay witnesses in regard to the special exception factors. Mr. Thaler testified that the proposed solar facility would not be detrimental to the health, safety or general welfare of the locality involved in that it does not harm the farmland. Mr. Copus and Mr. Thaler each testified that the solar facility would not create congestion in the roads as it is not a use that generates traffic into or out of the Property. (BCZR, §502.1.B.) Further, Mr. Copus confirmed that there are no flammable materials used in this solar facility. Ms. Weber testified that these panels are made from silicon (not cadmium) which have been proven effective. She also pointed out that the facility would be monitored 24/7 with cameras to ensure the facility is safe and properly working. Mr. Thaler highlighted that there are four fire stations in the immediate area. (BCZR, §502.1.C.)

As with the lack of traffic, Mr. Copus and Mr. Thaler repeated that this use does not generate people and therefore it would not tend to overcrowd the land or cause an undue concentration of population. (BCZR, §502.1.D.) Additionally, Mr. Thaler confirmed that this use does not interfere with schools, parks, water, sewerage, transportation or other public

requirements, conveniences or improvements because it is outside the URDL and does not generate people for public facilities such as schools or transportation. (BCZR, §502.1.E.) To the contrary, the Board finds that it produces electricity which benefits the surrounding community.

Mr. Copus and Mr. Thaler both confirmed that the height of the facility will be 8 feet at full tilt and as short as 2 feet in the front. The facility will stand in the area of the Property which was previously cleared for farming. Accordingly, the Board finds that shadowing and air circulation are not areas of concern. Thus, the facility would not interfere with adequate light or air. (BCZR, §502.1.F.)

As to the consistency of this use with the purposes of the RC zones and with the spirit and intent of the BCZR, §502.1.G, we find compelling the testimony of Petitioner's experts that solar facilities are consistent uses because they are temporary, and do not impair farmland. The racking system is simply lifted out of the ground at the end of the lease term. The soil type remains the same before, during and after removal.

Moreover, the County Council has deemed solar facilities to be uses which are consistent with the RC zones, provided they meet the special exception standard, as explained in *Schultz, Loyola* and *Attar*. The Protestants' argument about the appropriateness of a non-agricultural use in RC zones should be directed to the County Council. This Board is not required to determine whether a solar facility is detrimental to agricultural uses. Our authority to approve this use is contained in Article 4F and §502.1 factors. Even if this Property contains soil suitable for farming which Mr. Elseroad disputes, an owner cannot be compelled to farm this land, or to lease the Property to a farmer.

As for whether this use is consistent with impermeable surface and vegetative retention provisions of the BCZR, §502.1.H, Mr. Leskinen and Mr. Thaler both explained that there will

not be any clearing or grading of land, and no tree removal. The existing trees to the north, west and east of the Property will remain. Rain will propel off the solar panels and soak into the ground between the rows. The rows of panels are separated so that there is no concentrated flow of water runoff as there would be with pavement. While the panels are designed to function as a storm water management technique, Mr. Thaler added that the Department of Public Works will determine whether any further storm water management retention measures are needed.

As to the final special exception factor, Mr. Thaler and Mr. Leskinen each testified that this use, at this location, would not be detrimental to the environmental or natural resources of the Property, including the forest, streams, wetlands, aquifers and floodplains under BCZR, §502.1.I. The evidence confirmed that there are no wetlands or streams on the Property. The Protestants did not have expert testimony to the contrary. The solar panels will not be installed in the floodplains which were marked on the Site Plan. (Pet. Ex. 1). On May 1, 2017, a forest buffer was delineated and approved by EPS and the solar facility will not be located in the forest buffer. (Pet. Ex. 8). Mr. Leskinen prepared and explained a Revised Wetland and Forest Stand Delineation Plan which mirrored Mr. Thaler's floodplain boundaries. (Pet. Ex. 15).

Having found the special exception factors have been satisfied, we also find the Petitioner's evidence compelling to satisfy each of the requirements of BCZR, §4F-102.B.1 and BCZR, §4F-104.A.1-9. Mr. Copus testified that the solar facility area will produce 1.75 megawatts AC electricity; less than the maximum 2 megawatts AC. BCZR, §4F-102.B.1. Accordingly, we find that the Petitioner has met this burden.

Further, Mr. Thaler testified that the Property is not encumbered by an agricultural preservation easement, an environmental preservation easement or rural legacy easement, nor is it in a Baltimore County historic district or on the Baltimore County Final Landmarks list. (BCZR,

§§4F-104.A.1 and A.2.) In addition, as with the special exception factors, Mr. Thaler and Mr. Leskinen both testified that the solar facility will not be located in the forest conservation easement or designated conservancy area. (BCZR, §§4F-104.A.3.) There was no evidence by the Protestants which contradicted any of these requirements.

As to the setback and height requirements, Mr. Thaler made clear that the facility at its highest peak will not exceed 8 feet in the back, and will be as low as 2 feet in front. (BCZR, §§4F-104.A.4.) The Site Plan revealed that the solar facility will not be located within 50 feet from the tract boundary. (Pet. Ex. 1). (BCZR, §§4F-104.A.5.) Accordingly, both the height and setback requirements have been met. There was no evidence by the Protestants which contradicted either of these requirements.

With regard to the requirement for a landscape buffer on the perimeter, the photographs presented show a cluster of existing white pine and white oak trees on the north end of the Property. (BCZR, §4F-104.6). (Pet. Ex. 2, 3) (Prot. Ex. 5, 8, 9, 12). Although a final landscape plan has not yet been approved by the County, Mr. Thaler testified that the initial comments from the Department of Planning recommended adding additional deciduous trees where no trees exist and supplementing with low shrubbery beneath. (Prot. Ex. 11). The Petitioner is amenable to planting these additional trees and shrubs and prepared a schematic Landscaping Plan in support of its Petition. (Pet. Ex. 2).

We agree with the Petitioners assertion that Subsection A.6 does not mandate that the landscape buffer make the solar facility disappear. However, we also interpret Subsection A.10 as authorizing this Board to impose conditions or restrictions on a solar facility as is necessary to protect the environment and scenic views, and to lessen the impact of health, safety and welfare of surrounding residential community when the topography of adjacent lands is a factor. In this case,

the surrounding residential properties sit at a higher elevation (those homes look down on the Property), or at the same elevation (those homes look up at the Property) due to the bowl-shape of the Property.

Although Hanover Pike is a designated County scenic route and not a scenic view, we balance the topographical reality with the ZAC Comments which recommended 'fully screening' the solar panels along Hanover Pike. While we appreciate that Mr. Thaler has calculated the exact quantity of trees and shrubs as required by the Landscape Manual and the CMDP, in this particular case, the Board finds that certain additional landscaping conditions need to be met.

Toward that end, the Board found convincing the testimony of Ted Carter, as an expert in landscaping, who recommended that additional trees and shrubs be planted to provide for a denser screening. Specifically, Mr. Carter suggested three rows of trees rather than one row, which Petitioner proposed. He also testified that selecting fast-growing trees which will reach a height of 12 feet along with vegetation and shrubs beneath and between those trees, would more effectively screen the solar facility. He highlighted that white pine trees grow rapidly.

On this condition, we defer to the County Landscape Architect when the final landscaping plan is reviewed to require the Petitioner to plant at least three rows of mature, fast growing deciduous trees at varying heights and widths along with mature, fast growing shrubbery beneath to provide a dense screening of the Property. The County Landscape Architect shall be charged with ensuring that the proposed vegetation should be planted with such depth and height to maximize the screening from the properties of the Protestants who appealed this case, and from the vantage points along Hanover Pike and Frye Road. However, we decline to require the Petitioner to install tiered buffering between the solar panels as that would shade the panels and reduce the energy produced.

As for a security fence, the uncontradicted evidence was that an 8-foot high fence with wood posts, steel wire, and without barbed wire, will be erected between the landscape buffer and the solar facility. (Pet. Ex. 5 and 6). (BCZR, §4F-104.7). As Mr. Copus explained, access to the fence will be locked and a sign posted as to the contact information of the owner/operator. This will be a condition of this Order. With this evidence, we find that these requirements have been satisfied.

Additionally, there is a requirement that the solar panels minimize glare in order to prevent vehicle collisions and safety hazards. (BCZR, §4F-104.8). In this case, the Petitioner had Mr. Barrett testify and present his glare study. (Pet. Ex. 17). The Protestants did not present an expert to contradict Mr. Barrett. The glare study indicated that there would be no glare produced by the solar panels here. Based on the weight of the evidence, we find the Petitioner satisfied this requirement.

The final factor requires the Site Plan to comply with BCC, §33-3-108. (BCZR, §4F-104.A.9). In our review of BCC, §33-3-108, we find that the language in Subsection (a) is unambiguous. That Subsection requires EPS (as defined in §33-3-101(f)), to approve the Site Plan. Further, Subsection (b) directs that the Site Plan shall generally include such information (graphs, charts, etc.) to enable EPS to “make a reasonably informed decision regarding the proposed activity.” Additionally, a plan submitted to EPS for approval must also contain the information listed in Subsection (c).

In our view, the specific items listed in Subsection (c) must be considered by EPS, not this Board, when it reviews and approves the Plan. Sections 33-3-105 (1) and (2) provide that EPS is “responsible for enforcing the provisions of [Title 33]” and the Director of EPS “may adopt policies and regulations as necessary to implement the provisions of [Title 33].”

Given the express wording of Section 33-3-108 that EPS shall approve the Site Plan, and that EPS is responsible for ensuring that the Site Plan comply with both the general and specific requirements of Subsections (b) and (c), we find that the appropriate solution for this Board is to place a condition in the Order reiterating the words of §4F-104.A.9 (i.e. that the Petitioner shall comply with Section 33-3-108). To do otherwise would be to overstep this Board's statutory authority. That finding notwithstanding, Mr. Thaler testified that the Site Plan met all the requirements of Section 33-3-108. There was no expert testimony presented by the Protestants to counter the evidence presented by the Petitioner.

The final issue requested by the Petitioner on appeal is for a limited exemption under BCC, §32-4-106(a)(1)(vi). This exemption is for a "minor commercial structure" and permits the Petitioner a full exemption from the development process and to apply directly for a building permit. In this case, Mr. Thaler testified that the project was entitled to a full exemption because it is a commercial use and small in nature. While we agree that the use is not residential in the sense that it is not a solar facility for use in a home, we disagree that the proposed facility here is "minor." The term "minor commercial structure" is not defined in the BCC. Accordingly, this Board interprets that phrase to mean that the special exception area for the solar facility must be small, subordinate in size and scope to the total acreage of the property at issue.

In this case, the Petitioner's Memorandum in Lieu of Closing Argument states that the special exception area is 15 acres; the total Property acreage is 19.68 acres. (Pet. Memo, p. 3). However, Mr. Thaler testified that the special exception area was 10 acres. While the Petitioner was not consistent on this point, we find that if the special exception area will consume the majority of the total acreage. Therefore, it cannot be "minor" in nature. In this case, as with most solar facilities, the Petitioner elected to use maximum amount of acreage for the special exception area

in order to achieve the greatest AC of electricity under the 2 megawatt limit while still meeting the 50 feet setback and not disturbing the environmental areas on the Property. Accordingly, we find that the Petitioner must proceed through the development process and is not entitled to an exemption.

Conclusion

After reviewing all of the testimony and evidence presented, the Board finds that Petition for Special Exception pursuant to BCZR, Article 4F should be granted, with conditions. This Board further finds that the request for a limited exemption should be denied.

ORDER

THEREFORE, IT IS THIS 19th day of December, 2019, by the Board of Appeals of Baltimore County,

ORDERED, that the Protestants' Motion for Summary Disposition to Deny the Application for Special Exception be and the same is hereby **DENIED** for the reasons set forth herein, and it is further,

ORDERED that the Petition for Special Exception for a solar facility pursuant to BCZR, Article 4F as set forth on the Site Plan (Pet. Ex. 1), and the Landscape Plan (Pet. Ex. 2) be, and the same is hereby **GRANTED**, subject to the following conditions under the Board's authority in §4F-104.A.10:

1. Petitioners shall submit for approval to the Baltimore County Landscape Architect and/or his/her designee, a final landscape plan for the Property demonstrating appropriate screening and vegetation along the perimeter as required under BCZR, §4F-104.A.6 and specifically to require the Petitioner to plant at least three (3) rows of mature, fast growing deciduous trees at varying heights and widths along with mature, fast growing shrubbery beneath to

provide the densest possible screening of the site. The County Landscape Architect and/or his/her designee, shall be charged with ensuring, to the best of his/her professional opinion, that the proposed vegetation should be planted with such depth and height to maximize the screening from each of the properties of the named Protestants who appealed this case, and from all vantage points along Hanover Pike and Frye Road.

2. The Petitioner shall not be required to install tiered buffering between the solar panels as that would shade the panels and reduce the energy produced.

3. Petitioners shall install an eight (8) foot high, security fence, which shall consist of wood, pressure-treated posts with steel wires between the landscaping buffer and the solar facility as required by BCZR, §4F-104.A.7. There shall be no barbed wire on the fence. The fence shall be locked at all times. Attached to the fence in a conspicuous place, while the solar facility is in operation, shall be the current contact information (name, address, 24-hour telephone number, website and email address) of the owner and operator of the solar facility. The owner/operator may also install "No Trespassing" signs.

4. The Petitioner shall remotely monitor the solar facility 24/7 to ensure it is safely and properly working at all times and shall immediately make all necessary repairs during the life of the lease.

5. Prior to the issuance of a building permit, Petitioner must satisfy the environmental regulations set forth in BCC, §33-3-108 pertaining to the protection of water quality, streams, wetlands and floodplains and obtain approval of the Site Plan from the Department of Environmental Protection and Sustainability as required in that Section.

And it is further,

ORDERED that the Petitioner's request for a limited exemption under BCC, §32-4-106(a)(1)(vi), be and the same is hereby **DENIED**.

In the matter of: Woodsburg Land & Cattle Co., LLC - Legal Owner
SGC Power, LLC - Lessee
Case No : 17-107-X and CBA-19-018

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**


Maureen E. Murphy, Panel Chair


Kendra Randall Jolivet


William A. McComas

IN THE MATTER OF
WOODENSBURG LAND and CATTLE CO., LLC
- Legal Owner
SGC POWER, LLC - Lessee
5298 Frye Road
Reisterstown, MD 21136

RE: Petition for a Solar Facility and
Request for Limited Exemption

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case Nos. 17-107-X
and CBA-19-018

* * * * *

OPINION

This case comes before the Board on appeal of the final decision of the Administrative Law Judge ("ALJ") in which the ALJ granted a Petition for a Solar Facility, with conditions, by Opinion and Order dated December 5, 2018. Protestants, Timothy and Elizabeth Fales, Santo and Debra Mirabile, Patrick and Thanikan Fales, Paul Merritt and Melissa DePinho, Patrick Little, Sandra Brown, James and Juli Wolf (collectively the "Protestants") filed an appeal.

A public hearing was held before this Board on May 2, 2019, July 23, 2019 and July 25, 2019. The Petitioners, Woodensburg Land and Cattle Company, LLC and SGC Power, LLC (the "Petitioners") were represented by Lawrence E. Schmidt, Esquire and Smith, Gildea & Schmidt, LLC. The Protestants were represented by G. Macy Nelson, Esquire. A public deliberation was held on September 26, 2019.

Factual Background

The subject property is located at 5298 Frye Road in the Reisterstown area of Baltimore County, Maryland. It is unimproved and consists of 19.68 acres+/- on the east side of Hanover Pike, Maryland Route 30 (the "Property"). It is zoned RC2. Hanover Pike has been designated by Baltimore County as a "scenic route" and runs in a north-south direction. The Property was

previously used as a farm but no farming activities presently take place there. On the southern end of the Property is a private driveway known as Frye Road.

The Petitioners are proposing to use 15 acres of the 19.68 acres for a solar facility pursuant to Baltimore County Zoning Regulations ("BCZR"), Article 4F. The solar facility will generate less than 2.0 Mw of alternating current (AC) electricity. There are floodplain areas as marked on Petitioners' Site Plan (Pet. Ex. 1). A forest buffer was delineated and approved by Department of Environmental Protection and Sustainability (EPS). (Pet. Ex. 8).

Petitioners are also requesting a limited exemption from the development process under BCC, §32-106(a)(1)(vi) for a "minor commercial structure."

Solar Facilities Law

On July 17, 2017, the County Council enacted Bill 37-17 permitting solar facilities by special exception in certain zones, including RC2, RC4, RC5, and RC8. BCZR, §4F-102.A. The County Council imposed limits on the number of facilities per councilmanic district (*i.e.* 10 per district), and on the maximum area for each facility (*i.e.* the amount of acreage that produces no more than 2 megawatts alternating current (AC) of electricity). (BCZR, §4F-102.B.1 and two.)

In addition to the special exception factors, there are 10 requirements set forth in BCZR, §4F-104.A:

1. The land on which a solar facility is proposed may not be encumbered by an agricultural preservation easement, an environmental preservation easement, or a rural legacy easement.
2. The land on which a solar facility is proposed may not be located in a Baltimore County historic district or on a property that is listed on the Baltimore County Final Landmarks List.
3. The portion of land on which a solar facility is proposed may not be in a forest conservation easement, or be in a designated conservancy area in an RC 4 or RC 6 Zone.

4. Aboveground components of the solar facility, including solar collector panels, inverters, and similar equipment, must be set back a minimum of 50 feet from the tract boundary. This setback does not apply to the installation of the associated landscaping, security fencing, wiring, or power lines.

5. A structure may not exceed 20 feet in height.

6. A landscaping buffer shall be provided around the perimeter of any portion of a solar facility that is visible from an adjacent residentially used property or a public street. Screening of state and local scenic routes and scenic views is required in accordance with the Baltimore County Landscape Manual.

7. Security fencing shall be provided between the landscaping buffer and the solar facility.

8. A solar collector panel or combination of solar collector panels shall be designed and located in an arrangement that minimizes glare or reflection onto adjacent properties and adjacent roadways, and does not interfere with traffic or create a safety hazard.

9. A petitioner shall comply with the plan requirements of § 33-3-108 of the County Code.

10. In granting a special exception, the Administrative Law Judge, or Board of Appeals on appeal, may impose conditions or restrictions on the solar facility use as necessary to protect the environment and scenic views, and to lessen the impact of the facility on the health, safety, and general welfare of surrounding residential properties and communities, taking into account such factors as the topography of adjacent land, the presence of natural forest buffers, and proximity of streams and wetlands.

There are also provisions regarding maintenance of the facilities:

§ 4F-106. - Maintenance.

A. All parties having a lease or ownership interest in a solar facility are responsible for the maintenance of the facility.

B. Maintenance shall include painting, structural repairs, landscape buffers and vegetation under and around solar panel structures, and integrity of security measures. Access to the facility shall be maintained in a manner acceptable to the Fire Department. The owner, operator, or lessee are responsible for the cost of maintaining the facility and any access roads.

C. Appropriate vegetation is permitted under and around the solar collector panels and the tract may be used for accessory agricultural purposes, including grazing of livestock, apiculture, and similar uses.

D. The provisions on this section shall be enforced in accordance with Article 3, Title 6 of the County Code.

A solar facility which has reached the end of its useful life must be removed in accordance with §4F-107.

In order to grant a request for a special exception under BCZR, §502.1, 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.

In *Schultz v. Pritts*, 291 Md. 1, 22-23, 432 A.2d at 1331 (1981), the Court of Appeals held that "the 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 the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone."

The Court of Appeals in *People's Counsel for Baltimore County v. Loyola College in Md.* 406 Md. 54, 106, 956 A.2d 166 (2008) upheld that longstanding *Shultz* analysis, explaining that a special exception use has "certain [inherent] adverse effects....[which] are likely to occur". In its analysis, the *Loyola* Court observed, "[t]he special exception adds flexibility to a comprehensive legislative zoning scheme by serving as a 'middle ground' between permitted use and prohibited uses in a particular zone." *Id.*, 406 Md. at 71, 956 A.2d at 176 (2008).

The *Schultz* and *Loyola* Courts, and more recently in *Attar v. DMS Tollgate, LLC*, 451 Md. 272, 285 (2017) have expressly recognized that "[a] special exception is presumed to be in the interest of the general welfare, and therefore a special exception enjoys a presumption of validity." (See also *Loyola*, 406 Md. at 84, 88; 105 *Schultz*, 291 Md. at 11). Based on this standard, once an applicant puts on its *prima facie* evidence in support of a special exception, the opponents must then "set forth sufficient evidence to indicate that the proposed [use] would have any adverse effects above and beyond those inherently associated with such use under the *Schultz* standard." *Attar*, 451 Md. at 287. (See *Montgomery County v. Butler*, 417 Md.271, 276-77 (2010) (opponent must show "non-inherent adverse effects" to "undercut the presumption of compatibility enjoyed by a proposed special exception use"). (See also, *Clarksville Residents Against Mortuary Defense Fund, Inc. v. Donaldson Properties*, 453 Md. 516, 543 (2017) ("there is a presumption that the [special exception] use is in the interest of the general welfare, a presumption that may only be overcome by probative evidence of unique adverse effects").

Protestants' Motion to Dismiss

On May 1, 2019, Protestants filed a motion styled "Motion for Summary Disposition to Deny the Application for Special Exception" as well as an accompanying Memorandum of Law. It was the Protestants' position that the County Council, in enacting Special Regulation 4F – Solar

Facilities, failed to add solar facilities to the list of special exception uses in RC2 zones found in BCZR, §1A01.2(C). Because of this alleged error, they contend that Section 4F cannot independently authorize a solar facility by special exception use.

This Board unanimously denies the Motion. We read BCZR, §1A01.2(C) as being a general regulation whereas BCZR, §4F is a special regulation. Accordingly, we interpret Section 4F as taking precedent over BCZR, §1A01.2(C). In addition, we accept Petitioner's argument that the County Council may have deliberately decided not to amend the list of uses permitted in the RC2 zone because the number of solar facilities is limited to 10 per councilmanic district. We are persuaded by this logic because, after permits for 10 facilities per district have been issued, solar facilities will no longer be permitted. We also find persuasive Petitioners' response that when the County Council amended BCZR, Article 4B to provide regulations for tattoo businesses, the list of uses permitted in a MH zone was not amended to add these businesses.

As a result, the Motion to Dismiss is denied.

Evidence

Petitioner's case

The Petitioner had several witnesses who testified on its behalf in the merits of the case:

1. Samuel Glenn Elseroad.

Glenn Elseroad lives at 5423 Mount Gilead Road in Reisterstown. He is a member of Woodensburg Land & Cattle Company, LLC, which company holds title to the Property. Mr. Elseroad is a farmer and he, and/or his associated entities, own approximately 500 acres of farmland in Baltimore County, of which 375 is in an agricultural land preservation program. His grandfather owned the Property in 1923. Subsequently, Mr. Elseroad and his wife repurchased

the Property. They had been renting it out for farming until 3 years ago when it became apparent to Mr. Elseroad that deer were eating the crops.

Mr. Elseroad noted that the Property gets a southern exposure and has rolling hills which makes it suitable for a solar facility. He described a farm swale located in the center of the Property which is thick with fescue grass. This grass creates a mat through which storm water flows. He testified that the water is clear in color as it flows off the farm, without sediment.

2. Jack Copus- SGC Power, LLC.

Jack Copus testified as the representative of SGC Power, LLC ("SGC") which is the holding company of Chesapeake Energy I, LLC ("Chesapeake Energy"). SGC is located at 6865 Deer Path Road, Elkridge, Md. Chesapeake Energy was formed to develop and operate the proposed solar facility. Mr. Copus acknowledged that neither SGC nor Chesapeake Energy will own this facility. It will be sold before permission is given to operate.

Mr. Copus has been employed with SGC for 4 ½ years where he works as an engineer. With a geography degree from Towson University, Mr. Copus holds a Leed certification. He has been involved with over 30 solar facility projects in Maryland. As part of his job duties, he is familiar with the Maryland Community Solar Energy Program. SGC has applied, and been accepted as, a subscriber entity in that program.

Mr. Copus explained that a lease of the Property would run for 20 years. Mr. Copus described that a prospective site must be located within the BGE area and must be cleared of trees in the area of the solar array in order to maximize energy production. In this case, the land was previously cleared for farming. (Pet. Ex. 2 and 3). As such, there will be no tree removal or grading.

He explained that the solar panels, which are proposed here, are fixed tilt panels, angled toward the southern exposure, requiring little maintenance. (Pet. Ex. 4). These particular panels do not rotate with the sun and thus, there are no moving parts. As a result, no noise will be generated. The height of the panels at full tilt is less than 8 feet. Each solar panel (1 module) measures 3.5 feet by 6.5 feet. There will be a 1-inch gap between each of the panels.

The sun's rays are absorbed by the silicone material on the panel to create direct current (DC) energy that is then converted into alternating current (AC) energy by an inverter. The energy from the inverter is then distributed to a grid connected to the existing distribution power lines along Hanover Pike. The proposed interconnection from the solar facility to the power lines is as shown on the Site Plan. (Pet. Ex. 1). Mr. Copus testified that this facility would generate 1.75 megawatts of AC electricity. This amount of AC electricity is projected to supply 250-300 homes with energy.

This facility will be unmanned. A team of two people will inspect the Property every 6 months to check the panels and cut the grass if needed. Neither traffic nor congestion will be generated by this use. (BCZR, §502.1.B). Rainwater cleans the panels so no chemicals will be applied. The panels are coated with a non-reflective glare substance to absorb the sun's rays while minimizing glare and reflection. There are no flammable materials contained within the parts of the solar facility. (BCZR, §502.1.C).

An 8-foot agricultural fence with pressure treated wood posts and steel wire will be erected around the facility as a security measure. (Pet. Ex. 5 and 6). The fence will not have barbed wire. The fence will be locked and marked as private property.

3. David Thaler, P.E.

David Thaler was qualified and accepted as a professional engineer and land surveyor with expertise in the requirements for solar facilities and BCZR, §502.1 - special exception factors. Mr. Thaler testified that the proposed special exception area for the solar facility would encompass 10 of the total 19.69 acre Property (the "Site Plan"). (Pet. Ex. 1, 2 and 3).

Mr. Thaler described the Property as gently sloping with the highest slope in the northwest corner measuring under 5%. He confirmed a drainage swale or agricultural channel in the middle of the Property and that this is a storm water management technique used by the farmer. The swale is not a wetland. Mr. Thaler walked the swale and it was dry. On two site visits, he took soil samples from the Property.

He explained that the diagnostic features for detecting a wetland are: (1) hydric soil which turns gray or black; (2) growth of specific plants (hydrophytes); and (3) hydrology present which make feet wet. Mr. Thaler opined that soil takes 30-50 years to demonstrate a wetland. It was Mr. Thaler's opinion that a solar facility is a good use for this soil because pesticides and herbicides used in farming will not be applied.

A floodplain was identified by Mr. Thaler on the Site Plan. (Pet. Ex. 1). Consequently, a forest buffer delineation was then setback from the floodplain and was marked on the Site Plan. (Pet. Ex. 1). The solar array area will not be located within the floodplain or within any environmental sensitive areas on the Property. On May 1, 2017, EPS approved the delineation (aka the 'Wetlands Delineation'). (Pet. Ex. 8). Access to the facility will be by way of Frye Road pursuant to a Declaration of Rights of Way filed in Land Records of Baltimore County, Liber 9509, page 139. (Pet. Ex. 13).

As to the requirements in BCZR, §4F-104.A, Mr. Thaler testified that there are no agricultural preservation, environmental or rural legacy easements on this Property under Subsection A.1. Additionally the Property is not located in a Baltimore County historic district or on the Baltimore County Final Landmarks List under Subsection A.2. Likewise, there is no forest conservation easement on the Property under Subsection A.3.

The Site Plan indicates that the 50-foot setback from the track boundary has been met under Subsection A.4. (Pet. Ex. 1). The height of the facility will be less than 8 feet in the back and no taller than 2 feet in front. Thus, the maximum height of 20 feet will not be exceeded as required under Subsection A.5.

With regard to Subsection A.6., a Schematic Landscape Plan was prepared under Mr. Thaler's supervision and was filed with the County. (Pet. Ex. 2). The installation of the solar facility in this case will not require grading or clearing of land as that area has already been cleared. No trees or existing vegetation will be removed. Mr. Thaler explained that there are three separate legal requirements for landscaping of solar facilities: (1) Section 4F-104A.6; (2) the Baltimore County Landscape Manual; and (3) the Comprehensive Manual of Development Policies ("CMDP").

The northern end of the Property is tree lined. In accordance with §4F-104A.6, the Petitioner will plant a landscaping perimeter buffer around the remainder of the Property as shown on the Landscaping Plan. (Pet. Ex. 2). Existing deciduous trees and those to be planted will soften the view of the facility from Hanover Pike and Frye Road.

The Landscape Manual dictates the number of planting units based on street frontage along Hanover Pike and Frye Road as well as the adjacent residential communities. Based on this, Mr. Thaler calculated 170 planting units are required and those plantings are represented on the Site

Plan. The Landscape Manual refers to the CMDP which requires landscaping screening along “scenic views.” Although Hanover Pike is not a scenic view, it is designated by Baltimore County as a “scenic route.” (Prot. Ex. 11). Nevertheless, the Landscape Plan provides a buffer along Hanover Pike in areas, which do not currently have vegetation in accordance with the CMDP.

Landscape is also proposed within the agricultural swale. In doing so, Mr. Thaler stated that one floodplain will be visually connected to the other. The Landscape Plan was designed to create a filter or diffused view of the facility to soften it. While the Landscape Plan was submitted to the County, it has not yet been approved. Notwithstanding the Zoning Advisory Comments (ZAC) dated July 18, 2018, Mr. Thaler stated that there was no requirement to fully screen the solar array but only to soften the view. (Prot. Ex. 11).

With regard to Subsection A.9, Mr. Thaler opined that the Site Plan contains all the information required under BCC, §33-3-108(c). (Pet. Ex. 1, 2 and 3).

As to the special exception factors, Mr. Thaler testified that the solar facility is a benign use in that it helps farm soil regenerate which is, in turn, useful to the health, safety or general welfare of the locality. Further, it is beneficial because it provides renewable, sustainable energy. He explained that any aesthetic complaints are inherent in solar facilities. (BCZR, §502.1.A).

As with Mr. Copus, Mr. Thaler stated that the facility will not create congestion in the roads, streets or alleys as there is no traffic generated by this use, save periodic maintenance. (BCZR, §502.1.B). Additionally, the facility will not create a fire hazard or other danger as solar facilities are regulated by the Fire Code and National Electric Code. There are four fire stations in the area namely: Upperco, Boring, Glyndon and Reisterstown. (BCZR, §502.1.C).

There is no overcrowding of the land or undue concentration of population because this use does not generate people in or out of the Property. (BCZR, §502.1.D). Likewise, Mr. Thaler

confirmed that there is no impact from this use on schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements because it is located outside the URDL. (BCZR, §502.1.E). Additionally, there is no interference with adequate light and air as the solar facility measures 8 feet at full tilt. It will not cast shadows over the adjacent residences. (BCZR, §502.1.F).

Mr. Thaler opined that the solar facility will not be inconsistent with the purpose of the Property's zoning classification nor in any other way inconsistent with the spirit and intent of the BCZR because the County Council has decided that solar facilities are permitted uses in the RC2 zones and it is important to offer solar power to residents. (BCZR, §502.1.G). This use does not prevent future farming of this Property as the racking system installed on steel poles are simply lifted out of the ground after it ceases to operate.

As to the consistency between solar facility and impermeable surface and vegetative retention provisions, Mr. Thaler reiterated that there will be no impermeable surfaces other than the panels. When rainwater falls onto the panels, it soaks into the grass between and beneath the panels. The Petitioner will submit a storm water management plan to the County. At that point, the County may or may not require additional storm water management techniques including level spreaders or dissipaters. (BCZR, §502.1.H).

Finally, Mr. Thaler testified that the solar facility will not be detrimental to the environmental or natural resources of the Property or vicinity, including forests, streams, wetlands aquifers and floodplains. (BCZR, §502.1.I). The solar facility will not be located in the designated forest buffer areas or within floodplains. There are no forest conservation easements, wetlands or streams on the Property. The special exception area is the cleared area which was previously used for farming. There is only temporary disturbance of the soil by the solar array because, after

removal of the poles supporting the solar panels at the end of the lease, the land may be returned to farming or other purposes. Accordingly, this use will not be detrimental or impact nearby farms.

With regard to the Petitioner's request for a limited exemption from the development process under BCC, 32-4-106(a)(1)(vi), Mr. Thaler's opinion was that this use qualifies as a "minor commercial structure." It was his opinion that the proposed facility is small or minor, and is commercial in nature. He stated that it should qualify for a full exemption under subsection (a)(1)(vi) because it would be pointless to have a development plan or a Hearing Officer's hearing. On cross-examination, Mr. Thaler admitted that BCC does not define "minor commercial structure".

4. Henry Leskinen – Landscape Architect.

Henry Leskinen, a landscape architect with Eco-Science Professionals, Inc., was admitted as an expert in the area of landscape architecture, ecology and wetland delineations. (Pet. Ex. 14). Mr. Leskinen was retained to study whether wetlands exist on the Property. To do so, he visited the Property to determine whether three (3) factors indicating that hydrology was present: (1) the presence of wetland species grasses/plants; (2) surface water ponding; and (3) gray-colored soil. Mr. Leskinen's opinion was consistent with Mr. Thaler's in that no wetlands existed on the Property.

Mr. Leskinen submitted his findings to EPS and the wetlands/streams delineations were approved by the County. (Pet. Ex. 8). Mr. Leskinen prepared an environmental plan summarizing his finding. (Pet. Ex. 15). The bank of trees on the north end of the Property consist of white pine and white oak. When he visited the Property, no water was flowing in the swale. He saw Kentucky fescue and blue grass growing in the swale. There were a few areas of junkis grass on the southern end of the Property but it was not dominant. Given that the water table was at a seasonal high in

2019, it was Mr. Leskinen's opinion that if a wetland existed, ground water would have been present.

Further, Mr. Leskinen explained that there is no need for a second wetlands study as the State of Maryland and Baltimore County regulations (as well as the US Army Corp of Engineers) provide that the delineations are valid for 5 years. He testified that in his 33 years as an ecologist, he has never seen a wetland emerge where none previously existed.

5. Stephen Barrett – Glare Study.

The Petitioner contracted with Stephen Barrett, owner of Barrett Energy Resource Group located in Concord, MA to conduct a study on whether the proposed solar facility panels will produce glare from the sun's rays. (§4F-104.A.8). Mr. Barrett was accepted as an expert in glare analysis. Toward that end, he prepared a glare study report using computer software known as GlareGauge which is accepted by the U.S. Federal Aviation Administration, and is now considered the industry standard. (Pet. Ex. 17). Mr. Barrett was involved in the development of the model tool which became part of the 2013 FAA Guidance document for solar projects at airports and is now applied as effective in residential communities. The program only considers the solar array, the movement of the sun and the position of observers; it does not take into account terrain, vegetation, or other structures which might obstruct the observer's view of glare. *Id.* The program determines the path of the sun throughout the year.

Mr. Barrett testified that the FAA glare model includes a 3-step process which he analyzed in this case. The first step is to identify the receptors (adjacent properties, roads, motor vehicles) where glare from the proposed solar panels could potentially reflect the sun's rays. Without considering terrain, vegetation or structures, he located 13 receptors and discovered that nine of the 13 receptors have the potential for glare (for longer than 5 minutes annually). He emphasized

that this step is not the same as being able to observe the solar panels. He is concerned only with whether glare is produced from a selected location, as glare is a function of where the sun is in the sky in relation to the time of year. The selection of receptor sites was from Google Earth and the focus was on potential glare from locations due to sun rising in the east and setting in the west, while recognizing that the panels will be fixed toward the south.

The study indicated that the home of Patrick Little at 14531 Hanover Pike, Upperco, MD had the highest total annual minutes for potential glare (12,021 minutes). The potential for glare would be between 5:15pm-6:15 pm during late March through mid-September.

The second step of the model factors in the existing trees, vegetation and terrain. Mr. Barrett opined that the existing natural features on this Property obstruct the glare at the receptors. In particular, the shape of the Property is that of a bowl which will minimize and diffuse any glare produced. The third step considers the additional landscaping proposed. In this case, the potential for glare is further minimized by the proposed landscaping.

In summary, Mr. Barrett opined that no glare will be produced because the proposed design of the tracking system causes the panels to continuously move while tracking the sun. As a result, in his opinion, no glare of low or high intensity will be created.

Protestants' Case

1. Ted Carter.

Mr. Carter was accepted as an expert in landscaping, having a Master's degree in landscape architecture with work experience at Pinehurst Landscape Company since 2009. Pinehurst Landscape Company is a Baltimore County landscape company which has been in business for 54 years. Part of Mr. Carter's job duties includes analyzing a site and designing landscaping which will thrive.

As part of his review of the landscaping proposed here, Mr. Carter examined the Hanover Pike Corridor Study which is part of the Baltimore County Master Plan; the CMDP; the Landscape Manual; and the ZAC Comments. Mr. Carter opined that driving northbound on Hanover Pike, a driver could see the northeast corner of the Property. The plantings proposed (deciduous trees or evergreens) would need more than 12 years to grow tall enough to block the view.

Additionally, the proposed spacing of the 12-foot trees at 10-12 feet apart will not screen the view. Toward this end, Mr. Carter opined that more dense plants, arranged in several layers, are needed. Mr. Carter recommended three (3) lines of fast growing mature trees such as Sycamores and Poplars along with lower shrubbery to fully screen the view. Although conceding that the Landscape Manual does not require the plan to “fully screen” but rather to “minimize the visual impact,” Mr. Carter highlighted the ZAC Comments which noted that the view from Hanover Pike should be “fully screened.” (Prot. Ex. 11). The Landscaping Plan, in his view, fail in this regard.

Mr. Carter also acknowledged that the CMDP does not require the facility to be “fully screened” but rather requires the “least visual impact.” Furthermore, while conceding that the Hanover Pike Study does not require the landscape to “fully screen,” he opined that it is the best practice to minimize the site lines.

Along Frye Road, Mr. Carter also opined that the proposed landscaping screening was ineffective. Relying on the photos taken along Frye Road, he testified that the plantings would need to be 25 feet tall. (Prot. Ex 5 and 12). Mr. Carter again proposed denser plantings in rows of three (rather than one row), 10 feet on center. In his view, the proposed shrubs were not a good species to create depth. He also advocated for the use of contour strip buffers placed every 50 ft.

on the contour lines between the solar panels. He advised that this type of landscaping would require the solar panels to be moved farther apart such that fewer panels would be installed.

2. James Wolf.

Mr. Wolf purchased the lot at 5133 Frye Road in 1992 and built his home in 1994. He explained that Frye Road running along the southern end of the Property is a private driveway by which he uses to gain accesses to his property. Frye Road also services eight homes, the owners of which paid for part of the driveway to be paved.

Mr. Wolf opposes the installation of solar facilities generally in the RC2 zone and finds this one particularly objectionable because it is located at the entrance to the residential community. He feels that this solar facility will negatively impact the property values. He voiced his concern that because the final landscape plan is an integral part of the project, it should be approved before the solar facility is approved. Because of the bowl-shape to the Property, it is not suitable for a solar facility because it will never be sufficiently landscaped to provide an adequate screen.

3. Patricia Fallon.

Ms. Fallon lives at 14823 Hanover Pike which is located ½ mile north of the Property. She testified that she has observed water flowing as a stream through the Property. Additionally, the front of her property, which is located south of the solar panels, is in a 100-year Floodplain. She described water flowing off the Property and into the 100-year Floodplain.

Ms. Fallon also testified that given her work experience in making chemical components for manufacturing systems at Westinghouse, she researched and discovered that the same chemical components are generally used in solar panels, although she did not know what type of material would make up these particular panels. It was her opinion that, because of this, the solar panels

should be monitored remotely 24 hours per day and 7 days per week. Solar panels, she explained could be damaged by hail, fallen power lines, or fallen tree limbs. If this occurs, the chemicals used in the solar panels could seep into the ground water.

4. Linda Barker.

Ms. Barker lives at 14813 Old Hanover Pike. She did not file an appeal in this case as a protestant but does reside near the Property and had concerns to share with the Board. Toward that end, Ms. Barker is a retired landscape contractor. She cannot see the site from her property, only when she drives on Hanover Pike. Her concern is erosion of the soil due to rain coming off the impervious surface of the solar panels. The erosion will negatively impact farming and the stream which flows on the west end of the Property.

5. Santo Mirabile.

Mr. Mirabile owns two parcels of land at 14517 and 14525 Hanover Pike. Although he does not live there now, he is planning to build a home for his family and move there upon completion. He described that the trees located at the intersection of Hanover Pike and Frye Road which can be seen while driving north on Hanover Pike belong to him. He explained the problems with maintaining Frye Road which washes away when there is a heavy rain. Water flows off the Property and onto Frye Road which has no guardrails. A hurricane displaced the culvert. All of the neighbors (except Mr. Elseroad) contributed to the repair which Mr. Mirabile himself performed.

Using the photographs of the northerly view from his properties toward the site, Mr. Mirabile explained that no landscape screening will be effective and he will have an unobstructed view of the solar facility, particularly from his proposed 2-story home. Mr. Mirabile has financially invested in building his home in this community which he bought for its rural views.

He noted that the Petitioner's Glare Report did not consider the glare to his properties as it was not selected by Mr. Barrett as a receptor.

6. Debra Mirabile.

Mrs. Mirabile is the spouse of Santo Mirabile and co-owner of 14525 and 14527 Hanover Pike. Mrs. Mirabile echoed the testimony of other Protestants about the rural nature of the area, the bowl-shape topography of the Property, the higher elevations of the adjacent residential homes, her general opposition to Bill 37-17, the ineffectiveness of the proposed landscape screen, how this solar facility will negatively impact her investment, and the Hanover Pike rush hour traffic peaks. She described that the front of her new home will face the Property and would be at a higher elevation such that glare will be a problem for them. She is suspicious of the Petitioner's glare study as she recounted a motor vehicle collision which she caused due to glare from a solar panel.

7. Timothy Fales.

Mr. Fales lives at 14619 Hanover Pike, which is located at the northwest end of the Property, at a higher elevation. His house looks down onto the Property. The access to Mr. Fales' property is from Hanover Pike through a driveway on the western edge of the Property. There is a group of existing white pine trees to the east and some trees south of his property which will remain and thus partially block the view of the solar facility when he looks east. There is landscaping proposed south of his home to provide a screen. (Pet. Ex. 2). Mr. Fales is generally opposed to Bill 37-17 because he feels it is installing an industrial product into a rural setting. If the solar facility will be granted on this Property, Mr. Fales desires to have the panels moved down from the highest point on the Property.

8. Patrick Fales.

Mr. Fales is the brother of Timothy Fales and resides at 14533 Hanover Pike. He has lived there for 15 months. This home is located on northeast end of the Property. The bank of white pine trees to remain are located west of his home. Similar to his brother, Mr. Fales' home looks down into the site. He testified that the topography of this Property disqualifies it for use as a solar facility because it cannot be effectively screened by landscaping. If the solar facility is approved, he believes that the size of it should be reduced. He estimated that 100 feet of solar panels will be installed outside his front door.

9. Paul Merritt.

Mr. Merritt lives at 14527 Hanover Pike which is located east of the Property on Frye Road. As with the Fales' brothers, his home also looks down onto the site. In the winter, the deciduous group of trees between his home and the Property do not block the view. Mr. Merritt assisted Mr. Mirabile with the repair of the culvert on Frye Road. He testified that the water from the swale flows off the Property, across Frye Road and into a ditch on the Mirabile property. This flow of water has caused the ditch to erode. Mr. Merritt is opposed to Bill 37-17 as it brings a use which is inconsistent with RC2 zone. He further believes that a solar facility will negatively affect the value of his home and will increase the cost to maintain Frye Road.

10. Sandra Brown.

Ms. Brown lives at 5135 Frye Road where she has lived for 20 years. Ms. Brown is opposed to the facility because she can see it from her home. She is actively involved in the Hanover Improvement Association. She believes this Property is not appropriate for a solar facility. The uniqueness, she explained, stems from its location in a neighborhood with families

and this use will affect their lives. She repeated the ineffectiveness of screening a bowl-shaped parcel without using tiered buffering which requires the removal of panels from the Site Plan. She reasoned that if panels are installed at a lower point on the Property, it would reduce the glare.

Rebuttal

In rebuttal, the Petitioner called Andria Weber, a solar engineer with SGC to testify. She was admitted by the Board as an expert in solar panels. Addressing some of the Protestants' concerns, she emphasized that there would be 24/7 monitoring of the site along with a camera wherein the data can be viewed from anywhere, anytime, such that if there is a failure, there is an instant email notice and the system is shut down. Additionally, there are onsite inspections 2 times per year and surplus inverters and parts are stored by SGC for instant repair. She explained that the panels consists of Tier 1 silicon (not cadmium) modules which have been found reliable after 25 years of testing. The panels meet US standards and testing guidelines.

The modules which will be used here are designed not to leak. The panels have an anti-reflective coating designed to absorb the sun's energy, not to reflect the sun's rays. Any tiered landscaping would cast shadows onto the panels and would result in less energy produced.

Decision

As set forth above in BCZR, §4F-102.A, solar facilities are only permitted by special exception under the factors set forth in BCZR §502.1. In this case, each of the nine (9) special exceptions factors was addressed through the testimony of Mr. Copus, Mr. Thaler and Mr. Leskinen and through the documents and photographs accepted into evidence which supports the Petitioner's position that the proposed solar facility would not be detrimental to the health, safety or general welfare of the locality involved. BCZR, §502.1.A. To the contrary, the Protestants' collective concerns are impacts which are inherent with this particular use. The Protestants'

complaints center on their dissatisfaction with the County Council's enactment of Bill 37-17 which is codified in BCZR, Article 4F. (Prot. Ex. 27). Understandably, the Protestants want land in RC zones to remain as farmland without non-agricultural uses.

However, it is beyond the jurisdiction of this Board to rewrite Bill 37-17 or Article 4F. Applying the standard in *Schultz*, *Loyola* and *Attar*, the Protestants were required to present evidence that the adverse effects stemming from this solar facility, at this particular location, are unique and different than the inherent impacts associated with this use in general. We did not have such evidence here.

As described in detail above, and without repeating the same testimony here, we find persuasive the testimony of Petitioner's expert and lay witnesses in regard to the special exception factors. Mr. Thaler testified that the proposed solar facility would not be detrimental to the health, safety or general welfare of the locality involved in that it does not harm the farmland. Mr. Copus and Mr. Thaler each testified that the solar facility would not create congestion in the roads as it is not a use that generates traffic into or out of the Property. (BCZR, §502.1.B.) Further, Mr. Copus confirmed that there are no flammable materials used in this solar facility. Ms. Weber testified that these panels are made from silicon (not cadmium) which have been proven effective. She also pointed out that the facility would be monitored 24/7 with cameras to ensure the facility is safe and properly working. Mr. Thaler highlighted that there are four fire stations in the immediate area. (BCZR, §502.1.C.)

As with the lack of traffic, Mr. Copus and Mr. Thaler repeated that this use does not generate people and therefore it would not tend to overcrowd the land or cause an undue concentration of population. (BCZR, §502.1.D.) Additionally, Mr. Thaler confirmed that this use does not interfere with schools, parks, water, sewerage, transportation or other public

requirements, conveniences or improvements because it is outside the URDL and does not generate people for public facilities such as schools or transportation. (BCZR, §502.1.E.) To the contrary, the Board finds that it produces electricity which benefits the surrounding community.

Mr. Copus and Mr. Thaler both confirmed that the height of the facility will be 8 feet at full tilt and as short as 2 feet in the front. The facility will stand in the area of the Property which was previously cleared for farming. Accordingly, the Board finds that shadowing and air circulation are not areas of concern. Thus, the facility would not interfere with adequate light or air. (BCZR, §502.1.F.)

As to the consistency of this use with the purposes of the RC zones and with the spirit and intent of the BCZR, §502.1.G, we find compelling the testimony of Petitioner's experts that solar facilities are consistent uses because they are temporary, and do not impair farmland. The racking system is simply lifted out of the ground at the end of the lease term. The soil type remains the same before, during and after removal.

Moreover, the County Council has deemed solar facilities to be uses which are consistent with the RC zones, provided they meet the special exception standard, as explained in *Schultz*, *Loyola* and *Attar*. The Protestants' argument about the appropriateness of a non-agricultural use in RC zones should be directed to the County Council. This Board is not required to determine whether a solar facility is detrimental to agricultural uses. Our authority to approve this use is contained in Article 4F and §502.1 factors. Even if this Property contains soil suitable for farming which Mr. Elseroad disputes, an owner cannot be compelled to farm this land, or to lease the Property to a farmer.

As for whether this use is consistent with impermeable surface and vegetative retention provisions of the BCZR, §502.1.H, Mr. Leskinen and Mr. Thaler both explained that there will

not be any clearing or grading of land, and no tree removal. The existing trees to the north, west and east of the Property will remain. Rain will propel off the solar panels and soak into the ground between the rows. The rows of panels are separated so that there is no concentrated flow of water runoff as there would be with pavement. While the panels are designed to function as a storm water management technique, Mr. Thaler added that the Department of Public Works will determine whether any further storm water management retention measures are needed.

As to the final special exception factor, Mr. Thaler and Mr. Leskinen each testified that this use, at this location, would not be detrimental to the environmental or natural resources of the Property, including the forest, streams, wetlands, aquifers and floodplains under BCZR, §502.1.I. The evidence confirmed that there are no wetlands or streams on the Property. The Protestants did not have expert testimony to the contrary. The solar panels will not be installed in the floodplains which were marked on the Site Plan. (Pet. Ex. 1). On May 1, 2017, a forest buffer was delineated and approved by EPS and the solar facility will not be located in the forest buffer. (Pet. Ex. 8). Mr. Leskinen prepared and explained a Revised Wetland and Forest Stand Delineation Plan which mirrored Mr. Thaler's floodplain boundaries. (Pet. Ex. 15).

Having found the special exception factors have been satisfied, we also find the Petitioner's evidence compelling to satisfy each of the requirements of BCZR, §4F-102.B.1 and BCZR, §4F-104.A.1-9. Mr. Copus testified that the solar facility area will produce 1.75 megawatts AC electricity; less than the maximum 2 megawatts AC. BCZR, §4F-102.B.1. Accordingly, we find that the Petitioner has met this burden.

Further, Mr. Thaler testified that the Property is not encumbered by an agricultural preservation easement, an environmental preservation easement or rural legacy easement, nor is it in a Baltimore County historic district or on the Baltimore County Final Landmarks list. (BCZR,

§§4F-104.A.1 and A.2.) In addition, as with the special exception factors, Mr. Thaler and Mr. Leskinen both testified that the solar facility will not be located in the forest conservation easement or designated conservancy area. (BCZR, §§4F-104.A.3.) There was no evidence by the Protestants which contradicted any of these requirements.

As to the setback and height requirements, Mr. Thaler made clear that the facility at its highest peak will not exceed 8 feet in the back, and will be as low as 2 feet in front. (BCZR, §§4F-104.A.4.) The Site Plan revealed that the solar facility will not be located within 50 feet from the tract boundary. (Pet. Ex. 1). (BCZR, §§4F-104.A.5.) Accordingly, both the height and setback requirements have been met. There was no evidence by the Protestants which contradicted either of these requirements.

With regard to the requirement for a landscape buffer on the perimeter, the photographs presented show a cluster of existing white pine and white oak trees on the north end of the Property. (BCZR, §4F-104.6). (Pet. Ex. 2, 3) (Prot. Ex. 5, 8, 9, 12). Although a final landscape plan has not yet been approved by the County, Mr. Thaler testified that the initial comments from the Department of Planning recommended adding additional deciduous trees where no trees exist and supplementing with low shrubbery beneath. (Prot. Ex. 11). The Petitioner is amenable to planting these additional trees and shrubs and prepared a schematic Landscaping Plan in support of its Petition. (Pet. Ex. 2).

We agree with the Petitioners assertion that Subsection A.6 does not mandate that the landscape buffer make the solar facility disappear. However, we also interpret Subsection A.10 as authorizing this Board to impose conditions or restrictions on a solar facility as is necessary to protect the environment and scenic views, and to lessen the impact of health, safety and welfare of surrounding residential community when the topography of adjacent lands is a factor. In this case,

the surrounding residential properties sit at a higher elevation (those homes look down on the Property), or at the same elevation (those homes look up at the Property) due to the bowl-shape of the Property.

Although Hanover Pike is a designated County scenic route and not a scenic view, we balance the topographical reality with the ZAC Comments which recommended 'fully screening' the solar panels along Hanover Pike. While we appreciate that Mr. Thaler has calculated the exact quantity of trees and shrubs as required by the Landscape Manual and the CMDP, in this particular case, the Board finds that certain additional landscaping conditions need to be met.

Toward that end, the Board found convincing the testimony of Ted Carter, as an expert in landscaping, who recommended that additional trees and shrubs be planted to provide for a denser screening. Specifically, Mr. Carter suggested three rows of trees rather than one row, which Petitioner proposed. He also testified that selecting fast-growing trees which will reach a height of 12 feet along with vegetation and shrubs beneath and between those trees, would more effectively screen the solar facility. He highlighted that white pine trees grow rapidly.

On this condition, we defer to the County Landscape Architect when the final landscaping plan is reviewed to require the Petitioner to plant at least three rows of mature, fast growing deciduous trees at varying heights and widths along with mature, fast growing shrubbery beneath to provide a dense screening of the Property. The County Landscape Architect shall be charged with ensuring that the proposed vegetation should be planted with such depth and height to maximize the screening from the properties of the Protestants who appealed this case, and from the vantage points along Hanover Pike and Frye Road. However, we decline to require the Petitioner to install tiered buffering between the solar panels as that would shade the panels and reduce the energy produced.

As for a security fence, the uncontradicted evidence was that an 8-foot high fence with wood posts, steel wire, and without barbed wire, will be erected between the landscape buffer and the solar facility. (Pet. Ex. 5 and 6). (BCZR, §4F-104.7). As Mr. Copus explained, access to the fence will be locked and a sign posted as to the contact information of the owner/operator. This will be a condition of this Order. With this evidence, we find that these requirements have been satisfied.

Additionally, there is a requirement that the solar panels minimize glare in order to prevent vehicle collisions and safety hazards. (BCZR, §4F-104.8). In this case, the Petitioner had Mr. Barrett testify and present his glare study. (Pet. Ex. 17). The Protestants did not present an expert to contradict Mr. Barrett. The glare study indicated that there would be no glare produced by the solar panels here. Based on the weight of the evidence, we find the Petitioner satisfied this requirement.

The final factor requires the Site Plan to comply with BCC, §33-3-108. (BCZR, §4F-104.A.9). In our review of BCC, §33-3-108, we find that the language in Subsection (a) is unambiguous. That Subsection requires EPS (as defined in §33-3-101(f)), to approve the Site Plan. Further, Subsection (b) directs that the Site Plan shall generally include such information (graphs, charts, etc.) to enable EPS to “make a reasonably informed decision regarding the proposed activity.” Additionally, a plan submitted to EPS for approval must also contain the information listed in Subsection (c).

In our view, the specific items listed in Subsection (c) must be considered by EPS, not this Board, when it reviews and approves the Plan. Sections 33-3-105 (1) and (2) provide that EPS is “responsible for enforcing the provisions of [Title 33]” and the Director of EPS “may adopt policies and regulations as necessary to implement the provisions of [Title 33].”

Given the express wording of Section 33-3-108 that EPS shall approve the Site Plan, and that EPS is responsible for ensuring that the Site Plan comply with both the general and specific requirements of Subsections (b) and (c), we find that the appropriate solution for this Board is to place a condition in the Order reiterating the words of §4F-104.A.9 (i.e. that the Petitioner shall comply with Section 33-3-108). To do otherwise would be to overstep this Board's statutory authority. That finding notwithstanding, Mr. Thaler testified that the Site Plan met all the requirements of Section 33-3-108. There was no expert testimony presented by the Protestants to counter the evidence presented by the Petitioner.

The final issue requested by the Petitioner on appeal is for a limited exemption under BCC, §32-4-106(a)(1)(vi). This exemption is for a "minor commercial structure" and permits the Petitioner a full exemption from the development process and to apply directly for a building permit. In this case, Mr. Thaler testified that the project was entitled to a full exemption because it is a commercial use and small in nature. While we agree that the use is not residential in the sense that it is not a solar facility for use in a home, we disagree that the proposed facility here is "minor." The term "minor commercial structure" is not defined in the BCC. Accordingly, this Board interprets that phrase to mean that the special exception area for the solar facility must be small, subordinate in size and scope to the total acreage of the property at issue.

In this case, the Petitioner's Memorandum in Lieu of Closing Argument states that the special exception area is 15 acres; the total Property acreage is 19.68 acres. (Pet. Memo, p. 3). However, Mr. Thaler testified that the special exception area was 10 acres. While the Petitioner was not consistent on this point, we find that if the special exception area will consume the majority of the total acreage. Therefore, it cannot be "minor" in nature. In this case, as with most solar facilities, the Petitioner elected to use maximum amount of acreage for the special exception area

in order to achieve the greatest AC of electricity under the 2 megawatt limit while still meeting the 50 feet setback and not disturbing the environmental areas on the Property. Accordingly, we find that the Petitioner must proceed through the development process and is not entitled to an exemption.

Conclusion

After reviewing all of the testimony and evidence presented, the Board finds that Petition for Special Exception pursuant to BCZR, Article 4F should be granted, with conditions. This Board further finds that the request for a limited exemption should be denied.

ORDER

THEREFORE, IT IS THIS 19th day of December, 2019, by the Board of Appeals of Baltimore County,

ORDERED, that the Protestants' Motion for Summary Disposition to Deny the Application for Special Exception be and the same is hereby **DENIED** for the reasons set forth herein, and it is further,

ORDERED that the Petition for Special Exception for a solar facility pursuant to BCZR, Article 4F as set forth on the Site Plan (Pet. Ex. 1), and the Landscape Plan (Pet. Ex .2) be, and the same is hereby **GRANTED**, subject to the following conditions under the Board's authority in §4F-104.A.10:

1. Petitioners shall submit for approval to the Baltimore County Landscape Architect and/or his/her designee, a final landscape plan for the Property demonstrating appropriate screening and vegetation along the perimeter as required under BCZR, §4F-104.A.6 and specifically to require the Petitioner to plant at least three (3) rows of mature, fast growing deciduous trees at varying heights and widths along with mature, fast growing shrubbery beneath to

provide the densest possible screening of the site. The County Landscape Architect and/or his/her designee, shall be charged with ensuring, to the best of his/her professional opinion, that the proposed vegetation should be planted with such depth and height to maximize the screening from each of the properties of the named Protestants who appealed this case, and from all vantage points along Hanover Pike and Frye Road.

2. The Petitioner shall not be required to install tiered buffering between the solar panels as that would shade the panels and reduce the energy produced.

3. Petitioners shall install an eight (8) foot high, security fence, which shall consist of wood, pressure-treated posts with steel wires between the landscaping buffer and the solar facility as required by BCZR, §4F-104.A.7. There shall be no barbed wire on the fence. The fence shall be locked at all times. Attached to the fence in a conspicuous place, while the solar facility is in operation, shall be the current contact information (name, address, 24-hour telephone number, website and email address) of the owner and operator of the solar facility. The owner/operator may also install "No Trespassing" signs.

4. The Petitioner shall remotely monitor the solar facility 24/7 to ensure it is safely and properly working at all times and shall immediately make all necessary repairs during the life of the lease.

5. Prior to the issuance of a building permit, Petitioner must satisfy the environmental regulations set forth in BCC, §33-3-108 pertaining to the protection of water quality, streams, wetlands and floodplains and obtain approval of the Site Plan from the Department of Environmental Protection and Sustainability as required in that Section.

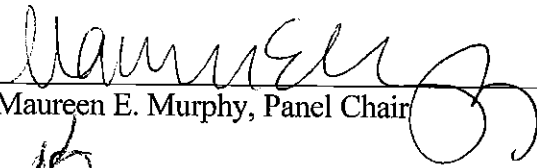
And it is further,

ORDERED that the Petitioner's request for a limited exemption under BCC, §32-4-106(a)(1)(vi), be and the same is hereby **DENIED**.

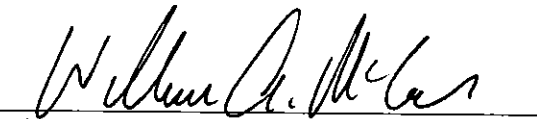
In the matter of: Woodensburg Land & Cattle Co., LLC - Legal Owner
SGC Power, LLC - Lessee
Case No : 17-107-X and CBA-19-018

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**


Maureen E. Murphy, Panel Chair


Kendra Randall Jolivet


William A. McComas



Board of Appeals of Baltimore County

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December 19, 2019

Lawrence E. Schmidt, Esquire
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G. Macy Nelson, Esquire
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204

RE: *In the Matter of: Woodensburg Land and Cattle Company, LLC – Legal Owner*
SGC Power, LLC – Lessee
Case Nos.: 17-107-X and CBA-19-018

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

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/taz
Enclosure
Duplicate Original Cover Letter

c: Glenn S. and Ruth L. Elseroad/
Woodensburg Land and Cattle Company, LLC
Bruce Wilson/SGC Power, LLC
Office of People's Counsel
C. Pete Gutwald, Director/Department of Planning
Paul M. Mayhew, Managing Administrative Law Judge
Lloyd Moxley, Development Manager/PAI
Michael D. Mallinoff, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law

Timothy and Elizabeth Fales
Santo and Debra Mirabile
Patrick and Thanikan Fales
Paul B. Merritt
Melissa A. DePinho
Patrick Little
Sandra M. Brown
James C. and Juli R. Wolf

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Woodensburg Land & Cattle Company, LLC – Legal Owner 17-107-X &
SGC Power, LLC – Lessee CBA-19-018

DATE: September 26, 2019

BOARD/PANEL: Maureen E. Murphy, Panel Chair
Kendra Randall Jolivet
William A. McComas

RECORDED BY: Tammy A. Zahner, Legal Secretary

PURPOSE: To deliberate the following:

1. Petition for Special Exception pursuant to BCZR Section 4F-102 to operate a solar facility in the RC-2 zone; and
2. Appeal of Director's letter granting a Limited Exemption under BCC Section 32-4-106(a)(1)(vi) for a minor commercial structure.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

DISCUSSION

- The Board held three days of hearings on the Petitioners' request to operate a solar facility.
- The Board discussed the Protestants' Motion to Dismiss which argues that the Bill allowing solar facilities is flawed, among other arguments. The Board unanimously agreed to DENY the Motion to Dismiss.
- The Board discussed the requirements contained in BCZR Section 4F-104, as follows:
 - The solar facility is permitted in the RC-2 zone by special exception.
 - The solar facility will produce no more than two megawatts of electricity.
 - Maximum of 10 per Council District. To the Board's knowledge this limit has not been reached.
 - Additional requirements:
 - 1) Not applicable. The land is not encumbered by an agricultural preservation easement, an environmental preservation easement or a rural legacy easement.
 - 2) Not applicable. The land is not located in a historic district or on property listed on the Baltimore County Final Landmarks List.
 - 3) Not applicable. The solar facility will not be located in a forest conservation easement, or in a designated conservancy area.
 - 4) Meets requirement. The components of the solar facility will meet the minimum setback requirement of 50 ft. from the tract boundary.

5) Meets requirement. The structure does not exceed 20 ft. in height.

6) The Board discussed the landscaping buffer which is a major concern of the Protestants. The landscaping plan itself is not filed until after special exception approval, and must be approved by the County. The Board discussed the requirement of providing adequate screening from adjoining residential properties, and the scenic road. The Protestants argue that regulations require the solar panels be invisible from adjoining properties. The Board disagrees finding that is not the intent of the regulations, however the Board can impose conditions to mitigate the impact to neighbors. There was some discussion regarding the impact to neighboring views across the property where the solar panels will be located. It was noted that the Board has ruled on multiple occasions that you do not own or have a right to the view across neighboring properties. The Board will impose a condition regarding the landscape buffer to create more depth to minimize the impact to neighbors.

- 7) The proposed security fence will be an agricultural type fence approximately 8 ft. in height, with no barbed wire on top. The Board will impose a condition that a sign be posted on the fence surrounding the solar facility with emergency contact information including a 24-hour telephone number, e-mail address, and website.
- 8) The Petitioner presented expert testimony which included a Glare Study. The solar panels will be designed to minimize glare or reflection onto adjacent properties and roads. The condition of additional landscaping will also help to minimize glare.
- The Board discussed the specific requirements of BCZR Section 502.1, Conditions determining granting of a Special Exception, as follows:
 - A) The Board found there would be no detriment to the health, safety or general welfare of the locality.
 - B) The Board noted that the solar facility will only be accessed during installation and periodic maintenance. The Board found there would be no impact on traffic or roads.
 - C) The Board found there was no evidence of potential hazard from fire, panic or other danger.
 - D) There will be no population increase as a result of the solar array, and accordingly will not overcrowd land or cause an undue concentration of population.
 - E) The Board found the project will not have an impact on schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements.
 - F) The Board noted that the height of the solar panels will not exceed 20 ft., and will not interfere with adequate light and air.
 - G) The Board noted that County Council Bill 37-17 permits solar facilities in the RC-2 zone as long as it meets the special exception requirements. The Board must apply the Bill as written and does not have the authority to change the law. The Board found the proposal to be consistent with the spirit and intent of the Zoning Regulations.

H) The Board discussed impermeable surface and vegetative retention. The Board noted there will be no grading of the property and no tree removal. The Board noted that DEPS is charged with review of storm water management and will be undertaking a more detailed analysis.

I) The Board discussed impact to environmental and natural resources on the site. The Board noted there are no streams or wetlands on the site. The Protestants argue that the swale located on the property is a wetland. The Board disagrees noting that the swale has no active flow of water, and is considered a farm swale. It was noted that DEPS will review the proposal to ensure there is no negative impact to any environmental and natural resources on the site.

- The Board discussed the Petitioners request for a limited exemption to BCC Section 32-4-106(a)(1)(vi) for a minor commercial structure. The Board noted that there is no definition of “minor commercial structure” in the BCC. The Board feels that due to the scope of the proposed project it is not a minor commercial structure and agree that the proposal should go through the development plan process.

CONCLUSION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to DENY the Protestants’ Motion to Dismiss; to GRANT the Petition for Special Exception, with conditions imposed; and to DENY the limited exemption to BCC Section 32-4-106(a)(1)(vi).

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,

_____/s_____
Tammy A. Zahner

IN THE MATTER OF:	*	BEFORE THE
5298 Frye Road		
E/s Hanover Pike, 2687 ft. at the	*	ADMINISTRATIVE LAW JUDGE
corner of Not Frye Road		
4 th Election District –	*	OF BALTIMORE COUNTY
3 rd Councilmanic District		
Legal Owners: Glenn & Ruth Elseroad	*	
Contract Purchaser/Lessee: Bruce Wilson		CASE NO. 2017-0107-X
Authorized Rep of SGC Power, LLC	*	

* * * * *

CITIZEN-PROTESTANTS' POST-HEARING MEMORANDUM

INTRODUCTION

On May 2, July 23, and July 25, 2019, the Board of Appeals (“Board”) conducted a de novo hearing regarding the application of Woodensburg Land and Cattle Company, Legal Owner, and Chesapeake Energy One, LLC, Lessee (collectively, “Applicant”) for a special exception and the Applicant’s request for a limited exemption under Baltimore County Code (“BCCC”) section 32-4-106(a)(1)(vi). Debra Mirabile, Santo Mirabile, Timothy Fales, Elizabeth Fales, Patrick Fales, Thanikan Fales, Paul Merritt, Melissa A. DePinho, Patrick Little, Sandra M. Brown, James C. Wolf, and Juli R. Wolf (collectively, “Citizen-Protestants”), opposed the application for special exception and the request for a limited exemption. The Board instructed the parties to file post-hearing memoranda by August 23, 2019.

FACTS

The Applicant applied for a special exception to construct a solar facility with approximately 129,864 square feet of solar panels¹ ("Solar Facility") on approximately twenty acres of land located at 5298 Frye Road ("Subject Property"). The Applicant has not yet submitted its landscaping plan for the Solar Facility to Baltimore County for approval. The Applicant also requested a limited exemption under BCCC section 32-4-106(a)(1)(vi) for the Solar Facility.

Subject Property

The Subject Property is in the southeast quadrant of the intersection of Hanover Pike (Route 30) and a private driveway known as Not Frye Road. Hanover Pike runs roughly north/south. Not Frye Road runs roughly east/west. The Applicant proposes to use the private driveway as the access to the Solar Facility.

Properties on the north, east, and south sides of the Subject Property have a higher elevation than the Subject Property. The low point of the Subject Property is a northeast/southwest line moving through the middle of the Subject Property. Overall, the ground tends to slope downward in a southwesterly direction, while the rising elevation

¹ Jack Copus described the size of the panel. He testified, in effect, that each individual panel is approximately 3.5 x 6.5 square feet, and they stack two together. So each individual panel is about 3.5 x 12 square feet. Citizen-Protestants' counsel used Applicant's Exhibit 1 to count the solar panels. Citizen-Protestants' counsel then multiplied the number of panels by the area of each panel to arrive at the total square footage of the solar panels.

on either side of the northeast/southwest line creates a bowl shape. *See* Applicant's Ex. 1 with topographic contour lines.

The Subject Property is zoned RC-2 and is in northern Baltimore County's agricultural area. The Subject Property contains prime and productive soils, *see* Citizen-Protestants' Ex. 20, and is "within an Agricultural Priority Preservation Area as designated in the Baltimore County Master Plan 2020 (MP2020)." Citizen-Protestants' Ex. 11, Zoning Advisory Committee Comments, July 18, 2018.

There is a wetland at both ends of the low-lying northeast/southwest line through the Subject Property. Test. of Henry Leskinen. Mr. Elseroad, the owner of the Subject Property, described large quantities of clean water flowing through this area. The Applicant's first engineer, SoCore Engineering, described the area between the two wetlands as an "intermittent stream." Citizen-Protestants' Ex. 1. Aerial photographs show a line of vegetation in the area where Mr. Elseroad testified there was flowing water and where SoCore depicted the "intermittent stream." Citizen-Protestants' Ex. 10; 1. Although Mr. Leskinen testified that the area between the two wetlands was a drainage swale, not an intermittent stream, he acknowledged that *Juncus*, a wetlands plant, was growing in the area he described as a drainage swale.

The Neighborhood

The neighborhood includes Not Frye Road, the Hanover Pike Corridor, and the residential neighborhood surrounding the Subject Property.

Not Frye Road

Not Frye Road is a private driveway. It runs in a roughly easterly direction until it reaches the property owned by Paul Merritt and Melissa A. DePinho. Citizen-Protestants' Ex. 10. The surface of the private driveway is pavement at the western end and gravel at the eastern end. The private driveway provides the access to the property of Debra Mirabile, Santo Mirabile, Paul Merritt, Melissa A. DePinho, Patrick Little, Sandra M. Brown, James C. Wolf and Juli R. Wolf. Citizen-Protestants maintain the private driveway at their own expense.

The Applicant performed a Solar Photovoltaic Glare Assessment ("Glare Assessment"). Applicant's Ex. 17. The Glare Assessment concluded that an observation point, OP 2, at the eastern end of the private driveway would be subject to 12,021 minutes per year of glare reflecting off the solar array. The Glare Assessment described the glare on the private driveway that would result from the solar array:

Figure 28 shows that the array will be visible to motorists heading west on Frye Rd [Not Frye Road or private driveway] from east of the array. There is potential for glare at this point. However, the section of Frye Rd [Not Frye Road or private driveway] directly south of the project site is not a public road. It is a private road, solely driven by the few residents whose houses are east of the array. As such, there is very minimal traffic for which this glare will be a concern. As per the Landscape Compliance Plan, maturing landscaping will be planted along this southern property line to further mitigate visibility of glare for these motorists.

Applicant's Ex. 17, p. 23.

Applicant's Exhibit 19 depicts the stream system that flows beneath Hanover Pike and the private driveway. Patricia Fallon introduced her report, which depicts the same stream system. Citizen-Protestants' Ex. 18. Her report includes a photograph of the culvert that passes beneath the private driveway. Citizen-Protestants described the flooding of the western end of the private driveway that occurs when rain events generate surface water runoff that exceeds the capacity of the culvert. Such flooding makes the private driveway impassable. In those circumstances, Debra Mirabile, Santo Mirabile, Paul Merritt, Melissa A. DePinho, Patrick Little, Sandra M. Brown, James C. Wolf, and Juli R. Wolf use a different private driveway to access their respective properties from the back. Paul Merritt described a severe rain event that washed out the entrance to the private driveway. Mr. Merritt used his heavy equipment to repair the private driveway. The driveway was impassable until he had completed the repair.

The Applicant's engineer, A. Weber, testified that if the Solar Facility required service when the private driveway was impassable, the Applicant would access the Subject Property from the private driveway that leads to the property owned by Timothy and Elizabeth Fales. *See* Citizen-Protestant's Ex. 10. Such access would require the Applicant to move its equipment through the proposed landscaping on the western border of the Subject Property.

Hanover Pike Corridor

Hanover Pike abuts the western boundary of the Subject Property. The BALTIMORE COUNTY MASTER PLAN 2020 ("BCMP") designated Hanover Pike as a

Scenic Route. BCMP 100. The Department of Planning recognized that the Subject Property is “subject to the Hanover Pike Corridor Study, adopted by the Baltimore County Council April 19, 1993.” Citizen-Protestants’ Ex. 11, Zoning Advisory Committee Comments, November 22, 2016. The Department of Planning explained further:

The Hanover Pike Corridor Study identifies the retention of rural character as an issue of concern (Page 4) wherein a stated goal is to “Maintain the rural integrity and character of the Hanover Pike Corridor” (Page 5). The Study further lists specific design guidelines (Pages 34-41) for development along Hanover Pike. The Baltimore County Comprehensive Manual of Design Policies (CMDP) also establishes guidelines for development along Baltimore County Scenic Routes to include “maintain a buffer between the road and the new development” (Page 180) and to “site development in relation to the natural contours. Avoid placing structures on the tops of prominent ridges” (Page 182).

Citizen-Protestants’ Ex. 11, Zoning Advisory Committee Comments, November 22, 2016; *see also* Citizen-Protestants’ Ex. 11, Zoning Advisory Committee Comments, July 18, 2018.

Planning Staff addressed these issues. For example, the Bureau of Development Plans Review stated, “Additional landscape buffers (including contour strip buffers) may be required to address existing topography changes, Scenic views, Scenic Routes, etc.” Citizen-Protestants’ Ex. 11, Zoning Advisory Committee Comments, July 12, 2018. Additionally, when the Department of Planning reviewed the application for special exception, they required that the Applicant’s landscape plan “[p]rotect the Hanover Pike Scenic Route by (a) planting a vegetative screening of mixed indigenous hardwood and

evergreen trees and shrubs *along Hanover Pike to a depth that fully screens the solar panels . . .*” Citizen-Protestants’ Ex. 11, Zoning Advisory Committee Comments, Nov. 22, 2016 and July 18, 2018 (emphasis added).

Citizen-Protestants’ Exhibits 8 and 9 establish that occupants in vehicles driving northbound on the Hanover Pike scenic route have a direct view of the northeast and northwest corners of the Subject Property due to its elevation. The Citizen-Protestants testified that during the commuting hours, traffic on Hanover Pike is congested and moves slowly.

The Board accepted Ted Carter as an expert witness in landscaping for the Citizen-Protestants. Regarding the view of the Subject Property from Hanover Pike, he referred to Citizen-Protestants’ Exhibits 8 and 9 and opined that the Applicant’s proposed landscaping plan did not satisfy the requirements of the Baltimore County Landscape Manual, the Baltimore County Comprehensive Manual of Development Policies, the Hanover Pike Corridor Study, and Staff comments. He testified that the Landscape Manual states as an objective, “Preserve and enhance the scenic resources identified in the Baltimore County Master Plan.” Landscape Manual, p. 65. He testified that the Comprehensive Manual specifically states, “Avoid placing structures on the tops of prominent ridges.” Comprehensive Manual, p. 182. Finally, he opined that the proposed landscaping plan did not satisfy the Staff’s condition that the Applicant’s landscape plan “[p]rotect the Hanover Pike Scenic Route by (a) planting a vegetative screening of mixed indigenous hardwood and evergreen trees and shrubs *along Hanover Pike to a depth that*

fully *screens the solar panels . . .*” Citizen-Protestants’ Ex. 11, Zoning Advisory Committee Comments, Nov. 22, 2016 and July 18, 2018 (emphasis added).

Trees in the foreground of Citizen-Protestants’ Exhibit 9 are on the Mirabile property. Test. of Santo Mirabile. The Applicant presented evidence that it relied, in part, on those trees to screen the view of the Solar Facility from Hanover Pike. There was no evidence that any law prohibited the Mirabiles from cutting down any of those trees. Furthermore, no principle of law authorizes the Applicant to require the Mirabiles to replace those trees should they die in order to fulfill the Applicant’s legal obligation screen the view of the Solar Facility. In short, the Applicant is asking the Board to restrict the Mirabiles’ property rights so it can construct the Solar Facility. In any event, those trees do not screen all of the Subject Property even when there are leaves on the trees. When those trees lack leaves for large portions of the year, any partial screening they may provide is rendered ineffective. Moreover, the ground elevation profile on Exhibit 8 proves that the Applicant’s proposed landscaping cannot effectively screen the view of the northeast corner and the northwest corner of the Subject Property due to the topography and sheer height differential of the Subject Property as compared to Hanover Pike.

Citizen-Protestants’ Exhibit 14 illustrates that an observer on Hanover Pike just to the west of the Subject Property looking in an easterly direction has a clear view of the Subject Property. Regarding the view of the Subject Property from this location, Ted Carter testified that the Applicant’s proposed landscaping plan did not satisfy the

requirements of the Baltimore County Landscape Manual, the Baltimore County Comprehensive Manual of Development Policies, the Hanover Pike Corridor Study, and Staff comments. The Applicant itself introduced contradictory evidence about the same view. Applicant's Exhibit 11 shows a view that is similar to Citizen-Protestants' Exhibit 14. Notwithstanding Applicant's Exhibit 11, David Thaler testified that one could not see the Site from this location and relied on Exhibits 11(b) and (c). The Board should find as fact that an observer on Hanover Pike just to the west of the Subject Property looking in an easterly direction will see the Solar Facility even with the proposed landscaping.

The Hanover Pike Corridor includes land within the Agricultural Priority Preservation Area. Regarding the Agricultural Priority Preservation Area, the Department of Planning stated that the Baltimore County Master Plan 2020 "warns that '*incremental development continues to threaten the protection of resources and the viability of the agricultural industry.*' (MP2020 pg. 92). The Department recommends that the future viability of commercial agriculture in Baltimore County be weighed when considering this special exception proposal within the context of 502.1.G." Citizen-Protestants' Ex. 11, Zoning Advisory Committee Comments, July 18, 2018.

Debra and Santo Mirabile - 14525 Hanover Pike and 14517 Hanover Pike

Debra and Santo Mirabile own 14525 Hanover Pike and 14517 Hanover Pike, which abut the southern boundary of the Subject Property. They use the private driveway for access to 14525 Hanover Pike and 14517 Hanover Pike. The Glare Assessment did not address the glare from either 14525 Hanover Pike or 14517 Hanover Pike.

They purchased 14517 Hanover Pike in approximately 2009 and 14525 Hanover Pike in approximately 2013, with the express plan to construct their lifelong family residence. When they purchased the properties, 14517 Hanover Pike was a de facto junkyard with a house trailer on it, and there was a house on 14525 Hanover Pike. Over time, they removed all the junk from 14517 Hanover Pike. In 2019, they razed the house on 14525 Hanover Pike and began the construction of their new home.

The Mirabiles have a direct view of the Subject Property from both 14525 and 14517 Hanover Pike. Citizen-Protestants' Exhibits 12 and 13 depict the topography of the Subject Property relative to 14525 Hanover Pike. Citizen-Protestants' Exhibits 5 and 6 depict the topography of the Subject Property relative to 14517 Hanover Pike. Any new tree or other planting of a reasonable height will not effectively screen the view of the Solar Facility from 14517 and 14525 Hanover Pike due to the elevation of the Subject Property. Test. of Santo Mirabile, Debra Mirabile; Citizen-Protestants' Exs. 5, 6, 12, and 13. For that reason, the Bureau of Development Plans Review stated, "Additional landscape buffers (including contour strip buffers) may be required to address existing topography changes, Scenic views, Scenic Routes, etc." Citizen-Protestants' Ex. 11, Zoning Advisory Committee Comments, July 12, 2018. Debra and Santo Mirabile each testified that the Applicant's landscaping plan would not screen at all the northern and higher half of the Subject Property. They also testified that the proposed landscaping would only make less intrusive the view of the southern and lower half of the Subject Property.

Regarding the view of the Subject Property from the Mirabile property, Ted Carter testified that the Applicant's proposed landscaping plan did not satisfy the requirements of the Baltimore County Landscape Manual, the Baltimore County Comprehensive Manual of Development Policies, the Hanover Pike Corridor Study, and Staff comments. At most, the proposed landscape plan would minimize the view of the solar array on the southern and lower half of the Subject Property. The proposed landscape plan would not screen at all the view of the solar array on the northern and higher half of the Subject Property.

The Applicant acknowledged that the proposed landscaping plan would not obstruct the view of the Solar Facility. David Thaler only testified, in effect, that the landscaping plan would only "soften" the view.

Staff did not address the screening of the view of the Solar Facility from the Mirabile property, 14517 and 14525 Hanover Pike.

When asked by the Board what conditions the Board should impose assuming, hypothetically, the Board approved the special exception, Debra and Santo Mirabile each testified that the Board should allow no portion of the solar array to be on the northern and higher half of the Subject Property.

Debra Mirabile and Santo Mirabile testified that the Solar Facility would depreciate the value of 14517 and 14525 Hanover Pike. The Applicant did not dispute that testimony.

**Elizabeth and Timothy Fales – 14619 Hanover Pike; Thanikan and
Patrick Fales – 14533 Hanover Pike; Paul Merritt and Melissa
DePinho – 14527 Hanover Pike**

Elizabeth and Timothy Fales own and reside at 14619 Hanover Pike, which abuts the northwest corner of the Subject Property. Their property is on the top of the slope overlooking the north side of the Subject Property. Test. of Timothy Fales. Timothy Fales testified that he has a direct view of the Subject Property because his property is higher than and overlooks the Subject Property. Citizen-Protestants' Exhibits 21 and 22 depict the topography of the Subject Property relative to 14619 Hanover Pike. Any new tree or other planting of a reasonable height will not effectively screen the view of the Solar Facility from 14619 Hanover Pike due to the elevation of the Subject Property. Regarding 14619 Hanover Pike, Planning Staff stated, "Provide a vegetative screening consisting of mixed indigenous hardwood and evergreen trees and shrubs between the security fence and the residential property located at 14619 Hanover Pike." Citizen-Protestants' Ex. 11, Zoning Advisory Committee Comments, November 22, 2016.

When asked by the Board what conditions the Board should impose assuming, hypothetically, the Board approved the special exception, Timothy Fales testified that the Board should allow no portion of the solar array to be on the western portion of the Subject Property, east of Hanover Pike and west of the edge of stand of trees on the northern boundary of the Subject Property.

Timothy Fales testified that the Solar Facility would depreciate the value of 14619 Hanover Pike. The Applicant did not dispute that testimony.

Thanikan and Patrick Fales own and reside at 14533 Hanover Pike, which abuts the northeast corner of the Subject Property. Patrick Fales testified that he has a direct view of the Subject Property because his property is higher than and overlooks the Subject Property. Citizen-Protestants' Exhibits 23 and 24 depict the topography of the Subject Property relative to 14533 Hanover Pike. Regarding 14533 Hanover Pike, Planning Staff stated, "Retain the existing woods between the location of the proposed solar panels and the residential property located at 14533 Hanover Pike." Citizen-Protestants' Ex. 11, Zoning Advisory Committee Comments, November 22, 2016. Any new tree or other planting of a reasonable height will not effectively screen the view of the Solar Facility from 14533 Hanover Pike due to the elevation of the Subject Property.

Patrick Fales testified that the Solar Facility would depreciate the value of 14533 Hanover Pike. The Applicant did not dispute that testimony.

Paul Merritt and Melissa A. DePinho own 14527 Hanover Pike, which is on the Subject Property's eastern boundary. They use private driveway for access to 14527 Hanover Pike. They have a clear view of the proposed site when vegetation is not on the trees. Citizen-Protestants' Exhibit 25 depicts the topography of the Subject Property relative to 14527 Hanover Pike. Any new tree or other planting of a reasonable height will not effectively screen the view of the solar facility from 14527 Hanover Pike due to the elevation of the Subject Property.

Paul Merritt testified that the Solar Facility would depreciate the value of 14527 Hanover Pike. The Applicant did not dispute that testimony.

SUMMARY OF APPLICABLE LAW

The two statutes controlling the approval of a Solar Facility special exception are section 502.1 and Article 4F of the BCZR. 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 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, and for consideration of a solar facility use under Article 4F, the inclusion of the R.C. 3, R.C. 6, and R.C. 8 Zones.

Section 4F-104 provides:

A. A solar facility located in an R.C. Zone is subject to the following requirements:

1. The land on which a solar facility is proposed may not be encumbered by an agricultural preservation easement, an environmental preservation easement, or a rural legacy easement.
2. The land on which a solar facility is proposed may not be located in a Baltimore County historic district or on a property that is listed on the Baltimore County Final Landmarks List.
3. The portion of land on which a solar facility is proposed may not be in a forest conservation easement, or be in a designated conservancy area in an R.C. 4 or R.C. 6 Zone.
4. Aboveground components of the solar facility, including solar collector panels, inverters, and similar equipment, must be set back a minimum of 50 feet from the tract boundary. This setback does not apply to the installation of the associated landscaping, security fencing, wiring, or power lines.
5. A structure may not exceed 20 feet in height.
6. A landscaping buffer shall be provided around the perimeter of any portion of a solar facility that is visible [sic] from an adjacent residentially used property or a public street. Screening of state and local scenic routes and scenic views is required in accordance with the Baltimore County Landscape Manual.
7. Security fencing shall be provided between the landscaping buffer and the solar facility.
8. A solar collector panel or combination of solar collector panels shall be designed and located in an arrangement that minimizes glare or reflection onto adjacent properties and adjacent roadways, and does not interfere with traffic or create a safety hazard.
9. A petitioner shall comply with the plan requirements of § 33-3-108 of the County Code.

10. In granting a special exception, the Administrative Law Judge, or Board of Appeals on appeal, may impose conditions or restrictions on the solar facility use as necessary to protect the environment and scenic views, and to lessen the impact of the facility on the health, safety, and general welfare of surrounding residential properties and communities, taking into account such factors as the topography of adjacent land, the presence of natural forest buffers, and proximity of streams and wetlands.

Limited exemptions from the development review and approval process may in limited circumstances be granted under section 32-4-106 of the BCCC. Subsection (a)(1)(vi) allows for exemption of “[t]he construction of residential accessory structures or minor commercial structures.”

While special exceptions enjoy the presumption that they are in the interest of the general welfare, an applicant still bears the initial burden of demonstrating that its special exception adheres to the BCZR. *See Schultz v. Pritts*, 291 Md. 1 (1981); *see also Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017). As this Board has very recently noted in another recent decision on a Solar Facility special exception, while “the concurrent presumption in favor of the special exception petitioner is not a mutually exclusive evidentiary burden,” “the special exception petitioner has both, the burden of production and the burden of persuasion.” *In re Robert K. Gerner*, No. 18-047-X (Balt. Cty. Bd. App. July 29, 2019); *see also Attar*, 451 Md. at 286–87.

Even when granted the presumption of validity, if an opponent shows “non-inherent adverse effects” that “undercut the presumption of compatibility enjoyed by a proposed special exception use,” then the special exception should not be granted.

Montgomery County v. Butler, 417 Md. 271, 276–77 (2010). In other words, if the characteristics on Subject Property present “unique adverse effects,” then the Board should disapprove the application. *Clarksville Residents Against Mortuary Def. Fund, Inc. v. Donaldson Properties*, 453 Md. 516, 542 (2017). Even where facts and circumstances merely indicate that a special exception “would impair neighboring property value to a greater extent than it would elsewhere in the zone,” the special exception should be denied. *Bd. of Cty. Comm’rs for Cecil Cty. v. Holbrook*, 314 Md. 210, 220 (1988).

Uniqueness in the zoning context differs slightly from layman understanding, in that it encompasses different characteristics above and beyond the norm, rather than truly one-of-a-kind differences.

These cases establish that a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties *unique and different* from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone. Thus, these cases establish that the 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 the particular use proposed at the particular location proposed *would have any adverse effects above and beyond those inherently associated with such a special exception use* irrespective of its location within the zone.

People’s Counsel for Baltimore Cty. v. Loyola Coll. in Maryland, 406 Md. 54, 89–90, 956 A.2d 166, 187 (2008) (quoting *Schultz*, 291 Md. at 22–23) (emphasis added). Thus, if

the location of a zoned property would present a different factual pattern than usual due to the unusual or uncommon nature of neighboring properties, that in itself could give rise to unique adverse effects. *See generally Holbrook*, 314 Md. at 220.

ARGUMENT

I. The Board of Appeals should disapprove the application for the Solar Facility on the Subject Property because it will cause unique adverse effects and because the Solar Facility does not comport with section 502.1(A), (C), (G), and (I) and section 4F-104.A.8 of the BCZR.

The presumption that a special exception use is in the interest of general welfare may be “overcome by probative evidence of unique adverse effects.” *Id.* Applicants bear the initial burden of demonstrating that the Solar Facility would not run afoul of BCZR section 502.1 or article 4F, and Citizen-Protestants may provide evidence not presented by Applicants that demonstrates such unique adverse effects. Section 502.1 of the BCZR requires that a special exception use must not “[b]e detrimental to the health, safety or general welfare of the locality involved,” must not “[c]reate a potential hazard from fire, panic or other danger,” and must not “[b]e 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; BCZR § 502.1(A), (C), and (G). Also, the facility should not “[b]e detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains” BCZR § 502.1(I).

There are many unique facts and circumstances regarding the Subject Property that would cause adverse impacts above and beyond those inherently associated with a solar facility in the RC-2 zone and conflict with the requirements of section 502.1. The setting of the Subject Property is unique. The Subject Property, and therefore the proposed Solar Facility, abuts a scenic route, while many other RC-2 properties do not. Although the Subject Property is in the RC-2 zone, it is surrounded by a residential community that is primarily served by the private driveway that also provides access to the Subject Property. That fact makes the Subject Property unique. Neighboring residences on Subject Property's northern, eastern and southern boundaries have direct views of the Subject Property. The Subject Property's bowl-shaped topography and the topography of adjacent properties makes it uniquely difficult, if not functionally impossible, to properly shield it with landscape buffers from the neighboring properties and from the scenic route Hanover Pike. Significantly, Applicant's proposed landscape plan has not yet been approved by Baltimore County. The fact that a private driveway serves both the Subject Property and many of the neighboring properties makes the Subject Property unique. Finally, the Subject Property is unique because the private driveway becomes impassable whenever the volume of the runoff from a severe rain event exceeds the capacity of the culvert that passes beneath the private driveway.

BCZR section 502.1(G) requires that a special exception not "[b]e 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 Solar

Facility does not satisfy this requirement. The Subject Property is zoned RC-2 and is in northern Baltimore County's agricultural area. The Subject Property contains prime and productive soils, Citizen-Protestants' Ex. 20, and is "within an Agricultural Priority Preservation Area as designated in the Baltimore County Master Plan 2020 (MP2020)." Citizen-Protestants' Ex. 11, Zoning Advisory Committee Comments, July 18, 2018. The Department of Planning stated that the Baltimore County Master Plan 2020 "warns that *'incremental development continues to threaten the protection of resources and the viability of the agricultural industry.'*" (MP2020 pg. 92). The Department recommends that the future viability of commercial agriculture in Baltimore County be weighed when considering this special exception proposal within the context of 502.1.G." Citizen-Protestants' Ex. 11, Zoning Advisory Committee Comments, July 18, 2018.

BCZR section 502.1(I) requires that a special exception use not be "detrimental to the environmental and natural resources of the site." The Subject Property is located in an Agricultural Preservation Area and contains prime and productive soils. In 2018, the Planning Board recommended to the County Council that "Solar Facilities should not be permitted on prime and productive soils." Citizen-Protestants' Ex. 15. The Subject Property has geomorphological characteristics that differentiate it from other land in the RC-2 zone, such as the streams that intersect with the southwest corner of the Subject Property and the two wetlands present on the Subject Property itself. Moreover, the Solar Facility poses a unique danger to the health and safety of nearby residents. A private driveway runs east-west along the southern border of the Subject Property and provides

access to the Subject Property and to the property of many of the Citizen-Protestants. Uncontested evidence showed that the entrance to the private driveway floods in severe rain events. That flooding will make it infeasible to service the Solar Facility during those periods.

BCZR section 4F-104(A)(8) provides:

A solar collector panel or combination of solar collector panels shall be designed and located in an arrangement that minimizes glare or reflection onto adjacent properties and adjacent roadways, and does not interfere with traffic or create a safety hazard.

The only evidence is that the Solar Facility will not satisfy the requirements of BCZR section 4F-104(A)(8). Applicant's Glare Assessment demonstrated that from a vantage point along Hanover Pike, motorists would receive nearly 4,000 minutes of solar glare, concentrated around commuting hours for half of a given year. Motorists on the private driveway would receive over 12,000 minutes of solar glare at similar points. Such regular solar glare would impede motorists' ability to drive safely along Hanover Pike or the private driveway, and because of Applicant's admission that it cannot properly fully screen the Solar Facility from view on either road, this solar glare is not wholly mitigable. In addition, the Glare Assessment selectively addressed specific vantage points that did not include, for example, other areas of Hanover Pike or the two Mirabile properties to the south, so Citizen-Protestants don't know how much glare they should expect from such locations.

The Glare Assessment admits that the proposed Solar Facility cannot adequately meet these requirements due to the increased danger posed to motorists along Hanover Pike and the private driveway without relying on inconsistent tree cover, and this is a detriment above and beyond the glare that would result from other RC-2 locations precisely because it is adjacent to both Hanover Pike and the private driveway. The assessment attempts to downplay the danger to motorists on the private driveway by stating that “[a]s such, there is very minimal traffic for which this glare will be a concern.” But even with a “solar collector panel or combination of solar collector panels . . . that minimize[] glare or reflection onto adjacent properties and adjacent roadways” installed in accordance with article 4F, inadequate screening would mean that the glare would still reach motorists.

Furthermore, Debra and Santo Mirabile, Timothy and Patrick Fales, and Paul Merritt all testified that the Solar Facility would depreciate the value of their homes. The Applicant never disputed any of their testimonies. The nature of Subject Property is unlike that of many other RC-2 zones in the area in that it is surrounded by smaller residential properties. Most lots in the RC-2 zone are larger than the lots owned by the Citizen-Protestants. Because of this, depreciation of residential properties at this RC-2 zone is an adverse effect that would not normally occur at other RC-2 zones throughout the region and thus would be “unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone.” See *Loyola Coll.*, 406 Md. at 89. If a special exception “would impair

neighboring property value to a greater extent than it would elsewhere in the zone,” then the special exception should be denied on that ground. *Holbrook*, 314 Md. at 220.

The Solar Facility fails to comply with BCZR sections 4F-104(A)(8) and 502.1(A), (C), (G), and (I). It also depreciates the value of the neighborhood properties in a way that would not occur in most other RC-2 zones in the region. For these reasons, the Board should disapprove the special exception.

II. The Board of Appeals should disapprove the application for the Solar Facility on Subject Property because Applicant needs to fully screen the facility from view from both Hanover Pike and neighboring residential properties in accordance with sections 4F-104(A)(6) and 502.1(G) of the BCZR, and the topography of the Subject Property makes this requirement infeasible.

Section 4F-104(A)(6) of the BCZR reads, “A landscaping buffer *shall* be provided around the perimeter of *any* portion of a solar facility that is visible [sic] from an *adjacent residentially used property or a public street*. Screening of state and local scenic routes and scenic views is *required* in accordance with the Baltimore County Landscape Manual,” (emphasis added). The plain language of this ordinance is clear: The proposed Solar Facility *must* have landscape buffers that screen it from sight. Furthermore, section 502.1(G) requires that all special exception uses not 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.”

Planning Staff interpreted the landscaping requirements in a similar way. When the Department of Planning reviewed the application, they required that the Applicant’s landscape plan “[p]rotect the Hanover Pike Scenic Route by (a) planting a vegetative

screening of mixed indigenous hardwood and evergreen trees and shrubs *along Hanover Pike to a depth that fully screens the solar panels . . .*” Citizen-Protestants’ Ex. 11, Zoning Advisory Committee Comments, Nov. 22, 2016 and July 18, 2018 (emphasis added). The Bureau of Development Plans Review stated that “[a]dditional landscape buffers (including contour strip buffers) may be required to address existing topography changes, Scenic views, Scenic Routes, etc.” Citizen-Protestants’ Ex. 11, Zoning Advisory Committee Comments, July 12, 2018. The plain intent of the BCZR was to require that any solar facility be fully and completely screened from view from all adjacent properties, especially to preserve the nature of scenic routes in Baltimore County, and the Department of Planning agreed with this spirit and intent—as required by section 502.1(G)—when reiterating the requirement that it be fully screened.

Applicant argued that the applicable landscaping requirements only required sufficient landscaping to “soften,” but not eliminate the view of the Solar Facility. Moreover, the Applicant incorrectly relied on trees owned by the Mirabiles to soften the view of the Solar Facility for Hanover Pike. The northeast and northwest portions of the Subject Property will be visible from Hanover Pike year-round with no screening at all, and no amount of screening could block or even soften the view of the Solar Facility from adjacent residentially used properties, as required by the BCZR. If the project were to go through with its proposed landscape buffer, the Solar Facility would be fully visible from multiple residential lots, and parts of the Solar Facility would be fully visible from Hanover Pike itself.

During the hearing, the Board acknowledged that the Citizen-Protestants opposed any approval of the Solar Facility. The Board also asked the Citizen-Protestants what conditions the Board should impose assuming, hypothetically, the Board approved the special exception. Indeed, section 4F-104(A)(10) authorizes the Board to impose conditions “to protect the . . . scenic views, and to lessen the impact of the facility on the health, safety, and general welfare of surrounding residential properties and communities, taking into account such factors as the topography of adjacent land”

If the Board approves the special exception for the Solar Facility, Citizen-Protestants request the following conditions:

1. The Board should allow no portion of the solar array to be on the northern and higher half of the Subject Property. Citizen-Protestants suggest that that area Mr. Leskinen described as a drainage swale is a logical northern boundary of the solar array. This condition would protect the scenic view from the Mirabile properties that border the southern boundary of the Subject Property, and it would also protect the view traveling north on Hanover Pike.
2. The Board should allow no portion of the solar array to be on the western portion of the Subject Property, east of Hanover Pike and west of the edge of the stand of trees on the northern boundary of the Subject Property. This condition would protect the scenic view from 14619 Hanover Pike, which borders the northwest corner of the Subject Property.
3. The Board should impose the condition in the Zoning Advisory Committee Comments, dated Nov. 22, 2016 and July 18, 2018, that the Applicant’s landscape plan “[p]rotect the Hanover Pike Scenic Route by (a) planting a vegetative screening of mixed indigenous hardwood and evergreen trees and shrubs *along Hanover Pike to a depth that fully screens the solar panels*” (emphasis added).

4. The Board should require that the Applicant double the width of the proposed landscaping on the perimeter of the Subject Property in order to increase the effectiveness of the screening.

5. The Board should require that the Applicant secures a third access point to the Subject Property. The only on-road access point exists on one half of a private road that regularly floods, and Applicant's hypothetical second access point would require driving through the landscape buffer on the western border of the Subject Property in the event of flooding.

6. The Board should require that the security fencing around the perimeter be in keeping with the rural aesthetic of the neighborhood, instead of industrial chain-link fencing.

7. The Board should require that the Applicant agree, in writing, with the Citizen-Protestants to a maintenance agreement for the private driveway.

Because Applicant needs to fully screen the Subject Property to preserve scenic views and shield themselves from adjacent residential properties, and because the current proposed facility has such a topography that full screening in accordance with the BCZR would be impossible with the facility's current size, the Board should either disapprove the application, or the Board should in the alternative restrict the facility's size in accordance with BCZR section 4F-104(A)(10).

III. The Board should determine that Applicant needs to undergo a development review for the proposed Solar Facility in accordance with BCCC section 32-4-106.

BCCC section 32-4-106(a)(1)(vi) authorizes a limited exemption from the development review and approval process for a "minor commercial structure." The DRC erred legally when it determined that the Solar Facility was a "minor commercial structure." Additionally, the DRC failed to articulate the basis of its decision as required

by Maryland law. Finally, the record lacks substantial evidence supporting the DRC's decision that the Solar Facility was a "minor commercial structure."

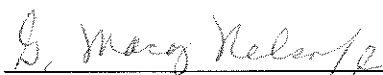
The Board should reverse the DRC's grant of the limited exemption because the Solar Facility is not a "minor commercial structure." Rather, the Solar Facility is a substantial commercial structure. The special exception area for the proposed Solar Facility is 15.18 acres, or 661,241 square feet. It will be near wetlands and intermittent streams, impact multiple adjacent properties including the residences of Citizen-Protestants, and require the construction of fencing, landscaping, an access drive and parking pad, and the installation of 6,184 solar panels. The solar panels themselves total approximately 129,684 square feet. It is especially important to require a full and public development review process in the circumstances present here where Baltimore County has not yet reviewed the Applicant's proposed landscaping plan and where the Applicant does not yet have an approved stormwater plan.

CONCLUSION

There are unique adverse effects present at the Subject Property both because of its location and because its topography prevents it from being fully screened with the current proposed plan. These characteristics also mean that the proposed Solar Facility does not comport with the requirements for a special exception solar facility enumerated in article 4F and section 502.1 of the BCZR. Because it cannot be fully screened with the current proposed plan, the Board should either disallow the special exception entirely or, under section 4F-104(A)(10) of the BCZR, reduce the size and shape of the facility to

allow for full screening and properly mitigate motorist safety concerns. Furthermore, because of the sheer size and nature of the proposed Solar Facility, the Board should determine that the proposed Solar Facility is not exempt from developmental review under section 32-4-106(a)(1)(vi) of the BCCC and remand it back to the DRC.

Respectfully submitted,

A handwritten signature in cursive script, reading "G. Macy Nelson", is positioned above a horizontal line.

G. Macy Nelson, Esquire
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Attorney for Citizen-Protestants

CERTIFICATE OF SERVICE

I CERTIFY that on this 23rd day of August, 2019, a copy of the foregoing

Citizen-Protestants' Post-Hearing Memorandum was mailed, postage prepaid, to:

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
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Attorney for Petitioners



G. Macy Nelson

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DAVID T. LAMPTON
MARY G. LOKER
STEPHEN J. NOLAN

August 23, 2019

Sent via Hand Delivery

Ms. Krysundra L. Cannington, Administrator
Board of Appeals of Baltimore County
Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204



Re: Legal Owner: Woodensburg Land & Cattle Co., LLC
 Lessee: SGC Power, LLC
 Property: 5298 (not) Frye Road
 Case Nos. 2017-0107-X and DRC-2018-00183

Dear Ms. Cannington,

Enclosed for filing in the above referenced matter please find an original and one copy of Petitioner's Closing Memorandum. Please date stamp the copy and return the same to my courier. In accordance with the Notice of Deliberation, an emailed copy of the attached will be sent to appealsboard@baltimorecountymd.gov.

Additionally, I am enclosing two letters of support which we received following the conclusion of the hearing in this matter. These letters were delivered to me, as opposed to being mailed directly to the Board. Although I appreciate that the record of the case is closed, I understand that the Board frequently receives letters from the public and that they are inserted into the case file. Please include these letters within your file and the Board can assign the evidentiary weight to these letters that it deems appropriate.

I appreciate the Board's attention to this request and please do not hesitate to contact me should you have any questions.

Very truly yours,

Lawrence E. Schmidt

LES/afm

Enclosures

cc: G. Macy Nelson, Esquire

PETITION FOR SPECIAL EXCEPTION * BEFORE THE
 Glenn & Ruth Elseroad * BOARD OF APPEALS
Legal Owners
 Chesapeake Energy One, LLC * FOR
Lessee * BALTIMORE COUNTY
 5298 Frye Road
 E/s Hanover Pike, 2687 ft. at the corner * Case No.: 2017-0107-X
 of Not Frye Road *
 4th Election District *
 3rd Councilmanic District *



* * * * *

WRITTEN MEMORANDUM IN LIEU OF CLOSING ARGUMENT

Woodensburg Land and Cattle Company, LLC (“Property Owner” or “Woodensburg”) and Chesapeake Energy One, LLC (“Chesapeake Energy” or “Lessee”) (hereinafter collectively called “**Petitioners**”), 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:

STATEMENT OF THE CASE AND BACKGROUND

This matter comes before the Board as a consolidated appeal of the approval of a Petition for Special Exception to permit a solar facility and the decision of the Director of the Department of Permits, Approvals and Inspections, which adopted the recommendation of the Development Review Committee (“DRC”) to approve a limited exemption pursuant to Baltimore County Code (“BCC”) § 32-4-106 (a)(1)(vi). The Petition was originally filed by Woodensburg and another solar power company

(SoCore Energy) to whom it then proposed to lease the subject property. The principles in Woodensburg are Glenn and Ruth Elseroad, long time farmers and residents in the community in which the subject property is located. Mr. and Mrs. Elseroad own multiple properties (farms) in the area. Subsequent to the filing of the original Petition for Special Exception and before any public hearing was conducted thereon and the DRC application was filed, Woodensburg terminated its contractual relationship with SoCore and entered into another/replacement lease with SGC Power, LLC ("SGC"). The Petition for Special Exception (as amended with a new lessee) then proceeded forward to a hearing before the ALJ. A DRC application was subsequently filed by SGC. SGC is an entity that is developing solar facilities throughout the Mid-Atlantic region and, for certain business reasons, determined that a separate and affiliated business entity should be created for each specific project. Thus, prior to the Board's hearing on the appeal of these matters, SGC established and formed Chesapeake Energy One, LLC for this project. The Petition and DRC application were amended accordingly and the applicants at this time are Woodensburg and Chesapeake Energy.

The appeals of both the granted Petition for Special Exception and Directors' adoption of the DRC recommendation were heard *de novo* by the Board. The public hearing before the Board was held on three dates: May 2, 2019, July 23, 2019 and July 25, 2019. Testimony was offered in support of the petition by Jack Copus, a partner with SGC responsible for site selection and development; David S. Thaler, professional engineer, surveyor and principle of D.S.Thaler and Associates; Glenn Elseroad, principle of Woodensburg; Stephen Barrett, energy consultant with Barrett Energy

Resources Group with expertise insofar as glare analysis; Henry Leskinen, environmental expert with Eco-Science; and Adria Weber, a PV Engineer with SGC. Several residents of the area and others appeared in opposition and testified. They were represented by G. Macy Nelson, Esquire.

STATEMENT OF FACTS

A review of the testimony and evidence offered established the following essential facts. The subject property under consideration is an unimproved property known as 5298 Frye Road (Tax Account No. 04-2200015847), located adjacent to Maryland Rte. 30 (Hanover Pike) in northwestern Baltimore County (hereinafter the "Property"). The Property is zoned RC 2 and is approximately 19.68 acres in net area. The area of the Property to be used for the solar facility is approximately fifteen (15) acres. The Property is presently vacant and for many years had been farmed. Pursuant to a long term lease with Woodensburg, Chesapeake Energy proposes to construct and operate a solar facility on the Property. The Property is immediately adjacent to a private driveway/roadway known as "Not Frye Road." Under an instrument recorded in the Land Records of Baltimore County, Woodensburg has legal access to the Property from that driveway. (See Petitioners' Exhibit No. 13).

As the Board is no doubt familiar from other similar cases that have come before it, solar energy is a renewable energy source, whose development and use is encouraged by the State of Maryland. Pursuant to legislation enacted by the State (See Annotated Code of Maryland, Public Utilities Article, Sec. 7-306.2), there has been a Community Solar Energy Generating System Pilot Program established. This program

encourages the development of solar energy facilities to be utilized as an alternative to the use of fossil fuels and is to comprise 25% of the State's energy use by 2021. The subject proposal is pursuant to that program. The facility will contain a series of fixed arrays (panels) that will be oriented in a southerly direction to capture energy from the sun. The energy produced by the proposed facility will be converted to electric current and fed into the adjacent power grid maintained by BGE. The connection to that grid will be by way of a feed into an adjacent power line located along Hanover Pike, as more particularly shown on the site plan. The amount of energy fed into the grid will be monitored and used by subscribers to the program. As required by Baltimore County, the subject facility will generate less than two megawatts (See Baltimore County Zoning Regulations "BCZR" 4F-102). The details of the operation were described by Mr. Copus and Ms. Weber and are more particularly shown on the Site Plan (Petitioners' Exhibit No. 1).

STANDARD OF REVIEW

A. Section 502.1

As with any special exception, the subject request must be adjudged in accordance with the provisions of BCZR § 502.1. That section 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 light 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 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). The holding in *Schultz* has been clarified and affirmed over the years, most notably and recently in *Attar v. DMS Tollgate, LLC* 451 Md. 272 (2017).

B. The *Schultz v. Pritts* 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 effects 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 than in any other similarly zoned area in the County.

As to the appeal of the Director's decision adopting the recommendation of the DRC, the matter is simply one of statutory construction. That is, does this proposal constitute one of the exemptions listed in BCC § 32-4-106? In this regard, Baltimore County's development/subdivision regulations are contained in Article 32, Title 4 of the BCC. Therein, a process is laid out by which development of property is reviewed by the County. BCC § 32-4-106 sets out a number of exceptions to that process. These exceptions are applied when the Director of PAI determines that the "full" review process is not appropriate given the nature of the proposed development. The Board considers whether the Director's decision was appropriate following a *de novo* hearing. Baltimore County Charter, Article VI, § 603.

ISSUES PRESENTED

A. THE PROPOSAL IS IN COMPLIANCE WITH BILL 37-17 (BCZR § 4F)

The technology of capturing the sun's energy and converting it to electricity by way of a "solar farm" or "solar facility" is governed in Baltimore County (from a zoning perspective) pursuant to § 4F-101 et. seq. of the BCZR. This section was added to the BCZR pursuant to the enactment of Bill 37-17 by the County Council, effective July 17, 2017. The instant amended petition is brought pursuant to that section. As a threshold issue, the Board need find that the proposal is compliant with the provisions of Bill 37-17.

BCZR § 4F-101 (et seq.) provides that solar facilities are permitted in the RC 2 zone by special exception and sets out the requirements for such facilities. Specifically, there are a series of criteria set out in BCZR § 4F-104 which the proposed use must

satisfy. That is, largely through the unrefuted testimony and evidence offered by Mr. Thaler, there is no dispute that the proposal meets the following requirements of BCZR § 4F:

1. The Property is not encumbered by an agricultural preservation easement, an environmental preservation easement or a rural legacy easement.
2. The Property is not located in a Baltimore County Historic District, nor is it listed on the Baltimore County Final Landmarks List.
3. The Property is not encumbered by a forest conservation easement. Further, it is not zoned RC 4 or RC 6 and thus there is no designated conservancy area.
4. The components (i.e. the solar panels/arrays and equipment box/inverter) of the solar facility are located at least fifty (50) feet from the tract boundary. Thus, there are no zoning variances for this requirement. In fact, no variances for any zoning requirement are requested or necessary.
5. The panels (structures) are less than the required 20 feet in height (the panels are approximately eight feet high).
6. A landscaping buffer around the "perimeter" of the solar facility is provided. Details of the landscaping are shown on the Landscape Plan (Petitioners' Exhibit No. 2)
7. Security fencing is provided around the perimeter, between the landscape buffer and the solar facility.
8. The solar panels are "designed and located in an arrangement that minimizes glare or reflection onto adjacent properties and roadways." (see glare analysis

discussion below) Moreover, the panels (from a visual perspective) will not “interfere with traffic or create a safety hazard.”

9. The Site Plan submitted contains the information required by BCC § 33-6-108 (i.e. certain environmental information about the Property).

10. Finally, although subject to a long term lease, the proposed use is not permanent in nature. The proposal will be subject to a “decommissioning agreement”, as required by BCZR § 4F. As Mr. Thaler explained, the lease is a form of crop rotation and the land can ultimately be returned to an agricultural use.

In summary, it is clear that the subject proposal complies with the threshold requirements set forth for a solar facility in Bill 37-17, as codified in BCZR § 4F.

B. THE PETITION FOR SPECIAL EXCEPTION SHOULD BE GRANTED.

As noted above, the Petition for Special Exception shall be adjudged in accordance with the provisions of BCZR § 502.1. That section sets out specific criteria which must be evaluated. As set forth as follows, the proposal meets this criteria.

A. The proposed solar facility will not be detrimental to the health, safety or general welfare of the locality involved. The inherent impacts of the proposed use are limited and they are certainly not any greater here than they would be elsewhere in the zone. The facility is proposed immediately adjacent to Maryland Route 30; a major traffic corridor that leads through the rural areas of northwestern Baltimore County. As one of the lead Protestants (Santo Mirabile) testified, Hanover Pike is a “congested” road with “heavy traffic”; particularly during the rush hours. The Property is not

nestled in a tranquil agricultural community adjacent only to farms and agricultural uses, away from busy public streets and highways. To the contrary, there are other industrial and commercial uses along Hanover Pike in the vicinity. The Protestants acknowledged that the rolling topography of the Property is typical of the area and the Property is like many RC 2 zoned tracts. Protestant Debra Mirabile testified that the property is typical of the “rural, rolling country side” character of the area. The rising topography of the Property is similar to other properties in the area. Under the legal standard articulated in Schultz, *infra*, the proposed special exception use will certainly not result in any impacts greater here than elsewhere in the zone.

B. The proposed solar facility will not tend to create congestion in the roads, streets or alleys in this locale. The facility will be unmanned. It will generate limited traffic. Except for limited visits to the site for routine maintenance, there will be no traffic generated.

C. The proposal will not create a potential hazard from fire, panic, or other danger. The panels used will meet all industry standards and fire codes as to construction and fire rating. There is little likelihood for a fire and the panels are set back a significant distance from the property line and any adjacent structures. There are no adjacent buildings to which flames would spread. There is no evidence in the record of this case suggesting that there is any “hazard” that will be generated. As Ms. Weber testified, in addition to periodic on site inspections, the facility will be continuously monitored remotely so that any irregularities in the operation of the facility will be immediately identified and addressed.

D. The proposed use will not tend to overcrowd land and cause undue concentration of population. There are no persons used at this site and thus no "concentration of population." The project will not overcrowd the land. The required setbacks are maintained and there are no area or bulk standards requested. All setback and size restrictions for the R.C 2 zone are observed. The entire property is not utilized by the special exception.

E. The proposed use will not interfere or impact adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements. There is simply no impact in regard to this criteria.

F. The Proposed use will not interfere with adequate light and air. It does not cast a shadow on adjacent properties. There are no odors generated. The inverter building and panels will produce minimal noise, not detectable at adjacent homes (particularly given traffic volumes on Maryland Rte. 30). As with the criteria in BCZR § 502.1 (e) above, there is no impact to this criteria.

G. The proposed use is consistent with the purposes of the property's zoning classification and not inconsistent in any way with the spirit and intent of these zoning regulations. The use is permitted by special exception in the R.C. 2 zone and Bill 37-17 permits such facilities along scenic routes. As such (as noted above in the discussion of the standard or review to be applied) it is presumptively permissible.

H. The proposed use will not be inconsistent with the impermeable surface and vegetative retention provisions of these zoning regulations. As testified to at the hearing, the proposal is subject to the storm water management regulations and will

meet those requirements. There is limited impermeable surface, as the panels are affixed to the ground via a post and there will grass planted underneath that will absorb storm water runoff.

I. The proposed use will not 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. This solar facility will not produce toxins, chemicals or other similar impacts that might result in environmental degradation.

C. THE PROPOSED SPECIAL EXCEPTION COMPLIES WITH BCZR § 1B01.2.C.

For any special exception petitioned for in the RC 2 zone, BCZR § 1B01.2.C requires that the hearing authority (Board) find that the use will not be detrimental to agricultural uses in the vicinity. It is to be particularly noted that there is no requirement for a finding that the use “support” agricultural uses; only that it not detrimentally impact them.¹ Based upon the testimony and evidence offered, it is clear that there will be no impact by this use on agricultural uses in the vicinity. First, it is noted that although there are agricultural uses in the area, the immediately adjacent land uses are primarily residential and open space. As to this proposal, it will have no impact on the farms and other agricultural uses in the area. As noted above, the proposed use does not generate traffic, storm water runoff will be properly managed and the project will not create any impacts that would affect adjacent and nearby uses.

¹ It is particularly noted that for cellular towers, a finding that such a proposed use support nearby agricultural uses is required. But this provision does not apply to solar facilities.

In addition, the economic benefits associated with the facility will assist Woodensberg in maintaining its other farms and agricultural interests. To that extent, the proposed use benefits agriculture as an industry in Baltimore County by providing income to the farming family. This requirement and required finding is thus easily satisfied.

**D. THIS PROJECT IS ENTITLED TO AN EXEMPTION
FROM THE DEVELOPMENT REVIEW PROCESS
PURSUANT TO BCC § 32-4-106 (A)(1)(VI)**

As noted above, Baltimore County's development review regulations are contained in Article 32, Title 4 of the BCC. Therein, a review process is established which governs how the County reviews proposed development. Under this process, an applicant can be required to file a concept plan, attend a concept plan conference, conduct a community input meeting, submit a development plan and participate in a hearing before the ALJ. The Board is no doubt familiar with this process as it hears appeals on the approval (or denial) of a development plan.

However, this process may be streamlined based upon a recommendation of the Development Review Committee and decision of the Director of PAI. There are two types of exemptions identified under County law and they are often referred to as "A" and "B" exemptions; based upon BCC § 32-4-106 under which they are listed. As noted earlier, then director Michael Mohler approved a "BCC § 32-4-106(a)(1)(vi)" request which was appealed to the Board. On appeal, the Petitioners request that the Board likewise determine that an "A" exemption is proper.

As Mr. Thaler testified, the DRC/Director has routinely granted "A" exemptions for solar cases. The County has been consistent in this regard. BCC § 32-4-106(a)(1)(vi)

identifies an exemption for “residential accessory structures or minor commercial structures.” The solar panels proposed here (and the small structure housing the electronic equipment serving the same) are clearly “minor” in size and scope. They are not buildings designed or used for human occupancy. They are small in size. They use no public utilities (i.e. public water or sewer). This project clearly falls within that exemption.

But this is not to say that there will be no further review of this project. The exemption only allows an applicant to proceed without submitting a development plan and undergoing a public hearing on that plan. Implicit in the Director’s granting of the “A” exemption is the rationale that the community’s right to participate in the review of this project is accommodated via the special exception process. That is, public participation is provided through the multiple public hearings (before both the ALJ and the Board) via the special exception hearing process. Moreover, the Petitioners will still be required to obtain permits to construct the facility. This includes, but is not limited to, grading permits for any land disturbance and building permits for the erection of the panels. Storm water management plans, a landscape plan, etc. will be required by Baltimore County before construction is authorized. There will be substantial review. But a filing of a development plan pursuant to the “full review process” should not be required.

PROTESTANTS’ ISSUES

Although Petitioners aver that this proposal easily meets each and every required element for special exception approval and a limited exemption pursuant to

BCC § 32-4-106 (a)(1)(vi), a discussion of the issues raised through the Protestants' testimony is presented. Those issues are:

1. The legislative history of Bill 37-17.

During their testimony, several of the Protestants made reference to Bill 37-17 and remarked that its legislative history was significant. However, as is well settled, an examination of the legislative history is required only when the language of the legislation is unclear or ambiguous. As has been said, "(i)f the language of a statute is clear and unambiguous, we "need not look beyond the statute's provisions and our analysis ends." *Koste v. Town of Oxford* 63 A3d 582 (2013) at 589, quoting *Barbre v. Pope*, 402 Md. 157 at pg. 172. The language of the Bill is clear and unambiguous. Thus, no examination of the legislative history is necessary.

It is obvious that the Protestants do not like the provisions of the existing law as adopted through Bill 37-17. For example, they believe that solar facilities should be located in urban (not rural) areas. But the Bill contains no such language or prohibition on placing solar facilities in the RC zones. Moreover, Protestants insist that whether a proposed facility is located on property with prime and productive soils (as so classified by the State) should be a determinative factor. But Section 4F of the Bill does not mention the existence of "prime and productive soils" as a determinative factor.

Indeed, the Councilman who represents the County's largely rural Third Councilmanic District (Wade Kach) has repeatedly and publicly voiced opposition to such facilities in the district that he represents. Prior to the passage of Bill 37-17, he introduced multiple legislative bills before the Council seeking strict limits on the

construction of solar facilities in the County's rural areas. However, none of these bills became law. The legislation that became law is Bill 37-17 and (obviously) that is the law under which the Petitioners must seek relief and the Board must apply. Bill 37-17 was enacted by the Council by a 6-1 vote. Councilman Kach was the sole dissenter and the only anti-solar voice on the Council. The members of the anti solar facility community profess their support for non renewable energy only for so long as "it's not in my backyard."

Protestant Tim Fales, who clearly expressed the sentiment of most of the opponents, plainly testified that he appeared at the hearing because he "didn't like the law" and thinks that the law should be stricken. However, notwithstanding Protestants objections, the issue in this case is not whether Bill 37-17 is "good legislation", but whether the proposal meets the legal requirements set out in that law. Quite simply, in this respect, the Protestants' objections miss the mark. As stated by the Board in its written decision in another solar facilities case (Case No. 18-030-X), "(h)owever, it is beyond the jurisdiction of the Board to rewrite Bill 37-17 or Article 4F."

2. Landscaping

The Petitioners' have submitted into evidence a landscape plan (Petitioners' Exhibit No. 2), that they aver meets the requirements of the law. The plan was prepared under the direction and supervision of Mr. Thaler by professional staff in his office. He testified, without contradiction, that the plan meets the requirements of the BCZR § 4F-104.A.6, the Comprehensive Manual of Development Policies (CMDP) and the County's Landscape Manual. Protestants apparently contend that the plan must be approved by

the County's Landscape Architect *prior* to approval of the Petition for Special Exception by the Board. Such contention is simply wrong and contrary to the provisions of law and prior practice of the Board. The Board can impose conditions upon the grant of special exception relief (per BCZR § 502.2) and in fact has conditioned the approval of other special exceptions for other solar facilities by requiring that a landscape plan thereafter be approved by Baltimore County (See e.g, Cases No. 18-194-X, Atkinson/owner; 18-030-X, HHK Farms/owner; and 17-108-X, Matthews/owner). The Petitioners are agreeable to such a condition in this case and have been working with the County Landscape Architect in formulating the landscape plan. A review of that plan shows that significant landscaping is proposed and existing woods/buffer are being retained. To the north, an approximate three acre portion of the property that is heavily wooded is being retained. No part of the Property is being cleared to accommodate the solar facility. Off site areas of woods (which are themselves protected and must be retained under the County's forest conservation laws) will also provide screening. Insofar as proposed landscaping, it will be provided around the perimeter of the Property (where required under Bill 37-17) and most heavily implemented where most appropriate. There is significant screening to the southwest buffering Hanover Pike and traffic approaching from the south. Additional new plantings are provided along the southern property line (adjacent to "Not Frye Road") to screen neighboring properties in that direction. Perhaps most importantly, the landscape plan shows an area or "contour" or "interior" screening within the facility (i.e. not just around the perimeter). Obviously, any screening of this type needs to be carefully located so as to

not interfere with the panels' direct orientation to sunlight and designed so as not to cast shadows and negatively impact the purpose of the use (i.e. to capture the sun's energy). But the landscape plan shows careful consideration to the topography of the area and Property and an effort to buffer the use to the fullest extent possible.

3. The swale on the property

Particularly during the first day of hearing, Protestants' counsel argued that the site plan could not be approved because portions of the proposed solar panel field were located within a stream and the required buffer imposed by Baltimore County to protect such an environmental resource. As a basis for this position, counsel produced the site plan prepared by Gavin C. Meinschein on behalf of SoCore in the initial filing in this matter. Such plan showed a stream on the site. As explained by Mr. Thaler, the plan is inaccurate and not based upon the requirements in Baltimore County related to plan preparation. The plan not only depicted a stream that does not exist, but showed required "buffers" which are wrong and not compliant with the applicable County law. Petitioners' environmental consultant, Henry Leskinen testified and fully addressed this issue. He testified that he had personally walked the property and conducted an environmental assessment. He described a swale being located within the interior of the Property which he described as common in many farm fields. Particularly, given the lack of ground cover when a farm field is not in active growing season, many farmers implement a swale to control water run off during rain and snow events. The swale here is exactly that. As such, the swale is not a stream and does not generate a buffer or warrant environmental protection. Not only does Mr. Leskinen's opinion and

assessments contradict the faulty initial plan, but his analysis was reviewed and approved by Baltimore County Department of Environmental Protection and Sustainability. There is simply no issue in this regard.

4. The Protestants "topography argument"

There was repeated testimony from the Protestants that the topography of the Property and immediate area was somehow unique and that Bill 37-17 allows for a denial based thereon. First, as noted previously, such a contention is factually inaccurate. As noted above, Ms. Mirabile testified that the rolling nature of the Property was similar to the topographic character of lands in the area. There is nothing uncommon about this Property and its topography.

Second, the Protestants infer that there is some requirement that the facility be invisible from adjacent properties. They simply do not want to see it! But there is no requirement of invisibility, just as the Protestants have no "right to a view" across the Property. In fact, such a contention is contrary to the designation of Md. Route 30 as a scenic route. The Comprehensive Manual of Development Policies ("CMDP") discusses "expansive" views when addressing the requirements of development along scenic routes. This suggests that views remain open and that a "wall" of landscaping (obscuring a property) is not desirable. The County's Landscape Manual in fact states (page 6) that landscaping is to "diminish" views, not "eliminate" them. As Mr. Thaler testified, the landscape plan proposed here will "soften" the view of the facility from adjacent properties and roads.

Finally, and most importantly, the Protestants misrepresent the applicable provision of law. BCZR § 4F does not state (as claimed by Protestants) that a petition for special exception for a solar facility may be denied because of unusual or unique conditions of topography. Instead, BCZR 4F-104(10) states, in part, “(i)n granting a special exception, the . . . Board of Appeals on appeal, *may impose conditions or restrictions* . . . taking into account such factors as the topography of adjacent land, the presence of natural forest buffers and the proximity of streams and wetlands.” (emphasis added) As Mr. Thaler testified, this is precisely the result designed for in the preparation of the site plan and landscape plan. Those plans propose retention and utilization of existing forested areas and trees, interior screening within the panels itself and heavier planting and screening where the view from adjacent properties warrants it. The Board may impose conditions (i.e. obtain approval of a landscape plan from Baltimore County) in order to address the particular concerns of a neighbor, but not deny the plan. Such a result is also suggested in the Zoning Advisory Committee comments from both the Department of Planning and Department of Development Plans Review. These comments are part of the record of the case as part of the file maintained by the Office of Administrative Hearings. For example, the Department of Planning stated that its office “had no objection” to the approval of the special exception and offered certain recommendations to be attached to any approval.

5. Glare Analysis

The glare analysis report submitted (Petitioners’ Exhibit No. 17) and the testimony on this subject offered by Petitioners’ expert witness (Stephen Barrett) was

not contradicted and is persuasive. As that evidence indicated, the amount of glare produced by the proposed facility is minimal and will be barely detectable from offsite locations. There will be no danger to traffic on the adjacent roads. There will be no adverse impacts on surrounding properties. The panels are designed to absorb; and not reflect, the sun. Given the fixed orientation of the panels, there will be a minimal amount of glare produced. Further, as detailed in the glare analysis report submitted, as well as through the testimony of Mr. Barrett, nearly all of the glare produced will be mitigated by the existing topography and landscaping. Finally, the additional landscaping proposed pursuant to the landscape plan will further mitigate any impacts. Simply stated, there will be no adverse impact caused by glare or reflection from the panels and there was no evidence presented to the contrary. As with the project's visibility, the requirement is not that there not be any glare and/or visibility, but that such impact be minimal and less at this location than elsewhere in the zone. That is clearly the situation here.

6. Prime and Productive Soils

Protestants repeatedly stated that the Property would be better used as a farm, has prime and productive soils, is inconsistent with the its' resource conservation zoning, etc. These arguments have been likely heard by the Board in every solar facility case. But these arguments miss the mark and ignore the law. There is nothing within BCZR § 4F that prohibits solar facilities on properties which contain prime and productive soils. The soil classification is not the criteria to be applied. As Mr. Elseroad testified, the Property is a relatively small property (from a farm field perspective); and

its location, configuration and characteristics make it unsuitable for farming. It is difficult to access for farm equipment. Rather than appreciate the fact that the facility will produce needed income for one of the remaining farming families in Baltimore County and support the retention of their farms nearby, the Protestants take a narrow and myopic view of the business of agriculture and oppose a facility which is appropriately located and presumptively permitted under law.

CONCLUSION

For the foregoing reasons, the Petition for Special Exception should be granted. The proposal meets all of the requirements in BCZR § 502.1 and the provisions in BCZR § 4F. The inherent effects of this proposal (already limited in the first instance) are no worse here than elsewhere in the zone and, given the character of the Property, proposal and locale, are actually less impactful than they would be elsewhere in the zone. Additionally, the BCC § 32-4-106(a)(1)(6) exemption should be granted. This is consistent with the County's long standing practice for such development proposals. As importantly, the proposal represents a minor development as it contains no habitable structures and does not require public utilities to operate.

Respectfully Submitted,

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
lschmidt@sgs-law.com

CERTIFICATE OF SERVICE

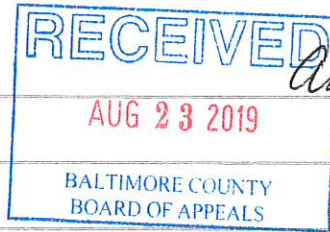
I HEREBY CERTIFY, that on this 23rd day of August, 2019, a copy of the foregoing Memorandum was mailed, postage pre-paid, to:

G. Macy Nelson
401 Washington Avenue
Suite 803
Towson, MD 21204

 for

LAWRENCE E. SCHMIDT

Board of Appeals



August 14, 2019

Dear Board Members

I am writing to express my support for the proposed solar farm on Route 30 in Baltimore County.

I have been a resident of Baltimore County since 1988 and have resided at 5421 Mt. Gilead Road since 1998. My house is a short distance from the proposed solar farm.

The proposed solar farm will not be obtrusive to the local rural farm area. The design incorporates elements that allow for the blending of the solar panels with the rural landscape.

Furthermore, the proposal will be a real attempt to provide clean, green energy to Baltimore County. It is a well thought out first step forward in the provision of energy in a world in the grip of climate change.

Thank you for your kind attention to my letter

Jerome Blake

5421 Mt. Gilead Road, Pikesville, MD 21136 443-386-5341



Retreat • Farm • Learn • Celebrate

410.500.5417
PEARLSTONECENTER.ORG
5425 MOUNT GILEAD ROAD
REISTERSTOWN, MD 21136

August 20, 2019

Baltimore County Board of Appeals
The Jefferson Building, Suite 203
105 West Chesapeake Avenue
Towson, Maryland 21204
appealsboard@baltimorecountymd.gov



Re: Case No. 17-107-X, Property 5298 Frye Road (Hanover Pike), Solar Field SUPPORT

Dear Baltimore County Board of Appeals:

On behalf of Pearlstone, I would like to express our full support for Glenn Elseroad as he creates a solar field on his property located at 5298 Frye Road (Hanover Pike) in Reisterstown. As a sustainable Jewish conference and retreat center, nearby in Reisterstown, Pearlstone believes that our well-being and the well-being of all earth's inhabitants, depends on the health of earth. Our 20,000 guests each year value our commitment to earth and to reducing our environmental impact. Thus, we believe it is crucial to support others in making efforts to create and use safe, renewables resources, such as solar energy.

Solar energy demand and generation is on this rise. Solar energy is less expensive and cleaner than using fossil fuels, is an abundant resource; and solar panels are relatively simple to install and maintain. Creating a solar field would serve to create renewable energy and provide a community point of education regarding solar on individual property. Investment in a solar energy farm will have lasting impact on the natural environment.

Pearlstone is an idyllic 180-acre retreat and conference center. We rely on our land, comprised of farms, meadows, forests, and streams, to guide our education of spiritual, environmental, school, and community groups. We tend to our chickens, goats, and sheep in a way that is in harmony with our land. Through our sustainability efforts we have reduced energy consumption by 20% over the past few years; grew 30% of our kitchen produce on our organic farm; and donate 10% of our farm harvest to local food banks and food rescues. In 2017, Pearlstone's farm was certified by the U.S. Department of Agriculture as organic; in 2018 the Maryland Department of the Environment awarded Pearlstone with a Green Leadership award; and we were awarded a national Seal of Sustainability in 2016, 2017, and 2018.

In Judaism, the principle of *piknuach nefesh*, saving human lives above all else, is our greatest moral obligation. We are taught, "You shall not stand idly by the blood of your neighbor" (Leviticus 19:16), and to "choose life, that you and your descendants may live" (Deuteronomy 30:20). It is our obligation to preserve human life by protecting our environment, including reducing the use of polluting and harmful fossil fuels.

Pearlstone is investigating ways to increase our own solar use and we support Glenn Elseroad for being a local leader in sustainable energy production.

Sincerely,

Jakir Manela

Jakir Manela

Executive Director



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

August 1, 2019

NOTICE OF DELIBERATION

IN THE MATTER OF: Woodensburg Land and Cattle Company, LLC – Legal Owner
SGC Power, LLC – Lessee
17-107-X 5298 Frye Road
4th Election District; 3rd Councilmanic District

Re: Petition for Special Exception pursuant to BCZR Section 4E-102 to operate a solar facility.

12/5/18 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED, subject to conditions.

-----SET WITH-----

IN THE MATTER OF: Woodensburg Land and Cattle Company, LLC – Legal Owner
SGC Power, LLC – Lessee/Applicant
CBA-19-018 5298 Frye Road
DRC # 010819B
Tracking Number: DRC-2018-00183
4th Election District; 3rd Councilmanic District

Re: Appeal of Director Letter Granting Limited Exemption

1/9/19 Letter from Director of PAI GRANTING the requested Limited Exemption under BCC Section 32-4-106(a)(1)(vi).

This matter having been heard May 2, July 23 and concluded on July 25, 2019, a public deliberation has been scheduled for the following:

DATE AND TIME: SEPTEMBER 26, 2019 AT 9:00 A.M.

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

NOTE: Closing briefs are due on August 23, 2019 no later than 3:00 p.m.
(Original paper copy and electronic copy emailed to
appealsboard@baltimorecountymd.gov)

Notice of Public Deliberation

In the matter of: Woodensburg Land and Cattle Co - Legal Owner

SGC Power, LLC - Lessee

Case No: 17-107-X and CBA-19-018

August 1, 2019

Page 2

NOTE: PUBLIC DELIBERATIONS ARE OPEN WORK SESSIONS WHICH ALLOW THE PUBLIC TO WITNESS THE DECISION-MAKING PROCESS. A WRITTEN OPINION AND ORDER WILL BE ISSUED BY THE BOARD WITHIN A REASONABLE TIMEFRAME AFTER DELIBERATION 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

c: Counsel for Legal Owner/Petitioner
Legal Owner

Lessee

: Lawrence E. Schmidt, Esquire
: Glen and Ruth Elseroad/Woodensburg Land and
Cattle Company, LLC
: Chesapeake Energy One, LLC

Counsel for Protestant/Appellants
Protestant/Appellants

: G. Macy Nelson, Esquire
: Timothy and Elizabeth Fales, Santo and Debra
Mirabile, Patrick and Thanikan Fales, Paul
Merritt and Melissa DePinho, Patrick Little,
Sandra Brown, James and Juli Wolf

C. Pete Gutwald, Director/Department of Planning
Jan Cook, Development Manager/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael D. Mallinoff, Director/PAI
Michael E. Field, County Attorney
Nancy C. West, Assistant County Attorney
Office of People's Counsel

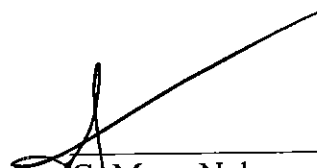
IN RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE	
(5298 Frye Road)	
4 th Election District	* BOARD OF APPEALS
3 rd Councilmanic District	
Woodensburg Land & Cattle Co., LLC	* FOR
<i>Legal Owner</i>	
SGC Power, LLC	* BALTIMORE COUNTY
<i>Lessee</i>	
Petitioners	* Case No. 2017-0107-X

* * * * *

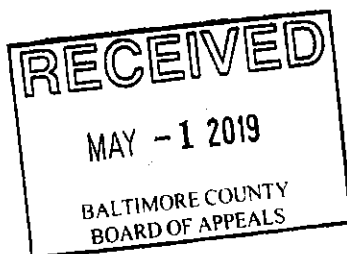
**Motion for Summary Disposition to
Deny the Application for Special Exception**

Citizen-Protestants, Timothy Fales, Elizabeth Fales, Santo Mirabile, Debra Mirabile, Patrick Fales, Thanikan Fales, Paul Merritt, Melissa A. DePinho, Patrick Little, Sandra M. Brown, James C. Wolf and Juli R. Wolf (collectively, "Citizen-Protestants"), by their attorney, G. Macy Nelson, move for summary disposition to deny the application for a special exception for the reasons set forth in the accompanying memorandum.

Respectfully submitted,



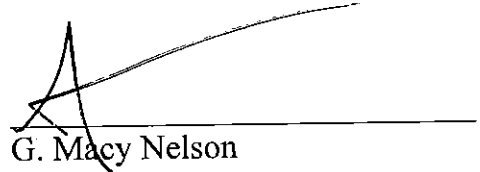
G. Macy Nelson
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204
gmacynelson@gmacynelson.com
(410) 296-8166
Attorney for Citizen-Protestants



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of May, 2019, a copy of the foregoing Motion for Summary Disposition to Deny the Application for Special Exception was emailed and mailed first-class, postage prepaid to:

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



G. Macy Nelson

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(5298 Frye Road)		
4 th Election District	*	BOARD OF APPEALS
3 rd Councilmanic District		
Woodensburg Land & Cattle Co., LLC	*	FOR
<i>Legal Owner</i>		
SGC Power, LLC	*	BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	Case No. 2017-0107-X

* * * * *

**Memorandum in Support of Motion for Summary
Disposition to Deny the Application for Special Exception**

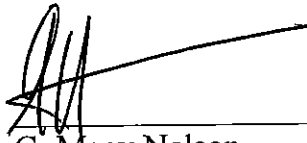
The Subject Property is zoned R.C. 2. Baltimore County Zoning Regulations (“BCZR”), section 1A01.2 (A) and (B) identify the uses permitted by right in the R.C. 2 zone. The list of uses does not include a solar facility. BCZR, section 1A01.2 (C) addresses the uses permitted by special exception in the R.C. 2 zone. Section 1A01.2 (C) states, “[t]he following uses, only, may be permitted by special exception in any R.C. 2 Zone....” (emphasis supplied). BCZR’s list of special exception uses for the R.C. 2 zone does not include a solar facility.

The Applicant incorrectly bases its application for a special exception for a solar facility on BCZR, Special Regulation 4F. That section, by itself, does not create the legal basis to allow a special exception in the R.C. 2 zone. The Special Regulations provide a layer of requirements for certain special exception uses in addition to the requirements set forth for all special exceptions in BCZR 502.1. Section 4F of the Special Regulations, by itself, cannot independently authorize a solar facility as a special exception use in the

R.C. 2 zone. Any permitted special exception use in the R.C. 2 zone must be on the list in BCZR, section 1A01.2 (C).

The Board of Appeals should enter summary disposition and deny the application for special exception for a solar facility because BCZR, section 1A01.2 (C) does not identify a solar facility as a special exception that is allowed in the R.C. 2 zone.

Respectfully submitted,

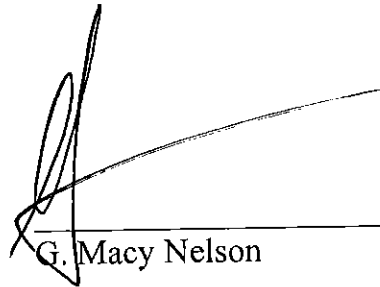
A handwritten signature in black ink, appearing to be 'G. Macy Nelson', written over a horizontal line.

G. Macy Nelson
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204
gmacynelson@gmacynelson.com
(410) 296-8166
Attorney for Citizen-Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of May, 2019, a copy of the foregoing Memorandum in Support of Motion for Summary Disposition to Deny the Application for Special Exception was emailed and mailed first-class, postage prepaid to:

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



G. Macy Nelson

S. SMITH, GILDEA & SCH. SMITH, LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
JASON T. VETTORI
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH

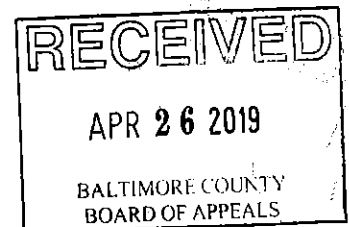
*Admitted in MD, FL, PA

LAUREN D. BENJAMIN
SARAH A. ZADROZNY
CARMELO D. MORABITO
ZACHARY J. WILKINS
of counsel:
EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON
MARY G. LOKER
STEPHEN J. NOLAN

April 26, 2019

Sent via Hand Delivery

Ms. Krysundra L. Cannington, Administrator
Board of Appeals of Baltimore County
Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204



Re: Legal Owner: Woodensburg Land & Cattle Co., LLC
Lessee: SGC Power, LLC
Property: 5298 (not) Frye Road
Case Nos. 2017-0107-X and DRC-2018-00183

Dear Ms. Cannington,

I write by way of follow up to the Notice of Second Postponement and Reassignment dated April 16, 2019 for the above referenced matter. I appreciate the Board setting in three days for this hearing as I understand the solar cases pending before the Board have needed every bit of those three days. I would request a fourth day be added to the calendar in the event we need it. I have discussed this request with Mr. Nelson and he does not object.

I appreciate the Board's attention to this request and please do not hesitate to contact me should you have any questions.

Thank you for your courtesy.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lawrence E. Schmidt".

Lawrence E. Schmidt

LES/afm
cc: G. Macy Nelson, Esquire



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 16, 2019

NOTICE OF SECOND POSTPONEMENT AND REASSIGNMENT

IN THE MATTER OF: Woodensburg Land and Cattle Company, LLC – Legal Owner
SGC Power, LLC – Lessee
17-107-X 5298 Frye Road
4th Election District; 3rd Councilmanic District

Re: Petition for Special Exception pursuant to BCZR Section 4E-102 to operate a solar facility.

12/5/18 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED, subject to conditions.

-----SET WITH-----

IN THE MATTER OF: Woodensburg Land and Cattle Company, LLC – Legal Owner
SGC Power, LLC – Lessee/Applicant
CBA-19-018 5298 Frye Road
DRC # 010819B
Tracking Number: DRC-2018-00183
4th Election District; 3rd Councilmanic District

Re: Appeal of Director Letter Granting Limited Exemption

1/9/19 Letter from Director of PAI GRANTING the requested Limited Exemption under BCC Section 32-4-106(a)(1)(vi).

This matter was assigned for hearing on May 2, 2019, June 18, 2019 and June 27, 2019. The June dates have been postponed by request of Counsel. This matter is

REASSIGNED FOR: MAY 2, 2019 AT 10:00 A.M. - Day 1
JULY 23, 2019 AT 10:00 A.M. - Day 2
JULY 25, 2019 AT 10:00 A.M. - Day 3

and

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.
- 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.
- 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**

c: Counsel for Legal Owner/Petitioner
Legal Owner

Lessee

: Lawrence E. Schmidt, Esquire
: Glen and Ruth Elseroad/Woodensburg Land and
Cattle Company, LLC
: Chesapeake Energy One, LLC

Counsel for Protestant/Appellants
Protestant/Appellants

: G. Macy Nelson, Esquire
: Timothy and Elizabeth Fales, Santo and Debra
Mirabile, Patrick and Thanikan Fales, Paul
Merritt and Melissa DePinho, Patrick Little,
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C. Pete Gutwald, Director/Department of Planning
Jan Cook, Development Manager/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael E. Field, County Attorney
Michael Mohler, Acting Director/PAI
Nancy C. West, Assistant County Attorney
Office of People's Counsel

Krysundra Cannington

From: Linda DellaRose <linda@gmacynelson.com>
Sent: Monday, April 15, 2019 11:32 AM
To: Krysundra Cannington
Subject: Case No. 2017-0107-X

This email authorizes payment by this office for copies of the following exhibits:

Petitioner's Exhibit No. 3
Petitioner's Exhibit No. 4
Protestants' Exhibit No. 3 (first page only)

Thank you and please let us know the cost of the copies and we will hand-deliver a check.

Linda

Linda DellaRose
Legal Assistant
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204
(410) 296-8166 ext. 107
Email: linda@gmacynelson.com
www.gmacynelson.com

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
JASON T. VETTORI
MARIELA C. D'ALESSIO*
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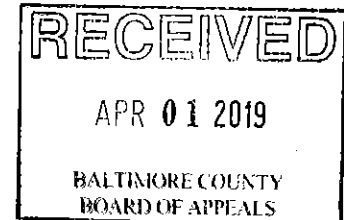
*Admitted in MD, FL, PA

LAUREN D. BENJAMIN
SARAH A. ZADROZNY
CARMELO D. MORABITO
ZACHARY J. WILKINS
of counsel:
EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON
MARY G. LOKER
STEPHEN J. NOLAN

April 1, 2019

Sent Hand Delivery

Ms. Krysundra L. Cannington, Administrator
Board of Appeals of Baltimore County
Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204



Re: Legal Owner: Woodensburg Land & Cattle Co., LLC
Lessee: SGC Power, LLC
Property: 5298 (not) Frye Road
Case Nos. 2017-0107-X and DRC-2018-00183

Dear Ms. Cannington,

I am in receipt of the March 22nd Notice of Postponement and Reassignment for the above referenced matter. Unfortunately, I am scheduled to be out of the County on a pre-paid, pre-planned trip from June 18, 2019 and returning July 5, 2019. However, other than June 6 and 7th, I am available the rest of June and July.

I appreciate the Board's attention to this request and please do not hesitate to contact me should you have any questions.

Thank you for your courtesy.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lawrence E. Schmidt".

Lawrence E. Schmidt

LES/afm

cc: G. Macy Nelson, Esquire



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 22, 2019

NOTICE OF POSTPONEMENT AND REASSIGNMENT

IN THE MATTER OF: Woodensburg Land and Cattle Company, LLC – Legal Owner
SGC Power, LLC – Lessee
17-107-X 5298 Frye Road
4th Election District; 3rd Councilmanic District

Re: Petition for Special Exception pursuant to BCZR Section 4E-102 to operate a solar facility.

12/5/18 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED, subject to conditions.

-----SET WITH-----

IN THE MATTER OF: Woodensburg Land and Cattle Company, LLC – Legal Owner
SGC Power, LLC – Lessee/Applicant
CBA-19-018 5298 Frye Road
DRC # 010819B
Tracking Number: DRC-2018-00183
4th Election District; 3rd Councilmanic District

Re: Appeal of Director Letter Granting Limited Exemption

1/9/19 Letter from Director of PAI GRANTING the requested Limited Exemption under BCC Section 32-4-106(a)(1)(vi).

This matter was assigned for hearing on April 23, 2019 and May 2, 2019. The hearing on April 23, 2019 has been postponed by request of Counsel this matter is

REASSIGNED FOR: **MAY 2, 2019 AT 10:00 A.M. - Day 1**
JUNE 18, 2019 AT 10:00 A.M. - Day 2
and **JUNE 27, 2019 AT 10:00 A.M. - Day 3**

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

**Krysundra "Sunny" Cannington
Administrator**

c: Counsel for Legal Owner/Petitioner	: Lawrence E. Schmidt, Esquire
Legal Owner	: Glen and Rule Elseroad/Woodensburg Land and Cattle Company, LLC
Lessee	: Chesapeake Energy One, LLC
Counsel for Protestant/Appellants	: G. Macy Nelson, Esquire
Protestant/Appellants	: Timothy and Elizabeth Fales, Santo and Debra Mirabile, Patrick and Thanikan Fales, Paul Merritt and Melissa DePinho, Patrick Little, Sandra Brown, James and Juli Wolf

Andrew Brown, P.E./D.S. Thaler & Associates

Jan Cook, Development Manager/PAI
Jeff Mayhew, Acting Director/Department of Planning
Lawrence M. Stahl, Managing Administrative Law Judge
Michael E. Field, County Attorney
Michael Mohler, Acting Director/PAI
Nancy C. West, Assistant County Attorney
Office of People's Counsel

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
JASON T. VETTORI
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH

*Admitted in MD, FL, PA

LAUREN D. BENJAMIN
SARAH A. ZADROZNY
CARMELO D. MORABITO
ZACHARY J. WILKINS
of counsel:
EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON
MARY G. LOKER
STEPHEN J. NOLAN

March 21, 2019

Sent Hand Delivery

Ms. Krysundra L. Cannington, Administrator
Board of Appeals of Baltimore County
Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204



Re: Legal Owner: Woodensburg Land & Cattle Co., LLC
 Lessee: SGC Power, LLC
 Property: 5298 (not) Frye Road
 Case Nos. 2017-0107-X and DRC-2018-00183

Dear Ms. Cannington,

As you are aware, I represent the Petitioners in reference to the above matters that are presently pending before the Board. I am in receipt of Mr. Nelson's request for Postponement of the April 23rd hearing date. We appreciate the Board's policy of granting first postponement requests, however, when another date is assigned, I assume another postponement would not be granted if a small number of the multiple Protestants can not appear at that time.

Collectively, this case results from the filing of two appeals. The first of the Opinion and Order of ALJ John E. Beverungen granting a petition for special exception; and the second, an appeal of the letter of the Director of PAI adopting the recommendation of the Development Review Committee ("DRC") granting an exemption to this project pursuant to Baltimore County Code ("BCC") § 32-6-104(a)(1)(6). Both of these matters relate to the proposed construction of a solar facility on the above captioned property.

Both the Petition for Special Exception and the application to the DRC identified the property owner as Woodensburg Land and Cattle Company, LLC and the lessee (i.e. the solar company) as SGC Power, LLC (hereinafter "SGC"). SGC is that entity that is developing solar facilities throughout the Mid-Atlantic region and (for certain

Ms. Krysundra L. Cannington

March 21, 2019

Page 2

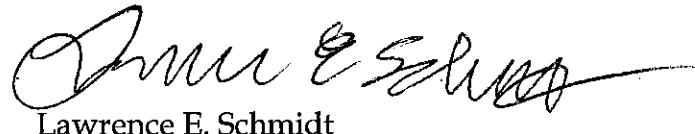
business reasons) has determined that a separate and specific business entity be created for each specific project. Thus, SGC has established and formed Chesapeake Energy One, LLC as the business entity that will lease and manage this proposed solar facility. Our petition should therefore be amended accordingly to identify Chesapeake Energy One, LLC as the lessee.

This amendment is simply a matter of form, and not substance, and does not alter the requested relief nor the nature of the case. Moreover, as zoning issues "run with the land" it should be noted that the property owner has not changed. It remains Woodensburg Land and Cattle Company, LLC.

Please make the appropriate change in your records and could you return a date stamped copy of this letter evidencing your receipt and acknowledgement of the same for my client's record? Thank you for your cooperation in this regard and please contact me should you have any questions.

Thank you for your courtesy.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lawrence E. Schmidt", with a long horizontal flourish extending to the right.

Lawrence E. Schmidt

LES/afm

cc: G. Macy Nelson, Esquire

Krysundra Cannington

From: Krysundra Cannington
Sent: Wednesday, March 20, 2019 10:34 AM
To: 'amoyers@sgs-law.com'
Cc: Lawrence Schmidt, Esquire; Nelson, G. Macy
Subject: Woodensburg aka SGC Power 17-107-X and CBA-19-018
Attachments: Woodensburg 17-107-X and CBA-19-018 Nelson Postponement Request.pdf

Alyssa,

Attached please find Mr. Nelson's postponement request. Please note Mr. Nelson is only requesting the postponement of day 1 on April 23, 2019.

Per our conversation, I will be out of the office part of the week next week and did not want to let this sit until my return.

Should Mr. Schmidt have any objection to the request for postponement, I kindly request I be advised by the end of the week.

Thank you for your prompt response.

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
410-887-3180

Confidentiality Statement

This electronic mail transmission contains confidential information belonging to the sender which is legally privileged and confidential. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action based on the contents of this electronic mail transmission is strictly prohibited. If you have received this electronic mail transmission in error, please immediately notify the sender.

LAW OFFICE OF
G. MACY NELSON, LLC

G. MACY NELSON*
(410) 296-8166 EXT. 290
gmacynelson@gmacynelson.com

401 WASHINGTON AVENUE, SUITE 803
TOWSON, MARYLAND 21204
www.gmacynelson.com

*Also admitted in D.C.

March 19, 2019



Board of Appeals of Baltimore County
Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Case Nos. 17-107-X and CBA-19-018
In the Matter of: Woodensburg Land and Cattle Company, LLC
SGC Power, LLC – Lessee
5298 Frye Road
4th Election District, 3rd Councilmanic District

Dear Sir/Madam:

On March 1, 2019, I received notice that your office scheduled the captioned cases for April 23 and May 2, 2019. I am writing to request that your office reschedule the April 23, 2019 hearing date because two of my clients – Paul Merritt and Melissa DePinho – will be in Florida on vacation at that time. I have enclosed a copy of the receipt for their reservations on American Airlines. They are scheduled to leave April 22, 2019 and return April 26, 2019. If you need any additional information, please let me know.

Very truly yours,

A stylized handwritten signature in black ink, consisting of a large 'G' and 'M' intertwined.

G. Macy Nelson

GMN:ldr
Enclosure
cc: Lawrence E. Schmidt, Esquire

AMERICAN AIRLINES VACATION PACKAGE

From: American Airlines <no-reply@notify_email.aa.com>

To:

Date: Thu, Jan 17, 2019 12:47 pm

American Airlines

Reservations

Redeem Miles

My Account

Deals

eTicket Itinerary &
Receipt Confirmation

Ticket Issued: Jan 17, 2019

Paul Merritt,

Thank you for choosing American Airlines / American Eagle, a member of the oneworld® Alliance. Below are your itinerary and receipt for the ticket(s) purchased. Please print and retain this document for use throughout your trip.

You may check in and obtain your boarding pass for U.S. domestic electronic tickets within 24 hours of your flight time online at aa.com by using www.aa.com/checkin or at a Self-Service Check-In machine at the airport. Check-in options may be found at www.aa.com/options. For information regarding American Airlines checked baggage policies, please visit www.aa.com/baggageinfo.

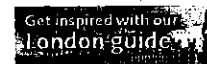
You can now Manage Your Reservation on aa.com, where you can check in and purchase additional items to customize your journey. A variety of seating options are also available for purchase to enhance your travel with features such as convenient front of cabin location, extra legroom and early boarding.

For faster check-in at the airport, scan the barcode below at any AA Self-Service machine.

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Up to 35% off
base rates
with Budget

Budget



Record
Locator



Itinerary

Carrier	Flight #	Departing	Arriving	Fare Code
American Airlines	4531	Washington Reagan MON 22APR 8:30 AM	Key West 11:27 AM	G
OPERATED BY REPUBLIC AIRLINES AS AMERICAN EAGLE				
Paul Merritt		Economy		Food For Purchase
Melissa Depinho		Economy		Food For Purchase
American Airlines	4531	Key West FRI 26APR 11:57 AM	Washington Reagan 2:41 PM	N
OPERATED BY REPUBLIC AIRLINES AS AMERICAN EAGLE				
Paul Merritt		Economy		Food For Purchase
Melissa Depinho		Economy		Food For Purchase

TO:
4.22.19

Return
FROM!
4.26.19

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
JASON T. VETTORI
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH

*Admitted in MD, FL, PA

LAUREN D. BENJAMIN
SARAH A. ZADROZNY
CARMELO D. MORABITO
ZACHARY J. WILKINS
of counsel:
EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON
MARY G. LOKER
STEPHEN J. NOLAN

February 28, 2019

Sent Hand Delivery

Ms. Krysundra L. Cannington, Administrator
Board of Appeals of Baltimore County
Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204



Re: Legal Owner: Woodensburg Land & Cattle Co., LLC
Lessee: SGC Power, LLC
Property: 5298 (not) Frye Road
Case Nos. 2017-0107-X and DRC-2018-00183

Dear Ms. Cannington,

This is in reference to the above appeals, both of which relate to a proposed solar facility on the property generally known as 5298 Frye Road/Hanover Pike. The appeals at issue relate to two approvals granted by Baltimore County. In case no. 2017-0107-X, Administrative Law Judge John E. Beverungen granted a petition for special exception to approve a proposed solar facility in a RC 2 zone. This approval has been appealed to the Board by G. Macy Nelson, Esquire on behalf of several residents in the locale. In case no. DRC-2018-00183, the County Development Review Committee ("DRC") approved an exception from the full development review process for this project pursuant to Baltimore County Code § 32-4-106 (a)(1)(vi). This approval was also appealed to the Board by Mr. Nelson on behalf of his clients.

Obviously, both appeals relate to the same property and also the same proposed development; to wit, a proposed solar facility. Also, the same parties are involved. Finally, both appeals will be considered by the Board de novo.

Under the circumstances, I respectfully suggest that these appeals be consolidated for the purposes of hearing. Such a consolidation would promote judicial economy and efficiency and allow the parties to expediently have these matters considered. Obviously, as the party at the hearing who has the burden of proof, I will offer evidence on both appeals and can easily differentiate the evidence offered in support of one, the other, or both matters.

Ms. Krysundra L. Cannington, Administrator

February 28, 2019

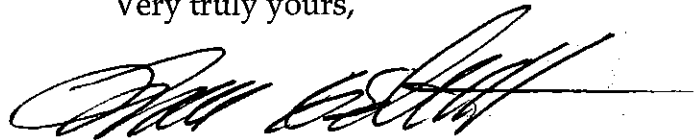
Page 2

I have requested that Mr. Nelson join this request, however, he has declined. Published news accounts have stated that the opponents in many of these solar cases employ a strategy of delay in hopes that the current law governing this use in Baltimore County is repealed or amended. But there is no such amendment now under consideration at the County Council. I do not believe that such tactics are a basis for not consolidating the appeals and having the Board consider both matters simultaneously.

I appreciate the Board's attention to this request and please do not hesitate to contact me should you have any questions.

Thank you for your courtesy.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lawrence E. Schmidt", with a long horizontal line extending to the right.

Lawrence E. Schmidt

LES/afm

cc: G. Macy Nelson, Esquire

Krysundra Cannington

From: Appeals Board
Sent: Wednesday, February 27, 2019 3:48 PM
To: 'Laura Miller'
Cc: Lawrence Schmidt, Esquire; Nelson, G. Macy
Subject: RE: Hanover Pike Solar Project

Ms. Miller,

We have had several other solar projects come through in recent months on appeal. Most of them have had three or four days of hearings before the Board to conclude. We figured scheduling two days was a good starting point. Of course, if this matter concludes in one day, that's ok too.

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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From: Laura Miller [mailto:Laura.Miller@sgc-power.com]
Sent: Wednesday, February 27, 2019 2:35 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>
Subject: FW: Hanover Pike Solar Project

I have been asked why there were two hearing dates provided when only one was anticipated.

Could you please clarify?

Thank you,

Laura

From: Laura Miller
Sent: Wednesday, February 27, 2019 11:47 AM
To: Appeals Board <appealsboard@baltimorecountymd.gov>
Subject: RE: Hanover Pike Solar Project

Thank you for getting back to me. The address is 5298 Frye Road.

I also contacted the office by phone, and there was a helpful individual that informed me that the hearings are scheduled:

April 23rd at 10 a.m.

May 2nd at 10 a.m.

Thanks again,

Laura

From: Appeals Board <appealsboard@baltimorecountymd.gov>
Sent: Wednesday, February 27, 2019 11:37 AM
To: Laura Miller <Laura.Miller@sgc-power.com>
Subject: RE: Hanover Pike Solar Project

Good morning Ms. Miller,

Can you please provide a case number or property address?

Thank you,

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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From: Laura Miller [<mailto:Laura.Miller@sgc-power.com>]
Sent: Wednesday, February 27, 2019 8:29 AM
To: Appeals Board <appealsboard@baltimorecountymd.gov>
Subject: Hanover Pike Solar Project

Could you please let me know if the date for the upcoming hearing for the subject project has been set? I did not see it on the Board of Appeals calendar.

Any assistance that you could provide would be greatly appreciated.

Thank you,

Laura

Laura A. T. Miller
SGC Power | Senior Analyst
410.995.8168
laura.miller@sgc-power.com



CONNECT WITH BALTIMORE COUNTY



www.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

February 26, 2019

NOTICE OF ASSIGNMENT

IN THE MATTER OF: Woodensburg Land and Cattle Company, LLC – Legal Owner
SGC Power, LLC – Lessee
17-107-X 5298 Frye Road
4th Election District; 3rd Councilmanic District

Re: Petition for Special Exception pursuant to BCZR Section 4E-102 to operate a solar facility.

12/5/18 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED, subject to conditions.

-----SET WITH-----

IN THE MATTER OF: Woodensburg Land and Cattle Company, LLC – Legal Owner
SGC Power, LLC – Lessee/Applicant
CBA-19-018 5298 Frye Road
DRC # 010819B
Tracking Number: DRC-2018-00183
4th Election District; 3rd Councilmanic District

Re: Appeal of Director Letter Granting Limited Exemption

1/9/19 Letter from Director of PAI GRANTING the requested Limited Exemption under BCC Section 32-4-106(a)(1)(vi).

ASSIGNED FOR: **APRIL 23, 2019, AT 10:00 A.M. – Day 1**
and **MAY 2, 2019 AT 10:00 A.M. – Day 2**

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.

Notice of Assignment

In the matter of: Woodensburg Land and Cattle Company, LLC

Case number: 17-107-X and CBA-19-018

February 26, 2019

Page 2

- 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.
- 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.
- 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

c: Counsel for Legal Owner/Petitioner
Legal Owner

Lessee

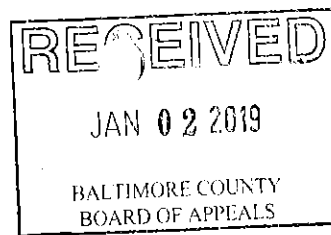
Counsel for Protestant/Appellants
Protestant/Appellants

: Lawrence E. Schmidt, Esquire
: Glen and Rule Elseroad/Woodensburg Land and
Cattle Company, LLC
: SGC Power, LLC

: G. Macy Nelson, Esquire
: Timothy and Elizabeth Fales, Santo and Debra
Mirabile, Patrick and Thanikan Fales, Paul
Merritt and Melissa DePinho, Patrick Little,
Sandra Brown, James and Juli Wolf

Andrew Brown, P.E./D.S. Thaler & Associates

Jan Cook, Development Manager/PAI
Jeff Mayhew, Acting Director/Department of Planning
Lawrence M. Stahl, Managing Administrative Law Judge
Michael E. Field, County Attorney
Michael Mohler, Acting Director/PAI
Nancy C. West, Assistant County Attorney
Office of People's Counsel



JOHN A. OLSZEWSKI, JR.
County Executive

ADMINISTRATIVE LAW JUDGE
Office of Administrative Hearings

January 2, 2019

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

G. Macy Nelson, Esq.
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204

RE: **APPEAL TO BOARD OF APPEALS** – Petition for Special Exception
Case No. 2017-0107-X
Property: 5298 Frye Road

Dear Counsel:

Please be advised that an appeal of the above-referenced case was filed in this Office on December 28, 2018. 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,

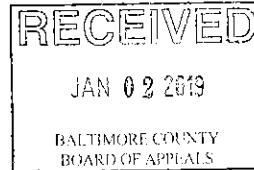

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

c: Baltimore County Board of Appeals
Peter Max Zimmerman, People's Counsel for Baltimore County

APPEAL

**Petition for Special Exception
(5298 frye Road)
4th Election District – 3rd Councilmanic District
Legal Owners: Woodensburg Land & Cattle Co., LLC.
Lessee: SGC Power, LLC
Case No. 2017-0107-X**



Petition for Special Exception (June 11, 2018)

Zoning Description of Property (June 5, 2018)

Certificate of Posting – 1st Posting (August 19, 2018) Linda O’Keefe
2nd Posting (September 7, 2018) Linda O’Keefe

Newspaper Advertisement – August 22, 2018-The Daily Record

Notice of Zoning Hearing – 1st Notice- July 6, 2018 (August 28, 2018- date) postponed
2nd Notice- August 1, 2018 (September 11, 2018 –date)

People’s Counsel Entry of Appearance – June 19, 2018

Zoning Advisory Committee Comments

Petitioner’s Sign-in Sheets – 1 Sheet for September 11, 2018 date
1 Sheet for November 16, 2018 date

Citizen’s Sign-in Sheets- 1 Sheet for September 11, 2018 date
1 Sheet for November 16, 2018 date

Petitioner(s) Exhibits –

1. McArthur Resume
2. Site Plan (redlined)
3. Aerial Exhibit
4. Schematic Landscape Plan
5. Photo of Agric. Fence
6. County schedule of Fees
7. Photos of Views from Hanover Pike
8. Glare Study
9. May 1, 2017 letter to H. Leskinen
10. Green line plan
11. ROW agreement

Protestant(s) Exhibits –

1. 7-26-16 Plan to accompany Pet. for SX
2. Google Earth Aerial
3. “Annotated” version of Pet. Ex. 7-new lines of site
4. Photograph-Aerial w/ Topo.
5. Aerial photo w/Topo.
6. Aerial Photo
7. Aerial Photo
8. Aerial Photo
9. Aerial Photo
10. Aerial Photo

Miscellaneous (Not Marked as Exhibits)

Administrative Law Judge Order and Letter (GRANTED with Conditions – December 5, 2018)

Appeal Notice, Letter & Receipt received from G. Macy Nelson- December 28, 2018

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No. **174808**

Date: **12/28/18**

PAID RECEIPT

BUSINESS ACTUAL TIME BRN
 12/28/2018 12/28/2018 11:41:11 3

WS03 HOLYIN CAN
 RECEIPT # 80006 12/28/2018 OPEN

Fund	Dept	Unit	Sub Unit	Obj	Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150				400.00

Total: **400.00**

Rec From: **G. Moev Nelson, LSO**

For: **Office of Administrative Hearings (CD OR APPEAL)**

CASE NO. **2017-0107-Y**

ADDRESS OR PROJECT: **5248 FIVE ROAD**

HEARING DATE(S): **12/10/18**

CHECK # **7433**

DISTRIBUTION

WHITE - CASHIER

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YELLOW - CUSTOMER

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PLEASE PRESS HARD!!!!

**CASHIER'S
 VALIDATION**

LAW OFFICE OF
G. MACY NELSON, LLC

G. MACY NELSON*
(410) 296-8166 EXT. 290
gmacynelson@gmacynelson.com

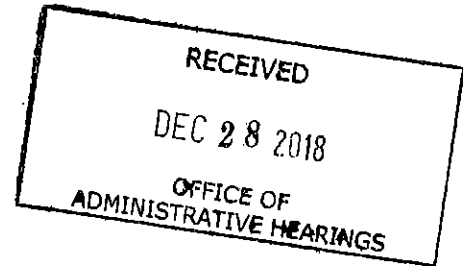
SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
www.gmacynelson.com

EMILY E. BAER**
(410) 296-8166 EXT. 113
emily@gmacynelson.com

*Also admitted in D.C.

** Only admitted in D.C.

December 28, 2018



Hand-Delivered

The Honorable John E. Beverungen
The Office of Administrative Hearings
Jefferson Building, Suite 103
105 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Petition for Special Exception
Case No.: 2017-0107-X
Property: 5298 Frye Road

Dear Judge Beverungen:

I have enclosed a copy of the Notice of Appeal I am filing on behalf of Citizen-Protestants, Timothy Fales, Elizabeth Fales, Santo Mirabile, Debra Mirabile, Patrick Fales, Thanikan Fales, Paul Merritt, Melissa A. DePinho, Patrick Little, Sandra M. Brown, James C. Wolf and Juli R. Wolf, of the decision of the Office of Administrative Hearings dated December 5, 2018.

I have also enclosed a check payable to Baltimore County, Maryland for \$400.00 for the filing fee.

Very truly yours,

A handwritten signature in dark ink, appearing to be "G. Macy Nelson", written over a horizontal line.

G. Macy Nelson

GMN:ldr

Enclosure

cc: Board of Appeals

Lawrence E. Schmidt, Esq.

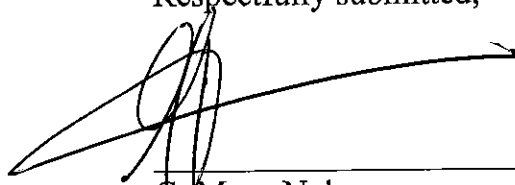
IN RE: PETITION FOR SPECIAL EXCEPTION	* BEFORE THE
(5298 Frye Road)	
4 th Election District	* OFFICE OF
3 rd Councilmanic District	
Woodensburg Land & Cattle Co., LLC	* ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>	
SGC Power, LLC	* FOR BALTIMORE COUNTY
<i>Lessee</i>	
Petitioners	* Case No. 2017-0107-X

* * * * *

Notice of Appeal

Citizen-Protestants, Timothy Fales, Elizabeth Fales, Santo Mirabile, Debra Mirabile, Patrick Fales, Thanikan Fales, Paul Merritt, Melissa A. DePinho, Patrick Little, Sandra M. Brown, James C. Wolf and Juli R. Wolf (collectively, "Citizen-Protestants"), by their attorney, G. Macy Nelson, file this Notice of Appeal of the decision of the Office of Administrative Hearings dated December 5, 2018. Citizen-Protestants have attached as Exhibit A to the Notice of Appeal a copy of the Opinion and Order of the Office of Administrative Hearings.

Respectfully submitted,



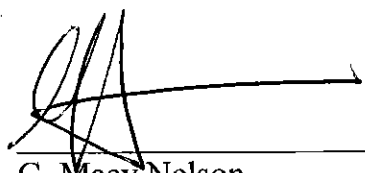
G. Macy Nelson
 Law Office of G. Macy Nelson, LLC
 401 Washington Avenue, Suite 803
 Towson, Maryland 21204
 gmacynelson@gmacynelson.com
 (410) 296-8166
Attorney for Citizen-Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of December, 2018, a copy of the foregoing Notice of Appeal was mailed first-class, postage prepaid to:

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

Board of Appeals
The Jefferson Building, Suite 203
105 West Chesapeake Avenue
Towson, Maryland 21204



G. Macy Nelson

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(5298 Frye Road)		
4 th Election District	*	OFFICE OF
3 rd Council District		
Woodensburg Land & Cattle Co., LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
SGC Power, LLC	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	Case No. 2017-0107-X

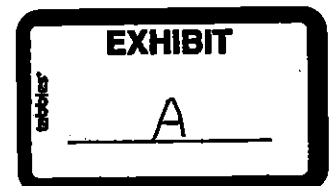
* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of a Petition for Special Exception filed on behalf of Woodensburg Land & Cattle Co., LLC, legal owner and SGC Power, LLC, lessee (“Petitioners”). The Petition for Special Exception pursuant to Section 4E-102 of the Baltimore County Zoning Regulations (“BCZR”) seeks approval for a solar facility.

Glenn Elseroad and landscape architect Stacy McArthur appeared in support of the petition. Lawrence E. Schmidt, Esq. represented the Petitioners. Several citizens, represented by G. Macy Nelson, Esq. attended the hearing and opposed the request. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”), the Bureau of Development Plans Review (“DPR”) and the Department of Environmental Protection and Sustainability (“DEPS”). None of the receiving agencies opposed the request.

The subject property is approximately 19.68 acres and zoned RC-2. The property is located on Hanover Pike (Md. Route 130), which is a designated Baltimore County scenic route. Petitioners propose to construct a solar facility on the property, a use permitted by special exception in the RC-2 zone.



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 *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized 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.

Petitioners presented four witnesses in their case. First was Stacy McArthur, a landscape architect accepted as an expert. Ms. McArthur described the site plan and testified the property is approximately 19.6 acres in size. She testified there are no flood plains on the site and that a wetlands delineation (as shown on the site plan) was approved by Baltimore County. She testified no trees would be removed from the site and indicated the site slopes gradually upward from Hanover Pike. Ms. McArthur stated a schematic landscape plan has not yet been approved by Baltimore County, although she explained such plans are normally approved later in the process at the time of permit application.

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worked on approximately 100 solar array projects. He testified SGC Power (lessee) has completed over 140 projects in 26 states. Mr. Corpus described the various elements of the solar facility and stated the panels would be fixed and that no lights would be installed on the property. The witness testified the lessee has received conditional approval from BGE for a 1.75Mw solar facility, and that at least 51% of the power generated would be sold/distributed to low-income customers.

The next witness was owner Glenn Elseroad. Mr. Elseroad and his wife own more than 500 acres of agricultural land in Baltimore County, 355 of which are protected by an agricultural easement preservation program. He testified this property has been in his family since 1923, although his grandfather sold portions of the land (including the subject property) in 1951. Mr. Elseroad testified he "re-acquired" the subject property in 2010. He stated the subject property was farmed until last year, but that the small size of the tract makes it unprofitable to farm.

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As noted by several of the Protestants (and conceded by Ms. McArthur), Petitioners will not be able to screen or enclose the panels in such a fashion that would prevent them from being seen by immediate neighbors or from motorists on Hanover Pike. But the law does not require

that; the zoning regulations specify only that “screening of...scenic routes and scenic views” be provided in accordance with the Baltimore County landscape manual. BCZR §4E-104.A.6. A condition will be added below to ensure this requirement is satisfied.

I am sympathetic to the concerns expressed by the community, and agree the proposed solar panels will be incongruous with the pastoral rural setting along a scenic roadway. But I cannot deny the petition on that basis. That is because a large field of solar panels will have a similar negative impact wherever it is located in an RC-2 zone along a scenic roadway. Indeed, nearly all of the previous solar facility cases in Baltimore County have involved property zoned RC-2, and several have also been proposed on scenic roadways.

In those cases, like this case, nearby residents stated they would be able to see the panels from their homes, and that the rolling nature or topography of the farm fields would prevent the petitioner from screening the project. In other words, these negative impacts are inherent in the operation of a solar facility in a rural area. *Montgomery County v. Butler*, 417 Md. 271, 276-77 (2010) (opponent must show “non-inherent adverse effects” to “undercut the presumption of compatibility enjoyed by a proposed special exception use”). In a more recent special exception case Maryland’s highest court reached the same conclusion, although it employed slightly different language. *Clarksville Residents Against Mortuary Defense Fund, Inc. v. Donaldson Properties*, 453 Md. 516, 543 (2017)(“there is a presumption that the [special exception] use is in the interest of the general welfare, a presumption that may only be overcome by probative evidence of unique adverse effects”).

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congestion....” *Butler*, 417 Md. at 297. As such, I believe the petition should be granted, subject to the conditions noted below which will help to “lessen the impact of the facility on the health, safety and general welfare of surrounding residential properties.” BCZR §4E-104.A.10.

As noted in the Memorandum submitted by Petitioners, the use of solar and other renewable energy alternatives is encouraged by the State of Maryland. In a recent case (applicable only to solar facilities which require a Certificate of Public Convenience and Necessity (CPCN) from the Public Service Commission (PSC)) the court of special appeals held that the State’s interest in the area was so strong that county zoning ordinances governing the location of such facilities were impliedly preempted by state law. *Washington County v. Perennial Solar, LLC*, --- A.3d ---2018 WL 5993859 (Nov. 15, 2018). While that case is not directly controlling here, it does show the strong public policy preference for these facilities which I believe only strengthens in the circumstances of this case the presumption of appropriateness associated with this use.

THEREFORE, IT IS ORDERED this 5th day of **December, 2018**, by this Administrative Law Judge, that the Petition for Special Exception pursuant to Section 4E-102 of the BCZR for a Solar Facility, 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. Petitioners must comply with the ZAC comments of the Bureau of DPR, DOP & DEPS, copies of which are attached.
3. No signage or lighting shall be installed at the site in connection with the solar facility.
4. No deliveries to or maintenance of the solar facility shall occur between the hours of 6:00 PM – 7:00 AM.

5. Petitioners must submit for approval by Baltimore County a landscape plan which satisfies the requirements set forth in the Landscape Manual and BCZR §4E-104.A.6.
6. Any expansion, enlargement and/or relocation of the solar facility as shown on the green lined site plan admitted herein as Petitioners' Ex. 10 shall require a public hearing before the OAH.

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

9-11

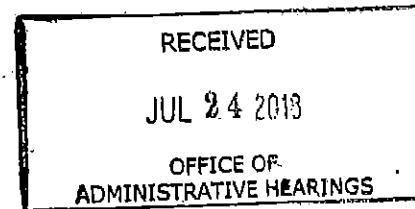
BALTIMORE COUNTY, MARYLAND INTER-OFFICE MEMORANDUM

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: July 18, 2018

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 17-107



INFORMATION:

Property Address: 5298 Frye Road
Petitioner: Glen Elseroad, Woodensburg Land and Cattle Company, LLC
Zoning: RC 2
Requested Action: Special Exception

The Department of Planning has reviewed the petition for special exception to use the property for solar panel array field as a public utility use.

A site visit was conducted on November 2, 2016. Hanover Pike is a designated Baltimore County Scenic Route. The subject site is located within an Agricultural Priority Preservation Area and is also subject to the Hanover Pike Corridor Study, adopted by the Baltimore County Council April 19, 1993.

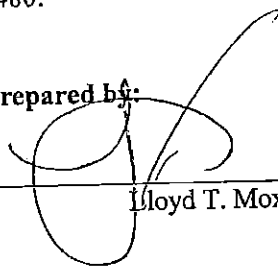
The Department has no objection to granting the petitioned zoning relief conditioned upon the following:

- Pursuant to BCZR §502.1.A, petitioners shall demonstrate to the satisfaction of the Administrative Law Judge that the facility will not be detrimental to the adjacent residential properties as a result of glare emanating from the facility.
- Petitioners shall note on the plan that the proposed solar facility will be subject to BCZR §4F-107.
- Petitioners shall certify by note on the plan that the proposed solar facility will not exceed the maximum permitted number of facilities allowed in its respective councilmanic district. If approved, Petitioners shall submit to this Department at the time of building permit application the final fixed location and area of the facility by coordinate data so that an inventory may be kept.
- Lighting shall be limited to what is required for security purposes only and will be sited in such a way as to have minimal spillage onto neighboring properties.
- Signage shall be limited to that which is necessary for safety and security purposes.
- No deliveries or outdoor maintenance which may generate excessive noise may occur on-site between the hours of 6 P.M. through 6 A.M.
- Indicate on the plan the means and location by which the solar facility connects to the power grid and whether grading or clearing will be involved.

- Protect the Hanover Pike Scenic Route by (a) planting a vegetative screening consisting of mixed indigenous hardwood and evergreen trees and shrubs along Hanover Pike to a depth that fully screens the solar panels and (b) retaining the woods on the top of the northern portion of the property to protect the distant scenic view from Hanover Pike.

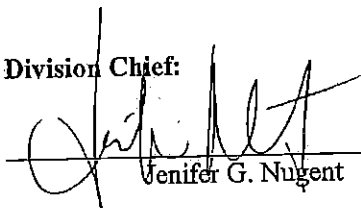
Be advised that the site is within an Agricultural Priority Preservation Area as designated in the Baltimore County Master Plan 2020 (MP2020). Said plan warns that *"incremental development continues to threaten the protection of resources and the viability of the agricultural industry."* (MP2020 pg.92). The Department recommends that the future viability of commercial agriculture in Baltimore County be weighed when considering this special exception proposal within the context of 502.1.G. For further information concerning the matters stated herein, please contact Wally Lippincott at 410-887-3480.

Prepared by:



Lloyd T. Moxley

Division Chief:



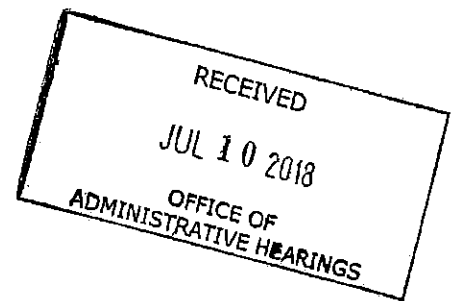
Jennifer G. Nugent

AVA/KS/LTM/ka

c: Wally Lippincott
James Hermann, R.L.A., Department of Permits, Approvals and Inspections
David H. Karceski, Esquire
Office of the Administrative Hearings
People's Counsel for Baltimore County

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: July 10, 2018

SUBJECT: DEPS Comment for Zoning Item # 2017-0107-X-AMENDED
Address 5298 Frye Road
(Woodensburg Land & Cattle
Company, LLC Property)

Zoning Advisory Committee Meeting of July 25, 2018

X The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

X Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

X Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Additional Comments:

Reviewer: Glenn Shaffer

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

FROM: ^{For EFC}
Vishnu Desai, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For June 25, 2018
Item No. 2017-0107-X

DATE: July 12, 2018

The Bureau of Development Plans Review has reviewed the subject zoning items and we have the following comments.

If Special Exception is granted, a Landscape Plan is required per the requirements of the Landscape Manual, Bill No. 37-17 and the CMDP. Specific landscape comments:

1. Hanover Pike is a Baltimore County Scenic Route,
2. Perimeter landscape buffers are required,
3. Must minimize tree and vegetation removal,
4. Solar panels are considered a utility and should be designed and located to harmonize with the surroundings and to create the least visual impact. (See Comment # 8, 9, & 10 below),
5. Additional landscape buffers (including contour strip buffers) may be required to address existing topography changes, Scenic Views, Scenic Routes, etc. depending on a number of items including the subject properties topography,
6. More comments may be rendered during review of the landscape plan,
7. Proposed perimeter fence shall be black vinyl-coated chain-link fence,
8. Proposed landscape screening should begin at or near the intersection of Frye Road, north to the property line of 14619 Hanover Pike, consideration of existing topography should be considered to assure screening of the solar array field from Hanover Pike views.
9. 14525, 14531, 14533 and 14619 Hanover Pike are adjacent properties that need to be reviewed for possible landscape screening to be designed and installed between their properties and the proposed solar facility.
10. Additional landscape and screening may be needed to address adjacent properties views when it relates to the proposed solar facility.

During the review of this property the Department of Public Works has found that there is a riverine flood plain on this property that may impact the proposed development. A flood plain study of this property must be submitted for verification of the flood plain boundary. Once the flood plain boundary has been established, the Building Code requirements for riverine flood plain and the Department of Public Works Design Manual Plate DF-1 requirements should be observed.

VKD: cen
cc: file

LAW OFFICE OF
G. MACY NELSON, LLC

G. MACY NELSON*
(410) 296-8166 EXT. 290
gmacynelson@gmacynelson.com

*Also admitted in D.C.

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
www.gmacynelson.com

EMILY E. BAER**
(410) 296-8166 EXT. 113
emily@gmacynelson.com

** Only admitted in D.C.

December 28, 2018

Hand-Delivered

The Honorable John E. Beverungen
The Office of Administrative Hearings
Jefferson Building, Suite 103
105 W. Chesapeake Avenue
Towson, Maryland 21204



Re: Petition for Special Exception
Case No.: 2017-0107-X
Property: 5298 Frye Road

Dear Judge Beverungen:

I have enclosed a copy of the Notice of Appeal I am filing on behalf of Citizen-Protestants, Timothy Fales, Elizabeth Fales, Santo Mirabile, Debra Mirabile, Patrick Fales, Thanikan Fales, Paul Merritt, Melissa A. DePinho, Patrick Little, Sandra M. Brown, James C. Wolf and Juli R. Wolf, of the decision of the Office of Administrative Hearings dated December 5, 2018.

I have also enclosed a check payable to Baltimore County, Maryland for \$400.00 for the filing fee.

Very truly yours,

A handwritten signature in black ink, appearing to be "G. Macy Nelson", written over a diagonal line that extends from the "Very truly yours," text.

G. Macy Nelson

GMN:ldr

Enclosure

cc: Board of Appeals

Lawrence E. Schmidt, Esq.

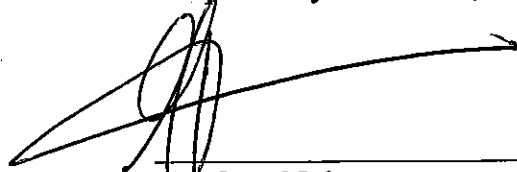
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3 rd Councilmanic District	
Woodensburg Land & Cattle Co., LLC	* ADMINISTRATIVE HEARINGS
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SGC Power, LLC	* FOR BALTIMORE COUNTY
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Petitioners	* Case No. 2017-0107-X

* * * * *

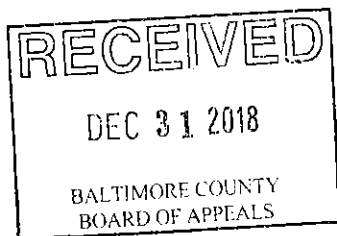
Notice of Appeal

Citizen-Protestants, Timothy Fales, Elizabeth Fales, Santo Mirabile, Debra Mirabile, Patrick Fales, Thanikan Fales, Paul Merritt, Melissa A. DePinho, Patrick Little, Sandra M. Brown, James C. Wolf and Juli R. Wolf (collectively, "Citizen-Protestants"), by their attorney, G. Macy Nelson, file this Notice of Appeal of the decision of the Office of Administrative Hearings dated December 5, 2018. Citizen-Protestants have attached as Exhibit A to the Notice of Appeal a copy of the Opinion and Order of the Office of Administrative Hearings.

Respectfully submitted,



G. Macy Nelson
 Law Office of G. Macy Nelson, LLC
 401 Washington Avenue, Suite 803
 Towson, Maryland 21204
 gmacynelson@gmacynelson.com
 (410) 296-8166
Attorney for Citizen-Protestants

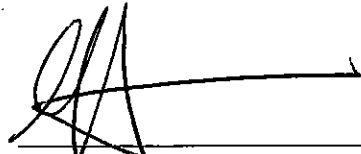


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of December, 2018, a copy of the foregoing Notice of Appeal was mailed first-class, postage prepaid to:

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

Board of Appeals
The Jefferson Building, Suite 203
105 West Chesapeake Avenue
Towson, Maryland 21204



G. Macy Nelson

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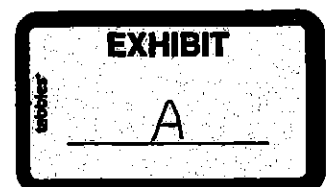
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OPINION AND ORDER

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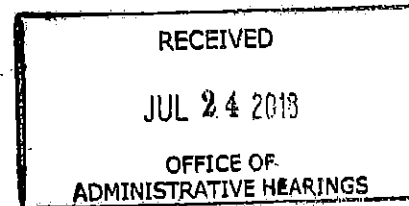
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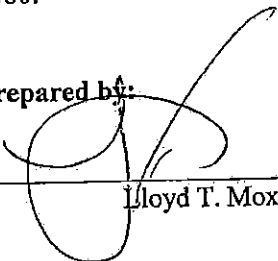
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- Petitioners shall certify by note on the plan that the proposed solar facility will not exceed the maximum permitted number of facilities allowed in its respective councilmanic district. If approved, Petitioners shall submit to this Department at the time of building permit application the final fixed location and area of the facility by coordinate data so that an inventory may be kept.
- Lighting shall be limited to what is required for security purposes only and will be sited in such a way as to have minimal spillage onto neighboring properties.
- Signage shall be limited to that which is necessary for safety and security purposes.
- No deliveries or outdoor maintenance which may generate excessive noise may occur on-site between the hours of 6 P.M. through 6 A.M.
- Indicate on the plan the means and location by which the solar facility connects to the power grid and whether grading or clearing will be involved.

- Protect the Hanover Pike Scenic Route by (a) planting a vegetative screening consisting of mixed indigenous hardwood and evergreen trees and shrubs along Hanover Pike to a depth that fully screens the solar panels and (b) retaining the woods on the top of the northern portion of the property to protect the distant scenic view from Hanover Pike.

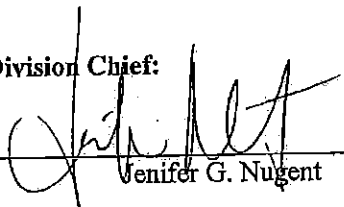
Be advised that the site is within an Agricultural Priority Preservation Area as designated in the Baltimore County Master Plan 2020 (MP2020). Said plan warns that *"incremental development continues to threaten the protection of resources and the viability of the agricultural industry."* (MP2020 pg.92). The Department recommends that the future viability of commercial agriculture in Baltimore County be weighed when considering this special exception proposal within the context of 502.1.G. For further information concerning the matters stated herein, please contact Wally Lippincott at 410-887-3480.

Prepared by:



Lloyd T. Moxley

Division Chief:



Jennifer G. Nugent

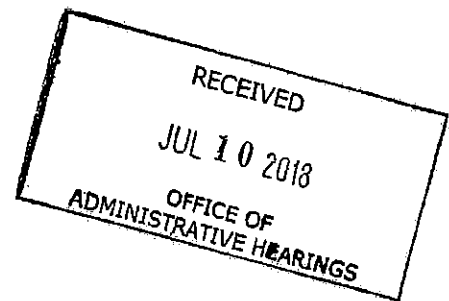
AVA/KS/LTM/ka

c: Wally Lippincott
James Hermann, R.L.A., Department of Permits, Approvals and Inspections
David H. Karceski, Esquire
Office of the Administrative Hearings
People's Counsel for Baltimore County

9-11

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: July 10, 2018

SUBJECT: DEPS Comment for Zoning Item # 2017-0107-X-AMENDED
Address 5298 Frye Road
(Woodensburg Land & Cattle
Company, LLC Property)

Zoning Advisory Committee Meeting of July 25, 2018

X The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

X Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

X Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Additional Comments:

Reviewer: Glenn Shaffer

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

FROM: ^{For EFC} Vishnu Desai, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For June 25, 2018
Item No. 2017-0107-X

DATE: July 12, 2018

The Bureau of Development Plans Review has reviewed the subject zoning items and we have the following comments.

If Special Exception is granted, a Landscape Plan is required per the requirements of the Landscape Manual, Bill No. 37-17 and the CMDP. Specific landscape comments:

1. Hanover Pike is a Baltimore County Scenic Route,
2. Perimeter landscape buffers are required,
3. Must minimize tree and vegetation removal,
4. Solar panels are considered a utility and should be designed and located to harmonize with the surroundings and to create the least visual impact. (See Comment # 8, 9, & 10 below),
5. Additional landscape buffers (including contour strip buffers) may be required to address existing topography changes, Scenic Views, Scenic Routes, etc. depending on a number of items including the subject properties topography,
6. More comments may be rendered during review of the landscape plan,
7. Proposed perimeter fence shall be black vinyl-coated chain-link fence,
8. Proposed landscape screening should begin at or near the intersection of Frye Road, north to the property line of 14619 Hanover Pike, consideration of existing topography should be considered to assure screening of the solar array field from Hanover Pike views.
9. 14525, 14531, 14533 and 14619 Hanover Pike are adjacent properties that need to be reviewed for possible landscape screening to be designed and installed between their properties and the proposed solar facility.
10. Additional landscape and screening may be needed to address adjacent properties views when it relates to the proposed solar facility.

During the review of this property the Department of Public Works has found that there is a riverine flood plain on this property that may impact the proposed development. A flood plain study of this property must be submitted for verification of the flood plain boundary. Once the flood plain boundary has been established, the Building Code requirements for riverine flood plain and the Department of Public Works Design Manual Plate DF-1 requirements should be observed.

* * * * *

VKD: cen
cc: file



DONALD I. MOHLER III
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

December 5, 2018

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

G. Macy Nelson, Esq.
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204

RE: Petition for Special Exception
Case No. 2017-0107-X
Property: 5298 Frye Road

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 County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,

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

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:slh
Enclosure

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(5298 Frye Road)		
4 th Election District	*	OFFICE OF
3 rd Council District		
Woodensburg Land & Cattle Co., LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
SGC Power, LLC	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	Case No. 2017-0107-X

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of a Petition for Special Exception filed on behalf of Woodensburg Land & Cattle Co., LLC, legal owner and SGC Power, LLC, lessee (“Petitioners”). The Petition for Special Exception pursuant to Section 4E-102 of the Baltimore County Zoning Regulations (“BCZR”) seeks approval for a solar facility.

Glenn Elseroad and landscape architect Stacy McArthur appeared in support of the petition. Lawrence E. Schmidt, Esq. represented the Petitioners. Several citizens, represented by G. Macy Nelson, Esq. attended the hearing and opposed the request. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”), the Bureau of Development Plans Review (“DPR”) and the Department of Environmental Protection and Sustainability (“DEPS”). None of the receiving agencies opposed the request.

The subject property is approximately 19.68 acres and zoned RC-2. The property is located on Hanover Pike (Md. Route 130), which is a designated Baltimore County scenic route. Petitioners propose to construct a solar facility on the property, a use permitted by special exception in the RC-2 zone.

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Date 12/5/18
By Alh

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 *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized 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.

Petitioners presented four witnesses in their case. First was Stacy McArthur, a landscape architect accepted as an expert. Ms. McArthur described the site plan and testified the property is approximately 19.6 acres in size. She testified there are no flood plains on the site and that a wetlands delineation (as shown on the site plan) was approved by Baltimore County. She testified no trees would be removed from the site and indicated the site slopes gradually upward from Hanover Pike. Ms. McArthur stated a schematic landscape plan has not yet been approved by Baltimore County, although she explained such plans are normally approved later in the process at the time of permit application.

In response to questions on cross examination Ms. McArthur conceded the proposed landscaping will not block the view into the site although she believed the view of the panels would be softened. Ms. McArthur testified that in her opinion there is not a stream in the area where the solar panels would be located, even though an engineer in a prior case prepared a plan for the site showing an intermittent stream and buffer. Prot. Ex. No. 1.

Jack Copus, a partner in the entity that would lease this site, was the next witness. Mr. Copus explained he has been involved in the solar industry since 2008 and since that time has

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Date

12/5/18

By

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worked on approximately 100 solar array projects. He testified SGC Power (lessee) has completed over 140 projects in 26 states. Mr. Corpus described the various elements of the solar facility and stated the panels would be fixed and that no lights would be installed on the property. The witness testified the lessee has received conditional approval from BGE for a 1.75Mw solar facility, and that at least 51% of the power generated would be sold/distributed to low-income customers.

The next witness was owner Glenn Elseroad. Mr. Elseroad and his wife own more than 500 acres of agricultural land in Baltimore County, 355 of which are protected by an agricultural easement preservation program. He testified this property has been in his family since 1923, although his grandfather sold portions of the land (including the subject property) in 1951. Mr. Elseroad testified he "re-acquired" the subject property in 2010. He stated the subject property was farmed until last year, but that the small size of the tract makes it unprofitable to farm.

The final witness in Petitioners' case was Henry Leskinen, who was accepted as an expert ecologist. Mr. Leskinen testified he performed wetland and forest stand delineations for the site. He testified there is a wetland area on the eastern property boundary, but he opined that it did not continue into the area between the solar arrays. Mr. Leskinen described the area between the proposed solar arrays as a broad swale with upland grasses. He opined this was a "best management practice" that assisted in removing sediment from fields which were farmed. In response to a question on cross examination the witness conceded there are streams on the property, but he noted that none of the panels would be in environmentally sensitive areas. The witness also conceded several of the proposed panels would be located within the swale.

As noted by several of the Protestants (and conceded by Ms. McArthur), Petitioners will not be able to screen or enclose the panels in such a fashion that would prevent them from being seen by immediate neighbors or from motorists on Hanover Pike. But the law does not require

that; the zoning regulations specify only that “screening of...scenic routes and scenic views” be provided in accordance with the Baltimore County landscape manual. BCZR §4E-104.A.6. A condition will be added below to ensure this requirement is satisfied.

I am sympathetic to the concerns expressed by the community, and agree the proposed solar panels will be incongruous with the pastoral rural setting along a scenic roadway. But I cannot deny the petition on that basis. That is because a large field of solar panels will have a similar negative impact wherever it is located in an RC-2 zone along a scenic roadway. Indeed, nearly all of the previous solar facility cases in Baltimore County have involved property zoned RC-2, and several have also been proposed on scenic roadways.

In those cases, like this case, nearby residents stated they would be able to see the panels from their homes, and that the rolling nature or topography of the farm fields would prevent the petitioner from screening the project. In other words, these negative impacts are inherent in the operation of a solar facility in a rural area. *Montgomery County v. Butler*, 417 Md. 271, 276-77 (2010) (opponent must show “non-inherent adverse effects” to “undercut the presumption of compatibility enjoyed by a proposed special exception use”). In a more recent special exception case Maryland’s highest court reached the same conclusion, although it employed slightly different language. *Clarksville Residents Against Mortuary Defense Fund, Inc. v. Donaldson Properties*, 453 Md. 516, 543 (2017)(“there is a presumption that the [special exception] use is in the interest of the general welfare, a presumption that may only be overcome by probative evidence of unique adverse effects”).

The County Council expressly permitted solar facilities in rural areas (including RC-2 zones) and along scenic routes, provided certain landscaping requirements are satisfied. Indeed, most special exception uses are regarded as “potentially troublesome because of noise, traffic,

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Date 12/5/18
By Sen

congestion....” *Butler*, 417 Md. at 297. As such, I believe the petition should be granted, subject to the conditions noted below which will help to “lessen the impact of the facility on the health, safety and general welfare of surrounding residential properties.” BCZR §4E-104.A.10.

As noted in the Memorandum submitted by Petitioners, the use of solar and other renewable energy alternatives is encouraged by the State of Maryland. In a recent case (applicable only to solar facilities which require a Certificate of Public Convenience and Necessity (CPCN) from the Public Service Commission (PSC)) the court of special appeals held that the State’s interest in the area was so strong that county zoning ordinances governing the location of such facilities were impliedly preempted by state law. *Washington County v. Perennial Solar, LLC*, --- A.3d ----2018 WL 5993859 (Nov. 15, 2018). While that case is not directly controlling here, it does show the strong public policy preference for these facilities which I believe only strengthens in the circumstances of this case the presumption of appropriateness associated with this use.

THEREFORE, IT IS ORDERED this 5th day of **December, 2018**, by this Administrative Law Judge, that the Petition for Special Exception pursuant to Section 4E-102 of the BCZR for a Solar Facility, 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. Petitioners must comply with the ZAC comments of the Bureau of DPR, DOP & DEPS, copies of which are attached.
3. No signage or lighting shall be installed at the site in connection with the solar facility.
4. No deliveries to or maintenance of the solar facility shall occur between the hours of 6:00 PM – 7:00 AM.

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12/5/18

By

Sen

5. Petitioners must submit for approval by Baltimore County a landscape plan which satisfies the requirements set forth in the Landscape Manual and BCZR §4E-104.A.6.
6. Any expansion, enlargement and/or relocation of the solar facility as shown on the green lined site plan admitted herein as Petitioners' Ex. 10 shall require a public hearing before the OAH.

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 12/5/18

By sln

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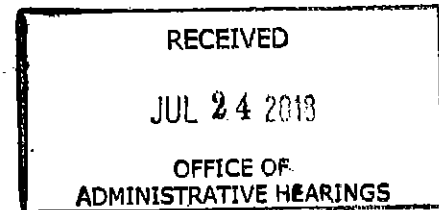
BALTIMORE COUNTY, MARYLAND INTER-OFFICE MEMORANDUM

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: July 18, 2018

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 17-107



INFORMATION:

Property Address: 5298 Frye Road
Petitioner: Glen Elseroad, Woodensburg Land and Cattle Company, LLC
Zoning: RC 2
Requested Action: Special Exception

The Department of Planning has reviewed the petition for special exception to use the property for solar panel array field as a public utility use.

A site visit was conducted on November 2, 2016. Hanover Pike is a designated Baltimore County Scenic Route. The subject site is located within an Agricultural Priority Preservation Area and is also subject to the Hanover Pike Corridor Study, adopted by the Baltimore County Council April 19, 1993.

The Department has no objection to granting the petitioned zoning relief conditioned upon the following:

- Pursuant to BCZR §502.1.A, petitioners shall demonstrate to the satisfaction of the Administrative Law Judge that the facility will not be detrimental to the adjacent residential properties as a result of glare emanating from the facility.
- Petitioners shall note on the plan that the proposed solar facility will be subject to BCZR §4F-107.
- Petitioners shall certify by note on the plan that the proposed solar facility will not exceed the maximum permitted number of facilities allowed in its respective councilmanic district. If approved, Petitioners shall submit to this Department at the time of building permit application the final fixed location and area of the facility by coordinate data so that an inventory may be kept.
- Lighting shall be limited to what is required for security purposes only and will be sited in such a way as to have minimal spillage onto neighboring properties.
- Signage shall be limited to that which is necessary for safety and security purposes.
- No deliveries or outdoor maintenance which may generate excessive noise may occur on-site between the hours of 6 P.M. through 6 A.M.
- Indicate on the plan the means and location by which the solar facility connects to the power grid and whether grading or clearing will be involved.

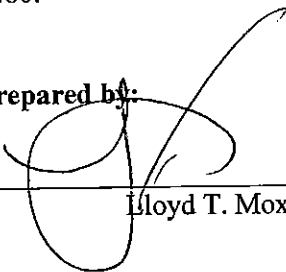
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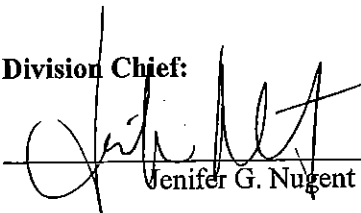
- Protect the Hanover Pike Scenic Route by (a) planting a vegetative screening consisting of mixed indigenous hardwood and evergreen trees and shrubs along Hanover Pike to a depth that fully screens the solar panels and (b) retaining the woods on the top of the northern portion of the property to protect the distant scenic view from Hanover Pike.

Be advised that the site is within an Agricultural Priority Preservation Area as designated in the Baltimore County Master Plan 2020 (MP2020). Said plan warns that *"incremental development continues to threaten the protection of resources and the viability of the agricultural industry."* (MP2020 pg.92). The Department recommends that the future viability of commercial agriculture in Baltimore County be weighed when considering this special exception proposal within the context of 502.1.G. For further information concerning the matters stated herein, please contact Wally Lippincott at 410-887-3480.

Prepared by:


Lloyd T. Moxley

Division Chief:


Jennifer G. Nugent

AVA/KS/LTM/ka

c: Wally Lippincott
James Hermann, R.L.A., Department of Permits, Approvals and Inspections
David H. Karceski, Esquire
Office of the Administrative Hearings
People's Counsel for Baltimore County

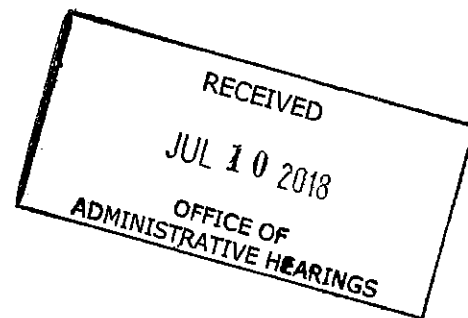
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Date 12/5/18
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BALTIMORE COUNTY, MARYLAND

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: July 10, 2018

SUBJECT: DEPS Comment for Zoning Item # 2017-0107-X-AMENDED
Address 5298 Frye Road
(Woodensburg Land & Cattle
Company, LLC Property)

Zoning Advisory Committee Meeting of July 25, 2018

X The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

X Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

X Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Additional Comments:

Reviewer: Glenn Shaffer

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Date

12/5/18

By

Sen

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

FROM: ^{For EFC} Vishnu Desai, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For June 25, 2018
Item No. 2017-0107-X

DATE: July 12, 2018

The Bureau of Development Plans Review has reviewed the subject zoning items and we have the following comments.

If Special Exception is granted, a Landscape Plan is required per the requirements of the Landscape Manual, Bill No. 37-17 and the CMDP. Specific landscape comments:

1. Hanover Pike is a Baltimore County Scenic Route,
2. Perimeter landscape buffers are required,
3. Must minimize tree and vegetation removal,
4. Solar panels are considered a utility and should be designed and located to harmonize with the surroundings and to create the least visual impact. (See Comment # 8, 9, & 10 below),
5. Additional landscape buffers (including contour strip buffers) may be required to address existing topography changes, Scenic Views, Scenic Routes, etc. depending on a number of items including the subject properties topography,
6. More comments may be rendered during review of the landscape plan,
7. Proposed perimeter fence shall be black vinyl-coated chain-link fence,
8. Proposed landscape screening should begin at or near the intersection of Frye Road, north to the property line of 14619 Hanover Pike, consideration of existing topography should be considered to assure screening of the solar array field from Hanover Pike views.
9. 14525, 14531, 14533 and 14619 Hanover Pike are adjacent properties that need to be reviewed for possible landscape screening to be designed and installed between their properties and the proposed solar facility.
10. Additional landscape and screening may be needed to address adjacent properties views when it relates to the proposed solar facility.

During the review of this property the Department of Public Works has found that there is a riverine flood plain on this property that may impact the proposed development. A flood plain study of this property must be submitted for verification of the flood plain boundary. Once the flood plain boundary has been established, the Building Code requirements for riverine flood plain and the Department of Public Works Design Manual Plate DF-1 requirements should be observed.

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Date

12/5/18

By

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PETITION FOR SPECIAL EXCEPTION * BEFORE THE
 Glenn & Ruth Elseroad * OFFICE OF
Legal Owners
 SGC Power, LLC * ADMINISTRATIVE HEARINGS
Lessee
 * FOR
 5298 Frye Road *
 E/s Hanover Pike, 2687 ft. at the corner * BALTIMORE COUNTY
 of *
 Not Frye Road * Case No.: 2017-0107-X
 4th Election District *
 3rd Councilmanic District



* * * * *

WRITTEN MEMORANDUM IN LIEU OF CLOSING ARGUMENT

Woodensburg Land and Cattle Company, LLC and SGC Power, LLC (hereinafter collectively "**Petitioners**"), 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:

STATEMENT OF THE CASE AND FACTUAL BACKGROUND

This matter comes before the Office of Administrative Hearings as a Petition for Special Exception to permit a solar facility in an RC 2 zone. The Petition was originally filed by Woodensburg Land and Cattle Company, LLC ("Property Owner" or "Woodensburg") and SoCore Energy ("Applicant" or "SoCore"), through their counsel, Venable, LLC. The principles in Woodensburg are Glenn and Ruth Elseroad, long time farmers and residents in the community in which the subject property is located. SoCore is a Chicago based energy company which develops, among other energy uses,

solar facilities. Subsequent to the filing of the original petition and before any public hearing was conducted, Woodensburg terminated its contractual relationship with SoCore and Venable LLC, and entered into another/replacement contract with SGC Power, LLC (hereinafter "SGC"). SGC and Woodensburg retained the undersigned counsel. The matter then proceeded forward to a hearing on an amended petition, which essentially replaced SoCore as applicant with SGC. Both SGC and SoCore are entities that construct and/or operate solar facilities.

The matter first came in for hearing on September 11, 2018 before Administrative Law Judge (ALJ) John E. Beverungen but the hearing could not be concluded on that day. The hearing was concluded on the second hearing date of November 16, 2018. Testimony was offered in support of the petition by Jack Copus and Richard Gilker (both employees of SGC), Stacey McArthur (Registered Landscape Architect with D.S. Thaler and Associates), Glenn Elseroad (principle in Woodensburg) and Henry Leskinen (environmental expert with Eco-Science). Several residents of the area also testified in opposition and were represented by G. Macy Nelson, Esquire.

A review of the testimony and evidence offered establishes the following. The subject property is an unimproved property known as 5298 Frye Road, located near Maryland Rte. 30 (Hanover Pike) in northwestern Baltimore County. Hanover Pike is a scenic route as designated in the Baltimore County Master Plan 2020. The property is zoned RC 2 and is approximately 19.68 acres in net area. The property had historically been farmed but is presently vacant. Pursuant to a long term lease with Woodensburg, SGC proposes to construct and operate a solar facility on the subject property.

As the ALJ is no doubt familiar from other cases that have come before him, solar energy is a renewable energy source, whose development and use is encouraged by the State of Maryland. In 2016, Maryland passed House Bill 1087, titled "Electricity - Community Solar Energy Generating System Program," which established a pilot program for community solar energy systems. In May of 2016, the Maryland Public Service Commission finalized regulations to guide the process for developing solar facilities throughout the State. The regulations for the community solar pilot program in Maryland became effective on July 18, 2016. The statutory and regulatory schemes for the community solar pilot program are set forth in Section 7-306.2 of the Public Utilities Article and in Subtitle 62 of Title 20 of COMAR. As such, solar energy is to be utilized as an alternative to the use of fossil fuels and is to comprise 2.5% of the State's energy use by 2021. Petitioner's proposed project is part of the community solar pilot program. The energy produced by the proposed facility will be fed into the adjacent power grid maintained by BGE. The connection to that grid will be by way of a feed into an adjacent power line located along Hanover Pike, as more particularly shown on the green-lined plan (Petitioner's Exhibit 10). The amount of energy fed into the grid will be monitored by BGE and used by subscribers to the program. As required by Baltimore County, the subject facility will generate less than two megawatts (See Baltimore County Zoning Regulations "BCZR" 4F-102).

The technology of capturing the sun's energy and converting it to electricity by way of a "solar farm" or "solar facility" is governed in Baltimore County (from a zoning perspective) pursuant to § 4F-101 et. seq. of the BCZR. This section was added to the

BCZR pursuant to the enactment of Bill 37-17 by the County Council, effective July 17 2017. The instant amended petition is brought pursuant to that section.

Prior to the enactment of Bill 37-17, there was no specific provision in the BCZR which regulated solar facilities. Given the lack of any specific regulation, such proposals were considered in several cases as “public utility uses” by the Office of Administrative Hearings. However, the enactment of Bill 37-17 added specific regulations for such uses to the BCZR and the instant petition is subject to the requirements thereof.

STANDARD OF REVIEW

As with any special exception, the subject request must be adjudged in accordance with the provisions of BCZR § 502.1 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 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 the 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, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.[”]

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).

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 *Schultz*, “[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.* at 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 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 body 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 ALJ is guided by the special exception factors listed in § 502 of the BCZR with special attention placed upon whether 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 petitioner (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).

ARGUMENT

1. The Proposed Solar Facility Satisfies 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 facility here is minimal. More importantly, the impacts (to whatever degree they even exist) are no more impactful here than elsewhere in the zone.

a. § 502.1 (a) The Proposed Solar Facility Will Not 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. Petitioners presented ample evidence that the grant of a special exception for the requested solar facility will not be detrimental to the health, safety or general welfare of the locale.

Insofar as the scenic view issue, Hanover Pike at this location is a scenic route and is designated as such in the Master Plan 2020. 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. 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, Stacey McArthur, Petitioner presented the manner by which the development guidelines set forth in the CMDP were incorporated in the landscape plan that is pending approval by the County. The landscape plan that was prepared by Ms. McArthur was designed taking into consideration the CMDP, the County Landscape manual and the provisions of Bill 37-17. Through a mix of trees and vegetation, the view of the facility will be softened. Given the existing and proposed vegetation/landscaping, as well as the existing topography, the impact on the scenic route, and the view from Hanover Pike is minimal. Moreover, there is nothing in the CMDP which prohibits a solar facility use adjacent to a scenic byway.

b. § 502.1 (b) – The Proposed Solar Facility Will Not Tend To Create Congestion In The Roads, Streets Or Alleys Therein.

Based on the uncontroverted evidence, the proposed solar facility will generate minimal/no traffic. This is an unmanned facility. During operations, Petitioners anticipates limited traffic (2-3 times a year) to and from the subject property. As such, there is no “adverse impact” in this regard.

c. § 502.1(c) – The Proposed Solar Facility Will Not Create A Potential Hazard From Fire, Panic Or Other Danger.

The solar facility will not create any hazards as it relates to fire, panic, or other danger. The arrays do not “catch fire” and they are setback a significant distance from the property line and any buildings on adjacent properties. The proposed solar facility meets all area requirements and needs no setback variances. The panels are built to all

applicable building and fire codes promulgated by the industry. The activity on the property is such that it will not create a panic or public nuisance.

d. § 502.1 (d) – The Proposed Solar Facility Will Not Tend To Overcrowd Land And Cause Undue Concentration Of Population.

The solar panels will not overcrowd 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.

e. § 502.1 (e) – The Proposed Solar Facility Will Not Interfere With Adequate Provisions For Schools, Parks, Water, Sewage, Transportation And Other Public Requirements, Conveniences Or Improvements.

Surely the solar facility 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.

f. § 502.1 (f) – The Proposed Solar Facility Will Not Interfere With Adequate Light And Air.

The proposed solar facility 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 builder and the motors which rotate the arrays) was described as conversational and will be overwhelmed by traffic by Hanover Pike.

g. § 502.1 (g) – The Proposed Solar Facility Is Consistent With The Purpose Of The Property's Zoning Classification And Is Consistent With The Spirit And Intent Of These Zoning Regulations.

Simply stated, there is no adverse impact. The solar facility is not "inconsistent with the spirit and intent of these zoning regulations." Solar facilities are permitted 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*, *infra*).

h. § 502.1 (h) – The Proposed Solar Facility Is Consistent With The Impermeable Surface And Vegetative Retention Provisions Of These Zoning Regulations.

There is no impact under this criterion. The arrays are ground mounted. They sit on a pole on the ground. There will be grass underneath to allow for the infiltration of rain/snow. During the development/permitting phase of the review of this project, the applicant will be required to submit a plan in compliance with the storm water management guidelines that have been promulgated for solar facilities.

i. § 502.1 (i) – The Proposed Solar Facility Will Not 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 or impact the underground water table. As this is an unmanned operation, the solar panels are cleaned off by rain water, which is an intentional design component in order to limit maintenance of this unmanned system. The proposed solar facility will follow approved storm water management guidelines that have been developed by the State for solar facilities. Additionally, there is no impervious surface but for the mounts. Under the panels, vegetation will be provided that will occasionally be mowed and which will absorb rainfall.

Protestants' Counsel incorrectly argued that the project plan could not be approved because portions of the proposed solar panel field were located within a

stream and the required buffer imposed by Baltimore County to protect such an environmental resource. As a basis for this position, he produced the site plan (Protestants Exhibit 1) prepared by Gavin Chase Meinschein, PE on behalf of SoCore in the initial filing in this matter. Such plan erroneously showed a stream on the site. The plan not only depicted a stream that does not exist, but showed required "buffers" to the stream which are improperly calculated and not compliant with the applicable County law. Clearly, the engineer was not familiar with either the property or the County's environmental requirements.

In rebuttal to that plan, Petitioner's environmental consultant, Henry Leskinen, testified on the second hearing date and fully addressed this issue. He testified that he had personally walked the property and conducted an environmental assessment. He described a swale being located within the interior of the property which he described as common in many farm fields. Particularly, given the lack of ground cover when a farm field is not in an active growing season, many farmers implement a swale to control water run off during rain and snow events. Swales are not streams, and thus are not an environmental resource that mandates protection. Mr. Leskinen's opinion and assessment, which contradicted the faulty initial plan, was reviewed and approved by Baltimore County Department of Environmental Protection and Sustainability. As such, there is simply no issue in this regard.

2. The Proposed Solar Facility Satisfies BCZR 4F-104

BCZR 4F-101 (et seq.) provides that solar facilities are permitted in the RC 2 zone by special exception and sets out the requirements for such facilities. Specifically, there

are a series of criteria set out in BCZR 4F-104 which the proposed use satisfies. There appears to be no dispute that the proposal meets the following requirements of the applicable zoning ordinance:

1. The subject property is not encumbered by an agricultural preservation easement, an environmental preservation easement or a rural legacy easement.
2. The subject property is not located in a Baltimore County Historic District, nor is it listed on the Baltimore County Final Landmarks List.
3. The subject property is not encumbered by a forest conservation easement.
4. The components (i.e. the solar panels/arrays and equipment box/inverter) of the solar facility are located at least fifty (50) feet from the tract boundary.
5. The panels (structures) are less than 20 feet in height (the panels are approximately eight feet high).
6. A landscaping buffer around the "perimeter" of the property is provided.
7. Security fencing is provided.
8. The solar panels are "designed and located in an arrangement that minimizes glare or reflection onto adjacent properties and roadways." Moreover, the panels (from a visual perspective) will not "interfere with traffic or create a safety hazard."
9. There have not been ten (10) such facilities approved in the Third Council District.

a. The Subject Property Is Not Encumbered By An Agricultural Preservation Easement, An Environmental Preservation Easement Or A Rural Legacy Easement.

The Petitioners presented ample evidence and there is no dispute that the subject property is not encumbered by an agricultural preservation easement, an environmental preservation easement or a rural legacy easement.

b. The Subject Property Is Not Located In A Baltimore County Historic District, Nor Is It Listed On The Baltimore County Final Landmarks List.

The Petitioners presented ample evidence and there is no dispute that the subject property is not located in a Baltimore County Historic District, nor is it listed on the Baltimore County Final Landmarks List.

c. The Subject Property Is Not Encumbered By A Forest Conservation Easement.

The Petitioners presented ample evidence and there is no dispute that the subject property is not encumbered by a forest conservation easement.

d. The Components (i.e. the solar panels/arrays and equipment box/inverter) Of The Solar Facility Are Located At Least Fifty (50) Feet From The Tract Boundary.

The Petitioners presented ample evidence and there is no dispute that the components (i.e. the solar panels/arrays and equipment box/inverter) of the solar facility are located at least fifty (50) feet from the tract boundary. There are no zoning variances requested or required.

e. The Panels (structures) Are Less Than 20 feet In Height.

The Petitioners presented ample evidence and there is no dispute that the solar panels are less than 20 feet in height. The proposed solar panel heights range from 4-7 feet depending on the time of day, as these systems are movable "tracking" modules that rotate with the position of the sun and will be surrounded by a fence and significant vegetative screening to protect the existing view corridor.

f. A Landscaping Buffer Around The "Perimeter" Of The Property Is Provided.

The Petitioner's have submitted into evidence a landscape plan (Petitioner's Exhibit 4), that they aver meets the requirements of the law. The plan was prepared by Stacy McArthur, a qualified Registered Landscape Architect. She testified, without contradiction, that the plan meets the requirements of the BCZR 4F-104.A.6, the Comprehensive Manual of Development Policies (CMDP) and the County's Landscape Manual. Protestants apparently contend that the plan must be approved by the

County's Landscape Architect prior to approval of the Petition for Special Exception by the ALJ. Such a contention is wrong and contrary to the provisions of law and prior practice of the ALJ. The ALJ can impose conditions upon the grant of special exception relief (BCZR § 502.2) and in fact has conditioned the approval of other special exceptions for other solar facilities by requiring that a landscape plan be thereafter approved (Case No. 2016-0335-SPHX; Case No. 2018-0072-X). The Petitioner has no control over the schedule and review of the plan by the County's Landscape Architect, James Hermann. He will review the plan when he reviews it. The evidence in the record of this case is that a Registered Landscape Architect (Stacey McArthur) who is well familiar with the requirements of law has prepared a plan and opined that it is compliant with the applicable standards. Like many "Phase Two" issues, this will ultimately be resolved before any permits for construction are issued.

g. Security Fencing Is Provided.

The Petitioners presented ample evidence and there is no dispute that security fencing is provided. As indicated on the site plan, security fencing is proposed around the solar facility. This will be a detail within the landscape plan.

h. The Solar Panels Are "Designed And Located In An Arrangement That Minimizes Glare Or Reflection Onto Adjacent Properties And Roadways." Moreover, The Panels (from a visual perspective) Will Not "Interfere With Traffic Or Create A Safety Hazard."

During the first day of the ALJ hearing, Petitioners submitted a glare analysis and provided testimony that glare will be minimized and not interfere with traffic or create a safety hazard. Solar panels are designed to absorb as much light as possible and

utilize anti-reflective coatings to reduce the possibility of light reflection. As testified to by Jack Copus, the orientation of the panels and proposed landscaping will minimize any potential for glare exposure. Protestants produced no evidence to the contrary.

It should be noted that on the second hearing day, Petitioners attempted to produce another witness to further explain the glare analysis. This was because Mr. Copus had candidly testified that he had not personally prepared the glare analysis and had been unable to answer certain questions of Protestants' counsel on cross-examination. However, such testimony was not permitted as rebuttal because Protestants produced no evidence contradicting the minimized glare effects. Importantly, this same type of solar panel has been installed at airports and racetracks, indicating minimal glare effects. There was no evidence presented that improper levels of glare would be produced and no evidence submitted to refute the conclusions expressed by Mr. Copus and the written analysis.

3. The Proposed Solar Facility Satisfies BCZR § 1A01.2C

Although the primary special exception criteria applicable to this case are found in BCZR § 502.1 and BCZR 4F-101, there is another provision of the BCZR that is relevant. 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. Solar facilities have become a common sight on farms throughout the country devoid of any adverse agricultural impacts. There are no impacts of this use which harm crops or farm animals. The State would not be incentivizing this type of

project if there was a concern about adverse impacts to agriculture. Additionally, many farmers in the locale are interested in purchasing energy from the subject property so as to reduce energy costs.

Solar facilities are unmanned and do not generate noise, odor, traffic, or any other adverse impacts and will not impair the use of the neighboring agricultural properties. The solar facility will be screened and fenced with quality planting and materials in compliance with the requirements imposed by the Baltimore County Landscape Architect. The proposed community solar farm will provide financial stability to farm operations as solar power generated will be utilized to power farm operation, with excess to be distributed to the surrounding community, providing additional supplemental income that will be reinvested into the farm operation at a time when it is becoming more and more challenging for farms to make money and stay viable.

PROTESTANTS' ISSUES

Although Petitioner avers that this proposal easily meets each and every required element for special exception approval, a brief discussion of the "issues" raised through the Protestants' testimony is presented.

1. Bill 37-17.

During Protestants Counsel's questioning of witnesses at the hearing, it became quite evident that some residents of the rural areas of Baltimore County (the Protestants among them) do not believe that solar facilities should be permitted in the RC zones. Indeed, the Councilman who represents the County's Third Councilmanic District

(Wade Kach) has repeatedly and publicly voiced opposition to such facilities in the district that he represents. Prior to the passage of Bill 37-17, he introduced multiple legislative bills before the Council seeking strict limits on the construction of solar facilities in the County's rural areas. However, none of these bills became law. The Bill which became law is Bill 37-17 and (obviously) that is the law under which the Petitioners must seek relief and the ALJ must apply. Notwithstanding Protestants objections, the issue in this case is not whether Bill 37-17 is "good legislation", but whether the proposal meets the legal requirements set out in that law. As has been often stated by the ALJ and Board of Appeals during the conduct of hearings regarding solar facilities permitted by special exception in Bill 37-17; the ALJ/OAH and Board of Appeals are quasi-judicial bodies that apply and interpret legislative acts by the County Council. The OAH and Board of Appeals are not legislative bodies and, simply stated, they do not make the law. If the Protestants do not like the provisions of Bill 37-17, then their redress is with the County Council and not through opposition in this case.

2. The Protestants "Topography Argument"

There was repeated testimony from the Protestants that the topography of this property and immediate area was somehow unique and that Bill 37-17 allowed for a denial based thereon. As an initial matter, the topography at the subject site is not unusual and is typical of the topography in the neighborhood and throughout the rural areas of Baltimore County. Unlike, for example, the Eastern Shore of Maryland (which is flat in its topography), Baltimore County has rolling hills, ridges and grade changes throughout the rural (RC zoned) areas. There is nothing unusual about this subject

property or view. The rolling topography of the subject property is no different than found throughout the County.

Significantly, contrary to Protestant's arguments, BCZR 4F-104 does not permit the ALJ to **deny** a petition based on topography. Rather BCZR 4F-104 provides:

"In granting a special exception, the Administrative Law Judge, or Board of Appeals on appeal, may impose conditions or restrictions on the solar facility use as necessary to protect the environment and scenic views, and to lessen the impact of the facility on the health, safety, and general welfare of surrounding residential properties and communities, taking into account such factors as the topography of adjacent land, the presence of natural forest buffers, and proximity of streams and wetlands." Emphasis added.

As such, if the ALJ finds that the topography is unique, then the ALJ may impose certain conditions or restrictions lessen the impact of the solar facility. In this case, the proper condition to be imposed is a requirement that a landscape plan be approved. As noted above, that plan has been designed to soften and mitigate the view, and takes into account the topography of adjacent land, the presence of natural forest buffers (both on the subject property and adjacent lands) and other environmental features in the area.

3. No Right To A View

During the hearing, Protestants testified that the Petition should be denied because the Protestants "view" will be "lost." Contrary to Protestants' claims, BCZR 4F-104, CMDP nor the Landscape Manual require that the solar facility be invisible. Rather, BCZR 4F-104 mandates that the panels be "designed and located in an arrangement that minimizes glare or reflection onto adjacent properties and roadways."

The requirement is not to "eliminate", but "minimize". As the ALJ correctly articulated in Case No. 2018-0078-X:

"Solar panels certainly do not improve the view shed in a rural area; a forest or open field would have more aesthetic appeal. But the County Council recently enacted legislation (Bill 37-17) which permits such facilities in the RC zones, and the petition cannot be denied based on aesthetics. In special exception parlance, the lack of visual appeal is an inherent negative impact of the use, and the Council is presumed to have been aware of this when it enacted the legislation."

Protestants have failed to provide proof that the solar facility use would have non-inherent impacts at this location.

Moreover, as is well settled, there is no legal right to a view. The Protestants have no right to dictate how this property may be used or what the owner might do with it. The property owners could decide to plant large evergreen trees around the perimeter of the site, build a fence or take other measure that would alter the current view shed. This is their right as owners and the Protestants have no legal basis to interfere with the owners' use. The panels themselves are low (less than ten feet high) and the visual impact (given the landscaping) will be minimal.

4. Frye Road Ownership

As stated earlier, the subject property is an unimproved property known as 5298 Frye Road, located near Maryland Rte. 30 (Hanover Pike). In order to access the property, Petitioners utilize a small strip of driveway which is connected to Frye Road. During the hearing, Protestants Counsel questioned the Petitioners' access and use of Frye Road, arguing certain limitations on the driveway. The strip was created by and through a deed dated December 23, 1992, and recorded among the Land Records of

Baltimore County in Liber 9651 at folio 091. At the time, Charles C. Campbell owed several properties (including the subject property) and created the driveway strip in anticipation of selling off lots, by which the owners of those lots would have use of the driveway in order to access their properties. As such, there is no prohibition in the 1992 deed (which created the driveway strip) as to its use, and Petitioners may continue to access the subject property via the driveway strip. The existence of this driveway and rights to it are also referred to in the deed by which Petitioners acquired the subject property, which is recorded among the Land Records of Baltimore County in Liber 029357 at folio 077.

CONCLUSION

The use of land in the agricultural areas of Baltimore County for solar facilities is obviously a debated subject. There are many that believe the environmental advantages of solar power are significant and will provide a lasting societal benefit. Others argue that such facilities detract from the agricultural character of the north County. But whatever side is taken, the forum to debate this issue is in the County Council and not before the ALJ. At this time, the Council has decided that solar facilities, under prescribed conditions, are a presumptively proper and appropriate land use in the RC 2 zone. The conditions required are met here. This proposal meets the requirements set forth in the BCZR. Notwithstanding 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 Petitioners request that the ALJ grant the relief requested within its Petition for Special Exception filed herein.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this _____ day of November, 2018, a copy of the foregoing Memorandum was mailed, postage pre-paid, to:

G. Macy Nelson, LLC
401 Washington Avenue
Suite 803
Towson, MD 21204
Counsel for Protestants

Peter Zimmerman
People's Counsel for Baltimore County
105 West Chesapeake Avenue, Room 204
Towson, MD 21204
People's Counsel


LAWRENCE E. SCHMIDT



IN THE MATTER OF:

5298 Frye Road

E/s Hanover Pike, 2687 ft. at the

corner of Not Frye Road

4th Election District –

3rd Councilmanic District

Legal Owners: Glenn & Ruth Elseroad *

Contract Purchaser/Lessee: Bruce Wilson *

Authorized Rep of SGC Power, LLC *

BEFORE THE

ADMINISTRATIVE LAW JUDGE

OF BALTIMORE COUNTY

CASE NO. 2017-0107-X

* * * * *

Memorandum of Protestants

Parties

Glenn S. Elseroad (“Applicant”) applied for a special exception for a solar facility. Timothy Fales, Elizabeth Fales, Santo Mirabile, Debra Mirabile, Patrick Fales, Thanikan Fales, Paul Merritt, Melissa A. DePinho, Patrick Little, Sandra M. Brown, James C. Wolf and Juli R. Wolf (collectively, “Protestants”) oppose the application.

Facts

The Applicant proposes to construct a solar facility on approximately 20 acres of land located at 5298 Frye Road (“Subject Property”). The Subject Property’s north side, east side, and south-east side are between forty and seventy feet higher than its center. (Protestants’ Exhibits 4-10). The low point of the Subject Property is a northeast/southwest line through the Subject Property. *See* elevations on Petitioner’s Exhibit 10. Overall, the ground slopes downward in a south-westerly direction. The rising elevation on each side of the northeast/southwest line creates the bowl shape of the terrain. An aerial photograph (Protestants’ Exhibit 2) shows a line of vegetation along this line and Mr. Elseroad testified that water flows there.

Jonathan Copus, a representative of SGC Power, LLC, testified that the Subject Property is an attractive site for a solar facility because it includes an appropriate amount of cleared land with a southern exposure and is close to an existing power line.

Hanover Pike abuts the western boundary of the Subject Property. The BALTIMORE COUNTY MASTER PLAN 2020 (“BCMP”) designated Hanover Pike as a Scenic Route. BCMP, 100. *See also* Zoning Advisory Committee Comments, November 22, 2016; Interoffice Correspondence, July 12, 2018; and Interoffice Memorandum, July 18, 2018.

The Department of Planning recognized that the Subject Property is “subject to the Hanover Pike Corridor Study, adopted by the Baltimore County Council April 19, 1993. Zoning Advisory Committee Comments, November 22, 2016. The Department of Planning explained further:

The Hanover Pike Corridor Study identifies the retention of rural character as an issue of concern (Page 4) wherein a stated goal is to “Maintain the rural integrity and character of the Hanover Pike Corridor” (Page 5). The Study further lists specific design guidelines (Pages 34-41) for development along Hanover Pike. The Baltimore County Comprehensive Manual of Design Policies (CMDP) also establishes guidelines for development along Baltimore County Scenic Routes to include “maintain a buffer between the road and the new development” (Page 180) and to “site development in relation to the natural contours. Avoid placing structures on the tops of prominent ridges” (Page 182).

(Zoning Advisory Committee Comments, November 22, 2016). *See also* Zoning Advisory Committee Comments, July 18, 2018).

Protestants presented evidence that occupants in vehicles driving on the Hanover Pike scenic route have, and will have, a direct view of the Subject Property due to its

elevation. The mature trees on the Mirabile property do not screen all of the Subject Property even when there are leaves on the trees. When those trees lack leaves for large portions of the year, any partial screening they may provide is rendered ineffective. Other large portions of the Subject Property slated for solar installation are clearly visible and completely unobstructed from views on Hanover Pike, even though mature trees are present, due to the topography and sheer height differential of the Subject Property as compared to Hanover Pike. Any new tree or other planting of a reasonable height will not effectively screen the view of the solar facility from Hanover Pike due to the elevation of the Subject Property.

Elizabeth and Timothy Fales own and reside at 14619 Hanover Pike, which abuts the northwest corner of the Subject Property. Their property is on the top of the slope overlooking the north side of the Subject Property. (Testimony of Timothy Fales). Timothy Fales testified that he has a direct view of the Subject Property because his property is higher than and overlooks the Subject Property. (Protestants' Exhibits 6 and 7). Any new tree or other planting of a reasonable height will not effectively screen the view of the solar facility from 14619 Hanover Pike due to the elevation of the Subject Property.

Thanikan and Patrick Fales own and reside at 14533 Hanover Pike, which abuts the northeast corner of the Subject Property. Patrick Fales testified that he has a direct view of the Subject Property because his property is higher than and overlooks the Subject Property. (Protestants' Exhibits 8 and 9.) Any new tree or other planting of a

reasonable height will not effectively screen the view of the solar facility from 14533 Hanover Pike due to the elevation of the Subject Property.

Debra and Santo Mirabile own and have begun the homebuilding process for their new primary residence at 14525 Hanover Pike. They also own 14517 Hanover Pike, which abuts the western boundary of 14525 Hanover Pike and the southern border of the Subject Property. They have a direct view of the Subject Property from both 14525 and 14517 Hanover Pike. Any new tree or other planting of a reasonable height will not effectively screen the view of the solar facility from 14517 and 14525 Hanover Pike due to the elevation of the Subject Property. (Testimony of Santo Mirabile, Debra Mirabile; Protestants' Exhibits 4 and 5.)

Paul Merritt and Melissa A. DePinho own 14527 Hanover Pike, which is on the Subject Property's eastern boundary. They have a clear view of the proposed site during three quarters of the year, when vegetation is not on the trees. Any new tree or other planting of a reasonable height will not effectively screen the view of the solar facility from 14527 Hanover Pike due to the elevation of the Subject Property.

Sandra M. Brown owns 5135 Frye Road. James C. Wolf and Juli R. Wolf own 5133 Frye Road. Each property is in close proximity to the Subject Property.

There is a wetland at both ends of the low-lying northeast/southwest line through the Subject Property. (Testimony of Henry Leskinen of Eco-Science Professionals, Inc.) Mr. Elseroad, the owner of the Subject Property, described large quantities of clean water flowing through this area. The Applicant's first engineer, SoCore Engineering, described the area between the two wetlands as an "intermittent stream." (Protestants' Exhibit 1).

Aerial photographs show a line of vegetation in the area where Mr. Elseroad testified there was flowing water and where SoCore depicted the “intermittent stream.” (Protestants’ Exhibit 2). The Department of Public Works wrote that it “found that there is a riverine flood plain on the property....” Inter Office Correspondence, November 18, 2016. The Bureau of Development Plans Review wrote, “A flood plain study must be submitted for the verification of the flood plain boundary.” Interoffice Correspondence, July 12, 2018.

Mr. Leskinen described the same area as a swale, not an intermittent stream. Mr. Leskinen testified that water flowed through the swale only in rain events and that the swale lacked hydric soils. Mr. Leskinen testified that the County approved his wetland delineation.

The Subject Property is zoned RC-2 and is in northern Baltimore County’s agricultural area. The Department of Planning addressed the agricultural issue:

Be advised that the site is within an Agricultural Priority Preservation Area as designated in the Baltimore County Master Plan 2020 (MP2020). Said plan warns that “*incremental development continues to threaten the protection of resources and the viability of the agricultural industry.*” (MP2020 pg. 92). The Department recommends that the future viability of commercial agriculture in Baltimore County be weighed when considering this special exception proposal within the context of 502.1.G.

(Zoning Advisory Committee Comments, July 18, 2018).

Planning Staff was aware of the Subject Property’s location adjacent to the Hanover Pike scenic route and of the Subject Property’s topography. Staff addressed the requirement that the Applicant screen the view of the solar facility from Hanover Pike:

Protect the Hanover Pike Scenic Route by (a) planting a vegetative screening consisting of mixed indigenous hardwood and evergreen trees and shrubs **along Hanover Pike to a depth that fully screens the solar panels** and (b) retaining the woods on the top of the northern portion of the property to protect the distant scenic view from Hanover Pike.

(Zoning Advisory Committee Comments, November 22, 2016 and July 18, 2018)
(emphasis supplied).

Planning Staff was aware that the topography of Subject Property made it difficult to screen the solar facility in accordance with the requirements of the law. Staff stated, "Additional landscape buffers (including contour strip buffers) may be required to address existing topography changes, Scenic Views, Scenic Routes, etc." (Interoffice correspondence, July 18, 2018).

Planning Staff also addressed the landscaping issue regarding only two of the adjacent properties:

- Retain the existing woods between the location of the proposed solar panels and the residential property located at 14533 Hanover Pike.
- Provide a vegetative screening consisting of mixed indigenous hardwood and evergreen trees and shrubs between the security fence and the residential property located at 14619 Hanover Pike.

Inter-Office Memorandum, November 22, 2016. Planning Staff did not address the screening of the view of the solar facility from the Mirabile property, 14517 and 14525 Hanover Pike.

Stacey McArthur prepared the landscaping plan for the Applicant. She testified that the plan included a perimeter screen which would "soften," but not fully screen, the view of the solar facility. She acknowledged there will be locations from which one will

be able to see the solar facility from the adjoining properties. *See* Protestants' Exhibit 3. She testified that the County's representative had raised the subject of contour strip buffers. Ms. McArthur stated that she relied, in part, on the forest stand located on the Mirabile property to screen the facility from Hanover Pike scenic route.

Counsel for the Applicant informed the ALJ that Jim Hermann of Baltimore County had not yet approved the landscaping plan. Counsel said, in effect, that, "we will have to work that out." Counsel argued that the ALJ should approve the special exception conditioned on the County's approval of the landscaping plan.

Protestants presented evidence that they met with members of the County Council while the Council was considering the bill that became Baltimore County Zoning Regulations ("BCZR"), section 4F-104. On June 5, 2017, after Council members Wade Kach and Vicki Almond inspected the Subject Property, Councilwoman Almond introduced Bill No. 37-17, which included the requirement that topography be considered. Other versions of the code, Bill No. 68-16 (November 9, 2016), Bill No. 95-16 (December 19, 2016), Bill No. 9-17 (February 6, 2017), and Bill No. 13-17 (March 20, 2017), Bill No. 38-17 (June 5, 2017) do not address topography. (Bills attached as Exhibit A).

Applicable Law

The BCZR allow a solar facility in the RC-2 zone by special exception if the application satisfies the requirements of BCZR, sections 4F-104 and 502.1

Hanover Pike is a Scenic Route. The BCMP includes a series of "Actions" to further the policy of preserving scenic routes. Action 9 states: "**For properties along**

scenic routes or within scenic viewsheds, variances, amendments, and special exceptions should be granted sparingly.” (emphasis supplied). BCMP, 101.

Argument

- I. **The Administrative Law Judge (“ALJ”) should disapprove the Application for the special exception because the Application does not comply with BCZR, section 4F-104(A)6.**

BCZR, section 4F-104(A)6 provides:

A solar facility located in an R.C. Zone is subject to the following requirements:

6. A landscaping buffer shall be provided around the perimeter of any portion of a solar facility that is visible from an adjacent residentially used property or a public street. Screening of state and local scenic routes and scenic views is required in accordance with the Baltimore County Landscape Manual.

The Applicant has not satisfied BCZR, section 4F-102(A)6 for several reasons. First, the landscaping plan does not satisfy the requirement to preserve the viewshed from Hanover Pike, a scenic road. Protestants presented evidence that occupants in vehicles driving on Hanover Pike have, and will have, a direct view of the Subject Property. The Department of Planning required that the landscape plan “[p]rotect the Hanover Pike Scenic Route by (a) planting a vegetative screening of mixed indigenous hardwood and evergreen trees and shrubs along Hanover Pike to a depth that fully screens the solar panels....” Zoning Advisory Committee Comments, November 22, 2016 and July 18, 2018) (emphasis supplied). Ms. McArthur testified that the landscaping plan only “softens” the view of the solar panels. The landscape plan also improperly relies on trees

on the Mirabile property to provide screening of the solar panels. The law does not permit the Applicant to rely on screening controlled by third parties. And even if the law did, those trees lack leaves for months of each year. During that time, they provide no screening. Finally, no new tree or other planting of a reasonable height on the Subject Property will effectively screen the view of the solar facility from Hanover Pike due to the elevation of the Subject Property.

Second, the landscaping plan does not satisfy the requirements to preserve the viewshed from the adjacent properties. Both 14619 Hanover Pike and 14533 Hanover Pike are higher than and directly overlook the Subject Property. 14517 and 14525 Hanover Pike also have a direct view of the Subject Property. 14527 Hanover Pike has a direct view of the Subject Property during the majority of the year. No amount of screening will obstruct those views due to the topography of the Subject Property.

During the hearing, there were references to the ALJ's approval of special exceptions for a solar facility in *In re Petition for Special Exception (10790 Raphel Road)*, Case No. 2018-0127X and in *In re Petition for Special Exception (1139 Monkton Road)*, Case No. 2018-0030X. *Raphel Road* is legally and factually different from the proposed solar facility abutting Hanover Pike. The Raphel Road site is close to Interstate 95 and Route 7. There is no nearby scenic route. There is no line-of-sight issue in *Raphel Road* because the solar facility is on a plateau at an elevation of almost 150 feet. The surrounding land has a lower elevation. Land to the south and west of the solar facility has an elevation of approximately 30 feet. Land to the north and east has an elevation of

approximately 140 feet. The image below depicts the topography of the Raphel Road site on an east/west cross section:



Similarly, in *Monkton Road* there is no line-of-sight issue because multiple hills on the property obstruct the view of the solar facility. There are four hills with intervening valleys on the property. The hills have peaks at roughly 580 feet, 600 feet, 610 feet, and 600 feet respectively with valleys at 550 feet, 560 feet, and 580 between them. The image below depicts the topography of the Monkton Road site on an east/west cross section:



The ALJ found that Monkton Road was a scenic road. No one challenged the applicant's land planner's incomplete testimony that the only requirement for a scenic road is that the solar facility be setback 50 feet for the road. Furthermore, the ALJ's opinion suggests that no one cited the provision in the BCMP which states: "For properties along scenic routes or within scenic viewsheds, variances, amendments, and special exceptions should be granted sparingly." The ALJ's opinion also suggests that Planning Staff did not require the applicant, as Staff did in this case, to "fully screen" the solar facility from Monkton Road.

The Applicant's failure to satisfy the requirements of BCZR, section 4F-104(A)6 requires the ALJ to disapprove the application for a special exception to operate a solar facility.

II. The Administrative Law Judge (“ALJ”) should disapprove the Application for the special exception because the Application does not satisfy the requirements of BCZR, section 502.1 A, G, H, and I.

The ALJ should disapprove an application for special exception where 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. *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017).

The ALJ should disapprove the application for a special exception for the solar facility because there are unique facts and circumstances regarding the Subject Property that make the adverse impacts of a solar facility at the Subject Property above and beyond those inherently associated with a solar facility use. The unique facts and circumstances include the following: (1) the location of the Subject Property adjacent to the Hanover Pike scenic route; (2) the applicability of the Hanover Pike Corridor study to the Subject Property; (3) the bowl-shape of the Subject Property; (4) the Applicant’s inability to fully screen the solar facility due to the topography of the Subject Property and the land surrounding it; (5) the location of two residences on the Subject Property’s northern boundary which are higher than and overlook the Subject Property; (6) the location of a residence on the Subject Property’s southern boundary which will have a direct view of the Subject Property; (7) the location of a residence on the Subject Property’s eastern boundary which will have a direct view of the Subject Property; (8) the Applicant’s proposal to use trees on the Mirabile property to partially screen the Subject Property during a portion of the year; (9) the fact that Baltimore County has not yet approved the Applicant’s landscape plan and the fact that counsel for the Applicant said,

in effect, that “we will have to work it out with Jim Hermann”; (10) the use of a private driveway for the sole access to the solar facility; (11) the location of the Subject Property in an Agricultural Preservation Area; (12) the presence of two wetlands on the Subject Property, two streams near the southwest corner of the Subject Property, and a “swale” or “intermittent stream” through which water flows on the Subject Property. The ALJ has approved no other special exception for a solar facility at a location that has these unique characteristics.

These unique characteristics require the factual finding that the Applicant has not satisfied the requirements of BCZR, section 502.1 A, G, H, and I. Section 502.1A requires that that solar facility not “[b]e detrimental to the health, safety or general welfare of the locality involved.” The adverse impacts of solar facility at the Subject Property would be above and beyond those inherently associated with a solar facility. Unlike other sites in Baltimore County, the topography of the Subject Property and the surrounding area, including the Hanover Pike scenic route, make it impossible to screen the solar facility in a way that satisfies the requirements of the law.

Section 502.1G requires that that solar facility not “[b]e 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 solar facility will be inconsistent with the purposes of the agricultural area in which the Subject Property is located.

Section 502.1H requires that that solar facility not “[b]e inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations.” The Applicant’s proposed landscaping plan does not satisfy the requirements of BCZR,

section 4F-104. Furthermore, it is likely that the County will not approve the Applicant's landscaping plan because it lacks contour strip buffers. *See* Interoffice correspondence, July 18, 2018) ("Additional landscape buffers (including contour strip buffers) may be required to address existing topography changes, Scenic Views, Scenic Routes, etc.") Additionally, counsel for the Applicant informed the ALJ that Jim Hermann of Baltimore County has not yet approved the landscaping plan. Counsel said, in effect, that, "we will have to work that out."

Section 502.1I requires that that solar facility not "be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains" The Applicant's expert witness, Henry Leskinen, testified that some of the solar panels are located in the area between the two wetlands though which the Applicant testified water flows. Moreover, the Applicant did not adequately address Planning Staff's comment about the floodplain. *See* Inter Office Correspondence, November 18, 2016 (The Department of Public Works wrote that it "found that there is a riverine flood plain on the property...."); Interoffice Correspondence, July 12, 2018 (The Bureau of Development Plans Review wrote, "A flood plain study must be submitted for the verification of the flood plain boundary.")

The Applicant's failure to satisfy the requirements of BCZR, section 502.1 requires the ALJ to disapprove the application for a special exception to operate a solar facility.

Conclusion

For all of these reasons, Protestants request that the ALJ disapprove the application for a special exception.

Respectfully submitted,

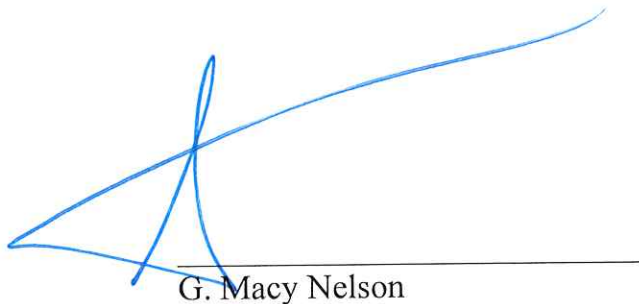


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of November, 2018, a copy of the foregoing Memorandum of Protestants was mailed first-class, postage prepaid to:

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



G. Macy Nelson

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COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2016, Legislative Day No. 16

Bill No. 68-16

Mr. Wade Kach, Councilman

By the County Council, September 19, 2016

A BILL
ENTITLED

AN ACT concerning

Solar Farms

FOR the purpose of imposing a temporary moratorium on the approval of any authorization for a solar farm or other solar facility in certain Zones until the completion of a study; providing exceptions; and generally relating to solar farms.

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 that new development changes the character of the countryside and may have detrimental impacts on these resources; and

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.

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

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

WHEREAS, by administrative decision, the County has determined that commercial solar farms may be located in the rural areas of the County, in certain resource conservation (R.C.) zones, by special exception, as a "public utility"; and

WHEREAS, it is not disputed that solar energy may help to create distributed 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 reduce greenhouse gases that cause climate change; and

WHEREAS, notwithstanding the presumed benefits of solar energy, the County Council believes that a study of the land use impact of solar farms should be conducted before the use is authorized as a type of public utility; and

WHEREAS, the public health, safety and welfare demands that consideration be given to the impact that a solar farm, or other solar facility, may have upon the County's land use policies, as well as the impact upon surrounding residential communities; and

WHEREAS, the County Council believes that it is necessary for the public health, safety and welfare to impose a temporary moratorium on the issuance of any form of authorization for a solar farm or solar facility for a period of ~~six~~ four months, pending the completion of a study by the Baltimore County ~~Planning Board~~ Council ; now, therefore

1 SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE
2 COUNTY, MARYLAND, that the authority to review an application, grant a special exception,
3 issue a permit, or give any form of approval for the location of a solar farm or other type of solar
4 facility in an R.C. Zone, whether as a utility or otherwise, be and hereby is suspended, through and
5 including ~~April 30~~ February 18, 2017.

6 The term "solar farm" means the use of land whereby a series of one or more solar
7 collectors or solar energy systems are placed in an area on a parcel of land for the purpose of
8 generating photovoltaic power for commercial use. The term includes a solar power plant or solar
9 photovoltaic farm.

10
11 SECTION 2. AND BE IT FURTHER ENACTED, that this Act does not apply to:

- 12
13 1. the installation of a solar collector that gathers solar radiation as a substitute
14 for traditional energy for water heating, active space heating and cooling,
15 passive heating, or generating electricity for a residential property, or
16 2. a solar project on federal, state or local government-owned land that produces
17 energy for government use, SUBJECT TO PRIOR NOTIFICATION OF THE
18 PROJECT TO THE COUNTY COUNCIL AND SUBJECT TO THE FILING
19 OF A LANDSCAPING PLAN TO BE PAID BY THE PRIVATE ENTITY
20 THAT CONTRACTS WITH THE GOVERNMENT.

21
22 SECTION 3. AND BE IT FURTHER ENACTED, that this Act, having been passed by the
23 affirmative vote of five members of the County Council, shall take effect on October 31, 2016 and
24 ~~shall apply prospectively, and retroactively to any application for approval of a solar farm in an~~

- 1 ~~R.C. Zone that was filed prior to the effective date of this Act.~~ shall apply prospectively, and
- 2 retroactively to October 18, 2016.

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2016, Legislative Day No. 20

Bill No. 89-16

Mr. Wade Kach, Councilman

By the County Council, November 21, 2016

A BILL
ENTITLED

AN ACT concerning

Commercial Solar Facilities

FOR the purpose of permitting a commercial 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 commercial solar facilities.

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

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.

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 that new development changes the character of the countryside and may have detrimental impacts on these resources; and

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

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

WHEREAS, it is not disputed that solar energy may help to create distributed 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 reduce greenhouse gases that cause climate change; and

WHEREAS, the benefits of solar energy production must be balanced with the potential impact of solar energy-producing facilities upon the County's land use policies, particularly in resource conservation and agricultural zones, as well as the impact of such facilities on surrounding residential communities; and

WHEREAS, the County Council believes that commercial solar facilities should be permitted in some parts of the County's rural areas so long as sufficient safeguards are provided to protect the County's agricultural land, its 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:

4 ARTICLE 4E

5 COMMERCIAL SOLAR FACILITIES

6 §4E-101. DEFINITION.

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

9 (B) "COMMERCIAL SOLAR FACILITY" MEANS A FACILITY THAT INCLUDES
10 A SERIES OF ONE OR MORE SOLAR COLLECTORS OR SOLAR ENERGY SYSTEMS
11 THAT ARE PLACED IN AN AREA ON A PARCEL 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 COMMERCIAL SOLAR
15 FACILITY MAY NOT BE CONSIDERED A PUBLIC UTILITY UNDER THE BALTIMORE
16 COUNTY CODE OR THE BALTIMORE COUNTY ZONING REGULATIONS.

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

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

22 A COMMERCIAL SOLAR FACILITY IS PERMITTED ONLY BY SPECIAL

EXCEPTION IN THE R.C. 2, R.C.3, R.C. 4, R.C. 5 AND R.C.6 ZONES OF THE COUNTY.

§4E-103. EXCEPTION.

THIS ARTICLE DOES NOT APPLY TO:

1. A SOLAR FACILITY LOCATED IN A YARD AREA, BUILDING, OR
STRUCTURE THAT IS ACCESSORY TO A PRINCIPAL RESIDENTIAL,
AGRICULTURAL, OR COMMERCIAL USE;

2. A SOLAR FACILITY ON FEDERAL, STATE OR LOCAL
GOVERNMENT-OWNED OR LEASED LAND THAT PRODUCES ENERGY FOR
GOVERNMENT USE; OR

3. A SOLAR FACILITY THAT USES AT LEAST 75% OF THE ENERGY
GENERATED FOR AGRICULTURAL USES.

§4E-104. REQUIREMENTS.

A COMMERCIAL SOLAR FACILITY IS SUBJECT TO THE FOLLOWING
REQUIREMENTS:

1. THE LAND ON WHICH A COMMERCIAL SOLAR FACILITY IS
PROPOSED MAY NOT BE IN THE AGRICULTURAL LAND PRESERVATION
PROGRAM AND MAY NOT BE ENCUMBERED BY AN AGRICULTURAL
PRESERVATION EASEMENT OR AN ENVIRONMENTAL PRESERVATION EASEMENT.

2. THE LAND ON WHICH A COMMERCIAL SOLAR FACILITY IS
PROPOSED MAY NOT BE LOCATED IN A BALTIMORE COUNTY HISTORIC DISTRICT
OR ON A PROPERTY THAT IS LISTED ON THE BALTIMORE COUNTY FINAL

1 LANDMARKS LIST.

2 3. THE MAXIMUM SIZE OF A COMMERCIAL SOLAR FACILITY IS 20
3 ACRES OR 20% OF THE TOTAL PARCEL ON WHICH A COMMERCIAL SOLAR
4 FACILITY IS PROPOSED TO BE LOCATED, WHICHEVER IS LESS. THE TOTAL
5 PARCEL ON WHICH A FACILITY IS PROPOSED TO BE LOCATED SHALL BE A
6 MINIMUM OF 10 ACRES IN SIZE.

7 4. ANY STRUCTURE SHALL HAVE A MINIMUM 50 FOOT SETBACK
8 FROM ALL PROPERTY LINES.

9 5. A STRUCTURE MAY NOT EXCEED 20 FEET IN HEIGHT.

10 6. A LANDSCAPING BUFFER SHALL BE PROVIDED AROUND THE
11 PERIMETER OF A COMMERCIAL SOLAR FACILITY, WHICH SHALL INCLUDE THE
12 SCREENING OF STATE AND LOCAL SCENIC ROUTES AND SCENIC VIEWS IN
13 ACCORDANCE WITH THE BALTIMORE COUNTY LANDSCAPE MANUAL.

14 7. SECURITY FENCING SHALL BE PROVIDED BETWEEN THE
15 LANDSCAPING BUFFER AND THE COMMERCIAL SOLAR FACILITY.

16 8. A SOLAR COLLECTOR OR COMBINATION OF SOLAR COLLECTORS
17 SHALL BE DESIGNED AND LOCATED TO AVOID GLARE OR REFLECTION ONTO
18 ADJACENT PROPERTIES AND ADJACENT ROADWAYS AND MAY NOT INTERFERE
19 WITH TRAFFIC OR CREATE A SAFETY HAZARD.

20 9. AN APPLICANT SHALL COMPLY WITH THE REQUIREMENTS OF
21 SECTION 33-3-108 OF THE COUNTY CODE.

22
23 § 4E-105 SECURITY BOND.

1 A. AN APPLICANT FOR A BUILDING PERMIT FOR A COMMERCIAL SOLAR
2 FACILITY SHALL PROVIDE A SECURITY BOND IN THE FORM AND AMOUNT
3 DETERMINED BY THE COUNTY ADMINISTRATIVE OFFICER.

4 B. THE CODE OFFICIAL MAY USE THE BOND TO PROCURE THE REPAIR OF
5 ANY UNSAFE OR HAZARDOUS CONDITIONS UNDER SECTION 4E-106 OR REMOVAL
6 OF A COMMERCIAL SOLAR FACILITY UNDER SECTION 4E-107 IN ACCORDANCE
7 WITH § 3-6-402 OF THE BALTIMORE COUNTY CODE.

8 §4E-106. MAINTENANCE.

9 A. ALL PARTIES HAVING A LEASE OR OWNERSHIP INTEREST IN A
10 COMMERCIAL SOLAR FACILITY ARE RESPONSIBLE FOR THE MAINTENANCE OF
11 THE FACILITY.

12 B. MAINTENANCE SHALL INCLUDE PAINTING, STRUCTURAL REPAIRS, AND
13 INTEGRITY OF SECURITY MEASURES. ACCESS TO THE FACILITY SHALL BE
14 MAINTAINED IN A MANNER ACCEPTABLE TO THE FIRE DEPARTMENT. THE
15 OWNER, OPERATOR, OR LESSEE ARE RESPONSIBLE FOR THE COST OF
16 MAINTAINING THE FACILITY AND ANY ACCESS ROADS.

17 C. THE PROVISIONS ON THIS SECTION SHALL BE ENFORCED IN
18 ACCORDANCE WITH ARTICLE 3, TITLE 6 OF THE COUNTY CODE.

19
20 §4E-107. ABANDONMENT; REMOVAL.

21 (A) A COMMERCIAL SOLAR FACILITY THAT HAS REACHED THE END OF ITS
22 USEFUL LIFE OR HAS BEEN ABANDONED SHALL BE REMOVED. THE OWNER OR
23 OPERATOR SHALL PHYSICALLY REMOVE THE INSTALLATION NO MORE THAN

1 150 DAYS AFTER THE DATE OF DISCONTINUED OPERATIONS. THE OWNER OR
2 OPERATOR SHALL NOTIFY THE COUNTY BY CERTIFIED MAIL OF THE PROPOSED
3 DATE OF DISCONTINUED OPERATIONS AND PLANS FOR REMOVAL.

4 (B) REMOVAL SHALL CONSIST OF THE:

5 (1) PHYSICAL REMOVAL OF ALL SOLAR ENERGY SYSTEMS,
6 STRUCTURES, EQUIPMENT, SECURITY BARRIERS AND TRANSMISSION LINES
7 FROM THE SITE;

8 (2) DISPOSAL OF ALL SOLID AND HAZARDOUS WASTE IN
9 ACCORDANCE WITH LOCAL, STATE, AND FEDERAL WASTE DISPOSAL
10 REGULATIONS; AND

11 (3) STABILIZATION OR RE-VEGETATION OF THE SITE AS
12 NECESSARY TO MINIMIZE EROSION.

13 (C) IF THE OWNER OR OPERATOR FAIL TO REMOVE THE FACILITY WITHIN
14 150 DAYS OF ABANDONMENT, THE COUNTY RETAINS THE RIGHT TO ENTER AND
15 REMOVE THE FACILITY. AS A CONDITION OF SPECIAL EXCEPTION APPROVAL,
16 THE APPLICANT 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
19 OPERATOR FOR REMOVAL OF A COMMERCIAL SOLAR FACILITY IF:

20 (1) THE CODE OFFICIAL DETERMINES THAT THE COMMERCIAL
21 SOLAR FACILITY HAS NOT BEEN IN ACTUAL AND CONTINUOUS USE FOR 12
22 CONSECUTIVE MONTHS;

23 (2) THE OWNER OR OPERATOR FAILED TO CORRECT AN UNSAFE OR

1 HAZARDOUS CONDITION OR FAILED TO MAINTAIN THE COMMERCIAL SOLAR
2 FACILITY UNDER SECTION 4E-106 WITHIN THE TIME PRESCRIBED IN A
3 CORRECTION NOTICE ISSUED BY THE CODE OFFICIAL; OR

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

6 SECTION 2. AND BE IT FURTHER ENACTED, that this Act, having been passed by
7 the affirmative vote of five members of the County Council, shall take effect on January 2, 2017
8 and shall apply retroactively to July 1, 2016.

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2016, Legislative Day No. 22

Bill No. 95-16

Mr. Wade Kach, Councilman

By the County Council, December 19, 2016

A BILL
ENTITLED

AN ACT concerning

Commercial Solar Facilities

FOR the purpose of permitting a commercial 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 commercial solar facilities.

BY adding
Article 4E – Commercial 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, 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 that new development changes the character of the countryside and may have detrimental impacts on these resources; and

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

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

WHEREAS, it is not disputed that solar energy may help to create distributed 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 reduce greenhouse gases that cause climate change; and

WHEREAS, the benefits of solar energy production must be balanced with the potential impact of solar energy-producing facilities upon the County's land use policies, particularly in resource conservation and agricultural zones, as well as in business and manufacturing zones where the impact of such facilities on surrounding residential communities must be considered; and

WHEREAS, the location of commercial solar facilities should be encouraged on commercial and industrial land; and

WHEREAS, the County Council therefore believes that commercial 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:

4 ARTICLE 4E

5 COMMERCIAL SOLAR FACILITIES

6 §4E-101. DEFINITION.

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11 THAT ARE PLACED IN AN AREA ON A PARCEL 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 COMMERCIAL SOLAR
15 FACILITY MAY NOT BE CONSIDERED A PUBLIC UTILITY UNDER THE BALTIMORE

COUNTY CODE OR THE BALTIMORE COUNTY ZONING REGULATIONS.

(C) "COMMERCIAL USE" MEANS THE TRANSFER TO THE ELECTRICAL POWER GRID OF ENERGY PRODUCED BY A COMMERCIAL SOLAR FACILITY FOR SALE TO CONSUMERS BY ENERGY SUPPLIERS.

§4E-102. LOCATION OF COMMERCIAL SOLAR FACILITIES.

A COMMERCIAL SOLAR FACILITY IS PERMITTED ONLY BY SPECIAL EXCEPTION IN THE 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 COUNTY.

§4E-103. EXCEPTION.

THIS ARTICLE DOES NOT APPLY TO:

1. A SOLAR FACILITY LOCATED IN A YARD AREA, BUILDING, OR STRUCTURE THAT IS ACCESSORY TO A PRINCIPAL RESIDENTIAL, AGRICULTURAL, COMMERCIAL OR INSTITUTIONAL USE;

2. A SOLAR FACILITY ON FEDERAL, STATE OR LOCAL GOVERNMENT-OWNED OR LEASED LAND THAT PRODUCES ENERGY FOR GOVERNMENT USE; OR

3. A SOLAR FACILITY THAT USES AT LEAST 66% OF THE ENERGY GENERATED FOR AGRICULTURAL USES.

§4E-104. REQUIREMENTS.

A. A COMMERCIAL SOLAR FACILITY LOCATED IN AN R.C. ZONE IS SUBJECT TO

THE FOLLOWING REQUIREMENTS:

1. THE LAND ON WHICH A COMMERCIAL SOLAR FACILITY IS PROPOSED MAY NOT BE IN THE AGRICULTURAL LAND PRESERVATION PROGRAM, ~~AND~~ MAY NOT BE ENCUMBERED BY AN AGRICULTURAL PRESERVATION EASEMENT OR AN ENVIRONMENTAL PRESERVATION EASEMENT, AND MAY NOT BE IN THE RURAL LEGACY PROGRAM.

2. THE LAND ON WHICH A COMMERCIAL SOLAR FACILITY IS PROPOSED MAY NOT BE LOCATED IN A BALTIMORE COUNTY HISTORIC DISTRICT OR ON A PROPERTY THAT IS LISTED ON THE BALTIMORE COUNTY FINAL LANDMARKS LIST.

3. THE LAND ON WHICH A COMMERCIAL SOLAR FACILITY IS PROPOSED MAY NOT BE IN FOREST CONSERVATION, CONSTITUTE A FOREST AS DEFINED IN SECTION 33-6-101 (O) OF THE COUNTY CODE, OR BE IN A CONSERVANCY AREA IN AN R.C.4 OR R.C.6 ZONE.

4. THE MAXIMUM SIZE OF A COMMERCIAL SOLAR FACILITY IS 20 ACRES OR 50% OF THE TOTAL PARCEL ON WHICH A COMMERCIAL SOLAR FACILITY IS PROPOSED TO BE LOCATED, WHICHEVER IS LESS.

5. ANY STRUCTURE SHALL HAVE A MINIMUM 50 FOOT SETBACK FROM ALL PROPERTY LINES. THE ADMINISTRATIVE LAW JUDGE, OR BOARD OF APPEALS ON APPEAL, MAY CONSIDER THE ADEQUACY OF THE SETBACK BASED ON THE IMPACT OF THE STRUCTURES ON ADJACENT OR SURROUNDING PROPERTIES, AND MAY DECREASE THE SETBACK IF LOCATED NEAR A FOREST OR OTHER SUFFICIENT BUFFER, OR INCREASE THE SETBACK IF LOCATED NEAR

1 RESIDENTIALLY USED PROPERTY, AS NECESSARY.

2 6. A STRUCTURE MAY NOT EXCEED 20 FEET IN HEIGHT.

3 7. A LANDSCAPING BUFFER SHALL BE PROVIDED AROUND THE
4 PERIMETER OF A COMMERCIAL SOLAR FACILITY, WHICH SHALL INCLUDE THE
5 SCREENING OF STATE AND LOCAL SCENIC ROUTES AND SCENIC VIEWS IN
6 ACCORDANCE WITH THE BALTIMORE COUNTY LANDSCAPE MANUAL, CLASS "A"
7 SCREENING REQUIREMENTS.

8 8. SECURITY FENCING SHALL BE PROVIDED BETWEEN THE
9 LANDSCAPING BUFFER AND THE COMMERCIAL SOLAR FACILITY.

10 9. A SOLAR COLLECTOR OR COMBINATION OF SOLAR COLLECTORS
11 SHALL BE DESIGNED AND LOCATED TO AVOID GLARE OR REFLECTION ONTO
12 ADJACENT PROPERTIES AND ADJACENT ROADWAYS AND MAY NOT INTERFERE
13 WITH TRAFFIC OR CREATE A SAFETY HAZARD.

14 10. AN APPLICANT SHALL COMPLY WITH THE REQUIREMENTS OF
15 SECTION 33-3-108 OF THE COUNTY CODE.

16 11. AT LEAST 30 DAYS, BUT NOT MORE THAN 60 DAYS, PRIOR TO
17 THE PUBLIC HEARING ON THE SPECIAL EXCEPTION, A PETITIONER SHALL HOLD
18 A COMMUNITY INPUT MEETING. THE DEPARTMENT OF PERMITS, APPROVALS
19 AND INSPECTIONS SHALL DIRECT THE POSTING OF THE PROPERTY FOR 15 DAYS,
20 GIVING NOTICE OF THE DATE, TIME AND LOCATION OF THE COMMUNITY INPUT
21 MEETING. EXCEPT FOR THE REQUIREMENTS OF THIS PARAGRAPH, THE
22 COMMUNITY INPUT MEETING SHALL BE CONDUCTED IN ACCORDANCE WITH
23 THE REQUIREMENTS OF SECTION 32-4-217 OF THE COUNTY CODE.

1 12. A PETITIONER SHALL HAVE THE BURDEN OF DEMONSTRATING
2 AT A HEARING THAT:

3 (A) THE PETITIONER HAS MADE A DILIGENT ATTEMPT TO
4 LOCATE THE COMMERCIAL SOLAR FACILITY ON LAND THAT DOES NOT
5 CONTAIN PRIME AND PRODUCTIVE AGRICULTURAL SOIL QUALITY;

6 (B) THE PETITIONER HAS MADE A DILIGENT ATTEMPT TO
7 LOCATE THE FACILITY IN AN AREA OF THE PARCEL THAT HAS THE LEAST
8 VISUAL IMPACT ON THE SURROUNDING AREA; AND

9 (C) DUE TO THE LOCATION, ELEVATION, TOPOGRAPHY, TREE
10 CANOPY, ENGINEERING, TECHNICAL FEASIBILITY, OR OTHER FACTORS
11 AFFECTING THE FEASIBILITY OF THE FACILITY, THE CONSTRUCTION OF THE
12 COMMERCIAL SOLAR FACILITY AT THE PROPOSED LOCATION IS WARRANTED.

13 13. IN GRANTING A SPECIAL EXCEPTION, THE ADMINISTRATIVE
14 LAW JUDGE, OR BOARD OF APPEALS ON APPEAL, SHALL IMPOSE CONDITIONS OR
15 RESTRICTIONS ON THE COMMERCIAL SOLAR FACILITY USE AS NECESSARY TO
16 PROTECT THE ENVIRONMENT AND SCENIC VIEWS, AND TO LESSEN THE IMPACT
17 ON THE HEALTH, SAFETY, AND GENERAL WELFARE OF SURROUNDING
18 PROPERTIES AND COMMUNITIES.

19
20 B. THE REQUIREMENTS OF SUBPARAGRAPHS A.7. AND A.8. SHALL APPLY TO A
21 COMMERCIAL SOLAR FACILITY LOCATED IN A BUSINESS OR MANUFACTURING
22 ZONE, EXCEPT THAT CLASS A SCREENING REQUIREMENTS ARE NOT
23 APPLICABLE.

1
2 § 4E-105 SECURITY BOND.

3 A. AN APPLICANT FOR A BUILDING PERMIT FOR A COMMERCIAL SOLAR
4 FACILITY SHALL PROVIDE A SECURITY BOND IN THE FORM AND AMOUNT
5 DETERMINED BY THE COUNTY ADMINISTRATIVE OFFICER.

6 B. THE CODE OFFICIAL MAY USE THE BOND TO PROCURE THE REPAIR OF
7 ANY UNSAFE OR HAZARDOUS CONDITIONS UNDER SECTION 4E-106 OR REMOVAL
8 OF A COMMERCIAL SOLAR FACILITY UNDER SECTION 4E-107 IN ACCORDANCE
9 WITH § 3-6-402 OF THE BALTIMORE COUNTY CODE.

10 §4E-106. MAINTENANCE.

11 A. ALL PARTIES HAVING A LEASE OR OWNERSHIP INTEREST IN A
12 COMMERCIAL SOLAR FACILITY ARE RESPONSIBLE FOR THE MAINTENANCE OF
13 THE FACILITY.

14 B. MAINTENANCE SHALL INCLUDE PAINTING, STRUCTURAL REPAIRS,
15 LANDSCAPE BUFFERS AND VEGETATION UNDER AND AROUND SOLAR PANEL
16 STRUCTURES, AND INTEGRITY OF SECURITY MEASURES. ACCESS TO THE
17 FACILITY SHALL BE MAINTAINED IN A MANNER ACCEPTABLE TO THE FIRE
18 DEPARTMENT. THE OWNER, OPERATOR, OR LESSEE ARE RESPONSIBLE FOR THE
19 COST OF MAINTAINING THE FACILITY AND ANY ACCESS ROADS.

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

1 §4E-107. ABANDONMENT; REMOVAL.

2 (A) A COMMERCIAL SOLAR FACILITY THAT HAS REACHED THE END OF ITS
3 USEFUL LIFE OR HAS BEEN ABANDONED SHALL BE REMOVED. THE OWNER OR
4 OPERATOR SHALL PHYSICALLY REMOVE THE INSTALLATION NO MORE THAN
5 150 DAYS AFTER THE DATE OF DISCONTINUED OPERATIONS. THE OWNER OR
6 OPERATOR SHALL NOTIFY THE COUNTY BY CERTIFIED MAIL OF THE PROPOSED
7 DATE OF DISCONTINUED OPERATIONS AND PLANS FOR REMOVAL.

8 (B) REMOVAL SHALL CONSIST OF THE:

9 (1) PHYSICAL REMOVAL OF ALL SOLAR ENERGY SYSTEMS,
10 STRUCTURES, EQUIPMENT, SECURITY BARRIERS AND TRANSMISSION LINES
11 FROM THE SITE;

12 (2) DISPOSAL OF ALL SOLID AND HAZARDOUS WASTE IN
13 ACCORDANCE WITH LOCAL, STATE, AND FEDERAL WASTE DISPOSAL
14 REGULATIONS; AND

15 (3) STABILIZATION OR RE-VEGETATION OF THE SITE AS
16 NECESSARY TO MINIMIZE EROSION.

17 (C) IF THE OWNER OR OPERATOR FAIL TO REMOVE THE FACILITY WITHIN
18 150 DAYS OF ABANDONMENT, THE COUNTY RETAINS THE RIGHT TO ENTER AND
19 REMOVE THE FACILITY. AS A CONDITION OF SPECIAL EXCEPTION APPROVAL,
20 THE APPLICANT AND LANDOWNER AGREE TO ALLOW ENTRY TO REMOVE AN
21 ABANDONED FACILITY.

22 (D) THE CODE OFFICIAL MAY ISSUE A CITATION TO THE OWNER OR
23 OPERATOR FOR REMOVAL OF A COMMERCIAL SOLAR FACILITY IF:

(1) THE CODE OFFICIAL DETERMINES THAT THE COMMERCIAL SOLAR FACILITY HAS NOT BEEN IN ACTUAL AND CONTINUOUS USE FOR 12 CONSECUTIVE MONTHS;

(2) THE OWNER OR OPERATOR FAILED TO CORRECT AN UNSAFE OR HAZARDOUS CONDITION OR FAILED TO MAINTAIN THE COMMERCIAL SOLAR FACILITY UNDER SECTION 4E-106 WITHIN THE TIME PRESCRIBED IN A CORRECTION NOTICE ISSUED BY THE CODE OFFICIAL; OR

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

§502.1. Conditions Determining Granting of Special Exception.

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

I. be detrimental to the environment 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, AND FOR CONSIDERATION OF A COMMERCIAL SOLAR FACILITY USE, THE INCLUSION OF THE R.C.3 AND R.C.6 ZONE.

SECTION 2. AND BE IT FURTHER ENACTED, that this Act, having been passed by the affirmative vote of five members of the County Council, shall take effect on January 30, 2017 and shall apply retroactively to July 1, 2016.

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2017, Legislative Day No. 3

Bill No. 9-17

Councilmembers Kach & Marks

By the County Council, February 6, 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

R.C.2, R.C.3, R.C.4, R.C.5, R.C.6, R.C.7, R.C.8, B.L., B.M., M.R., M.L.R., AND M.H. ZONES
OF THE COUNTY.

§4E-103. EXCEPTION.

THIS ARTICLE DOES NOT APPLY TO:

1. A SOLAR FACILITY LOCATED IN A YARD AREA, BUILDING, OR
STRUCTURE THAT IS ACCESSORY TO A PRINCIPAL RESIDENTIAL,
AGRICULTURAL, COMMERCIAL OR INSTITUTIONAL USE;

2. A SOLAR FACILITY ON FEDERAL, STATE OR LOCAL
GOVERNMENT-OWNED OR LEASED LAND THAT PRODUCES ENERGY FOR
GOVERNMENT USE; OR

3. A SOLAR FACILITY THAT USES AT LEAST 75% OF THE ENERGY
GENERATED FOR AGRICULTURAL USES.

§4E-104. REQUIREMENTS.

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

1. THE LAND ON WHICH A SOLAR FACILITY IS PROPOSED MAY NOT BE
ENCUMBERED BY AN AGRICULTURAL PRESERVATION EASEMENT, AN
ENVIRONMENTAL PRESERVATION EASEMENT, OR A RURAL LEGACY EASEMENT.

2. THE LAND ON WHICH A SOLAR FACILITY IS PROPOSED MAY NOT BE
LOCATED IN A BALTIMORE COUNTY HISTORIC DISTRICT OR ON A PROPERTY
THAT IS LISTED ON THE BALTIMORE COUNTY FINAL LANDMARKS LIST.

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

5 4. THE MAXIMUM SIZE OF A SOLAR FACILITY AS MEASURED FROM THE
6 PERIMETER OF THE FACILITY IS:

7 A. 30 ACRES UNTIL JUNE 30, 2018; AND

8 B. 40 ACRES BEGINNING ON JULY 1, 2018.

9 5. ABOVEGROUND COMPONENTS OF THE SOLAR FACILITY, INCLUDING
10 SOLAR COLLECTOR PANELS, INVERTERS, AND SIMILAR EQUIPMENT, MUST BE
11 SET BACK A MINIMUM OF 50 FEET FROM THE TRACT BOUNDARY, SUBJECT TO
12 THE FOLLOWING:

13 A. THIS SETBACK DOES NOT APPLY TO THE INSTALLATION OF THE
14 ASSOCIATED LANDSCAPING, SECURITY FENCING, WIRING, OR POWER LINES;
15 AND

16 B. THE ADMINISTRATIVE LAW JUDGE, OR BOARD OF APPEALS ON
17 APPEAL, MAY INCREASE THE SETBACK BY UP TO 25 FEET BASED ON THE IMPACT
18 OF THE STRUCTURES ON ADJACENT OR SURROUNDING RESIDENTIALLY USED
19 PROPERTIES, AND MAY DECREASE THE SETBACK BY UP TO 25 FEET IF LOCATED
20 NEAR A FOREST OR OTHER SUFFICIENT BUFFER.

21 6. A STRUCTURE MAY NOT EXCEED 16 FEET IN HEIGHT.

22 7. A LANDSCAPING BUFFER SHALL BE PROVIDED AROUND THE
23 PERIMETER OF ANY PORTION OF A SOLAR FACILITY THAT IS VISIBLE FROM AN

1 ADJACENT RESIDENTIALLY USED PROPERTY OR A PUBLIC STREET. SCREENING
2 OF STATE AND LOCAL SCENIC ROUTES AND SCENIC VIEWS IS REQUIRED IN
3 ACCORDANCE WITH THE BALTIMORE COUNTY LANDSCAPE MANUAL.

4 8. SECURITY FENCING SHALL BE PROVIDED BETWEEN THE LANDSCAPING
5 BUFFER AND THE SOLAR FACILITY.

6 9. A SOLAR COLLECTOR PANEL OR COMBINATION OF SOLAR COLLECTOR
7 PANELS SHALL BE DESIGNED AND LOCATED IN AN ARRANGEMENT THAT
8 MINIMIZES GLARE OR REFLECTION ONTO ADJACENT PROPERTIES AND
9 ADJACENT ROADWAYS, AND DOES NOT INTERFERE WITH TRAFFIC OR CREATE A
10 SAFETY HAZARD.

11 10. A PETITIONER SHALL COMPLY WITH THE PLAN REQUIREMENTS OF
12 SECTION 33-3-108 OF THE COUNTY CODE.

13 11. AT LEAST 60 DAYS PRIOR TO THE PUBLIC HEARING ON THE SPECIAL
14 EXCEPTION, THE PETITIONER SHALL SEND NOTICE VIA CERTIFIED MAIL, RETURN
15 RECEIPT REQUESTED, TO ADJOINING PROPERTY OWNERS AND COMMUNITY
16 ASSOCIATIONS OF THE ADDRESS OF THE PROPERTY UNDER PETITION OR, IF NOT
17 AVAILABLE, A DESCRIPTION OF THE PROPERTY, THE ACTION REQUESTED BY
18 THE PETITION, AND THE DATE, TIME, AND PLACE OF THE PUBLIC HEARING.

19 12. IN THE R.C.2, R.C.6, R.C.7, AND R.C.8 ZONE, A PETITIONER SHALL
20 DEMONSTRATE AT A HEARING THAT MEASURES ARE BEING TAKEN AT THE
21 LOCATION OF THE SOLAR FACILITY TO MINIMIZE THE IMPACTS OF THE
22 FACILITY ON PRIME AND PRODUCTIVE AGRICULTURAL SOIL.

23 13. IN GRANTING A SPECIAL EXCEPTION, THE ADMINISTRATIVE LAW

JUDGE, OR BOARD OF APPEALS ON APPEAL, MAY IMPOSE CONDITIONS OR RESTRICTIONS ON THE SOLAR FACILITY USE AS NECESSARY TO PROTECT THE ENVIRONMENT AND SCENIC VIEWS, AND TO LESSEN THE IMPACT OF THE FACILITY ON THE HEALTH, SAFETY, AND GENERAL WELFARE OF SURROUNDING RESIDENTIALLY USED PROPERTIES AND COMMUNITIES.

B. THE REQUIREMENTS OF SUBPARAGRAPHS A.5, A.7. AND A.8. OF THIS SECTION SHALL APPLY TO A SOLAR FACILITY LOCATED IN A BUSINESS OR MANUFACTURING ZONE.

§ 4E-105. SECURITY BOND.

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

B. THE CODE OFFICIAL MAY USE THE BOND TO PROCURE THE REPAIR OF ANY UNSAFE OR HAZARDOUS CONDITIONS UNDER SECTION 4E-106 OR REMOVAL OF A SOLAR FACILITY UNDER SECTION 4E-107, IN ACCORDANCE WITH SECTION 3-6-402 OF THE COUNTY CODE.

§4E-106. MAINTENANCE.

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

B. MAINTENANCE SHALL INCLUDE PAINTING, STRUCTURAL REPAIRS, LANDSCAPE BUFFERS AND VEGETATION UNDER AND AROUND SOLAR PANEL

STRUCTURES, AND INTEGRITY OF SECURITY MEASURES. ACCESS TO THE FACILITY SHALL BE MAINTAINED IN A MANNER ACCEPTABLE TO THE FIRE DEPARTMENT. THE OWNER, OPERATOR, OR LESSEE ARE RESPONSIBLE FOR THE COST OF MAINTAINING THE FACILITY AND ANY ACCESS ROADS.

C. APPROPRIATE VEGETATION IS PERMITTED UNDER AND AROUND THE SOLAR COLLECTOR PANELS, AND THE TRACT MAY BE USED FOR ACCESSORY AGRICULTURAL PURPOSES, INCLUDING GRAZING OF LIVESTOCK, APICULTURE, AND SIMILAR USES.

D. THE PROVISIONS OF THIS SECTION SHALL BE ENFORCED IN ACCORDANCE WITH ARTICLE 3, TITLE 6 OF THE COUNTY CODE.

§4E-107. ABANDONMENT; REMOVAL.

A. A SOLAR FACILITY THAT HAS REACHED THE END OF ITS USEFUL LIFE OR HAS BEEN ABANDONED SHALL BE REMOVED. THE OWNER OR OPERATOR SHALL PHYSICALLY REMOVE THE INSTALLATION NO MORE THAN 150 DAYS AFTER THE DATE OF DISCONTINUED OPERATIONS. THE OWNER OR OPERATOR SHALL NOTIFY THE COUNTY BY CERTIFIED MAIL OF THE PROPOSED DATE OF DISCONTINUED OPERATIONS AND PLANS FOR REMOVAL.

B. REMOVAL SHALL CONSIST OF THE:

1. PHYSICAL REMOVAL OF ALL SOLAR ENERGY SYSTEMS, STRUCTURES, EQUIPMENT, SECURITY BARRIERS AND TRANSMISSION LINES FROM THE SITE;
2. DISPOSAL OF ALL SOLID AND HAZARDOUS WASTE IN ACCORDANCE WITH LOCAL, STATE, AND FEDERAL WASTE DISPOSAL REGULATIONS; AND

1 3. STABILIZATION OR RE-VEGETATION OF THE SITE AS NECESSARY TO
2 MINIMIZE EROSION.

3 C. IF THE OWNER OR OPERATOR FAIL TO REMOVE THE FACILITY WITHIN 150
4 DAYS OF ABANDONMENT, THE COUNTY RETAINS THE RIGHT TO ENTER AND
5 REMOVE THE FACILITY. AS A CONDITION OF SPECIAL EXCEPTION APPROVAL,
6 THE PETITIONER AND LANDOWNER AGREE TO ALLOW ENTRY TO REMOVE AN
7 ABANDONED FACILITY.

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

10 1. THE CODE OFFICIAL DETERMINES THAT THE SOLAR FACILITY HAS NOT
11 BEEN IN ACTUAL AND CONTINUOUS USE FOR 12 CONSECUTIVE MONTHS;

12 2. THE OWNER OR OPERATOR FAILED TO CORRECT AN UNSAFE OR
13 HAZARDOUS CONDITION OR FAILED TO MAINTAIN THE SOLAR FACILITY UNDER
14 SECTION 4E-106 WITHIN THE TIME PRESCRIBED IN A CORRECTION NOTICE
15 ISSUED BY THE CODE OFFICIAL; OR

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

18
19 §502.1. Conditions Determining Granting of Special Exception.

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

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

1 AND FOR CONSIDERATION OF A SOLAR FACILITY USE UNDER ARTICLE 4E, THE
2 INCLUSION OF THE R.C.3, R.C.6, AND R.C.8 ZONE.

3
4 SECTION 2. AND BE IT FURTHER ENACTED, that the Maryland General Assembly
5 is urged to consider legislation to authorize Baltimore County to exempt solar facility equipment
6 located as an accessory use on buildings or parking facilities from personal property taxation.

7
8 SECTION 3. AND BE IT FURTHER ENACTED, that the Departments of Planning and
9 Environmental Protection and Sustainability shall by March 1, 2018 submit recommendations to
10 the County Council in regard to the appropriate size of a solar facility in the R.C. Zones, and any
11 other changes to the solar facility regulations that those Departments deem appropriate.

12
13 SECTION 4. AND BE IT FURTHER ENACTED, that this Act, having been passed by
14 the affirmative vote of five members of the County Council, shall take effect on March 20, 2017
15 and shall apply retroactively to any zoning petition filed after October 18, 2016, except that the
16 requirements of subparagraphs A.3, A.5, A.7, A.8, and A.13 of Section 4E-104 shall apply
17 retroactively to any zoning petition filed after July 1, 2016.

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

SECTION 33-3-108 OF THE COUNTY CODE.

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

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

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

§ 4E-105. SECURITY BOND.

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

B. THE CODE OFFICIAL MAY USE THE BOND TO PROCURE THE REPAIR OF ANY 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

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

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

§502.1. Conditions Determining Granting of Special Exception.

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

I. Be detrimental to the environment 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,
AND FOR CONSIDERATION OF A SOLAR FACILITY USE UNDER ARTICLE 4E, THE
INCLUSION OF THE R.C.3 AND R.C.6 ZONE.

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

SECTION 3. AND BE IT FURTHER ENACTED, that the Departments of Planning and
Environmental Protection and Sustainability, with participation of the Baltimore County Farm
Bureau, the solar industry, and the Sierra Club's Greater Baltimore Group, shall by July 1, 2018
submit recommendations regarding changes to current laws, incentives for solar development
under transmission lines before croppable farmland, an allocation regarding a percentage of the
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.

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2017, Legislative Day No. 11

Bill No. 38-17

Mr. Wade Kach, Councilman

By the County Council, June 5, 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;

2 B. THE MAXIMUM NUMBER OF SOLAR FACILITIES PERMITTED
3 SHALL BE LIMITED TO TWO IN EACH COUNCILMANIC DISTRICT;

4 C. A PROPOSED SOLAR FACILITY SHALL PRODUCE NO MORE THAN
5 2 MW; AND

6 D. BEFORE A PROPOSED SOLAR FACILITY CAN BE APPROVED, EACH
7 RESIDENTIALLY USED PROPERTY WITHIN 1,000 FEET AND WITH A VIEW OF THE
8 PROPOSED SOLAR FACILITY SHALL GIVE WRITTEN APPROVAL.

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

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

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

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

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

1 SURVEY.

2 8. ABOVEGROUND COMPONENTS OF THE SOLAR FACILITY, INCLUDING
3 SOLAR COLLECTOR PANELS, INVERTERS, AND SIMILAR EQUIPMENT, MUST BE
4 SET BACK A MINIMUM OF 50 FEET FROM THE TRACT BOUNDARY, SUBJECT TO
5 THE FOLLOWING:

6 A. THIS SETBACK DOES NOT APPLY TO THE INSTALLATION OF THE
7 ASSOCIATED LANDSCAPING, SECURITY FENCING, WIRING, OR POWER LINES;
8 AND

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

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

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

20 11. SECURITY FENCING SHALL BE PROVIDED BETWEEN THE
21 LANDSCAPING BUFFER AND THE SOLAR FACILITY.

22 12. A SOLAR COLLECTOR PANEL OR COMBINATION OF SOLAR
23 COLLECTOR PANELS SHALL BE LANDSCAPED TO MINIMIZE THE GLARE OR

1 REFLECTION ONTO ADJACENT PROPERTIES AND ADJACENT ROADWAYS, AND TO
2 NOT INTERFERE WITH TRAFFIC OR CREATE A SAFETY HAZARD.

3 13. A PETITIONER SHALL COMPLY WITH THE PLAN REQUIREMENTS OF
4 SECTION 33-3-108 OF THE COUNTY CODE, AND SHALL INCLUDE ADEQUATE
5 BUFFERS TO PROTECT NATURAL STREAMS AND WATERWAYS FROM
6 DEGRADATION OF AQUATIC WILDLIFE AS A RESULT OF STORMWATER RUNOFF.

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

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

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

1 § 4E-105. SECURITY BOND.

2 A. AN APPLICANT FOR A BUILDING PERMIT FOR A SOLAR FACILITY SHALL
3 PROVIDE A SECURITY BOND IN THE FORM AND AMOUNT DETERMINED BY THE
4 COUNTY ADMINISTRATIVE OFFICER.

5 B. THE CODE OFFICIAL MAY USE THE BOND TO PROCURE THE REPAIR OF ANY
6 UNSAFE OR HAZARDOUS CONDITIONS UNDER SECTION 4E-106 OR REMOVAL OF A
7 SOLAR FACILITY UNDER SECTION 4E-107, IN ACCORDANCE WITH SECTION 3-6-402
8 OF THE COUNTY CODE.

9
10 §4E-106. MAINTENANCE.

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

13 B. MAINTENANCE SHALL INCLUDE PAINTING, STRUCTURAL REPAIRS,
14 LANDSCAPE BUFFERS AND VEGETATION UNDER AND AROUND SOLAR PANEL
15 STRUCTURES, AND INTEGRITY OF SECURITY MEASURES. ACCESS TO THE
16 FACILITY SHALL BE MAINTAINED IN A MANNER ACCEPTABLE TO THE FIRE
17 DEPARTMENT. THE OWNER, OPERATOR, OR LESSEE ARE RESPONSIBLE FOR THE
18 COST OF MAINTAINING THE FACILITY AND ANY ACCESS ROADS.

19 C. A LAND MAINTENANCE PLAN SHALL BE PROVIDED BY AN APPLICANT FOR A
20 BUILDING PERMIT OR PROPERTY OWNER USING BEST LONG-TERM SITE
21 MANAGEMENT PRACTICES, AND SHALL BE IMPLEMENTED UPON ACCEPTANCE.
22 THE USE OF TOXIC CHEMICALS, SUCH AS GLYPHOSATE, AS AN HERBICIDE TO
23 CONTROL WEEDS AND OTHER UNWANTED VEGETATION UNDER AND AROUND

1 SOLAR PANEL STRUCTURES IS PROHIBITED.

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

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

7
8 §4E-107. ABANDONMENT; REMOVAL.

9 A. A SOLAR FACILITY THAT HAS REACHED THE END OF ITS USEFUL LIFE OR HAS
10 BEEN ABANDONED SHALL BE REMOVED. THE PROPERTY OWNER OR OPERATOR
11 OF THE FACILITY SHALL PHYSICALLY REMOVE THE INSTALLATION NO MORE
12 THAN 150 DAYS AFTER THE DATE OF DISCONTINUED OPERATIONS. THE OWNER
13 OR OPERATOR SHALL NOTIFY THE COUNTY BY CERTIFIED MAIL OF THE
14 PROPOSED DATE OF DISCONTINUED OPERATIONS AND PLANS FOR REMOVAL.

15 B. REMOVAL SHALL CONSIST OF THE:

16 1. PHYSICAL REMOVAL OF ALL SOLAR ENERGY SYSTEMS, STRUCTURES,
17 EQUIPMENT, SECURITY BARRIERS AND TRANSMISSION LINES FROM THE SITE;

18 2. DISPOSAL OF ALL SOLID AND HAZARDOUS WASTE IN ACCORDANCE
19 WITH LOCAL, STATE, AND FEDERAL WASTE DISPOSAL REGULATIONS; AND

20 3. STABILIZATION OR RE-VEGETATION OF THE SITE AS NECESSARY TO
21 MINIMIZE EROSION.

22 C. IF THE OWNER OR OPERATOR FAIL TO REMOVE THE FACILITY WITHIN 150
23 DAYS OF ABANDONMENT, THE COUNTY RETAINS THE RIGHT TO ENTER AND

1 REMOVE THE FACILITY. AS A CONDITION OF SPECIAL EXCEPTION APPROVAL,
2 THE PETITIONER AND LANDOWNER AGREE TO ALLOW ENTRY TO REMOVE AN
3 ABANDONED FACILITY.

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

6 1. THE CODE OFFICIAL DETERMINES THAT THE SOLAR FACILITY HAS NOT
7 BEEN IN ACTUAL AND CONTINUOUS USE FOR 12 CONSECUTIVE MONTHS;

8 2. THE OWNER OR OPERATOR FAILED TO CORRECT AN UNSAFE OR
9 HAZARDOUS CONDITION OR FAILED TO MAINTAIN THE SOLAR FACILITY UNDER
10 SECTION 4E-106 WITHIN THE TIME PRESCRIBED IN A CORRECTION NOTICE
11 ISSUED BY THE CODE OFFICIAL; OR

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

14
15 §502.1. Conditions Determining Granting of Special Exception.

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

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

22
23 SECTION 2. AND BE IT FURTHER ENACTED, that the Maryland General Assembly

1 is urged to consider legislation to authorize Baltimore County to exempt solar facility equipment
2 located as an accessory use on buildings or parking facilities from personal property taxation.
3

4 SECTION 3. AND BE IT FURTHER ENACTED, that the County Council shall establish
5 by Resolution a Commission consisting of one person appointed by each Councilmember, and
6 members from the Departments of Planning and Environmental Protection and Sustainability, with
7 participation of the Baltimore County Farm Bureau, the Baltimore County Commission on
8 Environmental Quality, the solar industry, and the Sierra Club's Greater Baltimore Group, and
9 shall by October 31, 2017 submit recommendations regarding changes to current laws, incentives
10 for solar development under transmission lines before croplable farmland, an allocation regarding
11 a percentage of the solar energy generated on each large-scale solar project to go to community
12 solar use for the benefit of low income residents, and an examination of the economic and
13 environmental best practices from other states as to balancing agricultural land use with solar
14 facilities.
15

16 SECTION 4. AND BE IT FURTHER ENACTED, that this Act, having been passed by
17 the affirmative vote of five members of the County Council, shall take effect on July 17, 2017 and
18 shall apply retroactively to any zoning petition filed after October 18, 2016, except that the
19 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 Section
20 4E-104 shall apply retroactively to any zoning petition filed after July 1, 2016. This Act shall
21 expire on January 31, 2018 without the necessity of further action by the County Council.

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2017, Legislative Day No. 11

Bill No. 37-17

Mrs. Vicki Almond, Councilwoman

By the County Council, June 5, 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; providing for a statement of purpose and defining terms; providing exceptions; 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 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

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

ARTICLE 4E

SOLAR FACILITIES

§4E-101. PURPOSE AND DEFINITIONS.

§4E-101.1. PURPOSE.

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, AND PRODUCE
CLEAN, RENEWABLE ENERGY AND REDUCE AIR AND WATER POLLUTION CAUSED
BY THE BURNING OF TRADITIONAL FOSSIL FUELS. THE PURPOSE AND INTENT OF
THIS ARTICLE IS TO PERMIT SOLAR FACILITIES IN PARTS OF THE RURAL AND
COMMERCIAL AREAS OF THE COUNTY BY SPECIAL EXCEPTION, AND TO BALANCE
THE BENEFITS OF SOLAR ENERGY PRODUCTION WITH ITS POTENTIAL IMPACT
UPON THE COUNTY'S LAND USE POLICIES BY ENSURING SUFFICIENT
SAFEGUARDS ARE IN PLACE TO PROTECT THE COUNTY'S COMMUNITIES AND ITS
AGRICULTURAL LAND, FORESTS, WATERWAYS AND OTHER NATURAL
RESOURCES.

1 §4E-101.2. DEFINITIONS.

2 AS USED IN THIS ARTICLE, THE FOLLOWING TERMS HAVE THE MEANINGS
3 INDICATED:

4 A. "SOLAR FACILITY" MEANS A FACILITY THAT INCLUDES A SERIES OF ONE OR
5 MORE SOLAR COLLECTOR PANELS OR SOLAR ENERGY SYSTEMS THAT ARE
6 PLACED IN AN AREA ON A TRACT OF LAND FOR THE PURPOSE OF GENERATING
7 PHOTOVOLTAIC POWER FOR COMMERCIAL USE. THE TERM INCLUDES A SOLAR
8 POWER PLANT OR SOLAR PHOTOVOLTAIC FARM.

9 B. "COMMERCIAL USE" MEANS THE TRANSFER TO THE ELECTRICAL POWER GRID
10 OF ENERGY PRODUCED BY A SOLAR FACILITY FOR SALE BY ENERGY SUPPLIERS
11 TO CONSUMERS.

12
13 §4E-102. LOCATION OF SOLAR FACILITIES.

14 A. SUBJECT TO PARAGRAPH B, A SOLAR FACILITY IS PERMITTED ONLY BY
15 SPECIAL EXCEPTION IN THE R.C.2, R.C.3, R.C.4, R.C.5, R.C.6, R.C.7, R.C.8, B.L., B.M.,
16 M.R., M.L.R., AND M.H. ZONES OF THE COUNTY.

17 B. THE ALLOCATION OF LAND FOR SOLAR FACILITIES IN THE COUNTY IS
18 LIMITED TO THE FOLLOWING:

19 1. THE MAXIMUM AREA PERMITTED FOR A SINGLE SOLAR FACILITY IS
20 THE AMOUNT OF ACREAGE THAT PRODUCES NO MORE THAN TWO MEGAWATTS
21 ALTERNATING CURRENT (AC) OF ELECTRICITY.

22 2. NO MORE THAN TEN (10) SOLAR FACILITIES MAY BE LOCATED IN A
23 COUNCILMANIC DISTRICT.

1 3. THE DIRECTOR OF PERMITS, APPROVALS AND INSPECTIONS SHALL
2 MAINTAIN A RECORD OF ALL PERMITS ISSUED FOR A SOLAR FACILITY IN THE
3 COUNTY, INCLUDING THE LOCATION AND COUNCILMANIC DISTRICT FOR EACH
4 SUCH FACILITY, AND SHALL KEEP A CURRENT ACCOUNTING OF THE NUMBER OF
5 FACILITIES IN EACH COUNCILMANIC DISTRICT UNDER THIS PARAGRAPH.

6 4. UPON REACHING THE THRESHOLD OF TEN (10) SOLAR FACILITIES IN A
7 COUNCILMANIC DISTRICT, NO ADDITIONAL PERMITS SHALL BE ISSUED FOR A
8 SOLAR FACILITY IN THAT DISTRICT UNLESS AN EXISTING FACILITY PREVIOUSLY
9 APPROVED UNDER THIS ARTICLE HAS BEEN REMOVED PURSUANT TO SECTION 4E-
10 107.

11
12 §4E-103. EXCEPTION.

13 THIS ARTICLE DOES NOT APPLY TO THE FOLLOWING SOLAR FACILITY
14 INSTALLATIONS:

15 1. A GROUND-MOUNTED SOLAR FACILITY LOCATED IN A YARD AREA,
16 BUILDING, OR STRUCTURE THAT IS ACCESSORY TO A PRINCIPAL RESIDENTIAL,
17 AGRICULTURAL, COMMERCIAL OR INSTITUTIONAL USE THAT IS ACCESSORY TO
18 A PRINCIPAL RESIDENTIAL OR AGRICULTURAL USE (SUBJECT TO SECTIONS 400.1
19 AND 400.2 OF THESE REGULATIONS APPLICABLE TO ACCESSORY BUILDINGS), OR
20 ACCESSORY TO A PRINCIPAL COMMERCIAL, INDUSTRIAL, OR INSTITUTIONAL
21 USE;

22 2. A ROOFTOP SOLAR FACILITY;
23

1 2 3. A SOLAR FACILITY ON FEDERAL, STATE OR LOCAL GOVERNMENT-
2 OWNED OR LEASED LAND THAT PRODUCES ENERGY FOR GOVERNMENT USE; OR

3 3 4. A SOLAR FACILITY LOCATED ON THE SAME PROPERTY OR TRACT AS
4 A FARM THAT USES AT LEAST 66% OF THE ENERGY GENERATED BY THE
5 FACILITY FOR AGRICULTURAL USES ON THE FARM.

6
7 §4E-104. REQUIREMENTS.

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

10 1. THE LAND ON WHICH A SOLAR FACILITY IS PROPOSED MAY NOT BE
11 ENCUMBERED BY AN AGRICULTURAL PRESERVATION EASEMENT, AN
12 ENVIRONMENTAL PRESERVATION EASEMENT, OR A RURAL LEGACY EASEMENT.

13 2. THE LAND ON WHICH A SOLAR FACILITY IS PROPOSED MAY NOT BE
14 LOCATED IN A BALTIMORE COUNTY HISTORIC DISTRICT OR ON A PROPERTY
15 THAT IS LISTED ON THE BALTIMORE COUNTY FINAL LANDMARKS LIST.

16 3. THE PORTION OF LAND ON WHICH A SOLAR FACILITY IS PROPOSED
17 MAY NOT BE IN A FOREST CONSERVATION EASEMENT, OR BE IN A DESIGNATED
18 CONSERVANCY AREA IN AN R.C.4 OR R.C.6 ZONE.

19 4. ABOVEGROUND COMPONENTS OF THE SOLAR FACILITY, INCLUDING
20 SOLAR COLLECTOR PANELS, INVERTERS, AND SIMILAR EQUIPMENT, MUST BE
21 SET BACK A MINIMUM OF 50 FEET FROM THE TRACT BOUNDARY. THIS
22 SETBACK DOES NOT APPLY TO THE INSTALLATION OF THE ASSOCIATED
23 LANDSCAPING, SECURITY FENCING, WIRING, OR POWER LINES.

1 5. A STRUCTURE MAY NOT EXCEED 20 FEET IN HEIGHT.

2 6. A LANDSCAPING BUFFER SHALL BE PROVIDED AROUND THE
3 PERIMETER OF ANY PORTION OF A SOLAR FACILITY THAT IS VISABLE FROM AN
4 ADJACENT RESIDENTIALLY USED PROPERTY OR A PUBLIC STREET. SCREENING
5 OF STATE AND LOCAL SCENIC ROUTES AND SCENIC VIEWS IS REQUIRED IN
6 ACCORDANCE WITH THE BALTIMORE COUNTY LANDSCAPE MANUAL.

7 7. SECURITY FENCING SHALL BE PROVIDED BETWEEN THE LANDSCAPING
8 BUFFER AND THE SOLAR FACILITY.

9 8. A SOLAR COLLECTOR PANEL OR COMBINATION OF SOLAR COLLECTOR
10 PANELS SHALL BE DESIGNED AND LOCATED IN AN ARRANGEMENT THAT
11 MINIMIZES GLARE OR REFLECTION ONTO ADJACENT PROPERTIES AND
12 ADJACENT ROADWAYS, AND DOES NOT INTERFERE WITH TRAFFIC OR CREATE A
13 SAFETY HAZARD.

14 9. A PETITIONER SHALL COMPLY WITH THE PLAN REQUIREMENTS OF
15 SECTION 33-3-108 OF THE COUNTY CODE.

16 10. IN GRANTING A SPECIAL EXCEPTION, THE ADMINISTRATIVE LAW
17 JUDGE, OR BOARD OF APPEALS ON APPEAL, MAY IMPOSE CONDITIONS OR
18 RESTRICTIONS ON THE SOLAR FACILITY USE AS NECESSARY TO PROTECT THE
19 ENVIRONMENT AND SCENIC VIEWS, AND TO LESSEN THE IMPACT OF THE
20 FACILITY ON THE HEALTH, SAFETY, AND GENERAL WELFARE OF SURROUNDING
21 RESIDENTIAL PROPERTIES AND COMMUNITIES, TAKING INTO ACCOUNT SUCH
22 FACTORS AS THE TOPOGRAPHY OF ADJACENT LAND, THE PRESENCE OF
23 NATURAL FOREST BUFFERS, AND PROXIMITY OF STREAMS AND WETLANDS.

B. THE REQUIREMENTS OF SUBPARAGRAPHS A.6, A.7, A.8 AND A.10 SHALL
APPLY TO A SOLAR FACILITY LOCATED IN A BUSINESS OR MANUFACTURING
ZONE.

§ 4E-105. REQUIRED SECURITY.

A. AN APPLICANT FOR A BUILDING PERMIT FOR A SOLAR FACILITY SHALL
PROVIDE A SECURITY BOND OR EQUIVALENT FINANCIAL SECURITY IN THE FORM
AND AMOUNT DETERMINED BY THE COUNTY ADMINISTRATIVE OFFICER.

B. THE CODE OFFICIAL MAY USE THE BOND TO PROCURE THE REPAIR OF ANY
UNSAFE OR HAZARDOUS CONDITIONS UNDER SECTION 4E-106 OR REMOVAL OF A
SOLAR FACILITY UNDER SECTION 4E-107, IN ACCORDANCE WITH SECTION 3-6-402
OF THE COUNTY CODE.

§4E-106. MAINTENANCE.

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

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

C. APPROPRIATE VEGETATION IS PERMITTED UNDER AND AROUND THE SOLAR

1 COLLECTOR PANELS, AND THE TRACT MAY BE USED FOR ACCESSORY
2 AGRICULTURAL PURPOSES, INCLUDING GRAZING OF LIVESTOCK, APICULTURE,
3 AND SIMILAR USES.

4 D. THE PROVISIONS ON THIS SECTION SHALL BE ENFORCED IN ACCORDANCE
5 WITH ARTICLE 3, TITLE 6 OF THE COUNTY CODE.

6
7 §4E-107. ABANDONMENT; REMOVAL.

8 A. A SOLAR FACILITY THAT HAS REACHED THE END OF ITS USEFUL LIFE OR HAS
9 BEEN ABANDONED SHALL BE REMOVED. THE OWNER OR OPERATOR SHALL
10 PHYSICALLY REMOVE THE INSTALLATION NO MORE THAN 150 DAYS AFTER THE
11 DATE OF DISCONTINUED OPERATIONS. THE OWNER OR OPERATOR SHALL
12 NOTIFY THE COUNTY BY CERTIFIED MAIL OF THE PROPOSED DATE OF
13 DISCONTINUED OPERATIONS AND PLANS FOR REMOVAL.

14 B. REMOVAL SHALL CONSIST OF THE:

15 1. PHYSICAL REMOVAL OF ALL SOLAR ENERGY SYSTEMS, STRUCTURES,
16 EQUIPMENT, SECURITY BARRIERS AND TRANSMISSION LINES FROM THE SITE;

17 2. DISPOSAL OF ALL SOLID AND HAZARDOUS WASTE IN ACCORDANCE
18 WITH LOCAL, STATE, AND FEDERAL WASTE DISPOSAL REGULATIONS; AND

19 3. STABILIZATION OR RE-VEGETATION OF THE SITE AS NECESSARY TO
20 MINIMIZE EROSION.

21 C. IF THE OWNER OR OPERATOR FAIL TO REMOVE THE FACILITY WITHIN 150
22 DAYS OF ABANDONMENT, THE COUNTY RETAINS THE RIGHT TO ENTER AND
23 REMOVE THE FACILITY. AS A CONDITION OF SPECIAL EXCEPTION APPROVAL,

1 THE PETITIONER AND LANDOWNER AGREE TO ALLOW ENTRY TO REMOVE AN
2 ABANDONED FACILITY.

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

5 1. THE CODE OFFICIAL DETERMINES THAT THE SOLAR FACILITY HAS NOT
6 BEEN IN ACTUAL AND CONTINUOUS USE FOR 12 CONSECUTIVE MONTHS;

7 2. THE OWNER OR OPERATOR FAILED TO CORRECT AN UNSAFE OR
8 HAZARDOUS CONDITION OR FAILED TO MAINTAIN THE SOLAR FACILITY UNDER
9 SECTION 4E-106 WITHIN THE TIME PRESCRIBED IN A CORRECTION NOTICE
10 ISSUED BY THE CODE OFFICIAL; OR

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

13
14 §502.1. Conditions Determining Granting of Special Exception.

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

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

21
22 SECTION 2. AND BE IT FURTHER ENACTED, that the Planning Board shall, in
23 consultation with the Departments of Planning and Environmental Protection and Sustainability,

1 and with participation of the Baltimore County Commission on Environmental Quality,
2 representatives of the Solar Industry, the Sierra Club's Greater Baltimore Group, and the Valleys
3 Planning Council, study and evaluate the impact of Solar Facilities in Baltimore County and the
4 effect of Article 4E of these Regulations, and by July 1, 2018 submit recommendations to the
5 County Council and the County Executive regarding potential changes to current law.

6 SECTION 3. AND BE IT FURTHER ENACTED, that this Act, having been passed by
7 the affirmative vote of five members of the County Council, shall take effect on July 17, 2017 and
8 shall apply retroactively to any zoning petition filed after October 18, 2016.

DATE _____

17-107-4

E - MAIL

[illegible]

CASE NAME _____
CASE NUMBER _____
DATE _____

Frye Rd.

11/16/2018

2017-107-X

E - MAIL

[illegible]

Sherry Nuffer

From: Alyssa Moyers <amoyers@sgs-law.com>
Sent: Wednesday, November 14, 2018 10:38 AM
To: Sherry Nuffer
Subject: Case 2017-0107-X

Sherry –

As a follow up to the “missing exhibits” to the above file, Petitioner’s exhibits 2-4 were mounted on boards so at the conclusions of Day 1 (since it was late) our engineer had grabbed them. We will bring them to Friday’s hearing.

However, Protestant’s Exhibit No. 2 was also missing from the file and we did not have that one.

Let me know if there are any questions. Thanks ☺

- *Alyssa*

Alyssa Fiore Moyers | Paralegal
SMITH, GILDEA & SCHMIDT, LLC

600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
amoyers@sgs-law.com | www.sgs-law.com

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Please consider the environment before printing this email.

Debra Wiley

11/16
1:30 PM

From: Debra Wiley
Sent: Tuesday, October 02, 2018 1:08 PM
To: 'Lawrence Schmidt'; G. Macy Nelson Esq. (GMacyNelson@gmacynelson.com)
Cc: 'Alyssa Moyers'
Subject: Continuance of Case No. 2017-0107-X (5298 Frye Rd.) - Continued from September 11th

Good Afternoon Gentlemen:

It is my understanding that you have agreed to a continuance date for the above case.

Therefore, this is to confirm that the above-referenced matter has been scheduled for continuance on Friday, November 16, 2018 @ 1:30 PM, in Room 205, 105 W. Chesapeake Ave., Towson, MD.

Please advise your client(s) accordingly.

Thank you and have a great day !

Debra Wiley, Legal Administrative Secretary
Baltimore County Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204
410-887-3868

J

Debra Wiley

From: Debra Wiley
Sent: Tuesday, October 02, 2018 1:08 PM
To: 'Lawrence Schmidt'; G. Macy Nelson Esq. (GMacyNelson@gmacynelson.com)
Cc: 'Alyssa Moyers'
Subject: Continuance of Case No. 2017-0107-X (5298 Frye Rd.) - Continued from September 11th

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Please advise your client(s) accordingly.

Thank you and have a great day !

Debra Wiley, Legal Administrative Secretary
Baltimore County Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204
410-887-3868

2-17-107-X

Debra Wiley

From: Debra Wiley
Sent: Friday, September 14, 2018 9:34 AM
To: 'Alyssa Moyers'
Cc: John E. Beverungen; Kristen L Lewis
Subject: FW: Case No. 2017-107-X

Orig. Rec'd
9-11-18
To be called
per JB

Alyssa,

Please contact Kristen Lewis for additional days; our office is not in receipt of the October calendar and therefore not aware of what has been scheduled.

Thanks.

From: Alyssa Moyers [mailto:amoyers@sgs-law.com]
Sent: Friday, September 14, 2018 9:29 AM
To: 'G. Macy Nelson' <gmacynelson@gmacynelson.com>; John E. Beverungen <jbeverungen@baltimorecountymd.gov>
Cc: Lawrence Schmidt <lschmidt@sgs-law.com>; Debra Wiley <dwiley@baltimorecountymd.gov>; Kristen L Lewis <klewis@baltimorecountymd.gov>
Subject: RE: Case No. 2017-107-X

Mr. Beverungen,

I understand from Mr. Nelson that his client is not available October 9 or 10 as he has already planned to be out of town that week.

As such, we have the following additional dates for Day 2: October 15, 16, 24, 25, 26 or November 5th.

Please let me know if any of these dates work with your calendar.

- Alyssa

Alyssa Fiore Moyers | Paralegal
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
amoyers@sgs-law.com | www.sgs-law.com

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Please consider the environment before printing this email.

From: G. Macy Nelson [mailto:gmacynelson@gmacynelson.com]
Sent: Thursday, September 13, 2018 11:09 AM
To: John E. Beverungen; Alyssa Moyers

Debra Wiley

From: Alyssa Moyers <amoyers@sgs-law.com>
Sent: Thursday, September 13, 2018 11:11 AM
To: 'G. Macy Nelson'; John E. Beverungen
Cc: Lawrence Schmidt; Debra Wiley; Kristen L Lewis
Subject: RE: Case No. 2017-107-X

Thank you. We would prefer the October 9th date if possible.

- *Alyssa*

Alyssa Fiore Moyers | Paralegal
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
amoyers@sgs-law.com | www.sgs-law.com

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Please consider the environment before printing this email.

From: G. Macy Nelson [mailto:gmacynelson@gmacynelson.com]
Sent: Thursday, September 13, 2018 11:09 AM
To: John E. Beverungen; Alyssa Moyers
Cc: Lawrence Schmidt; Debra Wiley; Kristen L Lewis
Subject: RE: Case No. 2017-107-X

Thanks. I am available, I will promptly check with my clients about their availability. I don't anticipate a problem.

-Macy Nelson

G. Macy Nelson
401 Washington Avenue, Suite 803
Towson, Maryland 21204
410-296-8166, ex. 290
Mobile 443-326-8749
Email gmacynelson@gmacynelson.com
www.gmacynelson.com

From: John E. Beverungen [mailto:jbeverungen@baltimorecountymd.gov]
Sent: Thursday, September 13, 2018 11:07 AM
To: Alyssa Moyers
Cc: G. Macy Nelson; Lawrence Schmidt; Debra Wiley; Kristen L Lewis
Subject: RE: Case No. 2017-107-X

October 9 or 10 work for me if the hearing can be rescheduled on one of those dates.

From: Alyssa Moyers [mailto:amoyers@sgs-law.com]

Sent: Wednesday, September 12, 2018 3:38 PM

To: John E. Beverungen <jbeverungen@baltimorecountymd.gov>

Cc: GMacyNelson@gmacynelson.com; Lawrence Schmidt <lschmidt@sgs-law.com>; Debra Wiley <dwiley@baltimorecountymd.gov>; Kristen L Lewis <klewis@baltimorecountymd.gov>

Subject: Case No. 2017-107-X

Mr. Beverungen,

I am writing to follow up on the hearing yesterday in the above referenced matter. I have attached the hearing notice for ease of reference. I understand that the case did not conclude yesterday and that another date will be required.

Based on Mr. Schmidt's and Mr. Nelson's calendars, the following dates are available on our end: **October 2nd, 9th or 10th**. I believe a half day should be sufficient time for the parties to conclude this matter. I have copied Kristen Lewis on this email to assist in coordinating.

As a side note, Mr. Schmidt was scheduled for a hearing before you on another matter on October 9th at 1:30 p.m. and we requested a postponement for that matter from Ms. Lewis today. Perhaps we can fill that time slot with this matter.

I will wait to hear from you or Ms. Lewis. Thank you.

Alyssa Fiore Moyers | Paralegal

SMITH, GILDEA & SCHMIDT, LLC

600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070

amoyers@sgs-law.com | www.sgs-law.com

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CONNECT WITH BALTIMORE COUNTY



www.baltimorecountymd.gov

CASE NAME

CASE NUMBER

DATE _____

NAME _____

ADDRESS

CITY, STATE, ZIP

E - MAIL

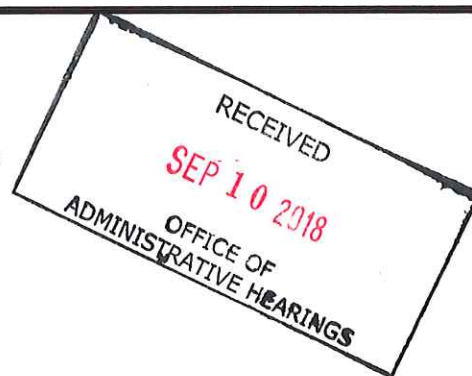
[illegible]

CASE NAME _____
CASE NUMBER 2017 - 0107 X
DATE Sept 11, 2018

[illegible]

Sherry Nuffer

From: June Wisnom
Sent: Monday, September 10, 2018 9:58 AM
To: Sherry Nuffer
Subject: FW: Message from "RNP002673BFB3B1"
Attachments: 20180910100417809.pdf



Good morning!! Will you please put this in the file . Thank You!!

-----Original Message-----

From: cpr111@baltimorecountymd.gov [mailto:cpr111@baltimorecountymd.gov]
Sent: Monday, September 10, 2018 10:04 AM
To: June Wisnom <jwisnom@baltimorecountymd.gov>
Subject: Message from "RNP002673BFB3B1"

This E-mail was sent from "RNP002673BFB3B1" (MP 4054).

Scan Date: 09.10.2018 10:04:17 (-0400)
Queries to: cpr111@baltimorecountymd.gov

June Wisnom

From: Bill Bealmear <williambealmear@me.com>
Sent: Monday, September 10, 2018 9:51 AM
To: June Wisnom
Subject: Case # 2017-0107-X in Opposition to Solar Facility Exception Request on Sept. 11, 2018

Dear Sir or Madam,

I respectfully request that you deny the request for a Zoning Exception request (Case # 2017-0107-X) to build an industrial solar generating facility on farmland. This proposed project negatively impacts multiple nearby properties, and sets a dangerous precedent for utility-scale solar generation on land zoned for agricultural use.

While I support solar energy development and reducing Baltimore County's reliance on fossil fuels, this proposal represents a short sighted and cheap solution to renewable energy development that will adversely impact the community and rural character of the Hanover Road community.

In July, the Baltimore County Planning Department recommended industrial solar generation facilities should NOT be built on farmland, but should be built in business and manufacturing zones, landfills and brownfields. Their full recommendation is due in the Fall, 2018. Area residents are now calling on the County Executive to issue an Executive Order for a moratorium on building utility-scale solar generation facilities on agricultural land, until the issue can be studied in-depth.

In 2017, residents were shocked that Bill 37-17 provided for a new commercial use on land zoned for agriculture with a process to grant limited exemptions without community input. Needless to say, area residents are stunned to see 50 years of preservation planning and easement garnering go totally ignored as fertile fields are aggressively targeted by solar companies.

In the meantime, property owners in District 3 shoulder the financial burden of appealing every Special Exception. This is egregious since no community benefit is guaranteed: all solar energy generated would be sold to the grid for use anywhere while local farmers are losing cropland.

The accelerated financial incentives offered by solar companies undermines decades of investment in land preservation and Maryland's agriculture industry. Properties targeted for utility-scale power plants are frequently not in isolated areas: they are in rural communities, watersheds and environmentally-sensitive areas, or along scenic byways, as in this case.

There is much work to be done to amend Bill 37-17 to accelerate solar energy progress, protect our farmland and reduce community conflict. Until then, agricultural lands should not be eligible for zoning Exceptions.

Resource conservation zoning is some of the most restrictive in Baltimore County because the area contains the most environmentally-sensitive land. Preservation of rural land keeps agriculture thriving, protects the watershed, maintains the environmental purity of forests and green spaces, and gives residents an enhanced quality of life.

Please deny this request for a special exception, and help Baltimore County be a leader in SMART solar energy while protecting our best farmland.

Sincerely,

William Bealmear
5316 Glen Falls Road
Reisterstown, MD 21136

william.bealmear@me.com
410-292-1306

SECOND CERTIFICATE OF POSTING

ATTENTION: SHERRY NUFFER

DATE: 9/7/2018

Case Number: 2017-0107-X

Petitioner / Developer: LAWRENCE SCHMIDT, ESQ.~

BRUCE WILSON ~ MR. & MRS. ELSE ROAD

Date of Hearing: SEPTEMBER 11, 2018

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:
5298 FRYE ROAD

The sign(s) were posted on: **AUGUST 19, 2018**

The sign(s) were re-photographed on: **SEPTEMBER 7, 2018**



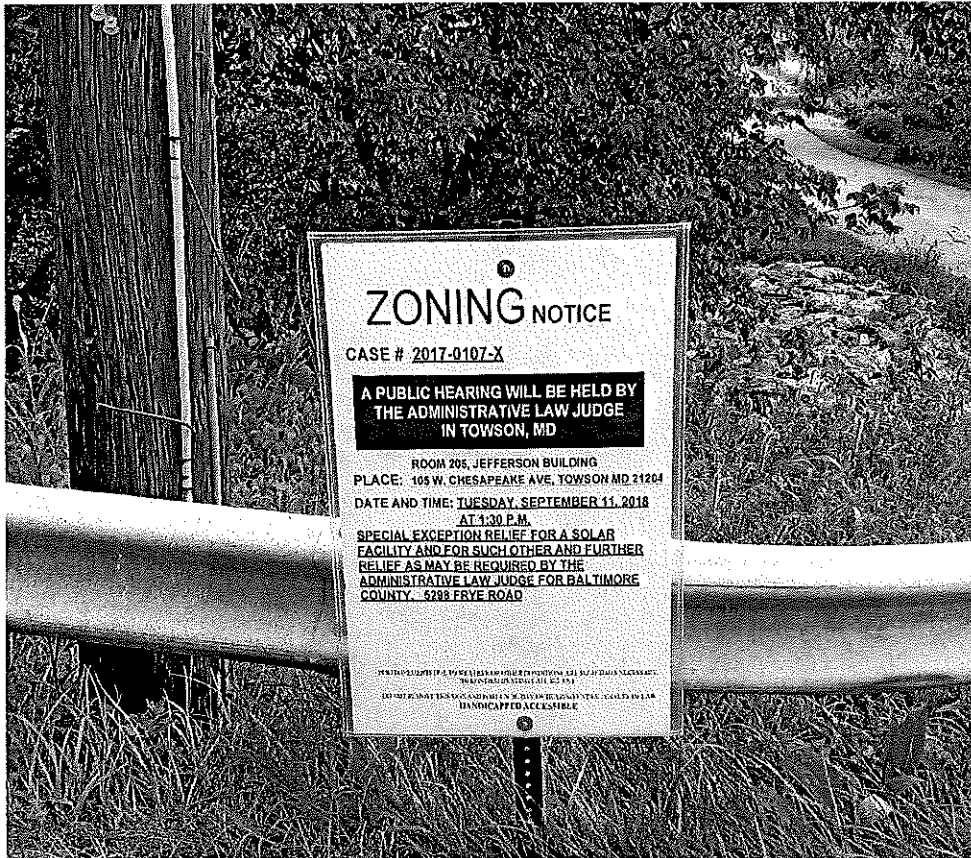
Linda O'Keefe
(Signature of Sign Poster)

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)



2nd Sign Re-photographed 9/7/2018 @ 5298 Frye Road
CASE # 2017-0107-X

Sherry Nuffer

From: Linda Okeefe <luckylinda1954@yahoo.com>
Sent: Friday, September 07, 2018 11:51 PM
To: Administrative Hearings
Subject: 2nd Cert. 2017-0107-X Frye Rd.
Attachments: 2nd Cert. Frye Rd..jpeg; 2nd Sign Frye Rd..docx



Hi Sherry,

I have attached the Certification for Case # 2017-0107-X @ 5298 Frye Rd. and a photo of the second sign for your records.

Thank you,

Linda

Linda O'Keefe
523 Penny Lane
Hunt Valley MD 21030
Phone # 410-666-5366
Cell# 443-604-6431
Fax# 410-666-0929
luckylinda1954@yahoo.com



DONALD I. MOHLER III
County Executive

ARNOLD JABLON
*Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections*

September 5, 2018

Woodensburg Land and Cattle Company LLC
Glen Elsroad, Ruth L Elsroad
5423 Mt. Gilead Road
Reisterstown MD 21136

RE: Case Number: 2017-0107 X, Address: 5298 Frye Road

To Whom It May Concern:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on June 11, 2018. 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
SGC Power LLC, Bruce Wilson, 6865 Deerpath Road, Elkridge MD 21075
Lawrence E Schmidt, Esquire, 600 Washington Avenue, Suite 200, Towson MD 21204

Date: 6/18/18

Ms. Kristen Lewis
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
111 West Chesapeake Avenue
Towson, Maryland 21204

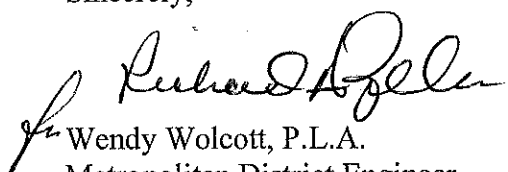
Dear Ms. Lewis:

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. 2017-0107-X

Special Exception
WLCC, Glenn S. & Ruth L. Elseroad.
5298 Frye Road

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,



Wendy Wolcott, P.L.A.
Metropolitan District Engineer
Maryland Department of Transportation
State Highway Administration
District 4 - Baltimore and Harford Counties

WW/RAZ

9-11

BALTIMORE COUNTY, MARYLAND INTER-OFFICE MEMORANDUM

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: July 18, 2018

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 17-107



INFORMATION:

Property Address: 5298 Frye Road
Petitioner: Glen Elseroad, Woodensburg Land and Cattle Company, LLC
Zoning: RC 2
Requested Action: Special Exception

The Department of Planning has reviewed the petition for special exception to use the property for solar panel array field as a public utility use.

A site visit was conducted on November 2, 2016. Hanover Pike is a designated Baltimore County Scenic Route. The subject site is located within an Agricultural Priority Preservation Area and is also subject to the Hanover Pike Corridor Study, adopted by the Baltimore County Council April 19, 1993.

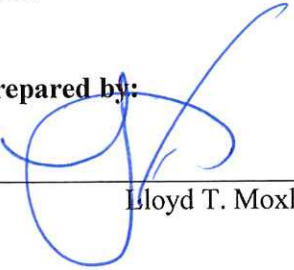
The Department has no objection to granting the petitioned zoning relief conditioned upon the following:

- Pursuant to BCZR §502.1.A, petitioners shall demonstrate to the satisfaction of the Administrative Law Judge that the facility will not be detrimental to the adjacent residential properties as a result of glare emanating from the facility.
- Petitioners shall note on the plan that the proposed solar facility will be subject to BCZR §4F-107.
- Petitioners shall certify by note on the plan that the proposed solar facility will not exceed the maximum permitted number of facilities allowed in its respective councilmanic district. If approved, Petitioners shall submit to this Department at the time of building permit application the final fixed location and area of the facility by coordinate data so that an inventory may be kept.
- Lighting shall be limited to what is required for security purposes only and will be sited in such a way as to have minimal spillage onto neighboring properties.
- Signage shall be limited to that which is necessary for safety and security purposes.
- No deliveries or outdoor maintenance which may generate excessive noise may occur on-site between the hours of 6 P.M. through 6 A.M.
- Indicate on the plan the means and location by which the solar facility connects to the power grid and whether grading or clearing will be involved.

- Protect the Hanover Pike Scenic Route by (a) planting a vegetative screening consisting of mixed indigenous hardwood and evergreen trees and shrubs along Hanover Pike to a depth that fully screens the solar panels and (b) retaining the woods on the top of the northern portion of the property to protect the distant scenic view from Hanover Pike.

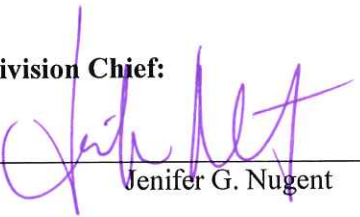
Be advised that the site is within an Agricultural Priority Preservation Area as designated in the Baltimore County Master Plan 2020 (MP2020). Said plan warns that *"incremental development continues to threaten the protection of resources and the viability of the agricultural industry."* (MP2020 pg.92). The Department recommends that the future viability of commercial agriculture in Baltimore County be weighed when considering this special exception proposal within the context of 502.1.G. For further information concerning the matters stated herein, please contact Wally Lippincott at 410-887-3480.

Prepared by:



Lloyd T. Moxley

Division Chief:



Jennifer G. Nugent

AVA/KS/LTM/ka

c: Wally Lippincott
James Hermann, R.L.A., Department of Permits, Approvals and Inspections
David H. Karceski, Esquire
Office of the Administrative Hearings
People's Counsel for Baltimore County

9-11

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: July 10, 2018

SUBJECT: DEPS Comment for Zoning Item # 2017-0107-X-**AMENDED**
Address 5298 Frye Road
(Woodensburg Land & Cattle
Company, LLC Property)

Zoning Advisory Committee Meeting of July 25, 2018

 X The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

- X Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).
- X Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Additional Comments:

Reviewer: Glenn Shaffer

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

FROM: ^{For EFC} Vishnu Desai, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For June 25, 2018
Item No. 2017-0107-X

DATE: July 12, 2018

The Bureau of Development Plans Review has reviewed the subject zoning items and we have the following comments.

If Special Exception is granted, a Landscape Plan is required per the requirements of the Landscape Manual, Bill No. 37-17 and the CMDP. Specific landscape comments:

1. Hanover Pike is a Baltimore County Scenic Route,
2. Perimeter landscape buffers are required,
3. Must minimize tree and vegetation removal,
4. Solar panels are considered a utility and should be designed and located to harmonize with the surroundings and to create the least visual impact. (See Comment # 8, 9, & 10 below),
5. Additional landscape buffers (including contour strip buffers) may be required to address existing topography changes, Scenic Views, Scenic Routes, etc. depending on a number of items including the subject properties topography,
6. More comments may be rendered during review of the landscape plan,
7. Proposed perimeter fence shall be black vinyl-coated chain-link fence,
8. Proposed landscape screening should begin at or near the intersection of Frye Road, north to the property line of 14619 Hanover Pike, consideration of existing topography should be considered to assure screening of the solar array field from Hanover Pike views.
9. 14525, 14531, 14533 and 14619 Hanover Pike are adjacent properties that need to be reviewed for possible landscape screening to be designed and installed between their properties and the proposed solar facility.
10. Additional landscape and screening may be needed to address adjacent properties views when it relates to the proposed solar facility.

During the review of this property the Department of Public Works has found that there is a riverine flood plain on this property that may impact the proposed development. A flood plain study of this property must be submitted for verification of the flood plain boundary. Once the flood plain boundary has been established, the Building Code requirements for riverine flood plain and the Department of Public Works Design Manual Plate DF-1 requirements should be observed.

* * * * *

VKD: cen
cc: file

June Wisnom

From: Abby Kealy <abbiekealy@me.com>
Sent: Sunday, August 26, 2018 5:22 PM
To: June Wisnom
Subject: Case # 2017-0107-X (Objection to Solar Facility Exception Request on Sept. 11, 2018)

Dear Sir or Madam,

I urge you to *deny* the Solar Facility Zoning Exception request (Case # 2017-0107-X) to build an industrial solar generating facility on farmland. This proposed project negatively impacts multiple nearby properties, and sets a dangerous precedent for utility-scale solar generation on land zoned for agricultural use.

While I support solar energy development and reducing Baltimore County's reliance on fossil fuels, there should be a moratorium on granting Exceptions until a solar energy siting plan is developed *first* to protect agricultural farmland.

In July, the Baltimore County Planning Department recommended industrial solar generation facilities should *NOT* be built on farmland, but *should be built in business and manufacturing zones, landfills and brownfields.* Their full recommendation is due in the Fall, 2018. Area residents are now calling on the County Executive to issue an Executive Order for a moratorium on building utility-scale solar generation facilities on agricultural land, until the issue can be studied in-depth.

In 2017, residents were shocked that Bill 37-17 provided for a new commercial use on land zoned for agriculture with a process to grant limited exemptions without community input. Needless to say, area residents are stunned to see 50 years of preservation planning and easement garnering go totally ignored as fertile fields are aggressively targeted by solar companies.

In the meantime, property owners in District 3 shoulder the financial burden of appealing every Special Exception. This is egregious since no community benefit is guaranteed: all solar energy generated would be sold to the grid for use anywhere while local farmers are losing cropland.

The accelerated financial incentives offered by solar companies undermines decades of investment in land preservation and Maryland's agriculture industry. Properties targeted for utility-scale power plants are frequently not in isolated areas: they are in rural communities, watersheds and environmentally-sensitive areas, or along scenic byways, as in this case.

There is much work to be done to amend Bill 37-17 to accelerate solar energy progress, protect our farmland and reduce community conflict. Until then, agricultural lands should not be eligible for zoning Exceptions.

Resource conservation zoning is some of the most restrictive in Baltimore County because the area contains the most environmentally-sensitive land. Preservation of rural land keeps agriculture thriving, protects the watershed, maintains the environmental purity of forests and green spaces, and gives residents an enhanced quality of life.

Please deny this request for a special exception, and help Baltimore County be a leader in SMART solar energy while protecting our best farmland.

Sincerely,

Abbie Kealy

5316 Glen Falls Rd, Reisterstown, MD 21136

abbiekealy@me.com

443-570-9482 www.abbiekealy.com

The Daily Record

11 East Saratoga Street
 Baltimore, MD 21202-2199
 (443) 524-8100
<http://www.thedailyrecord.com>

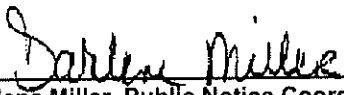
PUBLISHER'S AFFIDAVIT

We hereby certify that the annexed advertisement was published in **The Daily Record**, a daily newspaper published in the State of Maryland 1 times on the following dates:

8/22/2018

Order #: 11598998
 Case #: 2017-0107-X
 Description:

Case Number: 2017-0107-X - Notice of Zoning Hearing


 Darlene Miller, Public Notice Coordinator
 (Representative Signature)

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: 2017-0107-X

5208 Frye Road

E/s Hanover Pike, 2087 ft. at the corner of Not Frye Road

4th Election District - 3rd Councilmanic District

Legal Owners: Glenn & Ruth Elseroad

Contract Purchaser/Lessee: Bruce Wilson, Authorized Rep of SGC Power, LLC
 Special Exception relief for a solar facility and for such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

Hearing: Tuesday, September 11, 2018 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 410-887-3301.

au22

CERTIFICATE OF POSTING

ATTENTION: KRISTEN LEWIS

DATE: 8/19/2018

Case Number: 2017-0107-X

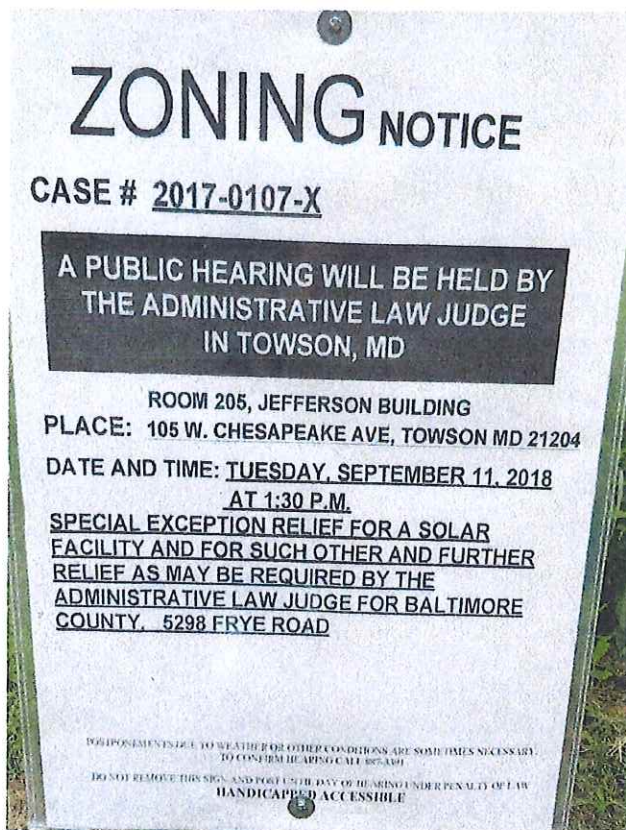
Petitioner / Developer: LAWRENCE SCHMIDT, ESQ. ~

BRUCE WILSON ~ MR. & MRS. ELSE ROAD

Date of Hearing: SEPTEMBER 11, 2018

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:
5298 FRYE ROAD

The sign(s) were posted on: AUGUST 19, 2018



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)



BACKGROUND PHOTO OF 1ST SIGN CASE # 2017-0107-X @ 5298 FRYE RD.



BACKGROUND PHOTO OF 2ND SIGN CASE # 2017-0107-X @ 5298 FRYE RD.
POSTED 8/19/2018



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
*Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections*

August 1, 2018

NEW 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: 2017-0107-X

5298 Frye Road

E/s Hanover Pike, 2687 ft. at the corner of Not Frye Road

4th Election District – 3rd Councilmanic District

Legal Owners: Glenn & Ruth Elseroad

Contract Purchaser/Lessee: Bruce Wilson, Authorized Rep of SGC Power, LLC

Special Exception relief for a solar facility and for such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

Hearing: Tuesday, September 11, 2018 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".

Arnold Jablon
Director

AJ:kl

C: Lawrence Schmidt, 600 Washington Avenue, Ste. 200, Towson 21204
Bruce Wilson, 6865 Deerpath Road, Elkridge 21075
Mr. & Mrs. Elseroad, 5423 Mt. Gilead Road, Reisterstown 21136
G. Macy Nelson, 401 Washington Avenue, Ste. 803, Towson 21204

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WEDNESDAY, AUGUST 22, 2018**
- (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.

Kristen L Lewis

From: G. Macy Nelson <gmacynelson@gmacynelson.com>
Sent: Monday, July 30, 2018 3:43 PM
To: Kristen L Lewis; Lawrence Schmidt
Cc: Alyssa Moyers
Subject: RE: Case 2017-0107-X (5298 Frye Road)

Kristin,

Thanks for your note. By now you should have rec'd a pdf of my letter seeking the postponement.

Larry and I are available the following days in September: 5, 7, 10, 11, 13, 14, 17, 19 and 20.

My personal preference is to avoid Sept. 5 and 7 because I will returning home from vacation late on Sept. 3.

Thank you.

-Macy Nelson

G. Macy Nelson
401 Washington Avenue, Suite 803
Towson, Maryland 21204
410-296-8166, ex. 290
Mobile 443-326-8749
Email gmacynelson@gmacynelson.com
www.gmacynelson.com

From: Kristen L Lewis [mailto:klewis@baltimorecountymd.gov]
Sent: Monday, July 30, 2018 3:13 PM
To: Lawrence Schmidt; G. Macy Nelson
Cc: Alyssa Moyers
Subject: RE: Case 2017-0107-X (5298 Frye Road)

Good afternoon,

I have not received Mr. Nelson's postponement letter as of yet. Once, I receive it, I will have Mr. Jablon decide on the postponement request. I will be in contact with a decision and what the next steps will be. Thank you,

Kristen Lewis
PAI - Zoning Review
410-887-3391

From: Lawrence Schmidt [mailto:lschmidt@sgs-law.com]
Sent: Monday, July 30, 2018 10:03 AM
To: 'gmacynelson@gmacynelson.com' <gmacynelson@gmacynelson.com>; Kristen L Lewis <klewis@baltimorecountymd.gov>
Cc: Alyssa Moyers <amoyers@sgs-law.com>
Subject: RE: Case 2017-0107-X (5298 Frye Road)

That "reprinting" should be "representing". Damned spell check!

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

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

From: Lawrence Schmidt

Sent: Monday, July 30, 2018 10:01 AM

To: gmacynelson@gmacynelson.com; Kristen L Lewis

Cc: Alyssa Moyers

Subject: Case 2017-0107-X (5298 Frye Road)

Macy: I received your letter over the weekend to Kristen in the Zoning Office asking for a postponement of the above matter. As we had discussed last week, I normally do not oppose another attorney's request for postponement under the theory that what goes around, comes around and there are certainly occasions when I might have a schedule conflict or vacation plans.

But with that said, this matter has been pending for sometime and my clients have instructed me to push hard to get this scheduled. So although I don't have an issue with putting this off a week or two, a significant delay is going to be difficult for my clients.

I also agree with you that with you now representing the neighbors, it appears that the case may take longer than the hour or two that it was allotted. It looks like you have five different individuals who you are reprinting. So I suspect a full day??? I will probably have two witnesses and (depending on your cross examination) presenting my case shouldn't take more than an hour or so.

I guess we'll see what Kristen has available and go from there.

I have copied her on this email and I appreciate anything that she can do for us.

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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CONNECT WITH BALTIMORE COUNTY



LAW OFFICE OF
G. MACY NELSON, LLC

G. MACY NELSON*
(410) 296-8166 EXT. 290
gmacynelson@gmacynelson.com

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
www.gmacynelson.com

EMILY E. BAER**
(410) 296-8166 EXT. 113
emily@gmacynelson.com

*Also admitted in D.C.

** Only admitted in D.C.

July 26, 2018

Hand-Delivered

Office of Administrative Hearings
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204



Re: Application for Special Exception
Property: 5298 Frye Road
Case No.: 2017-0107-X

Dear Clerk:

I am entering my appearance on behalf of the following:

Paul B. Merritt
Melissa A. DePinho
14527 Hanover Pike
Upperco, Maryland 21155

Timothy and Elizabeth Fales
14619 Hanover Pike
Upperco, Maryland 21155

Patrick and Thanikan Fales
14533 Hanover Pike
Upperco, Maryland 21155

Santo and Debra Mirabile
14517 Hanover Pike
Upperco, Maryland 21155

James C. and Juli R. Wolf
5133 Frye Road
Upperco, Maryland 21155

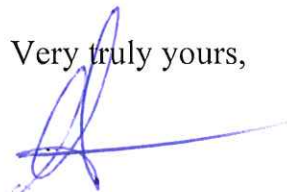
Letter to Office of Administrative Hearings

July 26, 2018

Page 2

I was provided a Notice of Hearing dated July 6, 2018 scheduling the case for a hearing before the Administrative Law Judge on August 28, 2018 at 1:30 p.m. I respectfully request a brief postponement of the hearing date because I am scheduled to be on vacation with my family at that time.

Very truly yours,

A handwritten signature in blue ink, appearing to be 'G. Macy Nelson', with a long horizontal stroke extending to the right.

G. Macy Nelson

GMN:ldr

cc: Lawrence E. Schmidt, Esquire



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

July 6, 2018

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: 2017-0107-X

5298 Frye Road

E/s Hanover Pike, 2687 ft. at the corner of Not Frye Road

4th Election District – 3rd Councilmanic District

Legal Owners: Glenn & Ruth Elseroad

Contract Purchaser/Lessee: Bruce Wilson, Authorized Rep of SGC Power, LLC

Special Exception relief for a solar facility and for such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

Hearing: Tuesday, August 28, 2018 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".

Arnold Jablon
Director

AJ:kl

C: Lawrence Schmidt, 600 Washington Avenue, Ste. 200, Towson 21204
Bruce Wilson, 6865 Deerpath Road, Elkridge 21075
Mr. & Mrs. Elseroad, 5423 Mt. Gilead Road, Reisterstown 21136

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WEDNESDAY, AUGUST 8, 2018.**
- (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 EXCEPTION	*	BEFORE THE OFFICE
5298 Frye Road; E/S Hanover Pike,	*	OF ADMINSTRATIVE
2687' N of Mt. Gildead Road	*	HEARINGS FOR
4 th Election & 3 rd Councilmanic Districts	*	BALTIMORE COUNTY
Legal Owner(s): Woodenburg Land &	*	2017-107-X
Cattle Company, LLC by Glen Elseroad,		
Authorized Rep. for WLCC		
Contract Purchaser(s): SGC Power, LLC		
by Bruce Wilson, Authorized Rep.		
Petitioner(s)		
* * * * *		

AMENDED 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
JUN 19 2018

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 19th day of June, 2018, a copy of the foregoing Entry of Appearance was mailed to Lawrence E. Schmidt, Esquire, Smith, Gildea & Schmidt, LLC, 600 Washington Avenue, Suite 200, Towson, Maryland 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



AMENDED

CASE NO. 2017-107-X

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 5298 Frye Road which is presently zoned RC2

Deed References: 29357/77 10 Digit Tax Account # 2200015847

Property Owner(s) Printed Name(s) Woodensburg Land and Cattle Company, LLC

(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

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:

Bruce Wilson, Authorized Rep. of SGC Power, LLC

Name- Type or Print

[Signature]

Signature

6865 Deerpath Road Elkridge MD

Mailing Address City State

21075 / bruce.wilson@sgc-power.com

Zip Code Telephone # Email Address

Attorney for Petitioner:

Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC

Name- Type or Print

[Signature]

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): *Authorized Rep. of WLCC*

Glenn S. Elseroad / Ruth L. Elseroad

Name #1 - Type or Print

Name #2 - Type or Print

[Signature]

[Signature]

Signature #1

Signature #2

5423 Mt. Gilead Rd. Reisterstown MD

Mailing Address City State

21136

Zip Code Telephone # Email Address

Representative to be contacted:

Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC

Name - Type or Print

[Signature]

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 2017-0107-X Filing Date 6/11/2018 Do Not Schedule Dates: 7/15-17

Reviewer *[Signature]*

REV. 10/4/11

Prop off no Review

ATTACHMENT TO PETITION FOR SPECIAL EXCEPTION

5298 Frye Road
3rd Councilmanic District
4th Election District

Special Exception Relief:

1. To grant Special Exception relief for a solar facility pursuant to BCZR § 4F-102 (as established by Bill 37-17); and
2. For such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

June 5, 2018

**ZONING DESCRIPTION
(SGC – HANOVER)**

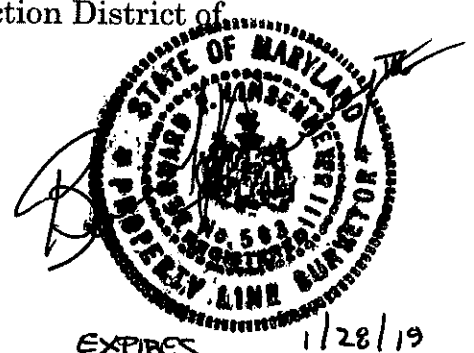
Beginning for the same at the northeast corner of the intersection of Hanover Pike (Route 30) and Not Frye Road, thence running the following fifteen (15) courses and distances:

1. North 57°40'22" West 27.21 feet to a point, thence
2. North 77°49'24" East 19.20 feet to a point, thence
3. North 12°10'36" West 60.00 feet to a point, thence
4. South 77°49'24" West 20.00 feet to a point, thence
5. North 12°10'36" West 249.25 feet to a point, thence
6. Northwesterly 113.40 feet by a curve the left having a radius of 2,824.79 feet and a chord bearing of North 11°01'37" West 113.39 to a point, thence
7. North 78°41'34" East 233.54 feet to a point; thence,
8. North 03°23'03" West 33.25 feet to a point; thence,
9. North 58°27'19" East 682.36 feet to a point; thence,
10. North 17°55'21" East 48.78 feet to a point; thence,
11. North 62°55'21" East 287.29 feet to a point; thence,
12. South 15°55'52" East 441.44 feet to a point; thence,
13. South 03°33'17" West 298.74 feet to a point; thence,
14. South 73°46'24" West 1,033.82 feet to a point; thence,
15. South 69°23'24" West 84.09 feet to the point of beginning.

Containing 15.18 acres of land, more or less.

Located on in the Third Councilmanic District, Fourth Election District of
Baltimore County, Maryland.

2017-0107-X



1
2
3 **IN THE MATTER OF:**

4
5 **WOODENSBURG LAND AND CATTLE COMPANY, LLC, LEGAL OWNER**
6 **CHESAPEAKE ENERGY ONE, LLC - LESSEE**
7 **CASE NUMBERS: CBA-19-018/17-107-X**
8
9

10
11 Hearing Date: May 2, 2019

12
13 Pursuant to Notice, the above-entitled hearing was held before the Board of Appeals for Baltimore
14 County at the Jefferson Building, Second Floor, Suite 203, 105 West Chesapeake Avenue, Towson,
15 Maryland 21204.
16

17
18
19 **PANEL PRESIDING:**

20
21 **MAUREEN E. MURPHY, CHAIR**

22
23 **KENDRA RANDALL JOLIET, BOARD**

24
25 **WILLIAM A. MCCOMAS, BOARD**
26

27
28 **PRESENT ON BEHALF OF THE PARTIES:**

29
30 **LAWRENCE E. SCHMIDT, ESQUIRE**

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32 **G. MACY NELSON, ESQUIRE**
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Christine R. Leary
3129 Hiss Avenue
Parkville, Maryland 21234

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1 (ON RECORD - 10:08:31 AM)

2 CHAIR: Okay. Good morning, everyone. We're here in
3 the matter of Woodensburg Land and Cattle Company, LLC, SGC
4 Power, LLC, 5298 Frye Road, case number 17-107-X, which is
5 Petition for Special Exception to Operate a Solar Facility,
6 consolidated with the case with the same number CBA-19-018,
7 which is a limited exemption case, an appeal of a granting of
8 limited exemption for an A-1-6 exemption. Let's have counsel
9 for the record.

10 MR. SCHMIDT: Good morning, Chairwoman Murphy and
11 members of the panel. I'm Lawrence E. Schmidt, with the Law
12 Firm of Smith, Gildea & Schmidt, with offices in Towson at 600
13 Washington Avenue here on behalf of the Petitioners, which
14 includes the property owner, Woodensburg Land and Cattle
15 Company, LLC, and also the Co-Petitioner, which is Chesapeake
16 Energy One, LLC.

17 MR. NELSON: Good morning. Macy Nelson on behalf of
18 the citizen, Protestants, Timothy Fales, Elizabeth Fales, Santo
19 Mirabile, Debra Mirabile, Patrick Fales, Thanikan Fales, Paul
20 Merritt, Melissa DePinho, Patrick Little, Sandra Brown, James
21 Wolf and Juli Wolf. I'm Macy Nelson, counsel for each of the
22 citizen Protestants.

23 CHAIR: Okay.

24 MR. NELSON: In opposition to the special exception
25 and we also did the appeal on the DRN issue.

1 CHAIR: All right and we consolidated those, as I
2 said earlier. So, we'll have those together. We preliminarily
3 had a Motion for Summary Disposition filed by Mr. Nelson
4 yesterday. Did you get a chance to look at that, Mr. Schmidt?

5 MR. SCHMIDT: I did. Mr. Nelson was kind enough to
6 send it to me via e-mail so I looked at it last evening and
7 this morning.

8 CHAIR: Okay and, and so, as we understand your
9 argument, just, why don't we just address that right way?

10 MR. NELSON: Yeah, thank you for --

11 CHAIR: We, as we understand it, what your argument
12 is is that because solar facilities are not listed under the
13 special exception list in the RC-2 regs, in, in the zoning
14 regulations, that therefore the application was, fails for that
15 reason because it doesn't, because it's not listed there, is
16 that right?

17 MR. NELSON: That's correct. And, and of course we
18 have special regulation 4-F, which talks about solar facilities
19 and the legal question, I think, is whether a special
20 regulation can bootstrap a special exception use in the list
21 and we say no. I anticipate my adversary will say yes.

22 But the, the rules in which, you know, all zoning
23 power comes from the State. That the State delegated the
24 County authority to implement a zoning ordinance, implemented
25 the authority to adopt uses by right, uses by special

1 exception.

2 We have a very precise regulation which sets forth
3 the uses by right in RC-2 and the uses by special exception and
4 that section states, if I just read the (inaudible) language.
5 The following uses only may be permitted by special exception
6 in any RC-2 zone. And, of course, solar facilities aren't on
7 there.

8 Now, the conundrum is, well, look at special
9 regulation 4-F, it talks about solar facilities. Now, this is
10 a purely legal point. The, if the County Council wanted, the
11 way they should have done it but didn't do it was to amend the
12 section which lists the special exceptions and have the special
13 regulations and if you look at the list of special exceptions,
14 there are special exceptions that are on the list and also have
15 special regulations. The only special regulation that
16 authorizes a special exception in an RC-2 zone is the solar
17 facility. The, the legislation was defective. There's a
18 legislative fix but right now, the law doesn't authorize solar
19 facilities as a special exception in RC-2 zones.

20 I'm mindful that this Board has considered other
21 solar facility cases. I'm mindful that the Board just last
22 week, or two weeks ago, issued the opinion in the Matthews
23 case. I'm mindful that two members of this panel were on that
24 panel, but no one raised this issue in that case. It's a
25 purely legal issue.

1 We're raising it, it has merit. We think the Board
2 should rule on it now and we think it should terminate the
3 case, this special exception case. Thank you.

4 CHAIR: Okay.

5 MR. SCHMIDT: Obviously, we disagree. And just by
6 way of background, and I know the Board has heard other cases,
7 so I'll not to, to dwell on it unnecessarily. Obviously, the,
8 the solar facilities are a relatively new use and a new
9 technology and for many years there was no identification in
10 the Baltimore County zoning regulations of solar facilities.
11 In fact, the first series of cases which came in for such
12 facilities were initially filed as public utility uses is what
13 they were called, which are also a permitted use in the RC-2
14 zone by special exception.

15 CHAIR: Right, and you had the Lippe case.

16 MR. SCHMIDT: And the Lippe case was an example of
17 that, exactly. It turned out then that eventually the Council,
18 Baltimore County Council sort of got around to regulating solar
19 facilities, which is under Bill 3717. If one looks at that
20 bill, in the very preamble of the bill, a bill entitled 3717,
21 an act concerning solar facilities, it says for the purpose,
22 for the purpose of permitting a solar facility to be located in
23 certain zones of the County by special exception. So, that is
24 the express purpose of the bill, in, in, in the preamble of the
25 bill.

1 The section of the BCZR which was enacted or adopted
2 by Bill 3717 is Article 4-F, which is the solar facility
3 section. 4-F-101.1 states the purpose of the bill, not the
4 preamble that I read, which is in the legislation. But this is
5 actually part of the BCZR. And it reads, in part, the purpose
6 and intent of this article is to permit solar facilities in
7 parts of the rural and commercial areas of the County by
8 special exception and then it goes on.

9 So, clearly Article 4-F, which is the most recent
10 enactment by the Baltimore County Council, enacted well after
11 the RC-2 zoning regulations, which were initially adopted by
12 the County in the seventies, but the most recent enactment on
13 this subject matter is Article 4-F, which was passed in July of
14 2017.

15 Obviously, I don't need to lecture to the Board as to
16 the principals of statutory construction, but it is clear that
17 it was the intent of the County Council by the enactment of
18 Bill 3717 to provide specific regulations and to allow solar
19 facilities in the RC-2 zone by special exception.

20 The rule of law, and just quoting a couple things for
21 the record of this case and for your consideration, is
22 obviously the cardinal rule, statutory interpretation is to
23 ascertain and effectuate the intent of the legislature. Here,
24 I don't think it can be beyond serious dispute that it was the
25 intent of the legislature that Baltimore County Council, by the

1 enactment of 3717, to allow solar facilities by special
2 exception. There's a myriad of cases, *Chau v. State, Cashell*
3 *v. Department of Natural Resources*, all which say that it, you,
4 the cardinal rule of statutory construction is to ascertain the
5 intent of the legislature.

6 Moreover, there's lang, language that reads, for
7 example, in *Chesapeake Charter v. Anne Arundel County*, which is
8 a Court of Appeals case, 350, 358 Md. 129, that says in
9 adopting the construction, and adopting an interpretation, the
10 body, the Board in this case, is to avoid quote, illogical or
11 unreasonable results, which I would proffer to the Board and
12 argue to the Board that if you adopt Mr. Nelson's approach that
13 special exceptions are not permitted in the RC-2 zone, that
14 would indeed be both illogical and unreasonable in view of the
15 exact and express purposes under the language adopted in BCZR,
16 Article 4-F.

17 Finally, I think really the principal of law which is
18 really applicable here is sort of the general versus the
19 specific, which is, I have a case, *Property and Casualty v.*
20 *Yanni*, which again is a Court of Appeals case from 2007, which
21 is at 397 Md. 474, which says that a specific enactment
22 prevails over an incompatible general enactment. And I think
23 that's what you have here. You have a specific regulation,
24 which was enacted by the Baltimore County Council as it relates
25 to solar facilities, which in my view, prevails over the

1 general RC-2 regulations, which relate to all uses in the RC-2
2 zone, but those as of right and those by special exception and
3 the, the specific regulation here expressly and in multiple
4 occasions indicates that a special exception is the tool and
5 the process which needs to be followed in order for a special,
6 or for a solar facility to be considered.

7 I would point out, you know, in a perfect world, the
8 Council arguably should, could have amended the RC-2
9 regulations to add the special exception. However, they have
10 done this before and if you look, for example, at the tattoo
11 regulations, which is another specific under the adult uses
12 section of the BCZR, which allows that tattoo uses are allowed
13 in the MH zone in that case. If you go to the MH zone, they're
14 not listed in that, in the MH zone as well. So, the Council
15 has, has, has done this before.

16 I would surmise, Mr. Nelson may be correct or if he
17 is inferring that the Council slipped up or made a mistake in
18 not listing the solar facilities as an RC-2 special exception
19 use under Article 1-A, perhaps it may have been intentional and
20 I guess we don't know in, on this point the exact intent of
21 the, the legislature, of the County Council.

22 But since there are limitation in number of solar
23 facilities per district, which I know the Board is aware of
24 that you can only have ten in district, perhaps that's why they
25 didn't list it as a special exception use because they didn't

1 want that limitation to be exceeded by language in the RC-2
2 zone, which would allow the use by special exception and
3 someone would argue that while there's no limitation listed in
4 the RC-2, Article A and you're allowed to have more than ten.

5 So, perhaps while they, you know, it may not have
6 been a slip of the pen, it may have been intentional to avoid
7 that issue. But clearly, it's beyond dispute, at least in my
8 view, that under Article, under Bill 3717, which is now
9 codified as Article 4-F of the zoning regulations, special
10 exceptions, to permit a solar facility in the RC-2 is what the
11 Council intended. Thank you.

12 CHAIR: Okay, thank you. Anything further, Mr.
13 Nelson?

14 MR. NELSON: Yeah, very briefly. Yeah, we, we say
15 that the County Council made a mistake. They put in a list, it
16 should have been on the list, it's not in the list and
17 consequently, this Board should grant this Motion for summary
18 disposition and Judge Harrell of course has reshaped land use
19 law in Maryland in the last twenty years, we all know that.
20 When you read his opinion, here is the constant theme of the
21 Harrell opinion, not one of which is less than thirty pages
22 long. There's a very precise mechanism by which counties must
23 implement their zoning regulations.

24 The County didn't do it here. They made a mistake.
25 The solution is for, if someone wants this on the list of

1 special exceptions, there's mechanisms for them to go to the
2 County and, and lobby for a zoning text amendment to correct
3 the mistake. But right now, the zoning ordinance doesn't
4 authorize this Board to consider, we respectfully suggest, an
5 application for a special exception for a solar facility in an
6 RC-2 zone.

7 CHAIR: Okay. Thank you very much. So, I'll ask my
8 colleagues, do you want to deliberate now or does anyone want
9 to reserve on this? What's your pleasure?

10 BOARD: (inaudible).

11 CHAIR: Okay. All right. So, I think we can rule on
12 this now. In my view, I think we should deny the Motion. I
13 would adopt a lot of the arguments that, as Mr. Schmidt. I
14 think it was, Article 4-F makes it clear that the County
15 Council wanted to introduce legislation and, and have solar
16 facilities by special exception as long as you meet those
17 factors. I think that was clear.

18 And, and I do think there is some, you know, merit to
19 the, to the argument that perhaps because there is this, this
20 limit of ten, you wouldn't want to have the opposite argument
21 that if it's listed in the RC-2 special exception list, you
22 know, then you could say well, you know, that overrides that.
23 And I did have a tattoo case, I think Mr. Schmidt had mentioned
24 that and we did have that in that, and in fact, that was the
25 case. I'm now recalling in the MH zone it was not listed in

1 the zoning regulations but we still had to deal with the case
2 and we still had the special regulation dealing with tattoo
3 parlors in those, those zones.

4 So, you know, for all the reasons I think instead of
5 just rehashing the, the argument here, I think I would, I would
6 position to deny the Motion for Summary Disposition. Anything?
7 Go ahead.

8 BOARD: I would deny it as well.

9 BOARD: I would deny it on, on the, the argument that
10 Mr. Schmidt made, which is the specific trumps the general
11 category.

12 CHAIR: All right, okay. So, having dealt with the
13 preliminary issue, we're here for opening statements on the
14 merits.

15 MR. SCHMIDT: And there's one other just preliminary
16 issue.

17 CHAIR: Oh.

18 MR. SCHMIDT: If I can, Ms. Murphy. And I, I had
19 written a letter to the Board on March 21st, 2019 and this is
20 just a, I, I think a, at least I'll certainly defer to what Mr.
21 Nelson says on behalf of his client, but I think it's a fairly
22 minor matter.

23 The Petition as it was originally filed, was filed by
24 Woodensburg Land and Cattle Company, LLC, which is the actual
25 property owner. And the zoning Petition also indicates that if

1 there's a lessee or a co-petitioner, that's to be identified
2 and that was identified as SGC Power, which is the solar
3 company, the company that specializes in doing that.

4 The Board may have seen this in other cases but, it
5 is not unusual for an entity or a developer, I know my
6 developer clients will sometimes establish LLC's for a specific
7 project instead of, for example, St. John Properties, if
8 they're going to develop something, the project may have a,
9 another name, even though St. John Properties develops
10 everything. And that's exactly what's happened here.

11 I, as I had indicated in my letter of March the 21st,
12 the entity which is, and I have verified, I can provide proof
13 to the Board if it needs it, Chesapeake Energy One, LLC is the
14 entity which is a subsidiary, affiliate of SGC Power is now the
15 actual entity and we put a redline on the site plan that we're
16 going to offer and Mr. Thaler can explain it under, actually
17 no, number one, the very first note, which indicates the
18 property owner, which remains the same. And then the
19 applicant, co-applicant is no longer SGC Power but Chesapeake
20 Energy One, LLC. Again, it's, it's just an affiliate that they
21 established for the purpose of this case, to have, because
22 they've done other solar facilities in Maryland and Baltimore
23 County, as a matter of fact.

24 So, I would form, when I filed that letter, Ms.
25 Cannington instructed me that, although she would put it in the

1 file, I should raise it and identify it to the Board initially,
2 which is why I'm doing it now.

3 CHAIR: Okay. We didn't read that before so I'm glad
4 you raised it.

5 MR. SCHMIDT: Yeah.

6 CHAIR: So, that will, we'll know, we'll hear from
7 Mr. Thaler. Did you need to say anything on that, Mr. Nelson?

8 MR. NELSON: No, we have no objection.

9 CHAIR: Okay. That sounds great. We, I think we've
10 had that in other cases where we've had subsidiaries and so, --

11 MR. SCHMIDT: It's very common for developers to --

12 CHAIR: Yeah, yeah.

13 MR. SCHMIDT: -- or, or big entities to establish a
14 specific LLC for each property that they might be developing.

15 CHAIR: It is.

16 BOARD: The one question I have, Mr. Schmidt, is, is
17 it, is it a controlled facility, I mean, the entity here? I
18 mean, is it a whole, like a wholly owned or, or, or is, does
19 SGC Power, you know, basically control this entity?

20 MR. SCHMIDT: Yes.

21 BOARD: Yeah.

22 MR. SCHMIDT: SGC, which is sort of a national --

23 BOARD: Yeah.

24 MR. SCHMIDT: -- group, does control this.

25 BOARD: Yeah.

1 MR. SCHMIDT: They established that for Maryland and
2 for --

3 BOARD: Yeah.

4 MR. SCHMIDT: -- the purpose of this particular
5 (inaudible). Okay.

6 CHAIR: All right. Ready for the, do we need to have
7 opening statements?

8 MR. SCHMIDT: I, I'll make it very, very brief.
9 Again, I know the Board is now, has had a number of these and
10 I've read your deliberation minutes in other cases, and I think
11 all the members of this panel have been involved in other solar
12 cases so to the extent I can't incorporate the remarks and your
13 knowledge there, but I don't want to bore you and will try to
14 move it along.

15 But just to basically tell you a little bit about
16 this case and try to keep it specific, this is another in a
17 series of cases that I know the Board has had on appeal related
18 to a proposed solar facility, which is pursuant to the
19 community solar program that the State of Maryland has adopted
20 and this particular property is an unimproved property which is
21 located up on Old, on Hanover Pike, which is Maryland Route 30,
22 which is the State highway which leads, at least I've always
23 said, from Reisterstown, if you're familiar with the
24 (inaudible) Town Center, going up in a, sort of a north west
25 direction up into Pennsylvania and I've got three exhibits

1 mounted on the board which we'll identify during the course of
2 the hearing and I might pre-mark them, if that's okay. Mr.
3 Nelson, do you have, do you have a problem if I mark them?

4 MR. NELSON: No objection, no.

5 MR. SCHMIDT: Okay. I'm going to mark Petitioner's
6 exhibit number one and this is, this is sealed by our engineer
7 as the site plan, which shows the subject property. It is
8 entirely zoned RC-2. The entire property is a little less than
9 twenty acres in site, it's, in, in size, excuse me, 19.69
10 acres. It is a vacant piece of property.

11 As shown on what I'll mark as Petitioner's exhibit
12 number two, which is the proposed schematic landscape plan for
13 this, and this is actually an aerial photograph that Mr. Thaler
14 is going to testify about and it shows the landscaping that is
15 proposed, but you can see that what I would call the north, or
16 the top of the page, in terms of the, the, the exhibit being
17 north at the top, south east and west in terms of orientation,
18 there's a heavy bank of trees, which is going to be retained on
19 the north side of the property. The area which has
20 historically been vacant and it's not in forest, is where the
21 facility is proposed.

22 The facility itself, the area where the panels will
23 be, is a little less than ten acres, nine plus acres of the
24 total, so about half of the overall site is, is going to be
25 developed.

1 Mr. Thaler's going to testify about the environmental
2 resources associated with the property. Again, the top portion
3 is the trees, which is not going to be disturbed, which is
4 going to remain, which will remain as an effective visual
5 buffer, at least to that side of the property.

6 There is a, a flood plain that's generated down in
7 the lower left hand corner of the property and that's shown in
8 red down at the bottom. Mr. Thaler will explain that, that's
9 not impacted by the solar facility as well.

10 Like a lot of these cases, the solar facility will be
11 constructed and then it will be an unmanned facility and other
12 than routine maintenance on a, a several times a year, when
13 people would come out and maintain it, the property won't
14 produce any traffic and there's no individuals.

15 Essentially, the way it works is the, we have a
16 representative from Chesapeake Energy One, LLC, who will
17 explain the essential science behind it and I know you've heard
18 this before. The sun shines on these panels, it creates
19 energy. I believe it's a DC current, if I'm correct. It is
20 then converted from the DC energy to AC current, which is what
21 we have when we plug things in in our house and then that
22 energy is conveyed by way of a line to a connection out here,
23 the connection is shown and, on the plan and labeled. Because
24 there's a line of telephone poles that are going up and down
25 Hanover Pike. There's a meter which keeps track of how much

1 energy is being conveyed and then the energy is distributed and
2 people who are what are called subscribers would sign up to
3 participate in this particular program.

4 And Jack Copus, who is with Chesapeake Energy One,
5 LLC is going to be one of my, one of my witnesses to explain
6 that.

7 Essentially, the legal test for this, as I would
8 describe it is, is, is basically two fold. You have provisions
9 in 3717 and 4-F which must be satisfied in order for a solar
10 facility to be granted. Things such as the panels cannot be
11 higher than twenty feet and they are not, they are eight feet.
12 Such as the panels must be setback at least fifty feet from the
13 property line, they are. Such as there must be a landscaping
14 plan, which we are going to submit as an exhibit, and other
15 requirements in 3717 that Mr. Thaler can discuss in detail.

16 And then you also have the 502.1 standards, which
17 come into play for any special exception, which Mr. Thaler will
18 address each of them. Some of them, obviously, are not even
19 applicable. Things like impacts on public water and sewer and
20 parks and schools. There is no impact, there is no public
21 water and sewer out here. These don't impact schools.

22 The issue in most of these cases, as I think you've
23 seen, traffic is not an issue, the panels don't make any noise
24 so sound is typically not an issue. The impacts that we here
25 about, and Mr. Nelson certainly will represent his clients, I'm

1 sure, but the primary impact that we hear about is visual.
2 People don't like to look at them. That seems to be what we
3 hear. There's also some testimony often, and there was below,
4 about impact on farmland or the farm soils.

5 As to the visual impact, Mr. Thaler is going to
6 testify about that. As I indicated, we do have a landscape
7 plan which we believe meets the requirements of both Art, Bill
8 3717, as well as the County Landscape Manual and since there is
9 a scenic route, Hanover Pike is a scenic route, the landscape
10 plan has also been designed to address the, those requirements
11 as they relate specifically to scenic view sheds in the
12 comprehensive manual development policies or what's referred to
13 as the CMDP.

14 In addition to that, just given the topography and
15 given the character of the existing area and, and the
16 neighborhood, we believe that a lot of the visual effect will
17 be mitigated. There's no requirement that the facility be
18 invisible, but we believe it's been softened and mitigated and
19 a lot of the facility will not be able to be seen, either from
20 traffic going up and down Hanover Road or by the neighbors.
21 They will be able to see some of it from some places, but given
22 the topography and the landscaping, we believe that we have met
23 the standard that's required.

24 So, I'm going to have generally three witnesses
25 today. I know we have this in for another couple days. I have

1 talked to Mr. Nelson, we tried to coordinate about witnesses
2 today and I think probably my witnesses, I think, we expect to
3 take mostly the whole day. Mr. Copus who is, will explain the
4 operation, he's from the company, Mr. Thaler who is the
5 engineer who can testify about all three of these plans and
6 also, Mr. Elseroad, who is the property owner.

7 And I know we have this in for two dates in July,
8 July 23rd and 25th as well. So, with that being said, I'm ready
9 to call my first witness.

10 CHAIR: Okay. Anything for opening, Mr. Nelson?

11 MR. NELSON: Yeah, very briefly. Thank you. Of
12 course, this is a special exception and a DRC waiver appeal.
13 The fact that this is a special exception case consolidated
14 with DRC really compounds one of our fundamental themes in this
15 case.

16 We don't yet have a landscape plan approved by
17 Baltimore County. Why the applicant asked, hasn't asked for
18 approval, I don't know. We have comments in the staff records
19 that, that Baltimore County has disapproved the landscape plan
20 that we're going to see today. So, we don't have a landscape
21 plan yet approved. And yet we're trying a special exception
22 case.

23 We don't yet have a storm water plan and yet we're
24 trying a special exception case.

25 We don't even have a development plan in his case

1 because the applicant obtained a DRC waiver. Then there's a
2 question of what does that waiver mean? I'll explore this with
3 Mr. Thaler. Does it mean that if this Board approves the
4 waiver, does it mean there's no plan at all or does it mean
5 that there's an administrative approval of the plan?

6 Every opportunity that my clients, forgive me, this
7 case (inaudible) my clients live on land surrounding this site.
8 The absence of these plans means that my clients have no
9 opportunity to weigh in on important issues in this case.

10 So, let me talk about my clients for a moment. This
11 site plan is in two dimensions, of course. But it has the
12 elevations on it and, and this site is, it's RC-2 so it has
13 certain characteristics that are similar to other RC-2 land.
14 But this, this RC-2 portion of land, these twenty acres, have
15 more changes in elevation than the traditional flat, RC-2 land
16 in northern Baltimore County.

17 That, for example, that, that this is, this is, this
18 is a slope here that rises from the south to the north.
19 There's a stream channel that flows, that flows from the north
20 west to the south east. We have a flood plain down here. So,
21 this is the low point here. You can see that's where they
22 don't have the, the solar panels, because that's the swale.
23 And then on the south side, the land rises again. So, folks on
24 the south side look down to the facility. The folks on the
25 north side look down to the facility.

1 So, my clients, for example, Timothy and Elizabeth
2 Fales live here on the north north west corner, Patrick and
3 Thanikan Fales live up here on, on the, the northern edge. The
4 Mirabiles own these two parcels here on the southern edge.
5 Patrick Little lives right here on, on the south east corner.
6 The Merritts are just north, just north east of him and the
7 Wolfs are a little bit further east.

8 So, my clients are acutely concerned about this
9 project because of the topography. They want to weigh in on
10 the landscape. They think that why in the world should we have
11 to contest a special exception case when we don't have the
12 fundamental document approved by the County. Of course, my
13 adversary says no worries, we'll get that approved down the
14 road.

15 My clients are worried about the storm water. They
16 say no worries, we'll get that approved down the road. My
17 clients are worried about the development plan. The applicant
18 says no worries, we got a waiver.

19 So, my clients oppose the DRC waiver. My clients
20 assert that it doesn't meet the test for a waiver, it is not a
21 minor commercial facility. It's a ten acre industrial
22 facility.

23 Now, I, I reviewed, my goal is to review, and I made
24 an effort to review all the Board of Appeals opinions that
25 address the DRC waiver issue, because I wanted to get a sense

1 of how the Board treated minor commercial facilities in other
2 cases. And there weren't a lot of cases. And I think one of
3 the reasons there aren't a lot of cases is citizens don't get
4 to be online every day looking to find it, right? It's not
5 easy, you don't get notice.

6 We have St. Paul's School, 2014, this is the pro
7 applicant case, eight thousand square foot building, minor
8 commercial structure. Then the TTV case, 2015, forty-five
9 hundred square foot (inaudible) is not a minor commercial
10 structure.

11 We say this case is not a minor commercial structure,
12 it's an industrial facility. We're not talking square feet,
13 we're talking ten acres. So, we, we believe that that ruling
14 is very important because a denial of the DRC waiver will give
15 my clients the opportunity to participate in a meaningful way
16 in the development plan, in the landscape plan, in the storm
17 water plan. Now, that's just the DRC piece.

18 And then, now we have the special exception piece.
19 And we all know what 4-F says, we all know what 502.1 says. We
20 will present evidence that a special exception solar facility
21 at this site will create especially adverse effects on the
22 neighboring community, greater than they would be elsewhere in
23 the zone where the topography does not have the shape it has
24 here, which is the ball like setting and, and, and that, that
25 issue is further compounded by the fact because one of the

1 quirks of this site, it's RC-2 but there's some relatively
2 small parcels, you know, they had, they had, they had small
3 parcels in the RC-2 on a tax map at the critical date 1976 or
4 '79.

5 So, what we have is a ball shaped topography, we have
6 a residential community in the RC zone, RC-2 zone, surrounding
7 this site and for all those reasons, we believe that the
8 adverse effects of this proposed use at this proposed site will
9 be greater than they will be elsewhere in the zone and that is
10 a basis to disapprove the special exception. Thank you.

11 CHAIR: Okay.

12 MR. NELSON: And we'll present evidence to support
13 all those assertions.

14 CHAIR: Thank you, Mr. Nelson. First witness?

15 MR. SCHMIDT: Certainly. Let me call Mr. Elseroad,
16 please.

17 BOARD: If everybody can shut off their cell phones
18 as well. Can you raise your right hand? Do you swear and
19 affirm under the penalties of perjury, that testimony you're
20 about to give is true and correct to the best of your knowledge
21 and belief?

22 MR. ELSEROAD: I do, yes.

23 BOARD: You're going to have to probably speak up and
24 also move the, the microphone to your, to your, and then please
25 state your name, your address, your business, for the record,

1 and spell your last name, please.

2 MR. ELSEROAD: My name is Samuel G. Elseroad, I live
3 at 5423 Mount Gilead Road. I am a farmer and own some farm
4 properties out in that area.

5 BOARD: Can you spell your last name?

6 MR. ELSEROAD: E-L-S-E-R-O-A-D.

7 BOARD: You can sit down and just move the microphone
8 down there.

9 MR. ELSEROAD: Okay, thank you.

10 BOARD: So we can hear you.

11 MR. SCHMIDT: Mr. Elseroad, you're familiar with the
12 entity, I assume, known as Woodensburg Land and Cattle Company,
13 LLC?

14 MR. ELSEROAD: Yes, that's correct.

15 MR. SCHMIDT: And what is that, what is that entity?

16 MR. ELSEROAD: That actually is our landholding set
17 up for these children in the future.

18 MR. SCHMIDT: Okay and are you a member of that
19 entity?

20 MR. ELSEROAD: Yes, I'm the president of it.

21 MR. SCHMIDT: Okay and is the subject property owned
22 by Woodensburg Land and Cattle Company, LLC?

23 MR. ELSEROAD: Yes, it is.

24 MR. SCHMIDT: Okay. So, when I say your property,
25 since you're a member, this is in your family, is that a fair

1 way to describe it?

2 MR. ELSEROAD: That's correct.

3 MR. SCHMIDT: Okay. Mr. Elseroad, how long have you
4 owned or your family owned this property?

5 MR. ELSEROAD: My grandfather originally bought that
6 in 1923 and it was sold out of the family in the fifties when
7 my father died. And but my wife and I, it came back on the
8 market about ten years ago and from our house coming out Mount
9 Gilead Road, I can see the property and it has some sentimental
10 value so I bought it back.

11 MR. SCHMIDT: Okay. So, you've owned it about ten
12 years and you do not live on the property?

13 MR. ELSEROAD: No, that's correct.

14 MR. SCHMIDT: How far, how far away is your residence
15 to this property?

16 MR. ELSEROAD: Probably about three-quarters of a
17 mile as the bird flies.

18 MR. SCHMIDT: Okay. Tell me, since it's been in your
19 family and I understand it was a period of time that you didn't
20 own it and you live nearby, can you tell us about the use of
21 the property over the years? How has it been used, how is it
22 used today?

23 MR. ELSEROAD: Most of the time it's been used as a
24 farm and it had been used as a farm up until the last couple
25 years when we had planted all in orchard grass to stabilize

1 the, the property because the, the engineering work and studies
2 and all that were going on. It, it's a small parcel of land
3 and we have a little over five hundred acres. We probably have
4 three hundred and seventy-five in land preservation programs.

5 This parcel of land has the pine trees to the north
6 of it and it's a small parcel. We had so much crop damage from
7 the deer along those top area of the, of the property, it, I,
8 I, actually I farm with Lippy Brothers. They would not rent
9 that property if it were a stand alone property. They rent
10 from us probably four hundred and fifty acres of land.

11 And, but, and the other problem is, it is difficult
12 to get the modern farm equipment in and out. It's very, very
13 difficult coming in off the Hanover Pike and it was a property
14 that really was not one that was given much attention for ag
15 preservation. The ag preservation properties we have are
16 either all bordering each other or they're parcels that are
17 maybe a hundred acres or more.

18 MR. SCHMIDT: Okay. So, this property is not in ag
19 preservation?

20 MR. ELSEROAD: That's correct, it is not.

21 MR. SCHMIDT: It's not, and it's not part of any kind
22 of rural leg, legacy program or any other ag preservation
23 program?

24 MR. ELSEROAD: No, no, no.

25 MR. SCHMIDT: So, there, is there any type of

1 encumbrance by deed or other requirement that prohibits the
2 proposal of the solar facility encumbering this property?

3 MR. ELSEROAD: No.

4 MR. SCHMIDT: Okay. Now, you indicated you do own
5 other properties in Baltimore County that are farmed?

6 MR. ELSEROAD: That's correct.

7 MR. SCHMIDT: Okay. How, in terms of proximity, how
8 far are those from this property?

9 MR. ELSEROAD: There are some that are probably a
10 half a mile away. We own property on the Old Hanover Road and
11 we own some property on Mount Gilead Road and we own several
12 farms that border the Hanover Pike.

13 MR. SCHMIDT: Do you own any property that's
14 immediately abutting or adjacent to this?

15 MR. ELSEROAD: No, no, I do not.

16 MR. SCHMIDT: So, this is a stand alone property in
17 terms of not --

18 MR. ELSEROAD: That, that is what it is.

19 MR. SCHMIDT: -- associated with other property you
20 have?

21 MR. ELSEROAD: That's correct.

22 MR. SCHMIDT: Okay. There came a time that you were
23 approached about the proposed solar facility by SGC or
24 Chesapeake One Energy, LLC?

25 MR. ELSEROAD: That's correct.

1 MR. SCHMIDT: What, what im, what impact or why did
2 you decide to, to pursue this venture? What impact will it
3 have on you and your family and, and, and this property?

4 MR. ELSEROAD: There actually are several reasons.
5 One is, that I had said before, it, it is a difficult parcel
6 to, to get in and out with the, with the equipment that we
7 have. It's also a lot of deer damage, so it is very difficult
8 to show a profit when the deer damage a crop that you plant.

9 And the other thing is, I am very conscience about
10 the environment. On our farms, I probably have three or four
11 thousand trees planted in wetlands areas and what was old
12 pasture fields. I'm a believer in cover crops. Actually, I
13 had a couple pictures of some of the farms back there which we
14 have them planted in cover crops in the winter and it's good
15 for the health of the soil and it's good because it creates a
16 matting that holds the storm water when we have the heavy rains
17 in the summer and it holds the ground so we don't have the
18 sediment and top soil loss in the winter. So, I believe in all
19 these things and I, I believe that this is a good location for
20 a solar plant because of the topography of the land. And I
21 think with the correct kind of landscaping, it will be very
22 attractive and it will probably be a surprise to some of the
23 people that are here today.

24 MR. SCHMIDT: Okay. When was the last time this
25 property was actually farmed, actively farmed? How many years

1 ago has it been?

2 MR. ELSEROD: Probably three years ago.

3 MR. SCHMIDT: Okay. Do any of your other properties,
4 are any of your other properties in conservation preservation
5 programs?

6 MR. ELSEROD: Yes. Actually, quite a few of them
7 are but the, they're the larger farms. The one on Mount Gilead
8 Road, there's one on the Hanover Pike that's on land
9 preservation and the one on Old Hanover Road in Upperco is an
10 ag preservation.

11 MR. SCHMIDT: Okay. How big is this property?

12 MR. ELSEROD: It's I think about nineteen and a half
13 acres.

14 MR. SCHMIDT: Okay. In your experience in putting
15 your other lands in, in preservation, is this, in your view,
16 appropriately sized to be a candidate for preservation?

17 MR. NELSON: Object.

18 CHAIR: What's the objection for?

19 MR. NELSON: I'm not sure, (inaudible) he's asking
20 the witness for an expert opinion as to whether this is a
21 candidate for land preservation. I'm not sure that this fact
22 witness is equipped to answer that question, so.

23 CHAIR: Okay. Overruled. We'll, we'll allow it as
24 background. Go ahead, sir.

25 MR. ELSEROD: I would say it would not be one that

1 would have a high priority or score high and, you know,
2 there's, there's a criteria that they look at and it's the size
3 of the property, whether it's productive and if it's bordering
4 other farms or in ag preservation and this doesn't seem to be
5 high on that criteria.

6 MR. SCHMIDT: To your knowledge, are there any other
7 properties that are immediately adjacent to it which are in
8 preservation? If you know, Mr. Elseroad.

9 MR. ELSEROAD: Not to my knowledge.

10 MR. SCHMIDT: Okay. I don't have any other questions
11 of the witness.

12 CHAIR: Thank you. Cross?

13 MR. NELSON: Oh, sure. Hello, good morning, Mr.
14 Elseroad.

15 MR. ELSEROAD: Yes.

16 MR. NELSON: Just a few questions. You shared with
17 the Board, you were talking about the thought process after the
18 solar company reached out to you about possibly constructing a
19 facility at, at the subject property and I want to direct your
20 attention to that. You said that, my, my memory is that you
21 indicated to the Board that you thought the topography of this
22 site made it a good candidate for a solar facility. Did you
23 say that, sir?

24 MR. ELSEROAD: Yeah, I said that.

25 MR. NELSON: Okay.

1 MR. ELSEROAD: It's rolling, it's a rolling property,
2 it rolls.

3 MR. NELSON: Right. And the, the topography, the
4 site has a southern exposure, does it not?

5 MR. ELSEROAD: Yes, it would.

6 MR. NELSON: Um hm. And it's true, is it not, that
7 generally speaking, the land, the elevation on the northern
8 boundary of the proposed facility is higher than it is at the
9 southern boundary?

10 MR. ELSEROAD: That's correct.

11 MR. NELSON: All right. It's, it's a slope that
12 rises?

13 MR. ELSEROAD: It rolls.

14 MR. NELSON: It rolls. Well, how much higher in the
15 north east corner is it then the south west corner?

16 MR. ELSEROAD: I don't know.

17 MR. NELSON: All right. But we can discuss that fact
18 with the engineer, can't we, by looking at the elevation?

19 MR. ELSEROAD: Certainly.

20 MR. NELSON: All right. But if you're looking at
21 the, if you and I are standing together on this private access
22 road, which we haven't yet talked about, we can look up that
23 slope and see the northern edge, can we not?

24 MR. ELSEROAD: In some areas. Some areas there's,
25 there's vegetation there that would stop that.

1 MR. NELSON: Okay.

2 BOARD: Can, can you try to speak into the
3 microphone? I'm not sure if the, we're picking you up on the
4 recorder.

5 MR. ELSEROAD: Oh, oh, I'm sorry.

6 MR. SCHMIDT: Say that again, Mr. Elseroad.

7 BOARD: Or, or at least move it closer or maybe make
8 the angle or something, I don't think it's picking you up.

9 MR. ELSEROAD: Okay. There are some areas you can,
10 there are some areas you can't because there is vegetation
11 along that road.

12 MR. NELSON: Now, if you and I are on that road and
13 we look to the south, towards the Mirabile property, you know
14 the property to which I refer, do you not?

15 MR. ELSEROAD: Right.

16 MR. NELSON: We're looking up at that property, are
17 we not?

18 MR. ELSEROAD: No, actually, if you're on that
19 driveway it's pretty much even. When they plant corn along
20 that driveway, you cannot see anything. Actually, when I look
21 over what I see are the trailers that have been in the field
22 for the last twenty years.

23 MR. NELSON: All right. So, is it your testimony,
24 Mr., Mr. Elseroad, that the, that all the Mirabile property is
25 the same elevation as the lowest elevation of your property, is

1 that your testimony?

2 MR. ELSEROAD: I, I don't know.

3 MR. NELSON: You don't know?

4 MR. ELSEROAD: I don't know that to be true.

5 MR. NELSON: Okay.

6 MR. ELSEROAD: I don't know.

7 MR. NELSON: All right. So, you would defer to the
8 elevations on the various plans to answer that question, would
9 you not?

10 MR. ELSEROAD: What was that again?

11 MR. NELSON: I, you share with us that you're not
12 sure the elevations of the Mirabile property.

13 MR. ELSEROAD: No, I don't know what they are.

14 MR. NELSON: Okay.

15 MR. ELSEROAD: I mean, I, I would only, I don't know.

16 MR. NELSON: All right, okay. And you would defer to
17 the elevations that appear on the various site plans, would you
18 not?

19 MR. ELSEROAD: Yeah.

20 MR. NELSON: All right. Now, I'm looking at this
21 proposed exhibit, exhibit, Petitioner's Exhibit 1, the site
22 plan. And it shows us, does it not, the layout of the various
23 solar panels?

24 MR. ELSEROAD: Yes, that's correct. That is correct.

25 MR. NELSON: And I don't see solar panels on this

1 line here that goes from the north east corner to the south
2 west corner down to the wetlands and the flood plain. What is
3 in that land there?

4 MR. ELSEROD: Actually, there's a variety of things
5 there. Part of that is, on every farm that we have, let me
6 explain this to you. On every farm and this --

7 MR. NELSON: My question, sir, --

8 MR. ELSEROD: -- let me, let me --

9 CHAIR: One second, one second. Wait, wait, wait.

10 MR. SCHMIDT: Hold on.

11 MR. ELSEROD: Okay.

12 CHAIR: We can't have everybody talking over every
13 one, so we just, it's unnatural, I realize.

14 MR. ELSEROD: Okay.

15 CHAIR: But he was trying to answer your question.

16 MR. NELSON: I disagree.

17 CHAIR: Let's, well, we don't know because he didn't
18 get a chance to actually say it. So, let's, let's have him
19 answer it.

20 MR. ELSEROD: Thank you very much.

21 CHAIR: He said he can and then, and then --

22 MR. ELSEROD: Thank you, appreciate it.

23 CHAIR: -- we'll, if he didn't, then you re-ask the
24 question.

25 MR. ELSEROD: Yeah, that, on, on all of the farms is

1 what we have are waterways and that is because of controlling
2 the storm water runoff on properties and sometimes most of them
3 we have, they're planted in fescue and the, we keep them mowed,
4 the ones that we can mow like that. And then, what happens is
5 when you have the heavy rainfall, you have the storm water.
6 The storm comes down and it runs into those lower areas and the
7 fescue is not mowed close like what a lawn would be. The
8 fescue has some height to it. And fescue is a grass that grows
9 very, very thick. So, it actually works as two things. It
10 slows the water down that's running off the property and if
11 there is sediment in it, it also traps that sediment. And we
12 put them in, they're all part of our soil conservation program,
13 which is with Baltimore County and they, they function very,
14 very well.

15 We also use, as I mentioned before, the cover crops,
16 which gives some vegetation growing, which has a root system,
17 which holds the ground during the winter months and is it, it
18 actually, there's pictures back there of it on our farm.
19 They're all green. When that is sprayed off to plant the corn
20 and the soybeans, it creates a mat, which also holds that storm
21 water from running off and the root system and all in it as it
22 decays, it makes the, it helps eliminate the compaction of the
23 soil so the, so the ground water absorbs more of the water.

24 We use a variety of things. We use rye and wheat and
25 --

1 MR. NELSON: Chairwoman Murphy, I'm sorry, I object
2 to this.

3 MR. ELSEROD: -- white clover, the red clover --

4 CHAIR: Okay. One second, one second, one second,
5 one second, okay, one second.

6 MR. NELSON: I asked a very specific factual
7 question.

8 CHAIR: He may not have understood. I think he's
9 trying to answer to the best of his ability. But, it, let me
10 just try. In between the two solar panel, that panels that are
11 on the site plans --

12 MR. ELSEROD: That would have been --

13 CHAIR: Wait a minute --

14 MR. ELSEROD: -- that would have been the storm
15 water area where the water would have collected. It's the
16 lowest area of the field.

17 CHAIR: So, between the two solar panels that are on
18 the site plan, you're saying that's a storm water management,
19 that's the fescue you were talking about, exists there, right?

20 MR. ELSEROD: Yeah, right now, it's, probably has a
21 lot of, of goldenrod and milkweed plants on it because I
22 haven't been mowing it.

23 CHAIR: Okay. So, you asked what was in between the
24 two panels. Does that answer your question?

25 MR. NELSON: (inaudible). So, that is the area, when

1 we talked about this before the Administrative Law Judge, that
2 is the area where you said you would routinely see flowing
3 water down your property?

4 MR. ELSEROD: You would see it when you have storm
5 water or you have water that, where you have a storm. Now,
6 this year is very different. We have a lot of farms that where
7 there is --

8 MR. NELSON: I'm sorry, I haven't yet, object. I
9 haven't yet asked about this year. My question, sir, was is
10 that the area during the hearing before the Administrative Law
11 Judge where you testified under oath that you would routinely
12 see flowing water and it would be clean?

13 MR. ELSEROD: It will be clean. And, and it will
14 be, and it will not be muddy and it will be clean. That is the
15 idea of what the water way is. It is a filtration and it will
16 catch that water. That storm water sometimes may be leaching
17 from the ground a day or two or week or something like that,
18 even, it all depends where the, but, but that's what the
19 purpose of that is.

20 MR. NELSON: All right. All right, let me ask my
21 next question.

22 CHAIR: Hold on one second, let him finish. Go
23 ahead.

24 MR. NELSON: Well, --

25 CHAIR: Wait a minute. One second, one second, he,

1 he just, what was your last thought? What was the last thing
2 you wanted to say?

3 MR. ELSEROD: That's, that's the purpose of the, of
4 the what they call storm water ways and, and those are designed
5 by the soil conservation (inaudible).

6 CHAIR: Okay. So, there's a, there's a water way
7 you're saying between those panels?

8 MR. ELSEROD: Yeah.

9 CHAIR: That's, that was the question.

10 MR. ELSEROD: Yeah.

11 CHAIR: Okay. Go ahead, next question.

12 MR. NELSON: During the hearing before the
13 Administrative Law Judge, you under oath, described that area
14 as wetlands, did you not?

15 MR. SCHMIDT: Objection. Show it to the witness.

16 CHAIR: What, what, what, what's the objection? What

17 --

18 MR. SCHMIDT: I, I think that's inaccurate. Show him
19 the transcript or something if you have it.

20 MR. NELSON: We'll get the transcript.

21 CHAIR: Okay. Well, if he wants to, it's his
22 question. Because it's cross examination, go ahead.

23 MR. SCHMIDT: Okay.

24 MR. NELSON: My question is, isn't that the area
25 where you testified under oath before the Administrative Law

1 Judge, it was a, in your word, the word you used, was a
2 wetland?

3 MR. ELSEROD: If I said a wetland, it's not, it's,
4 it is a storm water area and it will, the purpose is for it to
5 have an access so that water can run off that farm and, but it
6 run off in the farm as clear water and not wash lots of
7 sediment with it.

8 MR. NELSON: Um hm and if you and I walked down this
9 water way, --

10 MR. ELSEROD: Um hm.

11 MR. NELSON: -- from the north east corner with the
12 Board of Appeals to the south west corner of the subject
13 property and if it's raining, there will be water, clean water
14 flowing through that water way, will there not be?

15 MR. ELSEROD: There would be, sure.

16 MR. NELSON: Okay and as we make our way down to the
17 south west corner of your property near where the access road,
18 private access road, intersects Hanover Pike, there's a flood
19 plain in there, is there not?

20 MR. ELSEROD: I'm, tell you the truth, I'm not sure.

21 MR. NELSON: All right. Fair enough. There's a
22 stream though, is there not, you know that?

23 MR. ELSEROD: There's not a stream there, there's
24 the, there's the water that sometimes takes a few days to get
25 out of the system from, from when you have rainstorms. But as

1 I tried to tell you before, it's very different this year. We
2 have, we have large farms where we're going to lose crop land
3 because there's water standing in them. The water table has
4 just been so high and there's been so much water in the soil,
5 that it's just not like normal days. So, you, there's, I could
6 go down on every one of my farms and walk this water, the storm
7 water and some of them, you would, you'll get your feet wet
8 because there's water there.

9 MR. NELSON: All right. Your point is, this year is
10 especially wet?

11 MR. ELSEROD: The last couple years have been.

12 MR. NELSON: Okay.

13 MR. ELSEROD: I think we had seventy some inches of
14 rain last year, that's kind of a high amount of rainfall.

15 MR. NELSON: As it, if you were to obtain this
16 special exception, would you accept a condition that you, that
17 an independent wetland expert inspect the property to determine
18 whether the conditions have changed over time so that it has
19 evolved into a, a, a, so it meets the, the current requirements
20 for a classification of land as a wetland? Would you agree to
21 that condition?

22 MR. SCHMIDT: Objection. I mean, that's just an
23 improper question. I mean, we, as Mr. Nelson, we, we had
24 testimony below and we're going to have testimony at this
25 hearing from an environmentalist who went out there and

1 certified that it wasn't a wetland and Baltimore County
2 reviewed it and agreed. And we're going to have testimony about
3 that during the course of this case, just like we did as,
4 below. Mr. Elseroad is a farmer, he's not an environmental
5 expert. I think the question to him is improper. And I've
6 never heard the Board requiring some independent individual to
7 come out as a condition of approval.

8 MR. NELSON: Well, I'll rephrase the question.

9 CHAIR: Okay. Let's, let's, okay, sustained then.
10 Go ahead and rephrase.

11 MR. NELSON: All right. The point is, there was a
12 wetlands inspection of your property some years ago in this
13 case, was there not?

14 MR. ELSEROAD: Yes, there's been people look at it.

15 MR. NELSON: Okay, (inaudible). And, and as I
16 understand, the County has said there were no wetlands there in
17 this way, of this water way that we're talking about?

18 MR. ELSEROAD: Um hm.

19 MR. NELSON: You have to say yes or no?

20 MR. ELSEROAD: Yeah, I, (inaudible) what you're
21 saying.

22 MR. NELSON: Okay, all right. But then I've heard
23 you say that the last two years or so have been much wetter,
24 things have changed. There was seventy inches of rain last
25 year, which you said was, I think you said quite a lot. Of

1 course it was. My question is, would you agree to have the
2 County come back and do another wetland examination now to see
3 if the characteristics of the soils have changed during the
4 last two years when there's been this extraordinary amount of
5 rainfall?

6 MR. SCHMIDT: Objection.

7 MR. NELSON: Would you agree to that?

8 CHAIR: Wait a minute. Same objection?

9 MR. SCHMIDT: The, the same objection. I mean, to
10 ask a farmer, I mean, wetlands are based not on whether they're
11 wet, but they're, as the expert will testify, they're, wetlands
12 are defined by the Army Corps of Engineers and it's based on
13 soils and it's based on plants and so on and so forth. And the
14 evaluation has been one and the County has been, approved it.
15 And I'm going to put on a witness about that. But to ask Mr.
16 Elseroad, who is a farmer, I think is just unfair and it's not
17 a proper question.

18 MR. NELSON: I'm sorry. I'm asking not as an expert,
19 but as the landowner, would he agree to have this analysis done
20 again to see if the characteristics have changed since it was
21 done some years ago. That's the question. It's not an expert
22 testimony question, it's a question for the owner of the land,
23 would he agree to have that analysis done.

24 CHAIR: Okay, understood. We often ask if there, if
25 you'll have conditions imposed, you know, as the owner of the

1 property. But the Board certainly can filter out who is an
2 expert and who isn't.

3 MR. SCHMIDT: Sure.

4 CHAIR: So, we'll allow it, go ahead. If you, if you
5 have a response to that question.

6 MR. ELSEROD: Here's what, I guess, the way I
7 understand it. There, there, it has been looked at and I'm
8 sure that they would look at it now, as they design the thing
9 and, and know what they can and cannot do and what the
10 regulations are. I don't know the regulations on that. If you
11 want to know how many bushel of corn we produce an acre, or you
12 want to know something like that, I can help you with that.
13 But, but this right now, I don't, I think it's been looked at
14 by experts, people who well understand the soil, what could
15 grow in there, what the condition will be on the wettest season
16 and what the condition will be on the driest season, so.

17 MR. NELSON: Let me take one more crack at it. I'm
18 not asking you an expert opinion about wetlands. I'm asking
19 you a question as the, directed to the owner of the land.
20 Would you agree to allow the County to come out and do a
21 further investigation of the characteristic of the soil to see
22 whether it meets the, the designation of a wetlands or not?
23 Would you, as the owner, object to that?

24 MR. ELSEROD: That property is under lease right now
25 to SGC and they are continuing to be working on that and

1 looking at that project. So, I think what you're asking for is
2 actually some of the things that they're doing. So, that's,
3 that's what it is. Do you want to come out and look at any of
4 our other farms and make some suggestions, that you and the
5 soil conservation are more than welcome.

6 I would say this. I think I have the nicest farms in
7 Baltimore County and we have been given a number of
8 recognitions from the, Baltimore County, the State of Maryland,
9 the Federal government. We've had Earth Day celebrations out
10 there where U.S. Secretary of Agriculture has given, at that
11 time it was Jim Smith, \$2.5 million for preservation and we
12 looked at the projects that we have there on the farm. I am
13 very interested in protecting the environment.

14 I think that solar is important. We're going to have
15 to be moving to renewable energies and I think there's a number
16 of reasons that this is a good project. When it's finished, it
17 will be landscaped, it will be like all the other farms that we
18 have out there. It will be very, very attractive and I'm sorry
19 I can't answer all your questions, some of those things I'm not
20 an expert in.

21 CHAIR: Anything else?

22 MR. NELSON: I interpreted your answer to say that
23 the County wants to come out and examine the wetland
24 characteristics of any of the soil, you would stand in the way
25 of that?

1 CHAIR: I don't think he said that.

2 MR. ELSEROD: That's not what I said.

3 CHAIR: So, wait a minute, --

4 MR. NELSON: I need to know --

5 CHAIR: Wait a minute, wait a minute, wait a minute.

6 MR. NELSON: Maybe you can ask him.

7 CHAIR: Wait, wait. He said, what he said was that
8 the SGC, if I have that right, SGC, --

9 MR. ELSEROD: The lease on it.

10 CHAIR: -- did a bunch of tests, investigated and
11 they're investigating under their lease, but he never said that
12 he would agree. So, I mean, I, I can't have that question
13 sustained.

14 MR. NELSON: All right. Well, then, I need to know,
15 yes or no. Would you, the owner, agree or not? If the answer
16 is no, just say no and we'll move on.

17 CHAIR: So, he wants to know whether you would let,
18 let the County come out and investigate the wetlands issue
19 again and you've indicated that there has been investigation in
20 that the lessee is investigating it, what, I mean, do you even
21 have a response to the (inaudible)?

22 MR. ELSEROD: I, actually, I, I'm, I'm leasing the
23 property so if somebody else has the, then they are the ones
24 who --

25 BOARD: So, so the, so the answer is, ask the lessee

1 the question?

2 MR. ELSEROAD: Yeah, yeah, that's correct. Thank
3 you.

4 CHAIR: Ask SGC the question.

5 MR. ELSEROAD: Yeah, the lease, yeah.

6 CHAIR: Okay. So, the answer is, you know, you have
7 to ask someone else. He's under a legal obligation to the
8 lessee.

9 MR. NELSON: When's the, when's the lease end?

10 MR. ELSEROAD: I don't know, sometime in a year or
11 something like that, year and a half, something like that.

12 MR. NELSON: Now, let's look at Petitioner's exhibit
13 number one, just one part of it. I'm looking at this solar
14 panel here, the second one from the top on the east side, do
15 you see that, sir?

16 MR. ELSEROAD: I see it from here, yes.

17 MR. SCHMIDT: I'm just going to move so I can see
18 what he's talking --

19 MR. NELSON: Oh, I beg your pardon. Now, the western
20 end of that solar panel is right in the center of this water
21 way, is it not?

22 MR. ELSEROAD: You know what, I don't really know.

23 BOARD: Can, can you speak into the microphone so the
24 recorder can pick you up.

25 MR. ELSEROAD: You know something you don't

1 understand --

2 CHAIR: Oh, wait a minute, one second.

3 MR. SCHMIDT: Mr. Elseroad, start again. This didn't
4 hear you.

5 MR. ELSEROAD: Yeah, I, I don't know. I, I mean, --

6 MR. NELSON: That's fine.

7 MR. ELSEROAD: -- I don't know whether that shows the
8 trail or exactly where the water way is through it. It's just,
9 it shows where the solar units are and other than that, it's
10 clear paper.

11 MR. NELSON: That's all I have of this witness now.

12 CHAIR: All right. Thank you, Mr. Nelson. Any re-
13 direct?

14 MR. SCHMIDT: Very briefly. You mentioned the
15 Mirabile property, Mr. Elseroad. That's on the other side of
16 the, the drive, is it not?

17 MR. ELSEROAD: Yes, it is.

18 MR. SCHMIDT: Which is shown on this plan as Frye
19 Road?

20 MR. ELSEROAD: Right.

21 MR. SCHMIDT: Correct?

22 MR. ELSEROAD: Not Frye Road, yeah.

23 CHAIR: Yeah, I don't think the record picked that
24 up, that answer. Sorry, you have to keep bending your neck.

25 MR. ELSEROAD: I'm sorry, I'm sorry, I'm sorry.

1 CHAIR: That's okay. What, what did you say?

2 MR. ELSEROAD: Okay. That, that's correct.

3 MR. SCHMIDT: Do you know the Mirabiles?

4 MR. ELSEROAD: I know Santo and his wife, Debra, yes.

5 MR. SCHMIDT: All right. Do they live here?

6 MR. ELSEROAD: Not to my knowledge.

7 MR. SCHMIDT: Okay. Do you know, you mentioned,
8 what's on this property at the present time, on the Mirabile
9 property?

10 MR. ELSEROAD: They, there, some of the fields there
11 is corn planted there, there's, I don't know. There's some
12 kind of activity with the dirt bike trails through the woods
13 and the trailers and stuff like that. So, I don't, you know, I
14 don't know what else is going on on it.

15 MR. SCHMIDT: Okay. Fair enough. Okay. No other
16 questions of this witness.

17 CHAIR: All right. Thank you, sir.

18 BOARD: I have, I actually have a couple.

19 CHAIR: Oh, I'm sorry.

20 BOARD: Sorry.

21 CHAIR: Didn't mean to cut you off.

22 BOARD: So, so, so you're the first landowner that's
23 come to a case, so I have a couple specific questions as a
24 landowner --

25 MR. ELSEROAD: Yeah.

1 BOARD: -- from the solar panels. You, you testified
2 to Mr. Schmidt that the lease is only a year and a year and a
3 half, I guess that's an option depending on what, what happens
4 here or? Because most of the other ones have been like thirty
5 years or something like that.

6 MR. SCHMIDT: I, I think what he's referring to, and
7 if I can just say, --

8 MR. NELSON: Well, I object to that.

9 CHAIR: Wait a minute one second.

10 BOARD: Let's let him (inaudible).

11 CHAIR: We, we want to have the witness answer
12 (inaudible).

13 (EVERYONE TALKING AT ONE TIME)

14 MR. SCHMIDT: I'm sorry, okay.

15 CHAIR: (inaudible).

16 MR. ELSEROAD: Okay. Here's what it is. The leases
17 are set up in stages. One is the, the implementation, when
18 you're gathering all the information and, and going through the
19 approvals with all the different County agencies and things of
20 that nature. And then, after that reaches a point when a, a, a
21 working lease actually comes into effect.

22 BOARD: Okay.

23 MR. ELSEROAD: And that would be a much longer, and
24 that is, that goes --

25 BOARD: So, so let's assume all those conditions are

1 all met, it comes to like a twenty or thirty year lease after
2 that.

3 MR. ELSEROD: That's right.

4 BOARD: Have, have you worked, and I don't need the
5 specifics, have you worked out what happens at the expiration
6 of that lease?

7 MR. ELSEROD: Well, the --

8 BOARD: I don't need the details, is there something
9 that will happen?

10 MR. ELSEROD: Well, the property then is returned
11 back to, to my wife and myself and my two sons. It would be
12 removed from the, the properties within ninety days, which is
13 the rails and the, the steel posts, I believe they are, that
14 are put into the ground and it could go back to agricultural
15 use or something like that. But I would imagine the deer will
16 still be there so it would always be a challenge as far as
17 making it agricultural.

18 BOARD: And then the follow-up question, have you
19 worked out with, with the, the lessee, if an emergency occurs
20 where, let's say, a child gets inside the gate, have you worked
21 out with the lessee how that would be handled by the community?

22 MR. ELSEROD: You know what, I, we've addressed an
23 awful lot of things in, on that lease and the law firm that
24 represented us, I think they did a very good job. But for me
25 to tell you exactly how that would be, I, I don't know. I

1 think some of those things are, are really the maintenance of
2 the solar company more so than what I am.

3 BOARD: Thank you.

4 CHAIR: Okay.

5 MR. ELSEROAD: Thank you very much.

6 CHAIR: Thank you, sir.

7 BOARD: Thank you.

8 MR. SCHMIDT: I, I have no other questions. I would
9 just say, Mr. McComas, to just direct your attention to that
10 issue, I think it's in 4-F-107 that, in the statute. And I'm
11 not test, trying, not trying to testify. That there are
12 provisions in the statute that the County set up very much
13 similar to cell towers that when they end their useful life,
14 there are provisions in law as to how they are to be removed
15 and abandoned, so I just direct you to that.

16 BOARD: No, no, I, and, and I, and what I was doing
17 is we've been through a few of these so that was, that's a
18 common question, just like the emergency one and since that's
19 the first time we've had, at least I've had a home, property
20 owner there, I figured I'd ask him.

21 MR. SCHMIDT: Sure.

22 BOARD: Because I know the, the company is going to
23 probably give, field some of the same questions.

24 MR. SCHMIDT: Right, right.

25 CHAIR: Okay, great.

1 MR. SCHMIDT: I would call Jack Copus as my next
2 witness.

3 BOARD: You got to stand and raise your --

4 MR. SCHMIDT: They got to swear you in, yeah.

5 BOARD: -- right hand, yeah, sorry. I was, I was
6 missing a beat here. Do you swear and affirm under the
7 penalties of perjury, that testimony you're about to give is
8 true and correct to the best of your knowledge and belief?

9 MR. COPUS: Yes.

10 BOARD: Please state your name, your business, your
11 address for the record and spell your last name, please.

12 MR. COPUS: My name is Jack Copus, C-O-P-U-S. I'm
13 with SGC Power. We're also the holding company for Chesapeake
14 Energy One. We are located in Elkridge, Maryland, 6865
15 Deerpath Road.

16 BOARD: Thank you. You can sit down. Just adjust
17 the microphone, if you don't mind.

18 MR. COPUS: Yeah.

19 MR. SCHMIDT: Mr. Copus, I will probably refer to
20 your company as SGC and just to be clear, because I'm sure I'll
21 say that because that's what I usually say when I call your
22 office and that's who answers the phone. But SGC is the
23 holding company of Chesapeake Energy One, LLC, correct?

24 MR. COPUS: That is correct.

25 MR. SCHMIDT: And Chesapeake Energy One, LLC has been

1 established as the entity which will develop from the solar
2 facility standpoint, the facility processed here?

3 MR. COPUS: Chesapeake, Chesapeake Energy One, LLC is
4 the special purpose entity for this.

5 MR. SCHMIDT: For this, okay. And that's controlled
6 by SGC Power, LLC?

7 MR. COPUS: That's correct.

8 MR. SCHMIDT: Okay. You actually work for SGC Power,
9 LLC?

10 MR. COPUS: Yes.

11 MR. SCHMIDT: And how long have you been with them?

12 MR. COPUS: Four and a half years.

13 MR. SCHMIDT: And can you tell us what you do there?

14 MR. COPUS: I'm a partner in the company and I head
15 up our development.

16 MR. SCHMIDT: Okay and can you tell us a little bit
17 about the business of the company? What does the company do
18 and what, and if you could also weave into that, what do you do
19 for the company specifically?

20 MR. COPUS: Absolutely. We develop projects, we
21 engineer projects, we do the project management and
22 construction management for the projects.

23 MR. SCHMIDT: Okay.

24 MR. COPUS: We are located in Maryland. That's where
25 our, where our main office is. We have an office in Colorado.

1 We have been involved in over nine hundred megawatts worth of
2 projects. We've been involved in over, well over thirty
3 megawatts worth of projects in Maryland alone. A lot of those
4 are schools, universities. We did the Towson University
5 project (inaudible) second phase, University of Maryland our
6 second phrase. We've done several ground mounts for church, two
7 megawatt for a church in Prince George's County. We're doing a
8 two megawatt right now for a secured facility in Clinton,
9 Maryland. We've done a two megawatt in Kingsville, Maryland,
10 Baltimore County, for a (inaudible) megawatt for Kingsville
11 (inaudible).

12 MR. SCHMIDT: And you have another proposal not far
13 from here, which in fact, has been approved on Maryland Route
14 140, correct?

15 MR. COPUS: That is correct.

16 MR. SCHMIDT: Now, these projects, what type of
17 energy is it, wind, solar or, I mean, you haven't actually said
18 that?

19 MR. COPUS: It's solar (inaudible).

20 MR. SCHMIDT: Okay and how about you personally?
21 What do you do in connection with, I know you're a partner of
22 the, of the company but generally, what do you do as part of
23 the company's business?

24 MR. COPUS: So, I head up the development efforts.
25 There are six people on the development side, so we go out and

1 we identify projects, whether they're net meter projects, like
2 the universities I spoke about, and we identify the
3 opportunity, vet the opportunity and present it and develop it.

4 The, on the land development side, where we do a fair
5 amount of land development as well, we identify properties that
6 are conducive to solar with minimal impact on the environment,
7 as in we don't cut down trees for these projects. And we
8 develop those in multiple states.

9 MR. SCHMIDT: Okay. How about, just a little bit
10 about your educational background or, are you a college
11 graduate?

12 MR. COPUS: I am. I went to Towson University, I
13 graduated with a degree in Geography with a concentration in
14 Environmental Management.

15 MR. SCHMIDT: Okay.

16 MR. COPUS: I've been in solar, I was, at one point,
17 I was LEED AP certified and I was (inaudible) technical sales
18 certified. I've been in solar since 2009.

19 MR. SCHMIDT: Okay. You are not a P.E., not a
20 professional engineer?

21 MR. COPUS: I am not.

22 MR. SCHMIDT: And you're not an environmental expert
23 as well?

24 MR. COPUS: I am not.

25 MR. SCHMIDT: Okay. You've described some of them,

1 how many solar projects has the company been involved with say
2 in Maryland SGC? Can you put a number on it?

3 MR. COPUS: Thirty.

4 MR. SCHMIDT: Okay.

5 MR. COPUS: Around that number.

6 MR. SCHMIDT: How about Baltimore County, more
7 specifically? Of the thirty, how many --

8 MR. COPUS: I would say three or four.

9 MR. SCHMIDT: Okay. Okay. Let me ask you a little
10 bit, if I could turn your attention to this, this particular
11 project. If I can, Mr. Copus, for the Board's benefit, how
12 would you classify this project? Is it a community solar,
13 what, what exactly is this, what, what's the nature of this
14 project from the, from the industry's perspective?

15 MR. COPUS: So, this is considered a community solar
16 project. The, the State of Maryland, they have an RPS, the
17 renewal portfolio standard, which requires that two percent of
18 the electricity be from renewable resources by 2020. So, this
19 helps to comply with that. In addition, --

20 MR. SCHMIDT: That's a State requirement?

21 MR. COPUS: That's correct.

22 MR. SCHMIDT: Okay. Go ahead.

23 MR. COPUS: And then the State, the State, the PSC,
24 it was a State mandated program to release a pilot program for
25 community solar, it was a three year program that the various

1 utilities were required a certain amount of capacity for
2 projects. That has just recently been extended an additional
3 four years. So, seven years total to the program and then once
4 you enter into that program, it's a twenty year lease, which is
5 what we have on this property.

6 MR. SCHMIDT: So, in answer to Mr. McComas' question
7 before, you'll have a twenty year lease with Mr. Elseroad or
8 his, his LLC for the use of this property as a solar facility?

9 MR. COPUS: That's correct.

10 MR. SCHMIDT: Okay. Go ahead, I didn't mean to
11 interrupt you.

12 MR. COPUS: So, this complies with that, with the
13 Public Service Commission's mandate.

14 MR. SCHMIDT: Okay.

15 MR. COPUS: For community solar and this, the, the
16 way community solar works is you, you build a, the intent was a
17 lot of people can't afford to put solar on their house, or it's
18 shaded or they don't, it's not conducive for, for, you know,
19 the roof is too old, but they still wanted access to renewable
20 energy.

21 MR. SCHMIDT: Okay.

22 MR. COPUS: So, with community solar, it allows us to
23 install one larger system (inaudible) scale, and then they can
24 buy green energy from that array as long as they're in the same
25 service territory. So, anybody in BGE, whether you're a

1 residential customer or commercial customer, can purchase
2 electricity from this.

3 MR. SCHMIDT: Okay. So, if I live in Timonium and
4 I'm in BGE's service area, correct?

5 MR. COPUS: That's correct.

6 MR. SCHMIDT: And this property is in BG&E's service
7 area, correct?

8 MR. COPUS: You could subscribe and purchase
9 electricity from there, correct.

10 MR. SCHMIDT: Okay and --

11 MR. COPUS: Assuming there's capacity left.

12 MR. SCHMIDT: -- right, if my house is in the middle
13 of the woods or my house is old and the roof doesn't support
14 solar panels, I could become a subscriber to this solar
15 facility?

16 MR. COPUS: That's correct. And in addition to that,
17 there is a carve out in the program for low to moderate income
18 individuals and all of our sites have a, it's referred to as
19 LMI, they all have the, they've all been enrolled in the LMI
20 category.

21 MR. SCHMIDT: Okay and so, this, is this program part
22 of the community solar program, is this, I'm sorry, is this
23 site and proposal part of the community solar program?

24 MR. COPUS: Yes, we have allocation from the Public
25 Service Commission for this site for, for the project.

1 MR. SCHMIDT: Okay and can you explain just briefly
2 how that works? Do, do you, does SGC go to the Public Service
3 Commission or P, PSC and ask to be designated as a community
4 solar?

5 MR. COPUS: Yes. So, we have to be, we have to apply
6 to become a subscriber organization. They look at your
7 credentials. You have to post a bond to put these into the
8 program. You have to receive an interconnection approval from
9 the utility that's a viable interconnection, because that's a
10 large component is, is there capacity on the wires along the
11 road (inaudible). Then you submit that to the Public Service
12 Commission and then you get access, or you get granted capacity
13 and then you build a system.

14 MR. SCHMIDT: Okay and you've gone, shown those
15 requirements with the Public Service Commission?

16 MR. COPUS: That's correct.

17 MR. SCHMIDT: To allow this site to move forward
18 through the zoning process in Baltimore County?

19 MR. COPUS: Yes, and it is publicly available
20 information.

21 MR. SCHMIDT: Okay. Then let me turn your attention,
22 Mr. Copus, to this site. Just, if you can, take us back, I
23 assume there came a time when you identified this site as a
24 potential candidate for a community solar facility, correct?

25 MR. COPUS: Um hm, that's correct.

1 MR. SCHMIDT: And just how did that come about? Why
2 this site? Why, why'd you pick here? What, what, what led you
3 to this property?

4 MR. COPUS: So, we were looking for, we need projects
5 in all service territories that are participating in the
6 program, BGE being one of them, so it was criteria one. The
7 next criteria, we need to identify three phase electricity
8 along the property that has capacity for solar.

9 MR. SCHMIDT: Now, is that, where is that here?

10 MR. COPUS: That's located along Hanover Pike.

11 MR. SCHMIDT: What's it the telephone poles with the
12 wires?

13 MR. COPUS: With the three wires, that's correct.

14 MR. SCHMIDT: Okay.

15 MR. COPUS: And then we look at property that does
16 not have an existing tree bank on it, because we don't, we do
17 our best not to remove trees to install solar. So, this
18 property was cleared. And then it also had a southern facing
19 exposure, which is ideal for solar to maximize production of
20 the array. So, those are the criteria.

21 MR. SCHMIDT: Okay and --

22 MR. COPUS: And also, I would just, not to interrupt,
23 but it also had existing trees along the north and along the
24 east side as well.

25 MR. SCHMIDT: And what was the benefit or what, why

1 were those, the exist --

2 MR. COPUS: It helps provide natural screening from
3 the array. We always do landscape buffers as required per the
4 AHJ or the County, (inaudible).

5 MR. SCHMIDT: Okay and you, did you enter into an
6 agreement with the property owner to move forward with this
7 process?

8 MR. COPUS: Yes, I believe it was October 2017.

9 MR. SCHMIDT: Okay and just because I know Mr.
10 McComas asked this question, was there a, a lease which
11 provided you with a window of opportunity to get the necessary
12 local approvals before you entered into the twenty year lease?

13 MR. COPUS: Yeah. Standard procedure for, for these
14 projects is you execute an option, as part of the lease, it's
15 tied into the lease, so that you have a duration, whether it's
16 two years, three years, four years, whatever that duration may
17 be, specific to that property and that lease and that allows
18 you to have control of the property, spend the money to do the
19 diligence, do the engineering, do the interconnection
20 applications, submit it into the program, get through all the
21 final, you know, zoning requirements, landscape requirements
22 and so forth and then build the project and then the lease term
23 begins.

24 MR. SCHMIDT: Okay. Hold on one second. We're just
25 going to pause this for one second. She has to run out, sit

1 right here, one second.

2 MR. SCHMIDT: Okay.

3 (RECORDING PAUSED - 11:26:06 AM)

4 (ON RECORD - 11:27:45 AM)

5 CHAIR: All right. Back on the record, go ahead.

6 MR. SCHMIDT: Okay.

7 CHAIR: Next question.

8 MR. SCHMIDT: Mr. Copus, you've described the site, I
9 think you said it has a southern exposure, I believe.

10 MR. COPUS: That's correct.

11 MR. SCHMIDT: Can, and the area of the solar array
12 is, is that wooded presently?

13 MR. COPUS: No.

14 MR. SCHMIDT: Okay. Let me ask you, if I can, just a
15 little bit about the solar facility itself and how it's going
16 to work and what it's going to look like. I think it might be
17 helpful at this point. And Chairwoman Murphy, I had marked
18 these exhibits, which I'll have Mr. Thaler identify, but just
19 for the record, and I know for, Ms. Jolivet is handling the
20 exhibits, but Petitioner's exhibit number one is the site plan
21 and Mr. Thaler, whose office proposed, prepared these will
22 testify, unless, Mr. Nelson, should I just put them in now? Do
23 you have an objection or just for evidentiary purposes or would
24 you rather have the witness authenticate them?

25 MR. NELSON: I think let's keep it simple, put them

1 in evidence.

2 MR. SCHMIDT: Okay. If I could then, I would offer
3 Petitioner's exhibit number one, which is a sealed plan, is a
4 plan to accompany the Petition for Special Exception. And that
5 describes, obviously, the site and has notes and schematic
6 information. Petitioner's exhibit number two is entitled the
7 schematic landscape plan, which shows the proposed landscaping
8 for the site, for the project. And Petitioner's exhibit number
9 three is an aerial exhibit, which is an aerial photograph,
10 which is --

11 MR. NELSON: Which one is that?

12 MR. SCHMIDT: That's the one at the bottom, Mr.
13 Nelson.

14 MR. NELSON: Okay.

15 MR. SCHMIDT: Which shows, essentially, the property
16 outlined in a green line, the area of the special exception in
17 yellow and there also is environmental features off site shown
18 in red. That's an aerial photograph. And I'll have Mr. Thaler
19 authenticate that. Mr. Copus, those exhibits show the property
20 that we're considering today, correct?

21 MR. COPUS: That is correct.

22 MR. SCHMIDT: Okay.

23 MR. COPUS: Can you hear me? I can't tell. Am I
24 speaking (inaudible)?

25 CHAIR: Yes.

1 MR. SCHMIDT: Okay. I'm going to mark as
2 Petitioner's exhibit number four, and I'll give the witness a
3 copy and the Board one marked and then three others for the
4 panel to each have one, if I can approach?

5 BOARD: Thank you.

6 MR. SCHMIDT: Thank you. Mr. Copus, I've handed, I
7 hand, handed you a drawing which is entitled, I guess down at
8 the bottom, general racking details and then on the side it
9 reads, ground mount fix bracking detail. Can you tell us and
10 maybe, I think it's a drawing and then two different
11 photographs, what, what are we actually looking at? Can you
12 tell us? Start with the drawing, maybe.

13 MR. COPUS: So, this is typical detail on each site
14 will be, the design will be customized to the existing site.
15 But this is representative of a, of a typical system.

16 MR. SCHMIDT: Okay.

17 MR. COPUS: So, on the left where you see the
18 drawing, it shows, this is going to be a galvanized post and
19 then it will have the racking. The modules will be laid on top
20 of it at a, typically a twenty-five degree angle. It's kind of
21 a standard angle that comes from the racking. If we can
22 increase that a little bit it will actually improve, the
23 production, which we have at this site, because of the southern
24 sloping exposure.

25 MR. SCHMIDT: Okay.

1 MR. COPUS: So, that's a positive for this site. The
2 modules themselves are roughly three and a half by six and a
3 half feet, the dimensions, and that will be, I believe we have
4 two in portrait proposed for this site, which is representative
5 in the bottom right. So, that's what this shows. And this
6 also, the top right picture is indicative of the proposed
7 system, which shows roughly about two feet of clearance from
8 the bottom panel to the ground and then at the highest point,
9 we have proposed roughly seven feet, ten inches at the highest
10 point.

11 MR. SCHMIDT: Are these fixed panels or do they, do
12 they rotate to track the sun?

13 MR. COPUS: For this location, we have opted to use a
14 fixed tilt system so they will not track with the sun. There
15 is no additional motorized equipment or additional maintenance
16 required for this site.

17 MR. SCHMIDT: Okay. So, the drawing, which is on the
18 left hand side, that is a typical fixed mounted type of panel
19 system that you'll use here?

20 MR. COPUS: That is correct.

21 MR. SCHMIDT: And you indicated that the maximum
22 height, at least shown here, is something under eight feet, a
23 little bit under eight feet, is that correct?

24 MR. COPUS: That's correct and this points out to
25 seven feet eleven inches and seven-eighths (inaudible).

1 MR. SCHMIDT: Okay.

2 MR. COPUS: It would be typically, call it seven,
3 eight feet.

4 MR. SCHMIDT: Okay and even if the tilt is changed,
5 these, these would be well less than the twenty feet maximum
6 provided, correct?

7 MR. COPUS: That is correct.

8 MR. SCHMIDT: And just so that we're clear, this is
9 not a roof mounted system, it doesn't go on a roof of a
10 building.

11 MR. COPUS: That's correct.

12 MR. SCHMIDT: It's on, it's mounted on the ground.

13 MR. COPUS: That's correct.

14 MR. SCHMIDT: Okay and then the two photographs on
15 the right hand side, if, if you know, is that one of SGC's
16 facilities somewhere?

17 MR. COPUS: I do not know if these are from, where
18 they are, what sites are they?

19 MR. SCHMIDT: Oh, you can't ask somebody.

20 MR. COPUS: Yes, they are SGC's.

21 CHAIR: If you don't know, you don't know.

22 MR. COPUS: Okay, sorry.

23 MR. SCHMIDT: Okay. He's got one of the other people
24 from the --

25 CHAIR: Understood, understood.

1 MR. COPUS: We have a lot of sites and they, a lot
2 tend to look like this.

3 MR. SCHMIDT: Like this, but is this typical of what
4 this site would look like in terms of --

5 MR. COPUS: Yes.

6 MR. SCHMIDT: -- ground mounted facilities of the
7 same kind of size and configuration?

8 MR. COPUS: Yes.

9 MR. SCHMIDT: Okay. Now, let me ask you, can you
10 explain kind of the way this works from a, from a science
11 standpoint? I mean, what happens? I mean, obviously, the sun
12 shines and tell us what happens.

13 MR. COPUS: So, with photovoltaics, this is not
14 concentrated solar, which is sometimes a misconception but with
15 this, it's a silicone based wafer that are seventy-two cells in
16 series that are mounted on the panels, which are roughly three
17 and a half by six and a half feet. The sun hits it, energies
18 the photons, creates DC electricity which then goes to an
19 inverter, which converts it from DC to AC and then that
20 electricity is then put out through a meter onto the grid and
21 then the utility has their own meter as well, so they can
22 monitor how much electricity is put onto the grid and that is
23 what is sold to the different subscribers through the community
24 solar program.

25 MR. SCHMIDT: All right. Let me slow, slow down a

1 little bit and just explain that process a little bit further.
2 So, the sun shines on these panels and they capture the energy,
3 correct?

4 MR. COPUS: Um hm, that's correct.

5 MR. SCHMIDT: And then what type of energy is that,
6 if you can describe, I mean, I know it's solar energy but does
7 it produce an electric current or how does that work?

8 MR. COPUS: The photons begin to move and by the
9 photons moving in the cells it creates DC electricity.

10 MR. SCHMIDT: Okay. Is that the kind of current we
11 have in our house?

12 MR. COPUS: No.

13 MR. SCHMIDT: Okay. What do we have in our house?

14 MR. COPUS: We have AC, which is alternating, so it's
15 direct current or alternating current. So we have AC in our
16 house.

17 MR. SCHMIDT: Okay.

18 MR. COPUS: So, when the sun hits the mod, the solar
19 panels, we call them modules, but the solar panels, it creates
20 electricity, it goes through wires and then goes to an inverter
21 which converts it to AC electricity. There's no moving parts
22 in this system. And then, that AC electricity is then
23 distributed out to the grid, --

24 MR. SCHMIDT: Okay. So, so as shown on the plan,
25 there's a line where this current would go out to the line of

1 telephone poles --

2 MR. COPUS: Do you want me, do you want me to point
3 to it?

4 MR. SCHMIDT: Sure.

5 MR. COPUS: So, this is a proposed --

6 MR. SCHMIDT: Just keep your voice up.

7 BOARD: Yeah, you're, you're, you're good.

8 MR. COPUS: On the, on the drawing it has a proposed
9 interconnection and when we say it's proposed, because when we
10 go through the final design with utility, you know, they could
11 move it ten feet, twenty feet, but that's where they've
12 indicated at this point.

13 MR. SCHMIDT: Okay.

14 MR. COPUS: But that is at their discretion and they
15 have the right to move that as needed.

16 MR. SCHMIDT: And that's BG&E?

17 MR. COPUS: That is correct.

18 MR. SCHMIDT: And there's an existing line of
19 telephone poles along Hanover Pike?

20 MR. COPUS: That's correct.

21 MR. SCHMIDT: Now, that connection, will that be
22 above ground or below ground?

23 MR. COPUS: It'll, it should be below ground.

24 MR. SCHMIDT: Okay. But that's ultimately up to
25 BG&E.

1 MR. COPUS: That's up to BG&E. Typically, it's below
2 ground.

3 MR. SCHMIDT: Typically below ground.

4 MR. COPUS: But I can't speak on their behalf.

5 MR. SCHMIDT: Okay. Now, you said there's no moving
6 parts. Do these panels make any noise?

7 MR. COPUS: No.

8 MR. SCHMIDT: Is there going to be any noise, you
9 know, noise that's going to be heard by, you know, at the
10 adjacent houses from this facility?

11 MR. COPUS: Not that I'm aware of.

12 MR. SCHMIDT: Okay. How about is, are these manned
13 facilities? Is somebody out there operating them or how does
14 that work?

15 MR. COPUS: Yeah, great question. They, it is an
16 unmanned facility.

17 MR. SCHMIDT: Okay.

18 MR. COPUS: Once the construction is complete and the
19 system is commissioned and approved by the utility, because
20 they have to allow us, they have to give us permission to
21 operate, we call it PTO. Once they give us permission to
22 operate, then we would, there will be a, typically it's a two
23 person team that goes out every six months and they do a visual
24 inspection, infrared inspection to make, and, you know, any
25 sort of maintenance that needs to happen at that point.

1 In addition to that, there will be maintenance done
2 as far as grass cutting.

3 MR. SCHMIDT: Okay.

4 MR. COPUS: And, and that's just done on an as needed
5 basis and they will have, you know, they'll monitor the site.

6 MR. SCHMIDT: Okay. Other than the, other than that
7 maintenance, there's nobody there twenty-four/seven or no
8 building where somebody stays and watches it?

9 MR. COPUS: No, no.

10 MR. SCHMIDT: How about, what happens if the panels
11 get dirty?

12 MR. COPUS: So, the way that, in our environment in
13 the mid-Atlantic, it's considered self-cleaning, so there
14 aren't going to be crews that go out with any sort of cleaning
15 solution or anything to power wash the panels. The panels
16 themselves, you know, the, the rain that, that we receive will
17 wash the panels.

18 MR. SCHMIDT: So, when it rains, God cleans the
19 panels.

20 MR. COPUS: That's correct.

21 MR. SCHMIDT: Okay. Any kind of chemicals or
22 anything like that that leech or come off of these that would
23 get into the ground water, would get into the ground or any of
24 that kind of stuff?

25 MR. COPUS: None that I'm aware of or the industry

1 has identified.

2 MR. SCHMIDT: Okay. Now, the community solar program
3 and, and the County zoning regulation sets a limit, does it
4 not, on the amount of power or energy that can be produced, is
5 that correct?

6 MR. COPUS: For the community solar program, the
7 maximum allowable amount for a single array is a two megawatt
8 AC system.

9 MR. SCHMIDT: Okay and what, what is this system?

10 MR. COPUS: This is a 1.75 or, yeah, 1.75 AC system.

11 MR. SCHMIDT: Okay, so you're, and, and --

12 MR. COPUS: We're below the limit.

13 MR. SCHMIDT: Okay and, and the County also, does it
14 not, has a maximum of two meg, two megawatts?

15 MR. COPUS: Two megawatts AC, that's correct.

16 MR. SCHMIDT: AC. So, you're within the maximum that
17 the County allows?

18 MR. COPUS: That's correct.

19 MR. SCHMIDT: And just for the Board's reference,
20 because I didn't know this, how much power is 1.75 megawatts?
21 How many houses does that serve?

22 MR. COPUS: And, and just to be clear, because I know
23 some of the drawings have different numbers, a 1.75 megawatt AC
24 system, the way we build these, is equivalent to a 2.25
25 megawatt DC system. So, if you see the 2.25 DC, that is a

1 different rating when we talked about the AC and DC conversion.
2 But everything from a utility and from a zoning perspective and
3 a program perspective is always off, based off AC.

4 MR. SCHMIDT: Okay.

5 MR. COPUS: Just, not to make it super confusing, but
6 I just wanted to try to clarify that.

7 MR. SCHMIDT: The difference between DC and AC.

8 MR. COPUS: DC and AC, (inaudible) so this, this,
9 this project is estimated to produce 3.2 million kilowatt hours
10 on an annual basis, which is roughly, depending on the size of
11 the home and what electricity it takes, it'll, it should
12 provide electricity to about two hundred and fifty to three
13 hundred homes on an annual basis.

14 MR. SCHMIDT: Okay and I know we'll have a witness on
15 this, but do these, do these things reflect the sun or, or, or,
16 you know, have parts to them that would, it would cause a lot
17 of glare or, or shine or, or anything? And I know we have a
18 witness, so, and I know you're not that witness, but generally,
19 can you just describe how they look and what, --

20 MR. COPUS: So, these solar panels have a non-
21 reflective coating and it's, it's designed to absorb
22 electricity because the more electricity they absorb, the more
23 power they will create. And, you know, from a glare
24 standpoint, they have been authorized and have been installed
25 at runways throughout the country.

1 MR. SCHMIDT: Okay.

2 MR. COPUS: The Indianapolis airport has a large
3 array right at the runway.

4 MR. SCHMIDT: Okay, okay. Let me have a, let me mark
5 another exhibit I wanted to show you as well and I think we're
6 up to number five, correct?

7 BOARD: That's correct.

8 MR. SCHMIDT: Okay. Now, give a copy of this to the
9 Board and also to Mr. Nelson as well. And I've pre-marked one
10 as five and I have two, three other copies for panel members.

11 BOARD: Thank you.

12 MR. SCHMIDT: Let me give one to Mr., now, Mr. Copus,
13 is this a secure facility in terms of taking any steps to make
14 sure the kids or people are not running through here, or
15 cutting through here?

16 MR. COPUS: We will install an eight foot fence.

17 MR. SCHMIDT: Okay and I know there's different
18 kinds, is there not, of fencing that you can use. Have you
19 given thought, based on the character of this area and the size
20 of the facility, topography, etcetera, as the type of fence
21 that you would anticipate here?

22 MR. COPUS: Yeah, and, you know, we obviously install
23 these per the regulations of the County. So, any sort of
24 security regulations they require, we would adhere to in
25 addition to the national fire code as required.

1 MR. SCHMIDT: Okay.

2 MR. COPUS: With the fence, we typically do what we
3 call an agricultural fence, some people refer to it as a deer
4 fence, which is a pressure treated post with a four by four
5 steel wire.

6 MR. SCHMIDT: Okay. Is that fence shown on
7 Petitioner's exhibit number five, the drawing that I've just
8 given you?

9 MR. COPUS: That is representative of that, yes.

10 MR. SCHMIDT: Okay. So, that's the type of fence
11 that you would anticipate here?

12 MR. COPUS: It would look a lot like that, yes.

13 MR. SCHMIDT: Okay. Subject to the County approval
14 ultimately.

15 MR. COPUS: Sure, absolutely.

16 MR. SCHMIDT: Okay. I would offer that as
17 Petitioner's exhibit number five.

18 CHAIR: Any objection to Petitioner's five?

19 MR. NELSON: No.

20 CHAIR: No objection, it'll be admitted. Any barbed
21 wire on the top of this fence?

22 MR. COPUS: No.

23 CHAIR: Okay.

24 MR. COPUS: Did I state eight foot fence, which is
25 our standard, what it would be to code, which typically is a

1 minimum of six foot.

2 MR. SCHMIDT: Okay, got it. And I have one final
3 photograph. I think this was offered below so the number, the
4 exhibit number is written on here, I'm going to correct it so
5 reflect number, Exhibit 6. Give one to Mr. Nelson. Oops, I'm
6 sorry, Macy. And Mr. Copus, I'm handling, handing you what
7 I've marked as exhibit number six, which I think shows both,
8 well, you tell us what it shows.

9 MR. COPUS: This is representative of the fence and
10 one of the reasons we like this fence is it tends to blend in
11 with an agricultural environment.

12 MR. SCHMIDT: Okay and in the background of the photo
13 are the panels themselves, correct?

14 MR. COPUS: Yes, that one is not our array. As you
15 can see, it's a little higher off the ground than what ours
16 typically are.

17 MR. SCHMIDT: Okay. But there are some men standing
18 there and it gives you at least an idea of, of, of scale in
19 terms of the trees and the fence and so on and so forth?

20 MR. COPUS: That's correct.

21 MR. SCHMIDT: Okay and I would offer that as
22 Petitioner's exhibit number six.

23 CHAIR: Any objection? Any objection to six?

24 MR. NELSON: None.

25 CHAIR: All right, thank you.

1 MR. SCHMIDT: Mr. Copus, do these, I, I think I asked
2 you generally, but do, do these, is this facility expected to
3 generate any traffic other than the routing maintenance that
4 comes out here as you've described it?

5 MR. COPUS: Nothing additional.

6 MR. SCHMIDT: Okay. Is there, can you comment, I
7 mean, do these things catch on fire or is there any, is there
8 any fire hazard that's created by these that you've had with
9 other projects or in the industry? I mean, is, is that an
10 issue?

11 MR. COPUS: We, we have not, we personally have not
12 had any fires. We install per the fire code and we'd work with
13 Baltimore County fire inspector as needed.

14 MR. SCHMIDT: Okay, okay. That's all the questions I
15 have of the witness.

16 CHAIR: All right. Cross?

17 MR. NELSON: Very briefly. Good morning, Mr. Copus.

18 MR. COPUS: Good morning.

19 MR. NELSON: I was, you, in your description of the
20 solar panel, did you say it was, did I, my notes indicate you
21 said it was three and a half by six and a half roughly, plus or
22 minus?

23 MR. COPUS: Roughly, yes, per panel.

24 MR. NELSON: Per panel. Now, earlier this morning,
25 when, in my discussion with Mr. Elseroad, you know Mr.

1 Elseroad, don't you?

2 MR. COPUS: Through this project.

3 MR. NELSON: Yeah, (inaudible), I mean, you know who
4 he is.

5 MR. COPUS: I do know who he is.

6 MR. NELSON: Right. And he indicated that he had
7 entered into a lease with a company and the lessee had control
8 of the land. That would be your company, is that right?

9 MR. COPUS: That is correct.

10 MR. NELSON: All right. So, --

11 MR. COPUS: Until, until we sell the project to
12 another system owner, --

13 MR. NELSON: All right.

14 MR. COPUS: But, but we own, we have control of the
15 lease (inaudible).

16 MR. NELSON: So, you initially had an option for some
17 period of time and the exact time is not important to my
18 question. But roughly two years or so during which you could
19 do your due, due diligence?

20 MR. COPUS: We have an option period that I'm not
21 allowed to disclose, yes.

22 MR. NELSON: I beg your pardon?

23 MR. COPUS: We have an option period that I'm not
24 allowed to disclose.

25 MR. NELSON: All right. But is it some period of

1 time for which you have an option and then you enter into, if
2 everything goes the way you hope it goes, into the twenty year
3 lease?

4 MR. COPUS: That is correct.

5 MR. NELSON: Have you entered into that lease yet,
6 the twenty year lease?

7 MR. COPUS: We have a legal lease that has an option
8 built into it.

9 MR. NELSON: Okay. Now, but your company is, as we
10 speak today, the lessee of these roughly ten acres?

11 MR. COPUS: Chesapeake Energy One, LLC is the lessee.

12 MR. NELSON: Okay. Would that company, your company,
13 agree to have Baltimore County come out at the site and conduct
14 a revised wet, or new, a, a new wetlands analysis in view of
15 the heavy rain fall that Mr. Elseroad has described over the
16 last two or three years?

17 MR. COPUS: We had an expert come out and validate
18 and get it approved, is my understanding, about six months ago
19 within, so that's within the last year.

20 MR. NELSON: Would you, all right, so your point it
21 was done six months ago?

22 MR. COPUS: Roughly. I don't have the exact date in
23 front of me.

24 MR. NELSON: All right. But if it was longer than
25 that in the past, would your, would the lessee agree to have it

1 done again by the County?

2 MR. COPUS: I would take it under advisement.

3 MR. NELSON: All right. But right now you're not
4 prepared to commit to that, are you?

5 MR. COPUS: I would have to confer with my civil
6 engineering firm, the expert and the County. I don't believe
7 you're the expert on this, I have to touch base with the County
8 to verify that, what's needed.

9 MR. NELSON: All right. But your judgment is it was
10 done six months ago?

11 MR. COPUS: Roughly.

12 MR. NELSON: Roughly, how, how, how big a range is
13 that?

14 MR. COPUS: I can provide you with that documentation
15 as follow-up.

16 MR. NELSON: All right. Now, Board member McComas
17 asked Mr. Elseroad about, question about wondering, a lost
18 child. I want to follow-up on that. How, how, how you going
19 to, how does your company deal with that problem? The risk of
20 an inadvertent trespasser?

21 MR. COPUS: Like with any private property facility
22 that's locked, it's clearly marked as private property and as,
23 that there is risk of electric as far as if you went in there,
24 there is electricity in there like any building.

25 MR. NELSON: Um hm.

1 MR. COPUS: So, if somebody went in there illegally
2 and there had to be a rescue, then the appropriate authorities
3 could be called in and rescue that individual.

4 MR. NELSON: And, and do you have protocol in place
5 in your company to, to deal with that sort of situation?

6 MR. COPUS: We are not the long term system owners
7 and the long term system owners would have that protocol in
8 place.

9 MR. NELSON: All right. Well, let's explore that.
10 If this all is approved, how soon will you attempt to sell this
11 facility?

12 MR. COPUS: That is at our discretion.

13 MR. NELSON: Let me rephrase the question. Is it
14 your expectation that your company will operate this facility
15 for the full twenty years?

16 MR. COPUS: No.

17 MR. NELSON: All right. Historically, in other
18 projects that you've done in Maryland, how long, once they're
19 up and running, how long have you, have you ever actually
20 operated one?

21 MR. COPUS: They are sold prior to PTO.

22 MR. NELSON: Prior to, I'm sorry?

23 MR. COPUS: Permission to operate, as stated earlier.

24 MR. NELSON: Okay. Prior to, PTO. So, before we
25 turn the switch to activate this facility, the intention is for

1 your company to sell this operation?

2 MR. COPUS: That is correct.

3 MR. NELSON: Now, the, the site was attractive to you
4 and your company because it had a southern exposure, is that
5 right? That's one reason that was, that's a plus?

6 MR. COPUS: Yes.

7 MR. NELSON: The second plus is that there were no
8 trees on it, that's a plus?

9 MR. COPUS: Yes. On the portion that we are
10 utilizing.

11 MR. NELSON: Right.

12 MR. COPUS: We're leasing the entire lot.

13 MR. NELSON: I understand, okay.

14 MR. COPUS: But we are not removing any trees to the
15 north.

16 MR. NELSON: Right. And the third plus is that the
17 land is on a slope with a southern exposure?

18 MR. COPUS: A gentle slope, yes.

19 MR. NELSON: A gentle slope. How steep is that
20 slope?

21 MR. COPUS: I would have to defer to my civil
22 engineer.

23 MR. NELSON: Okay.

24 MR. COPUS: I'm not an engineer.

25 MR. NELSON: Now, let's look together at Petitioner's

1 Exhibit 4.

2 MR. COPUS: I'm sorry, I don't know which one it is.

3 MR. NELSON: This is the general racking detail. You
4 shared with us that the panel is roughly three and a half by
5 six and a half feet, is that right?

6 MR. COPUS: Yes.

7 MR. NELSON: Now, let's look together at Exhibit 4.
8 Does the Board have its copy? And at the top, I see a
9 dimension eleven feet nine and three-sixteenths inches. What's
10 that dimension?

11 MR. COPUS: That's the width of the footprint, of
12 the, of the modules.

13 MR. NELSON: All right. So, that's greater than six
14 and a half feet, isn't it?

15 MR. COPUS: You, you're asking two different things.

16 MR. NELSON: All right. First, we can agree that
17 that's greater than six and a half feet, isn't it?

18 MR. COPUS: Yes.

19 MR. NELSON: Okay. You say it's two different
20 things. In what way is it two different things?

21 MR. COPUS: A module is six and a half feet and I
22 said there's two modules in the portrait.

23 MR. NELSON: All right. So, it --

24 MR. COPUS: So, if you add that, it's greater than
25 six and a half feet.

1 MR. NELSON: All right. So, they're connected, are
2 they not?

3 MR. COPUS: They are placed next to each other.

4 MR. NELSON: All right. Well, --

5 MR. COPUS: As the diagram shows.

6 MR. NELSON: -- there, they touch each other?

7 MR. COPUS: No, there is an inch gap between them,
8 roughly.

9 MR. NELSON: Um hm. So, if, your point is, when you
10 said each one was three and a half by six and a half roughly,
11 you're talking about just the, the, the, the, each small
12 segment?

13 MR. COPUS: I stated that each solar panel was
14 roughly three and a half by six and a half feet.

15 MR. NELSON: All right. But if we look at the solar
16 array, from the bottom edge to the top edge, it's what
17 dimension?

18 MR. COPUS: Could you point on this diagram exactly
19 what you're referring to and I can add it for you?

20 MR. NELSON: Yeah.

21 MR. COPUS: I just want to make sure I get the exact
22 number. So, go ahead, you (inaudible).

23 MR. NELSON: I'm, I'm trying to help the witness here
24 but --

25 MR. COPUS: Yeah, that's fine.

1 MR. NELSON: I'm exploring this dimension there to
2 there and there to there.

3 BOARD: Can you describe (inaudible)?

4 MR. NELSON: So, the, yeah, I will.

5 BOARD: Okay.

6 MR. NELSON: I was just trying to point. So, I was
7 asking the, Mr. Copus or the, what is the dimension from the
8 bottom of the solar array where I'm pointing my finger, can you
9 see that? To the top of the solar array.

10 MR. COPUS: May I approach (inaudible)? So, as this
11 diagram is representative, it will show you that to the bottom
12 of the array, is your question, to the top of the array. And
13 in the middle, it will say twelve feet eleven inches.

14 MR. NELSON: All right. Twelve feet eleven inches.

15 MR. COPUS: Approximately.

16 MR. NELSON: Um hm. Have you calculated how many
17 square feet total there are of solar arrays on this proposed
18 project?

19 MR. COPUS: I personally have not.

20 MR. NELSON: All right. But there's a way to do
21 that, isn't there?

22 MR. COPUS: Of the surface area of the modules?

23 MR. NELSON: Yes.

24 MR. COPUS: Yes.

25 MR. NELSON: All right. So, we count up each module,

1 multiply dimensions that appear on Exhibit 4 and get the total
2 square footage --

3 MR. COPUS: Of modules, yes.

4 MR. NELSON: -- of the modules. Now, Exhibit 4, I
5 want to direct your attention to the, the post. That goes into
6 the ground?

7 MR. COPUS: That is correct.

8 MR. NELSON: How deep in the ground does it go?

9 MR. COPUS: The answer is, it depends, depending on
10 the geotechnical report and the requirement. Typically, it's
11 around eight feet.

12 MR. NELSON: Okay. Have you seen that geotechnical
13 report?

14 MR. COPUS: I am not an engineer, I have not
15 personally.

16 MR. NELSON: But does it exist?

17 MR. COPUS: We have conducted an, a geotechnical
18 report, yes.

19 MR. NELSON: Who did that report?

20 MR. COPUS: I believe it was our comp, we typically
21 use Hills Carns that does it.

22 MR. NELSON: Um hm.

23 MR. COPUS: But I would have to verify that for you.

24 MR. NELSON: Does your company have any plans, if
25 this project is approved, to do any re-grading of this site?

1 MR. COPUS: Not to my understanding.

2 MR. NELSON: That's all I have, thank you.

3 CHAIR: That's all you have? Okay. Any, any re-
4 direct? That's all the cross.

5 MR. SCHMIDT: That's all the questions? No, I have
6 no other questions.

7 CHAIR: Question. I, just so I understand, the
8 people who buy into the community program, to buy the
9 electricity, do they have to be located within, you know, the
10 area of this property?

11 MR. COPUS: They have to be located in the same
12 service territory as the array is located. So, if the array is
13 located in BG, Baltimore Gas & Electric service territory, then
14 all the subscribers have to be in the same service territory.
15 If you have one that's in Potomac Edison, all the subscribers
16 have to come from Potomac Edison.

17 BOARD: Within the provider. So, in other words,
18 anywhere BG&E goes, that, that home resident could purchase,
19 not just (inaudible) --

20 MR. COPUS: Because the electrons off that flowing on
21 their network of, of wires.

22 CHAIR: So, it doesn't matter, you don't have to be
23 in the adjacent area.

24 MR. COPUS: Nope. And another thing, again, just,
25 you know, again, we have a large low to moderate income that a

1 lot of people did not sign up for, that we (inaudible) all the
2 service territories.

3 CHAIR: Okay and, and as far as the spacing between
4 the panels, you said it was one inch, is that, is that right?
5 You said one inch?

6 MR. COPUS: So, if I may? If you look at, I'm not
7 sure which exhibit this is, Exhibit 4?

8 MR. SCHMIDT: It, it's four, yeah.

9 CHAIR: Hold on a second. Let, let the witness,
10 let's let the witness answer.

11 MR. COPUS: So, on this exhibit --

12 CHAIR: Which is Petitioner's four, right?

13 MR. COPUS: Yeah. You'll see that you'll have a
14 panel, if you look at one of the rows, you'll have the panel on
15 the bottom, which is three and a half feet by six and a half
16 feet roughly and then there's a panel above it. We call that
17 two in portrait, okay? So, two on top of each other. But in
18 between each panel, there's roughly an inch gap. And that just
19 has to do with expansion, contraction, with, as it gets cold,
20 as it gets hot, as water flows, you know, it'll flow through
21 the panels and behind the panel, in front of the panel. And it
22 helps with air movement as well.

23 CHAIR: Okay. Okay. Any questions?

24 BOARD: I have one. And this is consistent with
25 seeing three or four of these, often we've had a condition on

1 emergency number in, and I get it, you're not operating it, but
2 from the people that you've transferred the, the lease to in
3 the past, I mean, would you have any objection if, if we had,
4 as a condition, I, I know it's an eight foot fence and things,
5 but many of the community assoc, community members have been
6 concerned about whatever the, you know, think of something, I
7 used a child before, but they want to be able to reach out and
8 call somebody in an emergency. Would you have any objection
9 if, as, if we had that as a condition on the fence, there be a
10 sign saying what number to call and it would be operational,
11 you know, for somebody to reach twenty-four hours a day?

12 MR. COPUS: We would have no objection to that. We
13 would welcome that. In addition, I know there was a question
14 is there barbed wire? There is no barbed wire on this, but if
15 that was something that was conditioned, we'd be happy to put
16 that there as well.

17 CHAIR: I think they don't like barbed wire.

18 MR. COPUS: No, I just didn't know from a safety
19 perspective, if, if it was a deterrent, I was just --

20 BOARD: Well, we've seen some pictures of deer with
21 their foot inside the barbed wire fence that's been submitted
22 in the past, so.

23 MR. SCHMIDT: Most of them in the community don't
24 want it.

25 CHAIR: They don't want it (inaudible).

1 MR. COPUS: I understand, yeah.

2 CHAIR: Okay, great question.

3 BOARD: Yeah, that's it.

4 CHAIR: Okay.

5 MR. SCHMIDT: Just a question in view of the Board's
6 question. Mr. Copus, let me go back, because I think it's
7 shown on here schematically. If you look at Petitioner's
8 exhibit number four, and, and look at the drawing on the left
9 side of the page, and I'm going to try to focus this in. It
10 says, there's wording length determined by PV module dimensions
11 and portrait orientation, see where I'm talking about that?

12 MR. COPUS: Yes.

13 MR. SCHMIDT: And kind of in the middle of that, if
14 you go below that, there's a dimension that says three dash
15 three seven-eighths, see that?

16 MR. COPUS: Yes.

17 MR. SCHMIDT: And if you go below that, there appears
18 to be a little gap between the, the, sort of the rectangular
19 shaped boxes. Is that the inch or two that you were talking
20 about?

21 MR. COPUS: The inch or less, yes.

22 MR. SCHMIDT: The inch or less, okay. So, that shows
23 the two panels with the little gap between them, correct?

24 MR. COPUS: Yeah. I would also point you further
25 down to where it says number one, general racking details.

1 Again, I just wanted to clarify these are, these are our
2 standard general racking details and each site, you know, is,
3 is customized, so there could be slight variation.

4 MR. SCHMIDT: Okay. But this is generally what it
5 looks like?

6 MR. COPUS: That is correct.

7 MR. SCHMIDT: Okay. No other questions.

8 CHAIR: Okay. Thank you, sir. All right. Twelve
9 o'clock, should we take a lunch break?

10 MR. SCHMIDT: Yeah.

11 CHAIR: You know Mr. Thaler, he gets hungry.

12 MR. SCHMIDT: And I had talked, I had talked to Mr.
13 Nelson, we, we tried to talk about schedule and so I, I
14 actually have one other witness today, Mr. Thaler, who I think
15 is going to take some time.

16 CHAIR: Yeah.

17 MR. SCHMIDT: And then I did have, the glare expert
18 actually is out of town and had some issues getting here today
19 and I told Mr. Nelson that. So, if it's okay with the Board,
20 we'll, we'll do Mr. Thaler and then we can either recess or if
21 there's anybody who can't come back or something like that,
22 would want to go out of turn, that's okay with me, if that's
23 acceptable to the Board.

24 CHAIR: Sure. How long do you think Mr. Thaler will
25 take?

1 MR. SCHMIDT: I think he might be a while because as
2 you know --

3 CHAIR: An hour? An hour or two hours or longer than
4 two hours?

5 MR. SCHMIDT: I think he might be an hour, every bit
6 of an hour, two hours. Yeah, I think he's going to be every
7 bit of an hour on direct because he's going to address a lot of
8 it and I expect Mr. Nelson will be a while. We tried to figure
9 out how many witnesses to get here to, we're going a little
10 quicker than I had anticipated, which I'm glad, but --

11 CHAIR: That's great.

12 MR. SCHMIDT: Yeah.

13 CHAIR: Right, understood. Okay and how many
14 witnesses do you have, Mr. Nelson?

15 MR. NELSON: I don't have any lined up for today, but
16 we, I have, my, my citizen clients and --

17 CHAIR: So, each one is going to speak?

18 MR. NELSON: I think so, but there's going to be no
19 redundancy. We're going to move that along.

20 CHAIR: Understood. I was just trying to figure out
21 timing wise. We have two more days set, I was trying to figure
22 out whether we need --

23 MR. NELSON: Yeah, and then we'll see how we think
24 one (inaudible) landscaping piece. We may have a witness on
25 that. We'll see how it goes today. But the theme of our case

1 is pretty simple, which is --

2 CHAIR: No, I understand. We don't need to get into
3 that --

4 MR. NELSON: Yeah, but, my, it's my point is, is, our
5 case is not that --

6 CHAIR: I was just trying to figure out timing. We
7 have two more days scheduled, we may not need two more days.

8 MR. SCHMIDT: Yeah. I, I don't think we will but Ms.
9 Cannington was telling us that her experience on these --

10 CHAIR: She, she blamed it on you guys. That you
11 all, that you all requested --

12 MR. SCHMIDT: Did she put it on us?

13 CHAIR: -- it and, and were asking for more or
14 something. She makes --

15 BOARD: Do you want any of the citizens to testify
16 today after the expert is completed?

17 MR. NELSON: My preference is not to because I just,
18 for a variety of reasons, if you want to hear them, I'll give
19 them, but my preference is not to. I think we, I can do it
20 more efficient if I get them all cued up and just --

21 CHAIR: Understood.

22 BOARD: The same day?

23 CHAIR: Okay.

24 BOARD: Understood.

25 MR. SCHMIDT: I think we'll finish in, in two days

1 actually.

2 CHAIR: Okay.

3 MR. SCHMIDT: I mean, I have the glare guy, a glare
4 person and then the consultant who did the examination of the,
5 the storm water management.

6 BOARD: Okay.

7 CHAIR: So, two more witnesses.

8 MR. SCHMIDT: Well, but not today. I just, I didn't
9 bring them today because I didn't think we were going to get to
10 them today.

11 CHAIR: No, no, I understand. But you have a glare
12 expert and you have a storm water management?

13 MR. SCHMIDT: Yes, sir, yes, ma'am.

14 CHAIR: Okay.

15 MR. SCHMIDT: Yeah.

16 CHAIR: Got it, perfect.

17 MR. SCHMIDT: It's the environmental person who went
18 out and said it's not a wetland.

19 CHAIR: Okay.

20 MR. NELSON: May I inquire as to whether Stacy
21 McCarthy is going to, McArthur is going to testify or is Mr.
22 Thaler --

23 MR. SCHMIDT: I think Mr. Thaler will cover it.
24 Stacy McArthur and Mr. Brown, who were, I can't remember if
25 they both testified below, they're all from Thaler's office. I

1 was going to try to get it all through Mr. Thaler unless
2 somebody asked a question that he's got to defer to somebody in
3 his office on.

4 CHAIR: Understood. How long do we need for lunch?

5 MR. SCHMIDT: Hour? I mean, just, why don't you tell
6 me. What do you all --

7 CHAIR: Hour sounds good, okay. One o'clock, does
8 that sound good? One o'clock?

9 MR. SCHMIDT: One o'clock, that's fine.

10 CHAIR: Okay.

11 MR. SCHMIDT: That's fine.

12 CHAIR: Okay, we'll come back at one.

13 MR. SCHMIDT: Okay. Thank you.

14 CHAIR: Thanks.

15 (RECORDING PAUSED - 12:04:09 PM)

16 (ON RECORD - 01:08:47 PM)

17 CHAIR: Back on the record after lunch. We're
18 proceeding with Petitioner's case and Mr. Thaler to the stand.

19 MR. SCHMIDT: Yes, Mr. Thaler will be the next
20 witness.

21 BOARD: Everybody shut off your cell phones as well.
22 Do you swear and affirm under the penalties of perjury, that
23 testimony you're about to give is true and correct to the best
24 of your knowledge and belief?

25 MR. THALER: I do so affirm.

1 BOARD: Please state your name, your business, your
2 address for the record and spell your last name.

3 MR. THALER: My name is David Thaler, T-H-A-L-E-R.
4 I'm the managing principal of D.S. Thaler & Associates, LLC,
5 7115 Ambassador Road, Baltimore, Maryland 21244.

6 MR. SCHMIDT: Mr. Thaler, what's the nature of the
7 business of D.S. Thaler & Associates?

8 MR. THALER: For the last forty-two years, we have
9 been an engineering company that also practices land surveying,
10 town planning and landscape architecture with offices in
11 Baltimore County.

12 MR. SCHMIDT: Okay. What is your, you said you're
13 the managing member of that company?

14 MR. THALER: Well, we reorganized two years ago. I
15 was the president for the first forty years and I'm the
16 managing member now.

17 MR. SCHMIDT: Okay and --

18 CHAIR: Assuming he's being called as an expert?
19 Don't want to cut you off.

20 MR. SCHMIDT: Yes. And I have a copy of, let me give
21 Mr. Nelson one, his c.v. and I've got an original and three
22 copies --

23 CHAIR: What are the areas he's being called to
24 testify in?

25 MR. SCHMIDT: Oh, he's an expert in everything.

1 CHAIR: I, I know that but let's try to narrow it
2 down since we have --

3 MR. SCHMIDT: As, as noted, if you don't believe me,
4 ask Mr. Thaler.

5 CHAIR: Right, right.

6 MR. SCHMIDT: Mr. Thaler, as his resume indicates, is
7 a, both a professional engineer licensed in Maryland and land
8 surveyor as well. So, he is going to testify as a professional
9 in both of those certifications in terms of being able to
10 testify. And his testimony is going to be about, obviously,
11 the plan, the proposal with emphasis on testimony about the
12 special exception requirements for a solar facility in, in
13 Baltimore County and he is also going to testify about the
14 other issue on appeal, the development review process as it
15 relates to the DRC and the exemption. So, generally, those are
16 the areas that he's going to cover.

17 CHAIR: So, an expert, professional engineer, land
18 surveyor, an expert in the Baltimore County zoning regulations,
19 does that sound right?

20 MR. SCHMIDT: Yeah, that's, and --

21 CHAIR: And the Baltimore County Code because we're
22 talking about the limited exemption.

23 MR. SCHMIDT: Yes, that's correct.

24 CHAIR: Okay. Those are the areas?

25 MR. SCHMIDT: Those, that's where he's going to offer

1 his opinions.

2 CHAIR: Offer his opinions so he's being proffered,
3 offered as an expert in those areas. Mr. Nelson, you know, did
4 you want to voir dire Mr. Thaler or --

5 MR. NELSON: Well, I'd understood that the engineer
6 was going to speak today and the landscape architect was going
7 to testify in July. That was my understanding. It was an
8 erroneous understanding, it was my understanding. I'm told
9 today that Mr. Thaler is going to address (inaudible) the
10 landscape issue. Landscaping is not engineering. Landscape
11 architecture is not civil engineering. It's a different
12 discipline, it's a different curriculum, it's a different
13 degree. Different universities offer a different program. So,
14 to the extent that Mr. Thaler intends to address the issue of
15 landscape architecture, landscaping plan compliance or
16 landscaping requirements, I object. I'd understood that we're,
17 it was going to be classical testimony of a civil engineer in a
18 development case about the plan and so on. So, I object to
19 that. He's not, he's not experienced in, he's, he's not an
20 expert in storm water management, which is another issue
21 indicated. Does counsel intend to elicit that from him? I
22 don't know.

23 BOARD: Do you want to do voir dire?

24 CHAIR: Yeah, --

25 BOARD: Do you want to do that and ask him?

1 MR. NELSON: Well, --

2 CHAIR: You want to voir dire him? Is that, we're
3 just trying to figure out --

4 MR. NELSON: -- yeah, but the, the way I work is not
5 to guess what he's going to be, what he's going to say. He's
6 been proffered as an expert as civil engineer, maybe I should
7 ask --

8 CHAIR: Civil engineer, land surveyor --

9 MR. NELSON: No, I have that.

10 CHAIR: -- with an expertise in Baltimore County
11 zoning regulations and the Baltimore County Code.

12 MR. NELSON: Right. Does counsel intend to elicit
13 expert opinions from this witness on the subject of landscape
14 architecture?

15 CHAIR: Okay. That, Mr., Mr. Schmidt, let me just --

16 MR. SCHMIDT: Yes, I'm going to ask him about the
17 landscape plan, which was prepared by his office, you know, his
18 office and he is managing director. His office prepared the
19 landscape plan and Mr. Thaler has been doing this for a long
20 time and I would say as an engineer and a surveyor, he has
21 prepared many development plans and site plans and zoning plans
22 which depict landscape on them. That's part of what is a
23 requirement on a plan, which has to be sealed by an engineer.
24 So, he's going to testify about that, yes.

25 CHAIR: Okay and, and I, and I think, as I recall,

1 that, you know, in other cases, perhaps he has testified about
2 those, those things, we accept him as an expert in those areas,
3 although sometimes Stacy McArthur from your office comes and
4 testifies about landscape architecture. So, I mean, to the
5 extent that, you know, he's the managing member of the company,
6 you know, and the, the plans are sealed under his approval, and
7 under his direction, he certainly can testify about those
8 things. I mean, you can cross examine and you can certainly
9 elicit that information.

10 MR. NELSON: Well, I --

11 CHAIR: But I, but I want to know whether you want to
12 voir dire --

13 MR. NELSON: Yeah, I do want to voir dire.

14 CHAIR: Okay. Let's just get to that.

15 MR. SCHMIDT: Yep.

16 CHAIR: Okay. Voir dire.

17 MR. NELSON: Mr. Thaler, in your undergraduate degree
18 in civil engineering, you did not study landscape architecture,
19 did you?

20 MR. THALER: No.

21 MR. NELSON: You have not ever enrolled in a Master's
22 program for landscape architecture, have you?

23 MR. THALER: No.

24 MR. NELSON: Such a degree is offered?

25 MR. THALER: Does such a degree exist in the United--

1 MR. NELSON: Yeah.

2 MR. THALER: Yes.

3 MR. NELSON: Right. And people in your D.S. Thaler &
4 Associates have that degree, for example, Ms. McArthur?

5 MR. THALER: Yes.

6 MR. NELSON: Did you prepare the landscape plan in
7 this case? You personally?

8 MR. THALER: No.

9 MR. NELSON: When's the first time you saw the
10 landscape plan in this case?

11 MR. THALER: In the last week or two.

12 MR. NELSON: And how long has Ms. McArthur been
13 working on this landscape plan, do you know?

14 MR. THALER: I don't know.

15 MR. NELSON: Have you, in the last five years, you
16 yourself, David Thaler, individually, prepare, prepared a
17 landscape plan for a development case?

18 MR. THALER: No.

19 MR. NELSON: Are you a storm water engineer?

20 MR. THALER: Yes.

21 MR. NELSON: When's the last time you submitted a
22 storm water plan for approval for any governmental agency, you
23 personally?

24 MR. THALER: Well, maybe if I could simplify it a
25 little bit. I'm one of I think only six engineers in Maryland

1 who is a board certified diplomate of the American Academy of
2 Water Resources Engineers. I would say that storm water
3 management is my person, and hydraulics, of my personal
4 specialty in addition to land development. I taught the first
5 college post-graduate course in storm water management that
6 there was, I think, in the country beginning in 1979. And if
7 you'll indulge me, Mrs. Murphy, last week I was informed that I
8 was just, won the top professional engineering award in the
9 United States.

10 MR. NELSON: That's great news. But my question,
11 sir, was have you prepared a storm water plan within the last
12 five years for approval by any governmental agency?

13 MR. THALER: I --

14 MR. NELSON: That was the question.

15 MR. THALER: I don't prepare anything in my office
16 myself. I review, I review the work of my, and direct the work
17 of my office.

18 MR. NELSON: All right.

19 MR. THALER: That's the answer.

20 MR. NELSON: All right. So, you personally have not
21 prepared a plan in the last five years, storm water plan?

22 MR. THALER: Designed and --

23 MR. NELSON: Yes.

24 MR. THALER: -- drew and drafted, no.

25 MR. NELSON: All right. Have you, when, when did

1 MDE, or the State of Maryland, supplement a storm water
2 regulation? What year was that?

3 MR. THALER: I think the first was about 1977.

4 MR. NELSON: No, no, no. Most recently.

5 MR. THALER: You're talking about the manual, 2007
6 manual? Is that what you mean?

7 MR. NELSON: I'm asking the most recent supplement to
8 the regulatory regime for storm water management in the State
9 of Maryland, what year?

10 MR. THALER: Well, I think the ESD came in, there was
11 the 2000 manual, and chapter five, which was the environmental
12 site design, what was the word you used, supp, the
13 environmental site design supplement to storm water came in in
14 2011, I think.

15 MR. NELSON: All right. Are you familiar with the
16 regulatory regime for storm water management for solar
17 facilities?

18 MR. THALER: Yes. Very, very much so.

19 MR. NELSON: Um hm. What does that, what do they,
20 what does that say?

21 MR. THALER: Well, there's a, I guess you would call
22 it a guidance that comes from MDE and they call it, they call
23 it a guidance. They call it storm water design guidance solar
24 panel installations and they, they tell you exactly how to do
25 it. Under the ESD regulations, there is a practice called non-

1 rooftop disconnection and, and MDE has this handout, if you
2 will, on exactly how to --

3 BOARD: Mr. Thaler, can you, if you can, Mr. Thaler,
4 --

5 MR. THALER: -- I'm sorry?

6 BOARD: Can, is there an acronym, ESD, just keep the
7 record here --

8 MR. NELSON: ESD.

9 MR. THALER: ESD is --

10 BOARD: Is?

11 MR. THALER: Is environmental site design.

12 BOARD: And MDE is?

13 MR. THALER: MDE, I'm sorry, is the Maryland
14 Department of the Environment.

15 BOARD: Just trying to keep the record clear.

16 MR. THALER: You're a hundred percent right. And,
17 and they date it, they date it to the 2000 Maryland storm water
18 management design manual, volumes one and two.

19 MR. NELSON: All right. So, it's fair to say that
20 you yourself are familiar with the MDE document you just
21 described regarding solar facilities, storm water management
22 of, but you personally haven't done your own storm water man,
23 done yourself personally drafted a storm water plan for a solar
24 facility since that document came out?

25 MR. THALER: Mr. Nelson, you wouldn't want to see my

1 drafting. I haven't drafted in forty years. I direct the
2 office in the design, in the design and the drafting of
3 compliant plans to meet various regulations.

4 MR. NELSON: I object to the witness' proposed
5 expertise in landscape architecture. He's never taken a course
6 of study in it. One can get a degree in landscape
7 architecture. There are people in his office who have that
8 degree, Stacy McArthur is one. She's done the work. This
9 witness wasn't even aware, hadn't seen this plan until, I think
10 his testimony was one or two weeks ago, I'll defer to the
11 record. But it was very short time ago. I don't think he has
12 the requisite expertise to address the landscape issue in this
13 case. I, also, despite the fact that Mr. Thaler got some award
14 last week from the, from the American Society of Engineers, I
15 don't think he's got the requisite expertise in storm water
16 management. He hasn't done a plan himself in forty years he
17 just told us. So, I don't think he has that expertise either.
18 I don't object to his general expertise in civil engineering
19 with respect to the, the, the site plan. But landscape design,
20 architecture and storm water management, I object.

21 CHAIR: Okay, all right. So, I mean, there are other
22 ways to qualify as an expert other than education. He doesn't
23 necessarily have to have a degree in landscape architecture.
24 It is true there is someone in his office who does, but he
25 supervises and directs the work of the different people in his

1 office and I think experience also qualifies and, and, you
2 know, provides knowledge and, that the Board can find useful in
3 terms of the landscape architecture issue and also storm water
4 management. He's testified many times in cases with storm
5 water management, I know because I've sat on the cases for the
6 last dozen years and so, to that extent, I think he qualifies
7 for, in both areas. Certainly, cross examination though, I
8 mean, when he testifies can certainly highlight a lot of the
9 issues that I think Mr. Nelson had in terms of, you know,
10 landscape architecture and whatnot but, but the plans are
11 sealed and, I mean, I think this is a schematic plan in any
12 event, it's not even the approved plan so. For that reason,
13 we'll let him testify as to those areas.

14 MR. SCHMIDT: Thank you. Mr. Thaler, did there come
15 a time that your company was engaged by SGC to prepare the
16 appropriate plan, some of which are mounted on the board and
17 have been submitted in connection with SGC's application for
18 approval of a solar facility at this location?

19 MR. THALER: Yes.

20 MR. SCHMIDT: And maybe just to clear up the record
21 in view of Mr. Nelson's objection, did a number of people in
22 your office work on this project?

23 MR. THALER: Yes, and I worked on this project
24 personally and directly.

25 MR. SCHMIDT: And I was going to ask, you, you,

1 yourself, are familiar with the project personally?

2 MR. THALER: Yes.

3 MR. SCHMIDT: And did you supervise those individuals
4 as well?

5 MR. THALER: Yes.

6 MR. SCHMIDT: And just for the record, who in your
7 office took the lead in addition to you in terms of the
8 preparation of the plans and studies?

9 MR. THALER: Well, my colleague, Andrew Brown, who is
10 here, was sort of, was the project engineer, managed the
11 project and Stacy McArthur and one of her colleagues in our
12 landscape architecture department prepared the landscape plan.

13 MR. SCHMIDT: But you're familiar with the plans and
14 supervised the direction of those plans?

15 MR. THALER: Yes.

16 MR. SCHMIDT: Okay. Let me ask you a little bit
17 about the site plan, which is on the board as Petitioner's
18 exhibit number one. Are you familiar with this property?

19 MR. THALER: Very much so.

20 MR. SCHMIDT: Have you been there?

21 MR. THALER: Several times.

22 MR. SCHMIDT: When was the last time you were there?

23 MR. THALER: Saturday.

24 MR. SCHMIDT: Okay. Can you tell the Board a little
25 bit of background about the property? Tell, maybe tell us a

1 little bit starting about, just kind of maybe the general area,
2 the vicinity and neighborhood in which the property is located?

3 MR. THALER: Well, I'm sure the Board is familiar
4 with it. This is just north of Reisterstown. I guess you
5 would call it Woodensburg or Boring, I, I don't know, it's
6 maybe four or five miles north of Reisterstown. It's, it's a
7 rural residential and agricultural area. There's low density
8 housing and there's agricultural activities.

9 MR. SCHMIDT: Okay. In terms of the property itself,
10 how big is it?

11 MR. THALER: It's just under twenty acres.

12 MR. SCHMIDT: And the zoning?

13 MR. THALER: RC-2.

14 MR. SCHMIDT: How about the site itself? Let's start
15 with maybe the topography. Can you describe that? We've heard
16 some questions of Mr. Elseroad about the, the grade. Can you
17 tell us a little bit about the grade and is it shown on the
18 plan?

19 MR. THALER: Well, if I may approach, Mrs. Murphy?
20 The, the top, the topography generally rises gently from the
21 lower left corner of the property on this plan to the upper
22 right corner and it also falls a little bit from what they call
23 Not Fry Road. I'm not making this up. That's what's on the,
24 it's Not Fry, N-O-T, Fry Road is the name on the street sign
25 and it falls slightly to an agricultural swale that runs

1 diagonally across the property.

2 MR. SCHMIDT: How about the, the, generally the slope
3 and can you tell us about the elevation changes, Mr. Thaler?

4 MR. THALER: Well, actually anticipating Mr. Nelson's
5 question, I think to Mr. Elseroad, so I calculated the, the
6 slope from the highest back corner of the array to the, to the
7 front corner of the array and it's just under a five percent
8 slope. I would call that a gentle slope.

9 MR. SCHMIDT: Okay. How about, you've described the
10 topography, how about, I guess the geology of the site or the
11 features of the site from a geological standpoint in terms of
12 environmental --

13 MR. THALER: You mean environmental?

14 MR. SCHMIDT: Environmental resources, flood plains,
15 streams, wetland, those kinds of things on the property.

16 MR. THALER: Okay. If I may approach again, Mrs.
17 Murphy. There is a small stream at the bottom of the property,
18 at the bottom of Not Fry Road, which creates, and there's a
19 little flood plain associated with it. And actually on this
20 plan, we've added a red line, the flood plain limits on this.

21 BOARD: My apologies. Excuse me, Mr. Schmidt, do you
22 have like a smaller version of this exhibit for us?

23 MR. SCHMIDT: I do, I do. Hold on one second.
24 Andrew, help me find what I'm looking for because you --

25 BOARD: I apologize, I (inaudible).

1 MR. THALER: We can bring it closer if that helps.

2 MR. SCHMIDT: No, I've got a smaller one that I can
3 give to the Board.

4 CHAIR: Would you have three?

5 MR. SCHMIDT: I have three, I have three. But let
6 me, let me, if you don't mind, give me, can we go off the
7 record?

8 CHAIR: Oh, yeah, sure. No, take your time.

9 MR. SCHMIDT: I just got to find them. Andrew, you
10 brought them in this morning.

11 VOICE: Yeah, I handed them to you.

12 MR. SCHMIDT: Okay. Is this, is this it? No.

13 VOICE: No. They're stapled together, it's all three
14 exhibits.

15 MR. SCHMIDT: We, we've got them, hold on. They're
16 around here somewhere. Kill enough trees, don't we?

17 CHAIR: Underneath the binder maybe?

18 MR. SCHMIDT: No, they're not --

19 CHAIR: Underneath? No.

20 MR. SCHMIDT: Hold on. I got them, it's just a
21 question of where.

22 VOICE: That looks like them, might be them folded
23 over.

24 CHAIR: Right there, underneath.

25 MR. SCHMIDT: These, is this it?

1 CHAIR: Those, yep, that's what I was thinking I saw
2 was folded up.

3 MR. SCHMIDT: Okay. Is this the one? Just make sure
4 it's the right one.

5 VOICE: Yeah, it should be three pages each of each
6 of the exhibits, yep.

7 MR. SCHMIDT: Okay. I'll give one to Mr. Nelson.

8 BOARD: Yes.

9 MR. SCHMIDT: And I don't know if you want to make
10 this a, an exhibit or not but what I'm going to hand you, and
11 I'll give one to Mr. Thaler as well.

12 BOARD: Thank you.

13 MR. SCHMIDT: There's four copies and the top page
14 is, in fact, Petitioner's exhibit number one, which is the site
15 plan.

16 BOARD: Um hm.

17 MR. SCHMIDT: And then the next page, which is
18 stapled to that, is Petitioner's actually number three, they go
19 slightly out of order, which is the aerial photograph that
20 shows the site in, in yellow and then Petitioner's Exhibit 2 is
21 the last page which is the landscape plan or landscaping which
22 is super imposed over top the aerial photograph.

23 BOARD: All right.

24 MR. SCHMIDT: I think that's right. Is that correct,
25 Andrew? Mr. Thaler, I believe that's correct, is that correct?

1 MR. THALER: Yes.

2 MR. SCHMIDT: Okay.

3 BOARD: Thank you.

4 MR. SCHMIDT: So, that might, might help.

5 MR. THALER: Ms. Murphy, would you like me to
6 approach the bench and explain it or work from the exhibit?

7 CHAIR: Well, we have a copy now so you can even, if
8 you wanted to just use the big exhibit, whatever works for you.
9 We now can see.

10 MR. THALER: Okay. Actually, the copies are very
11 hard to read.

12 MR. SCHMIDT: But they're still visible, go ahead.

13 MR. THALER: There's some light lines that aren't
14 coming through clearly on that. In any event, there is a small
15 stream that parallels Route 30 and creates a little flood plain
16 at the bottom of Not Fry Road.

17 MR. SCHMIDT: And is that designated, that flood
18 plain, on this plan?

19 MR. THALER: Yes, we have designated it in red.

20 MR. SCHMIDT: Okay.

21 MR. THALER: I don't know if that came through on
22 the, it did come through on the --

23 MR. SCHMIDT: It does on the smaller exhibit.

24 BOARD: It does.

25 MR. SCHMIDT: Yes.

1 MR. THALER: There's two small areas of wetlands on
2 the property, which are hard to see on yours, and there is a
3 forest buffer, keeping in mind, I'm sure the Board knows this,
4 that a forest buffer has nothing to do with forest, it has
5 nothing to do with buffer. It's a setback from an
6 environmental resource and I don't think you can see it, but
7 there's a forest buffer surrounding the wetlands area. And up
8 at the northern end of the property, it's heavily forested.
9 And that would be the environmental features.

10 MR. SCHMIDT: Okay. We've heard a lot of testimony--

11 MR. THALER: So the forest buffer, see it right
12 there?

13 MR. NELSON: Right.

14 MR. SCHMIDT: Okay and that --

15 MR. THALER: I'm sorry.

16 MR. SCHMIDT: -- the forest buffer in the middle of
17 the property is shown on the larger version of the exhibit?

18 MR. THALER: Yeah, it's shown here, it's just too
19 light to really --

20 BOARD: And Mr. Thaler, can, can you mark the
21 waterways there where you pointed to on the, I guess the
22 middle, bottom middle of the, of the chart, of the plan?

23 MR. THALER: Do, do you, do you, do you mean the
24 wetland?

25 BOARD: Wetlands, sorry.

1 MR. THALER: The wetlands. There's a little bit of
2 confusion because Mr., what SCD calls agricultural swales --

3 BOARD: SCD is?

4 MR. THALER: Soil conservation district. What the
5 farmers call agricultural swales is agricultural waterways,
6 they're not really waterways. I'm going to mark the wetlands
7 area.

8 MR. SCHMIDT: In yellow?

9 BOARD: In yellow.

10 MR. THALER: In yellow.

11 BOARD: You may want to mark that one different if
12 it's different.

13 MR. THALER: Well, it's just two different areas.

14 BOARD: Oh, it's the same, it's the same --

15 MR. THALER: It's the same thing.

16 BOARD: All right, that's all right.

17 MR. SCHMIDT: Okay.

18 MR. THALER: And there's a setback around that called
19 a forest buffer, which I'll, I'll mark, if you want. I don't
20 know if it's significant.

21 BOARD: That's good.

22 MR. THALER: Okay.

23 MR. SCHMIDT: So, what you've marked in, in yellow,
24 Mr. Thaler, are the wetlands of, of, the areas which are
25 classified as wetlands?

1 MR. THALER: Yes.

2 MR. SCHMIDT: Have they been, how, well, let me ask
3 you this. How was that determined to be wetlands?

4 MR. THALER: Well, first of all, I went out and
5 looked at it sort of a diagnostic to see what was and what
6 wasn't and then we got a wetlands consultant, who I believe
7 will be testifying, who went out to the field and delineated
8 where the regulatory wetlands are. His report was submitted to
9 Baltimore County, Baltimore County approved that delineation.

10 MR. SCHMIDT: Okay. Is any part of the solar array
11 in, located within an environmentally sensitive or identified
12 area such as a wetland or a stream or a pond or, or within a
13 required buffer to an environmental resource?

14 MR. THALER: No. The, the, well, it was said a
15 different way. The array as proposed will not disturb the
16 trees, the wetlands or the buffer in any way.

17 MR. SCHMIDT: Okay. Now, how about the agricultural
18 swale or wetlands? Can you tell us what that is? Is that a,
19 is that a wetlands or what is that and how is that classified?

20 MR. THALER: Well, you see these all, you see these
21 all over the place. I call them agricultural channels.
22 Apparently, the farmer, the farmers call them waterways,
23 they're not really waterways. These are drainage swales that
24 drain the fields and, coincidentally, the reason soil
25 conservation likes them so much is they provide storm water

1 management benefits to the farmers. Farmers are not required
2 to have storm water management or sediment control like
3 developers are. But these swales have vegetation that grow in
4 them. The planting has herbicides and pesticides and sediment
5 and these swales help clean that up. You see them all over,
6 you can, you can, I think you can see some on the aerial map
7 here. You, they're very common on, on farms.

8 MR. SCHMIDT: Okay. I'll, I'll put this in now.
9 Again, this was an exhibit below so it's in your file and it's
10 got an exhibit number on it. We're up to number eight, I
11 believe, exhibit number eight?

12 BOARD: That's correct.

13 MR. SCHMIDT: Mr. Thaler, you indicated that the
14 environmental resources, I believe, including the wetlands,
15 were delineated by an expert engaged by SGC and that
16 delineation was submitted and approved by Baltimore County, is
17 that correct?

18 MR. THALER: That is correct.

19 MR. SCHMIDT: Okay and I'm going to show you a
20 letter, I'll put it in now, give Mr. Nelson a copy, it's number
21 eight, give the Board a copy.

22 BOARD: Thank you.

23 MR. SCHMIDT: And ask if you can identify this
24 letter, Mr. Thaler?

25 MR. THALER: This is a letter from Mr. Glen Schaffer

1 (phonetic), a supervisor with the Department of Environmental
2 Protection and Sustainability and he basic, it's dated May the
3 1st, 2017 and he basically states that all your environmental
4 delineations are approved.

5 MR. SCHMIDT: Okay and that would include that the
6 area between the panels that we've heard so much about called
7 the agricultural channel or whatever is not in a wetland?

8 MR. THALER: Yes, I believe Mr. Schaffer went out and
9 personally investigated it, although I can't speak for him.

10 MR. SCHMIDT: Okay and, but you personally
11 investigated that area yourself?

12 MR. THALER: I did personally investigate this area,
13 including as late as Saturday.

14 MR. SCHMIDT: And what did you determine based on
15 your own opinion and investigation?

16 MR. THALER: This is not a stream and it's not a
17 wetlands.

18 MR. SCHMIDT: Okay.

19 MR. THALER: I took soil samples I guess a year ago
20 when I was out here and I went out, and I did it again on
21 Saturday. To be a regulatory wetlands, --

22 MR. NELSON: Object. He wasn't offered as a wetlands
23 expert, he was offered as a civil engineer. We talked about
24 landscape architecture, this was not part of the proffer and I
25 object to his expertise on, on this subject, on wetlands. They

1 have the wetlands apparently expert coming in the next hearing
2 date, I object to it.

3 CHAIR: Okay, understood. I think it's part of civil
4 engineering, I mean, I don't think he's getting into the real
5 specifics, other than to give us, you know, a highlight of what
6 the County did in this case back in 2017 through Petitioner's
7 exhibit number eight so, we'll allow it. Go ahead.

8 MR. THALER: Well, well, a, a wetlands is a, is, is a
9 regulatory term. And a wetlands is not just land that's wet,
10 it has to have what's called three diagnostic parameters. It
11 has to have hydric soil, which is soil that has turned black
12 because it's been saturated for maybe fifty years or something
13 like that. It has to have certain types of plants called
14 hydrophytic plants, which like it wet and it has to have
15 hydrology, which means oversimplified, you have to get your
16 feet wet, you know? There has to be water close to the, a, a,
17 a surface. This is a dry swale. I went out there myself, I
18 re-walked it.

19 Again, to Mr. Nelson's point a little bit, wetlands
20 do not, even if you have a, a, a year of heavy rain or two
21 years of heavy rain, it really takes thirty years, fifty years
22 for the soil to demonstrate the, the hydric charac, hydric
23 characteristics to create a wetlands. So, there's no way a
24 wetland can be created in two years, plus I was there on
25 Saturday.

1 MR. SCHMIDT: Okay.

2 MR. THALER: It's not wet, it's dry.

3 MR. SCHMIDT: Mr. Thaler, in addition to those
4 environmental investigations, did, did you or did the client
5 with your assistance inquire about any plant or animal species
6 located on the property which would prohibit the proposed solar
7 facility?

8 MR. THALER: I presume you mean endangered species?

9 MR. SCHMIDT: Yes, sir.

10 MR. THALER: Yes, we did and there are no endangered
11 species.

12 MR. SCHMIDT: Okay and I'm going to show you which I
13 pre-marked as Petitioner's exhibit number nine, I believe, is
14 our exhibit.

15 BOARD: Yes.

16 MR. SCHMIDT: A letter from the Department of Natural
17 Resources or on their letterhead and ask if you can identify
18 that and explain what that letter indicates.

19 MR. THALER: This is a letter from Ms. Laurie Byrne
20 (phonetic) of the Maryland Department of Natural Resources and
21 finds no official State or Federal records for endangered plant
22 or animal species.

23 MR. SCHMIDT: Okay. All right. Let me ask then,
24 Mr., Mr. Thaler, you kind of described, I think, the property
25 and the environmental and geological conditions and topography.

1 Let me ask you about the proposal. Can you explain to the
2 Board, I know Mr. Copus has testified, but tell us a little bit
3 about the layout, the development of the site plan in terms of
4 what's proposed and, and how the, how the site is proposed for
5 development?

6 MR. THALER: Well, I think it's a --

7 CHAIR: One second, one second, one second. Any
8 objection to seven, eight or nine, of Petitioner's? Just want
9 to get these in before we switch subjects.

10 MR. SCHMIDT: Yeah, I'm sorry. If I didn't move
11 them, I apologize.

12 CHAIR: No, that's fine.

13 MR. NELSON: May I just have one moment? No
14 objection to nine, no objection to eight, seven is the c.v.?

15 CHAIR: Correct.

16 MR. NELSON: No objection.

17 CHAIR: All right, thank you. Just wanted to make
18 sure --

19 MR. SCHMIDT: And I believe all the exhibits have
20 been admitted now, have they not?

21 BOARD: Yes.

22 MR. SCHMIDT: Thank you. I apologize.

23 CHAIR: Just wanted to make sure we did that before
24 we moved on.

25 MR. SCHMIDT: Thank you, Ms. Murphy.

1 CHAIR: Go ahead.

2 MR. THALER: I think it's pretty straight forward.
3 This is about a ten acre, well, the overall area is about a ten
4 acre array, it's just under two megawatts. There is a fence,
5 some people call it a deer fence, if that's what the Board
6 chooses to impose. There is a little access, a very minimal
7 access driveway and there's an interconnection into the BG&E
8 three phase on Hanover Pike. Very straightforward.

9 It goes uphill generally on the south, it's, it's
10 really an excellent site for solar on the south facing site.

11 MR. SCHMIDT: Okay. Now, Mr. Thaler, this case
12 obviously, the zoning part of this case, has come to the Board
13 on an appeal of the decision of Mr. Beverungen, correct?

14 MR. THALER: Yes.

15 MR. SCHMIDT: And Mr. Beverungen approved a plan in
16 connection with the Petition for Special Exception, correct?

17 MR. THALER: Yes.

18 MR. SCHMIDT: Have there been any changes or
19 modifications to that plan from what Judge Beverungen approved
20 to what we see on the board today?

21 MR. THALER: There have.

22 MR. SCHMIDT: Okay and how are they shown on the
23 plan?

24 MR. THALER: Well, they're shown in red.

25 MR. SCHMIDT: Okay and can you tell the Board what

1 those updates or changes are?

2 MR. THALER: Yes. We have shown the flood plain
3 limits in red. We changed, forgive me, I have the cough from
4 hell, won't quit. We changed the, the name of the applicant.
5 We changed the note on the flood plain to say that the flood
6 plain is improved. We --

7 MR. SCHMIDT: Is approved?

8 MR. THALER: App, approved.

9 MR. SCHMIDT: Approved.

10 MR. THALER: The flood plain calculations that were
11 submitted and approved by the County. We showed the site
12 history, the zoning site history, to say that the special
13 exception was granted. We put a copy of the Zoning
14 Commissioner's Order on the plan, merely for the convenience of
15 the Board and we added a note that basically says this is a
16 little bit flexible. And the reason is the technology for
17 solar panels are changing so fast that the, that the solar
18 panels are becoming much more efficient almost every day and
19 this, the array may very well shrink in the future and we, it
20 may be smaller in the future and it would really be, I think,
21 pointless and a waste of resources to have to come back and ask
22 for new approval. So, we're saying that this is somewhat
23 schematic and could change in the future, but would not be
24 outside the area of the special exception.

25 MR. SCHMIDT: Okay. So, the area --

1 BOARD: Mr. Thaler, could I, could I just clarify?
2 You said the applicant's name changed on this?

3 MR. SCHMIDT: That's not on the one I just gave you.

4 BOARD: Oh, so I just wanted to make sure. I, I
5 figured the one in the record is this one, but I wanted to make
6 sure (inaudible).

7 MR. SCHMIDT: Yeah.

8 MR. THALER: This was as Chesapeake Energy One, LLC.

9 BOARD: We have a different document.

10 MR. THALER: Which is the current owner.

11 MR. SCHMIDT: Yeah, they, yeah, they just did that
12 this morning.

13 BOARD: All right.

14 BOARD: Oh, okay.

15 MR. SCHMIDT: Okay? And I, okay? And I believe, Mr.
16 Thaler, the original note under note twenty-two reads that a,
17 and this was before Mr. Beverungen, that a flood plain study
18 will be submitted, correct?

19 MR. THALER: That's correct.

20 MR. SCHMIDT: And subsequent to Judge Beverungen's
21 decision, in fact, a flood plain study was submitted, correct?

22 MR. THALER: Correct.

23 MR. SCHMIDT: So, you've updated the plan
24 accordingly?

25 MR. THALER: That's correct.

1 MR. SCHMIDT: Okay. Does this plan re, comply with
2 all the requirements for a zoning site plan?

3 MR. THALER: Yes.

4 MR. SCHMIDT: Okay. Now, there are other
5 requirements for the plan, are there not, in terms of
6 environmental information under Article, under Section 33-6-108
7 of the Code, is that correct?

8 MR. THALER: That is correct.

9 MR. SCHMIDT: Does this plan also contain that
10 information?

11 MR. THALER: Yes, it does.

12 MR. SCHMIDT: And can you tell us kind of generally
13 what that information includes?

14 MR. THALER: Generally, that section, under Title,
15 Article 33, requires that soils information be shown and we
16 have shown that on the plan.

17 MR. SCHMIDT: Okay and the soils chart is at the top
18 of the plan?

19 MR. THALER: That is correct.

20 MR. SCHMIDT: And there are other notes, are there
21 not, regarding the thirty, what I would call the 33-6-108
22 requirements?

23 MR. THALER: Yes.

24 MR. SCHMIDT: Okay. Okay.

25 CHAIR: You say 33-6-108? You mean, 33-3-108? It's,

1 it's the, --

2 MR. SCHMIDT: It's the section of the Code, wait a
3 minute.

4 CHAIR: Land information?

5 MR. SCHMIDT: It's the section of the Code that Bill
6 3717 says the plan also has to have that information.

7 CHAIR: Right, so four, four --

8 MR. THALER: 33-3-108.

9 CHAIR: -- 4-F, 4-F-A-9 has 33-3-108 shall comply --

10 MR. SCHMIDT: Yes.

11 CHAIR: Is that what you meant?

12 MR. SCHMIDT: That's what I meant, I apologize.

13 CHAIR: Okay. I just wanted to make sure I didn't
14 have, I was missing something so.

15 MR. SCHMIDT: Yeah.

16 CHAIR: So, does, does this plan have all the 33-3-
17 108-C information?

18 MR. THALER: Yes.

19 CHAIR: It does?

20 MR. THALER: Yes.

21 CHAIR: Okay.

22 MR. THALER: The only thing really missing would be
23 the soils, which is not typically on a special exception plan,
24 so we added that.

25 MR. SCHMIDT: Well, it includes, I think, some other

1 things. It indicates that, well, let's see, the zoning site
2 plan would have a location of vicinity map property lines,
3 there are no sewage disposal areas on this site, are there? No
4 septic systems?

5 MR. THALER: Well, going down quickly, it's vicinity
6 map, contour lines, forest buffers, yeah, all that's on the
7 typical plan, slopes greater than twenty-five percent, existing
8 vegetation, building envelopes. The only thing that I see
9 that's differed is it requires soils mapped and labeled in
10 accordance with the County soil survey number nine, which we
11 wouldn't necessarily put on a special exception plan.

12 MR. SCHMIDT: Okay.

13 CHAIR: But you say it's on this one because it's on
14 the top, soils chart?

15 MR. THALER: Yes.

16 MR. SCHMIDT: Yes.

17 MR. THALER: Well, it's on there, it's probably --

18 CHAIR: I see it at the top.

19 MR. THALER: -- just hard for you to see.

20 CHAIR: No, I see it.

21 BOARD: We see it.

22 MR. THALER: Well, like right here, it says GHB and
23 HBA. HBA means (inaudible) soil and the key to it is up, is up
24 here.

25 MR. SCHMIDT: Mr. Thaler, there was some discussion,

1 and let me just ask you from an engineering perspective, about
2 the use of the property. Will this be a permanent or perpetual
3 land use that'll always exist on this property necessarily?

4 MR. THALER: No, it's as (inaudible), this has the
5 typical twenty year lease on it. I suspect it has options, I
6 don't know that. And there has to be a decommissioning plan
7 and I think they have to post a surety too to make sure that
8 it's actually cleaned up, and then it goes back presumably to
9 its agricultural use.

10 MR. SCHMIDT: And what would the impact and I'll, if
11 any, of the use be on the soils in the event it re, was
12 returned to an agricultural use?

13 MR. THALER: Well, well, actually, the use is good
14 for soils and for agricultural. Farming, yeah, first of all --

15 MR. NELSON: Excuse me, Chairwoman Murphy. I
16 understand the Chair has made it pretty clear that the Chair
17 has a pretty liberal view as to the scope of Mr. Thaler's
18 expertise. But I do think now that farming expertise is,
19 should be outside the realm of, of his expertise and I object
20 to his testimony on, in the farming piece.

21 CHAIR: Okay. I don't, I don't think he's testifying
22 as an expert in farming. That's not what I understood. I
23 mean, we had a farmer --

24 MR. SCHMIDT: I'm not asking him if the corn is going
25 to grow taller, but just the impact on the soil.

1 CHAIR: Well, we had, the expert farmer already
2 testified and I don't think he's testifying about that but he,
3 in terms of civil engineering, soils do, are a part of that.
4 So, I just want to, --

5 MR. THALER: That's exactly --

6 CHAIR: -- you know, I mean, that's what he started
7 talking about and, and how perhaps this is a good use for soils
8 (inaudible) --

9 MR. THALER: Okay. Well, when you farm soils, this
10 is, I mean, everybody knows this. The farm, you know, the
11 crops uptake the nutrients, they uptake phosphorus and
12 nitrogen. Plus, farmers tend to use pesticides and herbicides.

13 When you, when you take it out of production, which
14 this is, remember, these panels don't take up the whole area
15 and there's grass underneath of it. And when you take the
16 soils out of production for twenty years, they regenerate
17 themselves. Takes something on the order of seven to nine
18 years for the microbes and the bacteria and everything else
19 that lives in the soil to regenerate the soil to its original
20 condition.

21 So, in fact, at least in my opinion, solar facilities
22 are very good for farms because it takes all that pressure, you
23 know, for twenty years off the soil. I think it, you know,
24 it's, it maybe even be biblical, you know, having, having your
25 fields fallow for a certain period of time and that's

1 essentially what it is.

2 MR. SCHMIDT: Mr. Thaler, let me ask you some, about
3 some of the requirements under Article 4-F. Is this property
4 encumbered by any environmental preservation easement,
5 agricultural preservation easement or rural legacy easement?

6 MR. THALER: No.

7 MR. SCHMIDT: Does the property have any historic
8 landmark designation?

9 MR. THALER: No. And full disclosure, the Board
10 should know I'm on the Landmark's Preservation Commission.

11 MR. SCHMIDT: Okay. Is, are there any, are the
12 arrays proposed for any area which is encumbered by a forest
13 conservation easement?

14 MR. THALER: No.

15 MR. SCHMIDT: Are the arrays and the panels proposed
16 setback at least fifty feet from the tract boundary?

17 MR. THALER: Yes.

18 MR. SCHMIDT: Do the arrays meet all of the, any
19 other applicable setback requirement under the County zoning
20 regulations?

21 MR. THALER: Well, RC-2 has a seventy-five foot
22 setback from the center line of an adjacent street in addition
23 to the fifty foot setback. Not in addition, kind of overlaying
24 the fifty foot setback in 3717 and it meets that as well.

25 MR. SCHMIDT: Okay. Do the, will the structures

1 exceed twenty feet in height?

2 MR. THALER: No, they're about, they're about eight
3 feet in the back, a hair under.

4 MR. SCHMIDT: Okay and to the best of your knowledge,
5 are there more than ten of, of these facilities in the 3rd
6 Councilmanic District which are operational at this time and
7 would, therefore, prohibit an additional facility from being
8 considered by the Board of Appeals?

9 MR. THALER: No. As far as I know, the answer is no.

10 MR. SCHMIDT: Okay. I, the, the bill likewise
11 requires a landscape plan or landscaping of the property, does
12 it not?

13 MR. THALER: Yes.

14 MR. SCHMIDT: Okay. Mr. Thaler, I know I had
15 previously introduced Petitioner's exhibit number two, which
16 was sort of a landscape plan that was superimposed on top of
17 the, of an aerial photograph, correct?

18 MR. THALER: Yes.

19 MR. SCHMIDT: And I'm going to show you another
20 document and can you, I'll mark this as Petitioner's exhibit
21 number ten?

22 BOARD: Um hm.

23 MR. SCHMIDT: Number ten.

24 MR. NELSON: I'm so confused, what's ten?

25 MR. SCHMIDT: Well, he's going to tell you what it

1 is. And I'm going to ask you, can you identify this document?

2 MR. THALER: This is the landscape plan, which was
3 prepared by my office and submitted to the County.

4 MR. SCHMIDT: And is this consistent with number two,
5 except that it's not on, it's not superimposed on the aerial
6 photograph?

7 MR. THALER: Yes. Number two is really an exhibit,
8 so you can see how it all works together and this is the, the,
9 it's called a compliance plan and that's exactly what it is.

10 MR. SCHMIDT: Okay. I'm going to ask you a series of
11 questions and, unfortunately, I do not have a smaller version
12 of this. You can refer to the smaller one that I gave you, but
13 I'll hold it here for Mr. Thaler. Mr. Thaler, I think the
14 easiest way maybe to cover this is just to ask you, can you
15 tell us what the landscaping proposal is if you want to work
16 your way around the property and the considerations that you
17 and your staff applied in developing this landscape? What,
18 what have you done here?

19 MR. THALER: Okay. Well, first of all, the, the
20 landscaping criteria are a little bit tricky in this particular
21 case. Where we've got 4-F, we've got the CMB, CMDP and we've
22 got the landscape manual.

23 So, 4-F, the, the solar facility bill, says there has
24 to be perimeter landscaping around the property where, where
25 it's, can be seen from residential properties. First of all,

1 there's a complete forest, there's a very heavily forested area
2 --

3 BOARD: Pointing at the northern end where there's
4 the start of the, just trying to get the record as to where
5 you're pointing.

6 MR. THALER: The, there's a rectangle, a large
7 rectangle at the northern end of the property that's completely
8 forested. We have run perimeter landscaping completely around
9 the property in all the spots where there aren't otherwise, I
10 mean, we didn't run it here because, I'm sorry, we didn't run
11 it at the northern end because it's already forested. So, you
12 will see that we've run landscaping, perimeter landscaping
13 completely around the array because that's required.

14 In addition to that, you have to meet the
15 requirements of the landscape manual and the landscape manual
16 sets out how you calculate these things. There's a thing
17 called condition A, which it, it, the landscape manual tells
18 you how many planting units you have to have and sets out the
19 specifications for the planning units. So, condition A, for
20 instance, is, is a requirement for street frontage. So, we
21 have calculated the street frontage on Hanover Pike, we've
22 calculated the street frontage on Not Fry Road and based on
23 those (inaudible) distances and the requirements of the manual,
24 we've calculated the number of planting units that are
25 required.

1 MR. SCHMIDT: And is that shown on a table on the
2 plan?

3 MR. THALER: It is.

4 MR. SCHMIDT: Okay.

5 MR. THALER: Okay. Non-residential buildings, which
6 this is, under the manual, condition E has the same thing. And
7 it has a requirement adjacent to residential institutional
8 property and adjacent to public right of way. And from that,
9 you calculate a number of planting units.

10 And in this particular case, we're required to have a
11 hundred and seventy planting units. And planting units, in
12 the, you go to the landscape manual, one big deciduous tree is
13 one planting, is, is a planting unit, two minor trees is a
14 planting unit, two evergreens is a planting unit, five shrubs
15 is a planting unit and then you get down to ground cover and,
16 and other things.

17 And so, that you come up with a nice plan of a
18 mixture of these planting units with certain specifications
19 that are laid out and you come up with a landscaping plan.

20 In addition, it refers back to the CMDP. The, the
21 CMDP, I told you this was convoluted, it refers back to the
22 CMDP, --

23 MR. SCHMIDT: What's that stand for?

24 MR. THALER: Comprehensive Man, Manual of Development
25 Policies. So, we have three basic requirements for

1 landscaping, 4-F, the landscape manual and the CMDP.

2 The CMDP has a section on, on scenic, on scenic roads
3 and scenic views. Now, for the scenic, now, Hanover Pike is a
4 County scenic road but not a State scenic road. Now, I, you,
5 Hanover Pike is, is below the grade, is below the grade of this
6 property. Could I see that picture? It might be a good time
7 to give the Board that picture.

8 MR. SCHMIDT: All of the photographs?

9 MR. THALER: Just the, just the one that, that I
10 took. In any event, Hanover Pike sits below the level of the
11 property and there's, there's landscaping and because it sits
12 below the level of the property, you basically cannot see
13 Hanover Pike from the property.

14 More to the point, with respect to scenic roots, you
15 can't see the property from Hanover Pike. You can only see a
16 tiny little area right at the intersection of Hanover Pike and
17 Not Fry Road and I'm going to show you that on a picture if I
18 may. Can I have one?

19 MR. SCHMIDT: Yeah. And, and just use, why don't you
20 take the one you want to use and I'll give it to --

21 MR. THALER: Okay.

22 MR. SCHMIDT: Hang on a second. Let's do it this
23 way, Mr., I'm going to have, just try to keep this in some
24 amount of order, let me hand to the Board, and we will offer
25 these but Mr. Thaler is throwing me a curve ball by going to

1 these photographs right now.

2 MR. THALER: What else is new?

3 MR. SCHMIDT: There's a, there's a series of them,
4 let me give one to Mr. Nelson. And let me give one to Mr.
5 Thaler. Now, Mr. Thaler, these are just, I will proffer to the
6 Board, and I think Mr. Nelson has seen many of these, because
7 they were offered below, there are a couple new ones on the
8 top, but I will collectively mark these as the next exhibit and
9 maybe we can refer them as A, B, C, --

10 CHAIR: A through L.

11 BOARD: A through L.

12 MR. SCHMIDT: A through L?

13 BOARD: Yes.

14 MR. SCHMIDT: Okay and --

15 MR. NELSON: This eleven?

16 MR. SCHMIDT: And this would be collectively --

17 BOARD: 11-A through L.

18 MR. SCHMIDT: -- Petitioner's exhibit number eleven.

19 So, Mr., Mr. Thaler, why don't you tell me which one, to
20 continue your testimony you're referencing?

21 MR. THALER: I'd like to refer to A and B, please.

22 And I took these about midday on Saturday. And what A, what I
23 want you to see on A, or demonstrate to the Board on A, is
24 really the heavy forested area on the northern portion of the
25 property and you can also see that the, the site is planted in

1 field, in orchard grass, with the exception of the area in the
2 agricultural channel that Mr. Elseroad didn't mow.

3 I'd like to go to B and what I want to show you at B,
4 I took this picture on Saturday, standing on the site, and you
5 can see, you cannot see Hanover Pike with the exception of that
6 little tiny spot right at the, that little tiny spot right at
7 the intersection. And so, as to the effect, and Hanover Pike
8 is a scenic, is a scenic road, but you cannot see the site, you
9 cannot, either way, you can't see Hanover Pike from the road or
10 the site from Hanover Pike. And on the landscaping plan, in
11 the area down at that little intersection, we planted quite a
12 few trees, including some major trees to really block that
13 view.

14 And finally, the CMDP has a section on scenic views,
15 not to be confused with scenic routes. I do not believe we are
16 required, this is not, Baltimore County has a map that lays
17 out, that shows the scenic routes and Hanover Pike is a
18 Baltimore County scenic route. Also has a map that shows the
19 scenic views. This is not, this site is not on the map as a
20 scenic view. This is not a scenic view. If it were, we would
21 have to comply with the CMDP. Notwithstanding that, we have
22 done our best to comply with the C, with the CMDP as to scenic
23 views anyway, which, which gives you guidance on how to
24 landscape scenic views, which basically says, look, you're not
25 putting up a fence, you're not putting up a wall so you can't

1 see it, what you're trying to do is create a filtered view, a
2 diffused view, to, to, to soften the scenic view. And we have
3 designed, actually Mrs. McArthur has designed this, consistent
4 with all three of, with those requirements and sort of
5 voluntarily on the CMD requirements for scenic views.

6 MR. SCHMIDT: Now, --

7 MR. THALER: Did I answer your question? I'm not
8 sure.

9 MR. SCHMIDT: You did, Mr. Thaler.

10 MR. THALER: Okay.

11 MR. SCHMIDT: Mr. Thaler, the, the panels will, in
12 fact, be visible from some locations off the property, correct?

13 MR. THALER: I'm sure you're going to be able to see,
14 I have not driven around the whole area and I'm sure you'll,
15 might be able to see them from some place.

16 MR. SCHMIDT: Is there a requirement that they be
17 invisible from any location, from every location off the
18 property, is that a requirement anywhere?

19 MR. THALER: No, not at all.

20 MR. SCHMIDT: Okay. All right. Why don't you, while
21 we're, while we have the photographs, why don't you go through
22 the remaining photographs and that might help further describe
23 the property, particularly as to landscaping?

24 MR. THALER: Well, I did not take the rest of the
25 photographs but I'm familiar with what they show. This is --

1 BOARD: That's Exhibit D?

2 MR. SCHMIDT: D?

3 BOARD: A, B, C, D, is that --

4 MR. THALER: C.

5 BOARD: C?

6 MR. THALER: These mark, this is marked 23, it says
7 numerals on it, I guess this is, this is C.

8 BOARD: Yeah.

9 MR. THALER: This, these are pictures of --

10 CHAIR: I think (inaudible) two of the same.

11 BOARD: Yeah, that's what I think he has.

12 MR. SCHMIDT: Yeah, I know. I think B and C is the
13 same.

14 CHAIR: So, we even marked it as C or no?

15 MR. SCHMIDT: Just keep it in there.

16 CHAIR: C, okay, so if B and C is the same, that's
17 why Mr. Thaler just went, you're, that's 11-D.

18 BOARD: Yeah.

19 CHAIR: Just pretend it's 11-D.

20 MR. SCHMIDT: D is this one, Mr. Thaler, with the two
21 at the bottom.

22 MR. THALER: Okay. The next, beginning with D, this
23 is Hanover Pike, south of the site, you can see, you can see
24 that little driveway appearing, that's Not Fry, that's Not Fry
25 Road. This is a little better view of, I didn't make this up--

1 BOARD: Exhibit E.

2 CHAIR: Yeah.

3 MR. THALER: This is, must, I guess I'm up to E.

4 MR. SCHMIDT: Yes.

5 MR. THALER: I guess I'm up to E. This is Not Fry
6 Road and it shows the little stream that parallels Hanover
7 Pike. F is a better view of that. G is just a little north of
8 the entrance. E is the same, a little further north. These
9 are, that whole series are pictures of Hanover Pike south of
10 and north of the entrance and you can see it's pretty heavily
11 wooded in that area.

12 MR. SCHMIDT: And I would collectively offer those
13 photographs as Petitioner's exhibit number eleven.

14 BOARD: 11-A through L.

15 MR. SCHMIDT: Yes, ma'am.

16 CHAIR: Any objection?

17 MR. NELSON: No.

18 CHAIR: No objection.

19 BOARD: Sorry, is it possible to take a break for
20 like two minutes, please?

21 MR. SCHMIDT: Sure, sure.

22 BOARD: Thank you, all right.

23 (RECORDING PAUSED - 02:05:03 PM)

24 (ON RECORD - 02:15:05 PM)

25 CHAIR: Had you asked a question?

1 MR. SCHMIDT: I don't think so. I think we were at a
2 pause.

3 CHAIR: Oh, we had a pause. Okay, next question.

4 MR. SCHMIDT: Okay.

5 CHAIR: Okay.

6 MR. SCHMIDT: And before I go on, if I have not, I
7 would ask, I would move Petitioner's exhibit number ten and
8 eleven into evidence, if I have not.

9 CHAIR: Any objection?

10 MR. SCHMIDT: Number ten is the landscape plan and
11 eleven are the photographs collectively.

12 MR. NELSON: No objection.

13 CHAIR: No objection, thank you.

14 MR. SCHMIDT: Mr. Thaler, just a couple other
15 questions about the landscape plan. I see, in addition to the
16 perimeter screening, there is some landscaping proposed within
17 the interior of the arrays, is that correct?

18 MR. THALER: That's correct.

19 MR. SCHMIDT: And can you tell us where that is,
20 maybe show us where that is and describe what is propo, what
21 and why is proposed there?

22 MR. THALER: Well, just to add some more screening, I
23 suppose, even though there's no regulatory requirement for it,
24 we have proposed some landscaping in the vicinity of the
25 agricultural channel.

1 BOARD: Running from one ease, what is it the --

2 MR. THALER: Running --

3 BOARD: -- from the, what is it a buffer there?

4 MR. THALER: -- running from, running diagonally from
5 east to west.

6 BOARD: Connecting from one buffer to the other,
7 right?

8 MR. THALER: That is correct. Thank you.

9 BOARD: I'm just doing it for the record.

10 MR. SCHMIDT: And Mr. Thaler, has the landscape plan
11 been submitted to Baltimore County for approval?

12 MR. THALER: Yes.

13 MR. SCHMIDT: Has it been approved by Baltimore
14 County?

15 MR. THALER: Not to my knowledge.

16 MR. SCHMIDT: Okay. Do you know why, okay, do you
17 know why not? If you know?

18 MR. THALER: I think Mr. Herman is too busy, based on
19 our, I really don't know. I presume Mr. Herman is too busy.
20 We submitted it, Baltimore County as the Board may know, now
21 has peer review. I'm not sure if you're familiar with it. And
22 so, we have submitted it to Avery Harden, who is the, you may
23 know, is the former landscape architect for Baltimore County.
24 He has, to my knowledge, he has approved it and we're waiting
25 for Mr. Herman.

1 MR. SCHMIDT: Okay. Let me ask you some questions,
2 if I can, Mr. Thaler, about actually the special exception
3 requirements. You're familiar with the standards in Section
4 502.1 of the Baltimore County zoning regulations?

5 MR. THALER: I am.

6 MR. SCHMIDT: Based on your ex, experience and
7 expertise, Mr. Thaler, do you have an opinion as to whether the
8 proposed use will be detrimental to the health, to the health,
9 safety and general welfare of the locale in accordance with
10 Section 502.1-A of the Baltimore County zoning regulations?

11 MR. THALER: I do have an opinion.

12 MR. SCHMIDT: And what is your opinion?

13 MR. THALER: I believe this is not detrimental to the
14 health or safety, it really is a benign, you couldn't have a
15 more benign use than that. It's not detrimental to the general
16 welfare and I think it's helpful for the general welfare. I
17 think we, I think everybody ought to be using more sustain,
18 have the ability to use more sustainable and renewable
19 resources and this program, the community solar program, allows
20 more people to participate in that and I think that is very
21 helpful for the community general welfare.

22 MR. SCHMIDT: Mr. Thaler, based on your experience
23 and expertise, do you have an opinion as to whether the
24 proposed solar facility will tend to create congestion in the
25 roads, streets or alleys in the locale or cause an adverse

1 impact on traffic pursuant to the requirement in Section 502.1-
2 B?

3 MR. THALER: I do have an opinion. My opinion is, of
4 course, not. You might cut the grass once a month or something
5 like that and there's routine maintenance twice a year and the
6 traffic is diminimus.

7 MR. SCHMIDT: Mr. Thaler, based on your experience
8 and expertise, do you have an opinion as to whether the
9 proposed solar facility will create a potential hazard from
10 fire, panic or other danger as specified in Section 502.1-C of
11 the Baltimore County zoning regulations?

12 MR. THALER: I do have an opinion. These are
13 obviously very safe facilities. They are regulated by the, the
14 fire code and the national electrical code. Interestingly,
15 there are four fire companies that I count, really right in the
16 neighborhood, you have Upperco about two miles north or so,
17 Boring, Glyndon and Reisterstown, this may be the best
18 protected site in Baltimore County with four, I don't know that
19 for a fact, but with four fire companies in the neighborhood.

20 MR. SCHMIDT: Mr. Thaler, do you have an opinion
21 based on your experience and expertise as to whether the
22 proposed solar facility would tend to overcrowd land or cause
23 undo concentration of population pursuant to the standard in
24 Section 502.1-D of the Baltimore County zoning regulations?

25 MR. THALER: I do. Obviously, there's no

1 concentration. Obviously, it doesn't overcrowd the land. The,
2 you know, the panels, when it's all said and done, are a small,
3 a smaller proportion of the overall site.

4 MR. SCHMIDT: And along those lines, Mr. Thaler, are
5 there any zoning variances or other similar approvals that are
6 required in order to accommodate this proposal?

7 MR. THALER: No zoning approvals, no.

8 MR. SCHMIDT: No zoning variances?

9 MR. THALER: No zoning, no zoning variances.

10 MR. SCHMIDT: Based on your experience and expertise,
11 do you have an opinion as to whether the proposed solar
12 facility will interfere with adequate provisions for schools,
13 parks, water, sewage, transportation or other public
14 requirements, conveniences or improvements pursuant to Section
15 502.1-E of the Baltimore County zoning regulations?

16 MR. THALER: I do have such an opinion. I mean,
17 there is, there's no impact, there's no use of those elements,
18 schools, parks, water, sewage. This is as benign a use, in my
19 opinion, as you can get.

20 MR. SCHMIDT: Is this property inside or outside the
21 County's Urban Rural Demarcation Line?

22 MR. THALER: It's outside.

23 MR. SCHMIDT: Are there public water and sewage
24 facilities in, or near or adjacent to this property?

25 MR. THALER: No.

1 MR. SCHMIDT: Okay. Based on your experience and
2 expertise, do you have an opinion as to whether the proposed
3 solar facility will interfere with adequate light and air
4 pursuant to Section 502.1-F of the Baltimore County zoning
5 regulations?

6 MR. THALER: I do have an opinion of, of course, now
7 that language comes from the original 1916 New York City zoning
8 ordinance. It really refers to early twentieth century
9 development in lower Manhattan. These panels are less than,
10 they go from two feet off the ground in the front, eight feet
11 in the back, they have no impact on light or air.

12 MR. SCHMIDT: Mr. Thaler, do you have an opinion
13 based on your experience and expertise, as to whether the
14 proposed solar facility will be inconsistent with the purposes
15 of the zoning classification, namely the RC-2 zone, nor in any
16 other way inconsistent with the spirit and intent of the
17 Baltimore County zoning regulations pursuant to Section 502.1-G
18 of the Baltimore County zoning regulations?

19 MR. THALER: No, I mean, obviously the County Council
20 has made its intention clear with new Section 4-F. This is a
21 permitted use. It's a use that I believe is important for the
22 residents of the County and in my opinion, it's consistent with
23 the spirit and intent of the zoning regulations.

24 MR. SCHMIDT: Mr. Thaler, before I ask you the next
25 question under those criteria, it relates to generally storm

1 water management and those type of conditions, and you
2 indicated that you have an expertise in that area. Will there
3 be storm water requirements applicable, County requirements
4 applicable, to this?

5 MR. THALER: Sure.

6 MR. SCHMIDT: And can you tell us just generally the
7 timing and also, in your experience, is there impervious
8 surface created by this facility?

9 MR. THALER: No, these are not an impervious surface.
10 The panels themselves are impervious, but as Mr. Copus
11 testified, there's spaces between all the panels. The panel
12 sections are far apart from each other and there's grass, as
13 well as some storm water management elements, under all of the
14 panels. So, this is a pervious area, not an impervious area.

15 MR. SCHMIDT: Will the County, to the best of your
16 knowledge, will the County require the submission of
17 information, a storm water management plan or other studies of
18 similar information prior to the issuance of any permits for
19 the proposal?

20 MR. THALER: Sure.

21 MR. SCHMIDT: And can you tell us, has the storm
22 water management plan been engineered at this point in time to
23 a, to a degree to submit to Baltimore County?

24 MR. THALER: In my head.

25 MR. SCHMIDT: Okay. Well, since it's in your head, I

1 mean, generally, in a situation like this, what type of storm
2 water manage, how do you, how do you assure the Board that
3 there won't be runoff or adverse impacts associated with storm
4 water runoff associated with the facility, just generally how
5 does that work?

6 MR. THALER: Well, as I talked about under voir dire,
7 there is a, what do you want to call it, a standard, there's,
8 there's a standard storm water facility that the Maryland
9 Department of the Environment requires. It requires, and
10 that's the one we're going to use, it's almost cookbook in a
11 sense. It, it requires the panels to be separated a certain
12 distance so there's sufficient grass for the runoff to run over
13 and then in, in certain circumstances, it requires at the lip
14 of the panels, it requires a level spreader or an energy
15 dissipator, which is basically just some gravels, gravel off
16 the end of the panel so the water would run off the end, run
17 into the gravel. It's a very standard and simple storm water
18 technique.

19 MR. SCHMIDT: Based on that and your experience and
20 expertise, Mr. Thaler, do you have an opinion as to whether the
21 proposed solar facility will be inconsistent with the
22 impermeable surface and vegetative provisions of the Baltimore
23 County zoning regulations as required under Section 502.1-H of
24 the Baltimore County zoning regulations?

25 MR. THALER: I do have such an opinion and that is

1 that it will not be inconsistent.

2 MR. SCHMIDT: Okay and also Mr., finally, Mr. Thaler,
3 as to the 502.1 requirements, do you have an opinion based on
4 your education and experience as an expert as to whether the
5 proposed solar facility will be detrimental to the
6 environmental and natural resources of the site and vicinity,
7 including the forests, streams, wetlands, aquifers and flood
8 plains as set forth in Section 502.I of the Baltimore County
9 zoning regulations?

10 MR. THALER: My opinion, my considered opinion, that
11 this facility will have no detrimental impact on any of the
12 environmental elements of the site. I think, I, on the
13 contrary, I think that by taking what's been farmed in corn,
14 which has pesticides, herbicides and runoff associated with it,
15 that it will be an environmental benefit as opposed to an
16 environmental detriment.

17 MR. SCHMIDT: Will it impact either of the streams or
18 the wetlands, Mr. Thaler, that you have shown in yellow on
19 Petitioner's exhibit number one in your opinion?

20 MR. THALER: In my opinion, it will not.

21 MR. SCHMIDT: Okay. Does the plan show that there
22 are adequate and appropriate buffers from those water resources
23 to the area where the special exception and solar facility is
24 located?

25 MR. THALER: It does and those buffers, which are

1 really setbacks, have been improved by the County.

2 MR. SCHMIDT: Okay. Mr. Thaler, there's also a
3 requirement for any special exception in the RC-2 zone under
4 Section 1-A-01.2-C-18 of the Baltimore County zoning
5 regulations and based on that section, I'll ask you do you have
6 an opinion as to whether the proposed facility will have a
7 detrimental impact on the primary agricultural uses nearby?

8 MR. THALER: I do have an opinion. It will, in my
9 opinion, it will have no impact on the primary agricultural
10 uses nearby.

11 MR. SCHMIDT: Okay. Okay, all right. Mr. Thaler, if
12 I can, the other part of this case, and I think it would be
13 appropriate at this point in time, although I know it's in the
14 Board's file, and we're up to exhibit number eleven, number
15 twelve now?

16 BOARD: Twelve.

17 MR. SCHMIDT: Okay. Mr. Thaler, I believe there came
18 a time, and I believe this is in the Board's file, but I'm
19 going to make it an exhibit so the witness can reference it.
20 There came a time when an application was made to the County's
21 Development Review Committee, was there not, for a limited
22 exemption under the subdivision development regulations and
23 Article 32 of the Baltimore County Code, is that correct?

24 MR. THALER: That is correct.

25 MR. SCHMIDT: And the DRC, or what did the DRC,

1 actually through Mr. Moeller who was, who is a director of
2 Permits, Approvals and Inspections, was an exception from the
3 full development review process granted?

4 MR. THALER: Well, it was approved to process as a
5 limited exemption or what we call an A exemption.

6 MR. SCHMIDT: What's that mean? From, tell the Board
7 what that means.

8 MR. THALER: It, to oversimplify a little bit, it
9 means you have to, you have to comply with all County
10 regulations, public works regulations, environmental
11 regulations, the zoning regulations, all regulations with the
12 exception of title, Section 2 under Title 32, which means you
13 don't have to have a concept plan, a community input meeting, a
14 development plan, or a hearing officer's hearing. You have to
15 do everything else except that.

16 MR. SCHMIDT: Will the landscape plan need to be
17 approved by Baltimore County in order for the permits to be
18 issued in this project?

19 MR. THALER: Yes.

20 MR. SCHMIDT: Will there need to be a storm water
21 management plan approved by Baltimore County for this project
22 to, to, in order to receive permits?

23 MR. THALER: Yes.

24 MR. SCHMIDT: Okay. Will there need to be a
25 decommissioning agreement, which relates to what will happen in

1 the event the facility goes out of service and that, will that
2 be required before the applicant will get permits?

3 MR. THALER: Yes. And any plan that would normally
4 be required, although I can't think of any, any more off hand,
5 needed a grading permit or something, for instance, you would
6 still need that under the A exemption.

7 MR. SCHMIDT: So, the A exemption, it's been
8 suggested that the A exemption just means that you immediately
9 walk out and get permits without any further review by
10 Baltimore County, is that accurate, in your opinion? That you
11 just immediately get permits?

12 MR. THALER: It, it's not accurate. All it means is,
13 is you don't have to, when it's all said and done, it means you
14 don't have two things. You don't have a development plan.
15 Okay, now, this plan, let's suppose we needed a development
16 plan. There's no more information necessary for a development
17 plan, for, for a, basically, a simple a facility as this,
18 there's nothing else I would put on the plan. There's no point
19 to a, to a development plan and it means you don't need a
20 hearing officer's hearing. Okay, well, of, of course, you
21 know, the community should have the right to a public hearing,
22 but we're having a public hearing right now and they'll have
23 their opportunity to say whatever they, they want to say and
24 it's really pointless in this particular case for as simple,
25 technically simple, a plan as this, to have to have two public

1 hearings. So, the County has apparently been processing all
2 the solar facilities as A exemptions under minor, minor
3 commercial facilities, I think it is, and it certainly seems
4 perfectly appropriate to me.

5 MR. SCHMIDT: Let me ask you about that, Mr. Thaler.
6 Has your company been involved in other proposed solar
7 facilities that are proposed for construction in Baltimore
8 County?

9 MR. THALER: Yes, and I think we had the first one on
10 Pfeffer Road, I think we have the first one that was actually
11 commissioned.

12 MR. SCHMIDT: Okay and have, just as a matter of
13 administrative practice, have those other applications, and I
14 don't believe there's ever been an appeal to the Board, also
15 received A exemptions, if you know?

16 MR. THALER: I believe they, I believe they all went
17 as A exemptions.

18 MR. SCHMIDT: Okay. Now, the, and let me refer you
19 to Petitioner's exhibit, the letter is number thirteen, I'm
20 sorry, I'm losing track?

21 BOARD: Yes.

22 MR. SCHMIDT: Petitioner's exhibit number thirteen,
23 which I've given you to identify. And I would actually move
24 that at this point in time.

25 MR. NELSON: I'm sorry, which one is that?

1 BOARD: Are you, you're presenting a new one, right?

2 MR. SCHMIDT: That's the letter from --

3 BOARD: That's twelve. You, I thought you were
4 presenting something else, I'm sorry, I thought you were asking
5 me for the next number.

6 MR. SCHMIDT: I'm sorry. Yes.

7 BOARD: So, the January 9, 2019 letter is number
8 twelve.

9 MR. SCHMIDT: Number twelve, I'm sorry. I misspoke
10 then, it's number twelve.

11 BOARD: Yes.

12 MR. SCHMIDT: Mr. Thaler, that indicates in the body
13 of the letter, and looking at the bottom of the first page,
14 that the exemption is pursuant to 32-4-106-A-1 roman numeral
15 little six, correct?

16 MR. THALER: That's, that's correct.

17 MR. SCHMIDT: Okay and to be fair to you, I'm not
18 going to make this an exhibit because it's a provision of law.

19 MR. THALER: I know what it says.

20 MR. SCHMIDT: But I'll, I'll give it to Mr. Nelson,
21 just so you have the provision. Can you tell us what the 32-4-
22 106-A-1-6 exception is, the wording of that exception in the
23 Code?

24 MR. THALER: Well, I'm, I'm sure the Board is
25 familiar with this. This is limited exemptions A, exemption

1 from development review and approval process. Little six,
2 little vi, is the construction of residential accessory
3 structures or minor, minor commercial structures.

4 MR. SCHMIDT: Okay. Is this a res, accessory
5 residential structure?

6 MR. THALER: No, of course not.

7 MR. SCHMIDT: Is it a minor commercial structure?

8 MR. THALER: I think so, yes.

9 MR. SCHMIDT: Why is that? Why do you believe it's
10 minor?

11 MR. THALER: Well, it's, it's, it's commercial, it's
12 small and there's, I, I think when the DRC looks at this, they
13 say is there any really, real public interest in having a
14 development plan and having a hearing officer's hearing or, you
15 know, can that all be sorted out in the special exception
16 process. So, I, I believe, I don't know, you know, but I
17 believe the County is looking at, you know, what's fair to
18 everybody and what's efficient --

19 MR. NELSON: Objection to interpretation of what the
20 County Council was thinking when it adopted this (inaudible).

21 CHAIR: I don't, I don't think he said County
22 Council. I thought he said County.

23 MR. SCHMIDT: County.

24 MR. THALER: DRC, County.

25 CHAIR: Yeah, County.

1 MR. THALER: County DRC.

2 CHAIR: County believes it's fair, which is why he
3 was describing --

4 MR. THALER: Well, that was --

5 CHAIR: -- (inaudible) believes it's a minor
6 commercial structure. Go ahead. Overruled.

7 MR. THALER: Well, that's opinion. What I don't
8 think is opinion, what I think is fact, is that the DRC, the
9 County that makes this decision, to the best of my knowledge,
10 has been processing them all as minor commercial structures.

11 MR. SCHMIDT: Is there going to be any, in terms of
12 the structures, the arrays, the, the improvements, which
13 constitute the solar facility, is that going to require, is it
14 going to require any water? I mean, in other words, do they
15 have to dig a well or hook into a, a water line?

16 MR. THALER: Of course not.

17 MR. SCHMIDT: Okay. Is it going to require any --

18 MR. THALER: It's an erector, it's an erector set.

19 MR. SCHMIDT: Okay.

20 MR. THALER: It's an erector set with wires.

21 MR. SCHMIDT: Is it going to require any onsite
22 sewage disposal, septic system or connection to a public sewer?

23 MR. THALER: No.

24 MR. SCHMIDT: So, Mr. Thaler, I, oh, I believe that's
25 all the questions that I have of the witness and I just did

1 have, it might be helpful to the Board before I, I stop. I'll
2 give one of these to Mr. Thaler. I promised you that I would
3 give you one of these smaller versions of the landscape plan,
4 exhibit number ten, which I didn't have. So, now you have, all
5 have smaller versions of all the plans that have been submitted
6 and I'll give one to Mr. Nelson as well.

7 BOARD: Thank you.

8 MR. SCHMIDT: And with that, I do not have any other
9 questions of Mr. Thaler. Oh, I do. I do, I'm sorry, I forgot
10 one thing. You had talked about this, Mr. Thaler. I'm sorry,
11 and I just think it might be helpful for the complete record,
12 about the surrounding roads. Obviously, Hanover Pike is a
13 public road, is it not?

14 MR. THALER: Yes.

15 MR. SCHMIDT: Is it a State or a County road?

16 MR. THALER: State, I think.

17 MR. SCHMIDT: Okay. Maryland Route 30?

18 MR. THALER: Maryland Route 30.

19 MR. SCHMIDT: Okay. You had indicated that the
20 street sign says Not Fry, Fry Road on it, correct?

21 MR. THALER: Yes.

22 MR. SCHMIDT: Is Fry Road, is Not Fry Road on the
23 southern side of the subject property a public road or a
24 private road?

25 MR. THALER: Private.

1 MR. SCHMIDT: Okay. Does the owner, Mr. Elseroad,
2 and Woodensburg, of the subject property have access to that
3 under any deed or other instrument?

4 MR. THALER: Yes, he has a, he has a deed. He has,
5 he has a right, he, he has an agreement called Declaration of
6 Rights of Way, Baltimore County Liber 9509, Folio 139, that
7 gives him non-exclusive rights together with others to use what
8 we're calling Not Fry, what the County is calling Not Fry Road.

9 MR. SCHMIDT: Okay and so that the record is
10 complete, this, I'm going to give a copy to Mr. Nelson, a copy
11 of that Declaration, which is in the public record and recorded
12 in the Land Records of Baltimore County, as Mr. Thaler
13 explained. I've marked it as Petitioner's exhibit number
14 thirteen and it's find at, found at liber 9509, page 139. I
15 think it's a public record and it speaks for itself. But it is
16 the Declaration of Rights, which provide a number of owners in
17 this area to utilize the non-portion of Fry Road, or what is
18 called Not Fry Road. Never seen a road sign that says Not Fry
19 Road or not something on it, but that's what this one says.

20 CHAIR: Any objection to thirteen?

21 MR. NELSON: No.

22 CHAIR: No objection.

23 MR. SCHMIDT: And with that, I have no other
24 questions of Mr. Thaler.

25 CHAIR: Before you ask, don't we, I mean, I know, Mr.

1 Thaler, you've been here before on exemption cases. Don't we,
2 when we look at minor commercial structures, exemptions, don't
3 we look at that minor commercial development definition and go
4 to the, which asks whether or not there's a public works
5 agreement? Do, do you remember that? And I was just curious
6 in this case, was there any public, public works agreement?

7 MR. THALER: No, but this, there's no public works
8 agreement.

9 CHAIR: Well, that's what I just want to, I just want
10 to confirm for the record just because you did mention, you
11 know, that there was no, you don't have to dig a well, you
12 don't have to go through these things, just, I mean, I think
13 those, in our, in the past, the Board has looked at the
14 definition of, of, of minor commercial development, I believe,
15 off my memory, and always looked at whether or not there was a
16 public works agreement so --

17 MR. THALER: You're not thinking of minor sub, are
18 you?

19 MR. SCHMIDT: No.

20 MR. THALER: Are you, I think you're thinking of
21 minor subs.

22 CHAIR: No, no, no, not a minor sub. Nope, it's not
23 a minor sub.

24 MR. THALER: No?

25 CHAIR: But the other cases that we've heard, that

1 we've decided whether something is a minor commercial structure
2 has to do with the fact of whether or not there's a min, a
3 public works agreement and I believe Mr. Schmidt has had those
4 cases before and --

5 MR. SCHMIDT: Yes.

6 CHAIR: -- I was just curious as you, here no public
7 works agreement is required.

8 MR. THALER: No public works agreement.

9 CHAIR: Okay, that's all.

10 MR. SCHMIDT: And just, if I can, Ms. Murphy. A lot
11 of those cases have actually resulted from a BA exemption,
12 which talks about a minor development, which does have a
13 definition.

14 CHAIR: Okay.

15 MR. SCHMIDT: So, this is slightly a different animal
16 because --

17 CHAIR: So, we don't have to worry about public works
18 agreement?

19 MR. SCHMIDT: Yeah.

20 CHAIR: Okay.

21 MR. SCHMIDT: I mean, there's a thing called a minor
22 commercial structure.

23 CHAIR: Yes.

24 MR. SCHMIDT: And then there's a thing called a minor
25 development.

1 CHAIR: Right, right, right. Okay, thank you.

2 MR. SCHMIDT: I mean, you'll, you'll look at it and
3 save it.

4 CHAIR: Yes. Thank you. Okay. Cross? I didn't
5 mean to --

6 BOARD: Go ahead, I'll wait, I'll wait. It, well, I
7 did want to just ask, you mentioned that there were not more
8 than ten solar facilities in the Councilmanic district. How
9 many are there? Do you, if you know.

10 MR. THALER: I think there are ten that have sort of
11 make their, made their presence known and are working their way
12 through the process. I think, but you can only have ten. And
13 I'm not exactly sure.

14 BOARD: Okay, thank you.

15 MR. THALER: The, the other districts don't have, the
16 third district seems to have the chunk of them.

17 BOARD: Okay, thank you.

18 CHAIR: Go ahead. Cross, Mr. Nelson?

19 MR. NELSON: Yeah, thank you, Chairman Murphy. Now,
20 Mr. Thaler, let me ask a few questions, if I might, about this
21 limited exemption --

22 MR. THALER: Could you speak up just a little bit,
23 Mr. Nelson?

24 MR. NELSON: Yes, sir. Let me ask a few questions,
25 if I might, about this limited exemption under the County Code

1 32-4-106-A-6.

2 MR. THALER: Um hm.

3 MR. NELSON: The so called minor commercial structure
4 exemption. Did I understand you to say, sir, that as a matter
5 of routine, the DRC is granting these exemptions for all the
6 solar facilities in district three, for example?

7 MR. THALER: I, I think so, I'm not personally
8 familiar with every one of them.

9 MR. NELSON: All right.

10 MR. THALER: I think that's what they've been doing.

11 MR. NELSON: Fair enough. Let's assume that to be
12 true. How many times have you seen an appeal of such a
13 decision?

14 MR. THALER: I think you're the first.

15 MR. NELSON: And can you speculate as to why this,
16 why there have been no appeals?

17 MR. THALER: Because nobody is aggrieved, okay? You
18 have, you, you haven't thought this through, Mr., Mr. Nelson,
19 based on your opening statement is what your issues were. What
20 you said is you wanted an approved landscape plan, you wanted
21 an approved storm water plan. But if you didn't have the
22 exemption and you went through the process and you had a
23 hearing officer's hearing, you don't have any of those
24 approvals at that time.

25 MR. NELSON: Well, I appreciate, I appreciate, Mr.,

1 your guidance, Mr. Thaler. I do, sincerely. But my question,
2 sir, is isn't it true that when the DRC approves a limited
3 exemption, there's no sign posted on the property, that's a
4 statement that's true, is it not?

5 MR. THALER: I'm not sure you're right on that.
6 Isn't it, when it goes to the DRC, isn't there a sign? I think
7 so.

8 MR. NELSON: Is there a decision posted on paper or
9 is it only posted somewhere online?

10 MR. THALER: It's on, it's on their web page.

11 MR. NELSON: Okay. So, in order to learn of a DRC
12 exemption, a citizen needs to be tracking the web page and I'm
13 keeping my voice up because, if I'm too loud tell me.

14 MR. THALER: You're fine.

15 MR. NELSON: I don't mean to be yelling.

16 MR. SCHMIDT: I thought you were yelling, Mr. Nelson.

17 MR. NELSON: Yeah. The, I was trying to keep my
18 voice up for the witness. But the point is, in order to become
19 aware of the DRC exemption, a citizen must be tracking the web
20 page?

21 MR. THALER: You, you and I, Mr. Nelson, are
22 dinosaurs but the, the, the youngsters today, everybody works
23 on the internet and on web pages, that's how it works.

24 MR. NELSON: All right. So, the answer is yes?

25 MR. THALER: Yes.

1 MR. NELSON: Okay and the answer is also yes to this
2 question. This is the first time, this case here today, is the
3 first time that a citizen was aware of the decision and
4 actually noted an appeal to the Board of Appeals of the DRC's
5 decision to grant a limited exemption under the minor
6 commercial structure provision for a solar facility, this is
7 the very first case?

8 MR. THALER: I'm not sure, I think so.

9 MR. NELSON: Okay. Now, this is a legal question but
10 you seem to have a broad range of expertise. There's no court
11 case that we can point to that says a DRC exemption for a solar
12 facility, calling it a minor commercial structure, is a correct
13 ruling? There's no case, court case --

14 MR. THALER: I don't think there is a case on that.

15 MR. NELSON: Right. There's no Board of Appeals
16 decision that says that, that you're aware of?

17 MR. THALER: I have to defer to Mrs. Murphy on that.

18 MR. NELSON: All right. Now, is the phrase minor
19 commercial structure defined in the Code?

20 MR. THALER: Not that I'm aware of.

21 MR. NELSON: This solar facility, the panel, I'm
22 talking about the array, I'm not talking about the forest
23 buffer, I'm talking about the footprint of the solar facility
24 and if I'm off here, correct me. I believe you or one of the
25 witnesses says, said it was in the range of 9.5 acres, is that

1 right?

2 MR. THALER: The area of the array is, yes, that's
3 about right.

4 MR. NELSON: Okay and so that's the, that's the
5 ground underneath the array, is that right?

6 MR. THALER: Yeah, yes.

7 MR. NELSON: Okay. Can you cite me any example,
8 anywhere in Baltimore County, where any type of case, a Board
9 of Appeal said a facility that spans 9.5 acres is a minor
10 commercial structure?

11 MR. THALER: I have to defer to the Board. I'm not,
12 I don't --

13 MR. NELSON: All right. The answer is, you
14 personally cannot, can you?

15 MR. THALER: I personally cannot.

16 MR. NELSON: All right. Now, I'm talking about the
17 ground, roughly 9.5 acres. We could also calculate the square
18 footage of the solar panels total, could we not?

19 MR. THALER: Sure.

20 MR. NELSON: We know each one is roughly three and a
21 half by, I'll defer to Mr. Copus' testimony, each panel is
22 roughly three and a half by six and a half and they stack them
23 double portraits, is that right?

24 MR. THALER: Yes.

25 MR. NELSON: So, we could go to the plan, count up

1 all the double portraits and figure out how many solar panels
2 there are, multiply by the square footage of each, three and a
3 half by six and a half, and get the total square footage of the
4 solar array? Not the ground, but the panels?

5 MR. THALER: Sure.

6 MR. NELSON: All right. That's a pretty big number,
7 isn't it?

8 MR. THALER: Sure.

9 MR. NELSON: All right. You can't cite one example,
10 can you, where a Board has determined that the footprint of a
11 commercial structure that big was a minor commercial structure?

12 MR. THALER: Yeah, but I, I, I, I don't think that
13 it's the area of the array that decides whether it's minor or
14 not. There's no, I mean, this doesn't do anything. There's no
15 emanations here. Nothing goes out. This sucks in photons and
16 is completely benign and I think that's the criteria that you
17 use as to whether it's minor or not. They, excuse me, if they
18 were manufacturing something and bringing trucks in and it was
19 a steel mill of this, they were doing anything in this size,
20 you might have a point.

21 MR. NELSON: All right. Point me to one document
22 that says what you just said.

23 MR. THALER: My opinion.

24 MR. NELSON: Your opinion.

25 MR. THALER: Of forty-two years of, forty-five years

1 of working in Baltimore County.

2 MR. NELSON: Um hm. Now, the landscaping plan, and I
3 don't mean to put words in your mouth, and if I have the
4 context off slightly, please correct me, but I think I have the
5 theme, essentially, correct. But your point was, we don't have
6 to fully screen the view of the solar facility. What we need
7 to do was, I don't know whether you used this phrase or Ms.
8 McArthur used it, but you, something like, we need to soften
9 the view, make it more diffused?

10 MR. THALER: Yes.

11 MR. NELSON: So, is it fair to say that it's your
12 opinion that Baltimore County law doesn't require that the
13 applicant fully screen, it only requires it to soften?

14 MR. THALER: Well, that, that is my opinion and it's
15 completely laid out in the CMDP, on the section on scenic
16 views.

17 MR. NELSON: All right. Now, staff's comments are
18 different, aren't they?

19 MR. THALER: I don't know, you'd have to show it to
20 me.

21 MR. NELSON: You haven't seen staff's comments?

22 MR. THALER: I have, but show me what you mean.

23 MR. NELSON: All right. Well, the, why don't you
24 pull out your copy, July 18, 2018. Do you have your copy
25 there, sir?

1 MR. THALER: I do not.

2 MR. NELSON: All right. And I came off without a
3 clean copy so, no, I have a clean copy here, perfect.

4 MR. SCHMIDT: The Planning Office comment? Yeah, I
5 have it.

6 MR. NELSON: I'm sorry, I came off with, does the
7 Board have copies of the comments?

8 CHAIR: I have my own copy.

9 MR. NELSON: Okay.

10 BOARD: No.

11 BOARD: You have the record, right?

12 MR. SCHMIDT: They're probably in the file from
13 below.

14 BOARD: That, that's what Maureen has, I think.

15 BOARD: She has the, what's in the file.

16 BOARD: You have the one from the file below.

17 MR. NELSON: Let me show him and then I'll give this
18 to you in one minute.

19 BOARD: Okay.

20 MR. NELSON: Directing your attention --

21 MR. THALER: Which one do you want?

22 MR. NELSON: Well, I want to direct your comments,
23 I've handed the witness a copy of the comments for July 18th,
24 2018 from Department of Planning and at the top of page two,
25 does it say, it says, does it not, that the applicant should

1 protect the Hanover Pike scenic route by planting a vegetative
2 screen consisting of mixed indigenous hardwood and evergreen
3 trees and shrub, shrubs along Hanover Pike to a depth that, and
4 what are the next two words?

5 MR. THALER: To a depth that fully screens the solar
6 panels, and that's exactly what we have done. You're talking
7 about screening Hanover Pike and you'll see that we put a lot
8 of landscaping of major deciduous trees right here in this
9 corner to fully screen Hanover Pike.

10 MR. NELSON: All right. So, I have two questions.
11 The first question is, is it your testimony, sir, that when
12 you're on Hanover Pike, when one is on Hanover Pike, one will
13 not see at all any of the solar panels, is that your testimony?

14 MR. THALER: Yes, yes. That's my testimony.

15 MR. NELSON: All right. My next question, my next
16 question --

17 MR. THALER: No, Hanover Pike in the vicinity of the
18 site. If you're a mile up the road, I don't know what you see.

19 MR. NELSON: Well, this array, let's talk about that.
20 The scenic route requirement in the comment requires that it be
21 fully screened from Hanover Pike. It doesn't say at a
22 particular location, does it?

23 MR. THALER: That's, that's what they mean. It means
24 right there --

25 MR. NELSON: Whoa, whoa, whoa. What do you mean,

1 that's what they mean?

2 MR. THALER: What they mean is here's Hanover Pike
3 at, in the, proximate to the site, fully screened is exactly
4 what they say. Protect the Hanover Pike scenic road by
5 planting a vegetative screen so you can't see the site from
6 Hanover Pike and that's exactly what does it.

7 MR. NELSON: Okay. So, your testimony, sir, is that
8 the only requirement for the scenic route is to protect it from
9 that precise location right next to the site, not a little bit
10 south or a little bit north? Is that your testimony?

11 MR. THALER: Well, I showed, I showed you the
12 picture. I got on, I got on the site, I got on the site,
13 here's Hanover, here's Hanover Pike right here. You can't --

14 MR. NELSON: For the record, we're looking at Exhibit
15 11-C and D, is that right?

16 MR. THALER: This is B, okay. This is, this is
17 Saturday. I got on the site, I'm standing about two-thirds,
18 you know, up in the site. I went to see if you could see
19 Hanover Pike. The only thing you see is this little tiny spot
20 right here and we have fully, we've put a big chunk of our
21 landscaping right here to protect Hanover Pike.

22 MR. NELSON: All right. So, let's talk about
23 comparing your image at 11-D with 11-H.

24 MR. THALER: You'll have to help me, Mr. Nelson.

25 MR. NELSON: All right. So, we'll go to Exhibit 11.

1 MR. THALER: What number, I have, I have numbers on
2 mine.

3 MR. NELSON: Oh, I'm sorry. It's, may I approach
4 the, Mr. Thaler? This is the one I, I think is, we call it H,
5 it has six in red (inaudible). Now, that's the reverse review,
6 view of 11-D, isn't it?

7 MR. THALER: Yes.

8 MR. NELSON: All right. Well, 11-D you said proves
9 A, you can't see the road from that site and also the converse
10 you said was true, that from the, from the road you can't see
11 that site. You just told me two seconds ago that 11-H is the
12 reverse view of 11-D.

13 MR. THALER: I drove up and down this road six times
14 as late as Saturday. You can't see the site. Because the road
15 sits below, I don't know where this is exactly taken from, but
16 the, the road sits below the level of the site and you can't
17 see the site.

18 MR. NELSON: Okay. So, let's just have, let me ask a
19 very simple question. We're looking together at what we call
20 11-H, also has a red numeral six on it. We can agree that's
21 Hanover Pike on the left, can we not? Sir, can we agree that's
22 Hanover Pike?

23 MR. THALER: Yeah, sure.

24 MR. NELSON: Okay and can we agree that that's, that
25 roadway we see there is this entrance here on Exhibit 1? That

1 turns off Hanover Pike and runs north along it parallel and
2 then bends around behind the trees?

3 MR. THALER: Yes.

4 MR. NELSON: Okay. So, then we can agree, can we
5 not, that the vista we see to the right is the site?

6 MR. THALER: Well, I don't know where this was taken,
7 but what I think this shows, I don't know, maybe he was
8 standing on the top of his car or something when he took this.

9 MR. NELSON: All right.

10 MR. THALER: But what this shows is that the site is
11 above the level of Hanover Pike. And so, that when you're in
12 your car, which I did, you can't see over this hill into the,
13 into the site.

14 MR. NELSON: All right. So, --

15 MR. THALER: That's the picture that I took to show
16 the effect on Hanover Pike.

17 MR. NELSON: All right. So, is it your testimony,
18 Mr. Thaler, that Exhibit 11-H, your packet has it red number
19 six, the photographer was standing on his car, holding the
20 camera up to deceive the fact finder?

21 MR. THALER: I don't know what it is, but that's not
22 what I, that's not what I visually saw --

23 MR. NELSON: Okay, okay.

24 MR. THALER: -- nor the picture that I took.

25 MR. NELSON: All right. So, this Exhibit 11-H,

1 number six, is not, you don't think accurately depicts the
2 condition of the site?

3 MR. THALER: That's correct.

4 MR. NELSON: All right. Now, can we agree that the
5 soils at this site are in the vernacular, prime and productive
6 soils?

7 MR. THALER: I don't know.

8 MR. NELSON: Well, if you don't know whether these
9 soils are prime and productive, you can't address the
10 comprehensive plan requirement that we preserve prime and
11 productive soils, can you?

12 MR. THALER: I have not looked up what these soils
13 are classified as.

14 MR. NELSON: All right. So, you have no opinion as
15 to whether the, the soil characteristics of this site, whether
16 using, taking the soil char, taking these soils out of the ag,
17 ag, agriculture, agricultural production is, let me rephrase
18 that. Because you don't know whether these soils are prime and
19 productive, you can't address how this plan addresses the comp
20 plans requirements for prime and productive soil?

21 MR. THALER: Well, sure I can, okay?

22 MR. SCHMIDT: Object, and I'm just going to object
23 for the record because I don't believe that's a criteria and I
24 think the Board has ruled that in other cases that the statute
25 does not require an analysis of whether a property is, has

1 prime and productive soils and should be used as a farms. And
2 I'm not sure if it's in the *Matthews* case, but I know at least
3 in the other cases that I reviewed deliberations on, the Board
4 has addressed that issue, it's not a criteria.

5 CHAIR: It isn't. Mr. Nelson, there, it's not a
6 criteria in the 4-F, right?

7 MR. NELSON: Well, I, I, I must say I disagree. The
8 Planning Board report on this subject said it's relevant. I,
9 I, --

10 CHAIR: Well, the Planning Board report was for the
11 purpose of putting a bill into evi, right? Putting a bill
12 through, right? I mean, wasn't that the, the purpose of it and
13 then the bill went through and then that really was actually
14 eliminated from the bill, is what I recall, from the other
15 cases. And actually, so, you know, it's, it's not a question
16 of what --

17 MR. NELSON: Well, we, we could have a legal debate
18 about what that Planning Board report means but what that
19 Planning Board report said was stay off prime and productive
20 soils.

21 CHAIR: Understood. But then, when the bill went
22 through, I think that that language was struck. Pretty sure
23 about that, but, I mean, from the case --

24 MR. NELSON: Well, we can argue, I think, I think, --

25 CHAIR: Okay.

1 MR. NELSON: -- the chronology is, is, you have the
2 chronology wrong but we can come back and argue that point
3 later on.

4 CHAIR: But it, but in any event, it's not in 4-F.
5 4-F does not require proof of its prime and productive soils or
6 not --

7 MR. NELSON: Well, 4-F, I'm sorry.

8 CHAIR: In other words, if it has prime and
9 productive soils, it can't be used for a solar facility, right?
10 There's no factor there, right?

11 MR. NELSON: Of course, 4-F doesn't specifically
12 address prime and productive soil. 502.1 is certainly broad
13 enough to include it.

14 CHAIR: Understood, okay.

15 MR. NELSON: All right. So, my question, sir, is you
16 don't know whether these soils are prime and productive?

17 MR. THALER: I would, if you say they are and you
18 looked them up, I would accept that. But I don't know myself.

19 MR. NELSON: All right. In your landscape plan, what
20 indigenous hardwood trees do you have?

21 MR. THALER: Asarubrum, October Glory, October Glory
22 Maple, Corpus Rubra, Red Oak.

23 MR. NELSON: All right. Those are all indigenous
24 hardwood?

25 MR. THALER: Yeah.

1 MR. NELSON: What evergreen trees do you have?

2 MR. THALER: Ilex opeca, American Holly, Juniperus
3 Virginia, Eastern Red Cedar, Pinus Strobus, White Pine.

4 MR. NELSON: All right. Who did the peer review of
5 your draft landscape plan?

6 MR. THALER: Avery, Avery Hardy.

7 MR. NELSON: Okay and do you have a document from
8 him?

9 MR. THALER: No.

10 MR. NELSON: Is there a document?

11 MR. THALER: I don't believe so.

12 MR. NELSON: He's in private practice?

13 MR. THALER: He's with Ken Wells now, after he left
14 the County.

15 MR. NELSON: Who, who met with Mr. Hardy?

16 MR. THALER: My office.

17 MR. NELSON: Um hm. Who in your office?

18 MR. THALER: Probably Stacy.

19 MR. NELSON: Um hm. Stacy McArthur?

20 MR. THALER: Um hm, yes.

21 MR. NELSON: Look at Exhibit 3, I think it's this one
22 here.

23 MR. SCHMIDT: If I can, I'm going to stand around so
24 I can see.

25 MR. NELSON: Yeah, all right. So, I have, I'm

1 holding for the witness Exhibit 2, this is the blow-up of the
2 landscape plan super imposed on the aerial photography, is that
3 a correct statement?

4 MR. THALER: Yes.

5 MR. NELSON: All right and this, this, the landscape
6 plan depicts the solar arrays?

7 MR. THALER: Yeah.

8 MR. NELSON: And it discuss, it also, the photograph
9 depicts, does it not, Mr. Elseroad called it a waterway, you
10 call it an agricultural --

11 MR. THALER: Agricultural channel.

12 MR. NELSON: -- channel.

13 MR. THALER: Swale.

14 MR. NELSON: Has anyone ever called it a stream? Any
15 professional looking at this site ever call that a stream?

16 MR. THALER: Yes.

17 MR. NELSON: Who?

18 MR. THALER: Well, there were apparently two other
19 engineers on this. One, there was, there was at least one
20 other engineer on this from Chicago that called it a stream.

21 MR. NELSON: Um hm.

22 MR. THALER: That's how we got the job, incidentally.

23 MR. NELSON: Well, let's look at that.

24 MR. THALER: Can I see it?

25 MR. NELSON: Yeah, I'm, I'm wondering, I have another

1 copy, I'm going put that, Mr. Schmidt, do you have a copy or do
2 you --

3 MR. SCHMIDT: Mr. Nelson, is this the one that
4 (inaudible) did?

5 MR. NELSON: Yes.

6 MR. SCHMIDT: Okay. I think I do have it.

7 MR. NELSON: So, this would be Protestant's one.

8 BOARD: One.

9 BOARD: Have you seen it, Mr. Schmidt?

10 MR. SCHMIDT: I have, I, I've seen it below, it was
11 introduced below.

12 MR. NELSON: Thank you. (inaudible) this is the same
13 copy.

14 BOARD: Put the sticker on that one.

15 MR. NELSON: Oh, okay, you want to switch --

16 MR. THALER: I've got the (inaudible).

17 MR. NELSON: (inaudible).

18 BOARD: Thank you.

19 MR. NELSON: So, I proffer for the record that
20 Exhibit 1 is a plat prepared by Soco Engineering. This is the
21 Chicago firm that Mr. Thaler --

22 MR. THALER: No, no, no, Larson Engineering.

23 MR. NELSON: Larson Engineering. And I would, this
24 was an exhibit below. There's no debate about the authenticity
25 of the document, there's some debate about whether the document

1 is right or wrong. We say it's correct, but I move it into
2 evidence and I want to ask the witness a few questions about
3 it.

4 CHAIR: Any objection?

5 MR. SCHMIDT: I, I, Ms. Murphy, it was offered and
6 admitted below and I think, technically, it's part of your file
7 because of that. So, I don't know that I can object to it
8 because it's already in the file, as Mr. Thaler, I mean, well,
9 Mr. Thaler is going to ex, I have confidence in Mr. Thaler to
10 explain.

11 CHAIR: So, you object or you don't object? Well,
12 since you usually put the file in anyway, it seems to me that
13 you wouldn't be objecting.

14 MR. SCHMIDT: Yeah, I won't object for the record.

15 MR. NELSON: All right.

16 CHAIR: Okay, great.

17 MR. NELSON: All right. So, can we agree, Mr.
18 Thaler, that this was a plan prepared by a company prior to
19 yours for the subject property?

20 MR. THALER: Yes.

21 MR. NELSON: And the plan, at that point, was to
22 develop a solar facility at this site?

23 MR. THALER: Yes.

24 MR. NELSON: And this, may I look over your shoulder
25 because I only have two copies here?

1 MR. THALER: Sure.

2 MR. NELSON: This engineering firm documented the
3 existence of an environmental feature that tracks what you have
4 called the agricultural drainage area on Exhibit, I'm going to
5 point over here sir, that tracks the drainage area on Exhibit
6 2?

7 MR. SCHMIDT: Objection and the objection is to Mr.
8 Nelson's specific question that they documented the existence
9 and the point is they didn't document anything. They didn't
10 know what the hell they were doing and they called it a stream
11 and it's not. So, I object to the phrasing of the question.

12 CHAIR: Phrasing of it.

13 MR. SCHMIDT: That it was documented.

14 CHAIR: Of the question, okay. Over, over --

15 MR. NELSON: All right. Let me, let me --

16 CHAIR: -- over, overruled.

17 MR. NELSON: All right.

18 CHAIR: It's cross examination.

19 MR. NELSON: All right. So, Mr. Thaler, --

20 CHAIR: Go ahead.

21 MR. NELSON: -- I want to just look, ask you to look
22 together at the same time, Petitioner's Exhibit 2 is landscape
23 plan superimposed on the aerial photograph, which you told me a
24 moment ago depicts, among other things, what you call the
25 agricultural --

1 MR. THALER: Channel.

2 MR. NELSON: -- channel.

3 MR. THALER: Swale, channel.

4 MR. NELSON: Swale, that runs generally from the
5 north east corner, generally to the south west corner, right?

6 MR. THALER: Um hm.

7 BOARD: Was that a yes?

8 MR. THALER: Yes.

9 MR. NELSON: My question to you, sir, is with respect
10 to Protestant's Exhibit 1, the Larson Engineering plan, it
11 shows a feature that's in roughly the same location as the
12 agricultural drainage channel?

13 MR. THALER: Yes.

14 MR. NELSON: Okay and that engineering firm, excuse
15 me for leaning over your shoulder.

16 MR. THALER: No problem.

17 MR. NELSON: Calls that feature an existing
18 intermittent stream, does it not?

19 MR. THALER: It does.

20 MR. NELSON: Okay, all right. Good, thank you.

21 MR. THALER: You want me to explain it?

22 MR. NELSON: No. Now, that was the area that Mr.
23 Elseroad described as carrying water flow, was it not?

24 MR. THALER: Yes.

25 MR. NELSON: Okay. So, we have Mr. Elseroad

1 describing clean water flow coming down his property, we have
2 Larson Engineering describing an intermittent stream and you
3 say it's not a stream, it's a drainage, agricultural drainage
4 channel only.

5 MR. THALER: Yes.

6 MR. NELSON: Okay.

7 MR. THALER: Can I explain it now?

8 MR. NELSON: (inaudible). Now, I want to ask you
9 about Petitioner's Exhibit 1. And we can also, let me rephrase
10 it, let's, let's, let's stay with Exhibit 2. And I want to
11 direct your attention to the solar, solar facility on the
12 eastern quadrant, are there any that will, whose footprint will
13 be in what you call the agricultural drainage channel and what
14 the other engineering firm called the intermittent stream?

15 MR. THALER: Yes.

16 MR. NELSON: How many?

17 MR. THALER: Oh, I don't know, maybe one, two, three
18 maybe.

19 MR. NELSON: Right.

20 MR. THALER: Maybe (inaudible). Three, possibly a
21 piece of four.

22 MR. NELSON: Now, let me ask you about the site
23 generally. We have Hanover Pike that runs roughly north/south
24 on the west side of the property.

25 MR. THALER: Yes.

1 MR. NELSON: It's a scenic route under the,
2 designated by the comprehensive plan.

3 MR. THALER: Yes.

4 MR. NELSON: Okay. We have land that's zoned RC-2.

5 MR. THALER: You're making statements, I'm not sure
6 if these are questions.

7 MR. NELSON: There's a question mark at the end of
8 my, the land is not zoned RC-2?

9 MR. THALER: Is the zone RC-2? Yes. Okay.

10 MR. NELSON: Is that true?

11 MR. THALER: This is zoned RC-2.

12 MR. NELSON: Okay. You describe a gentle slope of
13 five percent from the south west corner going up to the north
14 east corner.

15 MR. THALER: Yes.

16 MR. NELSON: We can, can we not, look at the plans
17 and determine the elevations at other locations of the site.

18 MR. THALER: Is that a question?

19 MR. NELSON: Yes, it is.

20 MR. THALER: Yes.

21 MR. NELSON: All right. So, let me make, put on the
22 board what's going to be Protestant's Exhibit 2, it's going to
23 be a copy of the special exception plat and I got, can we
24 agree, sir, that this is a, feel free to look at it
25 (inaudible), this is a copy of the special exception plat.

1 MR. THALER: Okay.

2 MR. NELSON: And I'd like to have that marked as
3 Protestant's Exhibit 2, please.

4 CHAIR: Any objection?

5 MR. SCHMIDT: No. Just, just for clarification, Mr.
6 Nelson, is that the one that was approved by Beverungen or the
7 original one that was filed or, or, if you know?

8 MR. NELSON: The short answer is, I don't know.

9 MR. SCHMIDT: Okay. I have no objection. I, I
10 believe that's the one that was originally filed with the
11 Petition.

12 CHAIR: Thank you.

13 MR. NELSON: All right. So, Mr. Thaler, this plat
14 may have been amended but certainly the elevations didn't
15 change, right?

16 MR. THALER: Shouldn't.

17 MR. NELSON: Shouldn't. So, here's a magic marker
18 and I'm going to ask you to annotate this, please, and I'm
19 going to ask you to, to identify the elevations at certain
20 locations and let's just start at this location here and we'll,
21 I'm going to ask you what, what elevation that is there, take a
22 moment and look at, direct your attention, that's a six ten
23 line there and I want to be a little bit north of that. So,
24 that line there.

25 MR. THALER: What do you want me to do?

1 MR. NELSON: I want to mark the, tell us the
2 elevation at that location --

3 MR. THALER: You want it this or --

4 MR. NELSON: There?

5 MR. THALER: Where?

6 MR. NELSON: Right here, right where my finger is.

7 MR. THALER: (inaudible).

8 MR. NELSON: And what's the elevation? Here's a six
9 ten here.

10 MR. THALER: Six ten, that's six, probably six
11 twelve.

12 MR. NELSON: All right, okay. And let's go down here
13 to the south, right, excuse me, right --

14 MR. THALER: Why don't you mark it (inaudible).

15 MR. NELSON: Right here. What's that elevation?

16 MR. THALER: Five eighty, it looks like, like five
17 seventy-eight.

18 MR. NELSON: All right. The other was five seventy-
19 six but we won't quibble over that. Then the elevation here is
20 what?

21 MR. THALER: Six thirty, six thirty-two.

22 MR. NELSON: Okay and let's go to the elevation
23 there. Yeah, I have five eighty-eight also. Okay. Now, I
24 want to get a red pen, I have one here. And you gave us two
25 elevations, I don't have my notes here --

1 MR. THALER: Well, you covered it up. I marked it on
2 the other exhibit.

3 MR. NELSON: Right, but can we mark it on this?

4 MR. THALER: Can we find the other, is that one?

5 Okay. Well, you had asked Mr. Elseroad, you asked Mr.
6 Elseroad, I think, I think what was the rise, this was your
7 question, I'm trying to remember it.

8 MR. NELSON: Yes, sir.

9 MR. THALER: What was the rise from sort of the high
10 point, which I took at the array, --

11 MR. NELSON: Um hm.

12 MR. THALER: -- to the low point --

13 MR. NELSON: Okay.

14 MR. THALER: -- which I took at the array and --

15 MR. NELSON: Fair enough.

16 MR. THALER: -- and, okay and you'll see --

17 MR. NELSON: I, I see.

18 MR. THALER: -- here's my mark.

19 MR. NELSON: Okay. So, let's add those to this
20 exhibit, please. Do that in red.

21 MR. THALER: Okay, there. And oh, I don't know,
22 maybe there.

23 MR. NELSON: Okay and what are the, what's the
24 elevation up here, the north east corner?

25 MR. THALER: Let's say six thirty.

1 MR. NELSON: All right and then down here?

2 CHAIR: The record is not going to hear you. If you
3 can tell, okay, --

4 MR. NELSON: The witness said six thirty. Is that
5 right, Mr. Thaler?

6 MR. THALER: Yeah.

7 MR. NELSON: And down here is --

8 MR. THALER: Something like five eighty-two. Okay.

9 MR. NELSON: Five eight two.

10 CHAIR: Five eight two is where?

11 MR. NELSON: The south west corner.

12 CHAIR: Okay.

13 MR. NELSON: All right.

14 BOARD: Inside the, the array? Is that touching the
15 array or is it --

16 MR. NELSON: Just barely touching the, the bottom --

17 MR. THALER: Because what I thought the question was,
18 was what's the, what was the elevation just, what was the
19 elevation, a difference in elevation from the highest corner of
20 the array to the lowest corner of the array.

21 MR. NELSON: All right. One more to ask you. Let's
22 also, I marked the south east corner --

23 MR. THALER: Did you, you must know what this is.
24 (inaudible).

25 MR. NELSON: I thought, I got six oh six.

1 MR. THALER: (inaudible) six ten, I don't think so,
2 six ten, six, I say six twelve.

3 MR. NELSON: Okay.

4 MR. SCHMIDT: You're going, you're going to have to
5 say that again, I'm sure that didn't get picked up.

6 MR. NELSON: Six twelve.

7 CHAIR: Yeah, the record is just going to
8 (inaudible).

9 MR. NELSON: All right. He said it was six, I
10 thought it was six oh six, he said it was six twelve.

11 BOARD: So, the lower right hand corner of the array,
12 the altitude is six twelve.

13 MR. THALER: I can't find it. Where's the --

14 MR. NELSON: Six ten.

15 MR. THALER: Six ten.

16 MR. NELSON: Goes there.

17 MR. THALER: That's it, oh, we're going down, I'm
18 sorry, to six eight, sorry, six oh eight.

19 MR. NELSON: Six oh eight.

20 MR. THALER: Sorry.

21 MR. NELSON: All right.

22 BOARD: The lower right hand corner of the array.

23 MR. NELSON: All right. Okay, thank you. Now, you
24 calculated your slope going from the north east corner to the
25 south west corner by making a rough estimate of the distance

1 and dividing it by the --

2 MR. THALER: Run.

3 MR. NELSON: I'm sorry?

4 MR. THALER: Divide it by the length, the run.

5 MR. NELSON: Right, okay. So, if we do that
6 calculation for the other slopes, the difference between six
7 twelve and five seventy-eight, what do we get?

8 MR. THALER: I don't know.

9 MR. NELSON: All right. If I told you that we got a
10 slope of 12.12% you wouldn't disagree, would you?

11 MR. THALER: If you did it right.

12 MR. NELSON: All right. And if, I did it right.

13 MR. THALER: Okay.

14 MR. NELSON: So, you don't dispute that that slope
15 there from elevation of six twelve to an elevation of five
16 seventy-eight is in the range of 12.12%?

17 MR. THALER: If you say so.

18 MR. NELSON: All right and let's look at the slope
19 from, excuse me when I look at my notes here, I'm sorry. Six
20 thirty to five eighty-eight, we get a slope, you won't
21 disagree, that that slope is in the range of ten percent?

22 MR. THALER: If that's what you calculated.

23 MR. NELSON: Um hm. And you don't disagree that the
24 slope between the south east corner going down is a slope of
25 6.8%?

1 MR. THALER: Six point eight percent?

2 MR. NELSON: Right.

3 MR. THALER: Okay.

4 MR. NELSON: All right. Now, you know, you're
5 shrugging your shoulders, say well, you know, if it's true it's
6 true. But let's assume, hypothetically, I did it right because
7 I know I did do it correctly. All those are higher than the
8 number you gave, are they not?

9 MR. THALER: Yeah, but it was your question, Mr.
10 Nelson. It was your question to Mr. Elseroad, sort of if
11 you're looking at it, you know, if it's one of your clients and
12 you're looking at it here, I presume your question is, what's
13 the slope that you're looking at, was your question that I
14 answered. You can take two points, whether you take it
15 parallel to the slope, perpendicular to the slope, you can
16 create any, almost any slope you want. But this was your
17 question that I anticipated and I answered.

18 MR. NELSON: All right. So, but from an engineering
19 perspective, it's important to understand, in terms of storm
20 water management, all the slopes, isn't it?

21 MR. THALER: No, it isn't, okay? It's important to
22 understand the average slope, which is, you can't, you can't
23 take the flattest slope on a site and, you know, one spot
24 that's the steepest. You take the average slope on a site like
25 this or you take the, the slope at the time of concentration,

1 which is, it's a little bit technical but that's the path that
2 the water runs. That's the, that's the engineering slope that
3 you're interested with, not, not throwing a dart at the plan,
4 you know? And saying what's a slope.

5 MR. NELSON: So, what you're saying is, I gave you
6 three slopes which range between 6.8 and 12%, high to low. You
7 picked a slope, one slope, that you say had a slope of 5% and
8 you say yours is the average and mines not?

9 MR. THALER: It was your question, Mr. Nelson.

10 MR. NELSON: Yeah, I don't remember that. I don't
11 remember asking the question, give me the most shallow slope
12 you can find on that site. I don't remember asking that
13 question.

14 MR. THALER: No, the question you asked Mr. Elseroad,
15 as I best remember, you asked him what's the difference in
16 elevation, you didn't say slope, you said difference in
17 elevation from the lower left hand corner to the upper right
18 hand corner, that's what I calculated.

19 MR. NELSON: Um hm. This land is in the agriculture
20 preservation district, is it not?

21 MR. THALER: The district?

22 MR. NELSON: Yes.

23 MR. THALER: I don't know.

24 MR. NELSON: Okay and, therefore, you can't say
25 whether, if it is, whether it satisfies the requirements for

1 land in that district?

2 MR. THALER: I don't know, what I know is it doesn't
3 have an agricultural preservation easement on it.

4 MR. NELSON: Um hm, okay. Have you considered the
5 views from the surrounding property?

6 MR. THALER: Have I considered them? What do you
7 mean by that?

8 MR. NELSON: Well, have you, you've talked about how
9 this landscaping plan will soften the view.

10 MR. THALER: Yes.

11 MR. NELSON: You've argued, contrary to your client's
12 own evidence, you will be able to see the site from Hanover
13 Pike. My question is, have you done any analysis to answer the
14 question will you be able to see this facility from the
15 adjoining properties?

16 MR. THALER: I'm sure you'll be able to see it. I
17 have not done an analysis. We, we provided the required
18 landscaping and the perimeter landscaping and I've driven, you
19 know, up Not Fry Road and looked at all the surrounding houses
20 on, you know, on the road.

21 MR. NELSON: All right. Let me make sure
22 (inaudible). So, did I just hear you say that I am confident
23 that Nelson, your clients, will be able to see this site if
24 it's constructed and if we do the landscaping plan we propose
25 to do?

1 MR. THALER: This is not a wall. I'm sure they'll be
2 able to see something.

3 MR. NELSON: Okay. Will they be able, are they high
4 enough that they can look over any landscaping at the base?

5 MR. THALER: What's, what's the name of your client?

6 MR. NELSON: Which one?

7 MR. THALER: Who lives here again?

8 MR. NELSON: Mirabile.

9 MR. THALER: Mirabile? Well, he doesn't live there,
10 so I'm not sure from what point do you, he's got a big
11 property, I'm not sure from what point do you mean. Do you
12 mean from any point on his property?

13 MR. NELSON: Well, he'll testify that he and his wife
14 plan to construct a house. He'll tell you where the house is
15 going to be built.

16 MR. THALER: Okay.

17 MR. NELSON: All right? And my question is, will,
18 are the --

19 MR. THALER: Where, where's his house going to be
20 built?

21 MR. NELSON: All right, I'll show you. One moment,
22 please.

23 BOARD: Can you show Mr. Schmidt?

24 MR. NELSON: Yeah, yeah. Let me get a copy. Let me
25 have this marked as Protestant's Exhibit 3. For the record,

1 this was Protestant's Exhibit 5 at the ALJ hearing.

2 BOARD: Can you cover up the five, (inaudible)
3 confused? Thank you.

4 MR. NELSON: All right. This is an aerial photograph
5 that we got from Google Earth Pro showing the site and the
6 location of the existing house on the Mirabile property and the
7 location of where they're going to build a new house.

8 MR. SCHMIDT: Which, which one is which, Mr. Nelson?

9 MR. NELSON: B is the new site, A is the existing
10 site. And Google Earth Pro has a tool that allows you to, give
11 you a cross section of the change in elevation going from A to
12 B. Google called that location at six thirty-four, we had it
13 at six thirty-two.

14 BOARD: Which (inaudible)?

15 MR. NELSON: M-I-R-A-B-I-L-E, Santo and Debra
16 Mirabile.

17 BOARD: Thank you.

18 MR. NELSON: So, my question, sir, is based on your
19 knowledge of the topography, --

20 MR. THALER: Got a question?

21 MR. NELSON: Yeah. Based on your knowledge of the,
22 the topography, you would agree, sir, that if this facility is
23 constructed and if the landscaping is done as you propose it
24 will be done, someone standing at the location of the existing
25 house on the Mirabile property and also the location of the new

1 house, we'll be able to see the solar facility going up the
2 slope on the subject property?

3 MR. THALER: Well, from this exhibit, I'm not sure.

4 MR. NELSON: Hm.

5 MR. THALER: I would say that, well, the landscaping
6 requirements are not supposed to make this thing invisible.
7 That's not what the County Council wanted. They, they wanted
8 it to comply with the landscape, with 4-F, perimeter
9 landscaping and the landscape manual. And so, you're going to
10 be able, somebody is, somebody somewhere is going to be able to
11 see these facilities. But be that as it may, Mr. Nelson, as
12 best, well, first of all, Google Earth, to do any engineering
13 off of Google Earth is not accurate enough. But this cross
14 section, as near as I can calculate it, misses, you know,
15 misses basically all of the solar array on your cross section.
16 See, see the red line, how it's, how it's kind of close to the
17 property line? Certainly misses everything up here and I think
18 it misses everything down here on this lower right section.

19 MR. NELSON: So, if you're standing at that house
20 location, you're looking north, you only see twelve, a twelve
21 inch column a view straight ahead, you don't see anything to
22 the left or the right?

23 MR. THALER: Well, it's your cross section, you know?
24 This, this is a cross section, you know? Make an accurate
25 cross section, you know, that's accurate, we'll figure it out.

1 I can answer the question.

2 MR. NELSON: All right. So, you say that --

3 MR. THALER: This is your, this is your cross
4 section.

5 MR. NELSON: Um hm.

6 MR. THALER: First of all, I would never use a Google
7 cross section. It's not accurate enough, but even what it
8 shows, there's, there's no array in here.

9 MR. NELSON: Um hm. All right. Well, let's try
10 another one. This is, we'll have this marked as Protestant's
11 Exhibit 4 --

12 CHAIR: Are you going to bring these pictures in
13 through your witness when he comes up?

14 MR. NELSON: Yeah.

15 CHAIR: Okay. I wasn't sure Mr. Thaler could
16 identify these accurately as, as, we're just marking them --

17 MR. NELSON: Right, yeah. I thought we sort of
18 developed this culture of relative informality of (inaudible)
19 exhibits.

20 CHAIR: That's fine with, that's fine with me if Mr.
21 Schmidt doesn't object to the exhibit, that's, I just was
22 curious.

23 MR. SCHMIDT: Yeah, I mean, I, I don't doubt that
24 they were taken from Google Earth. I think Mr. Thaler has
25 said, I mean, I, I don't object to the authenticity that these

1 were taken from Google Earth. How reliable they were, the
2 witness has already said you don't engineer off of Google Earth
3 but.

4 CHAIR: So, you don't object to these coming in?

5 MR. SCHMIDT: I don't object to the admission of the
6 documents.

7 CHAIR: Okay. So, Protestant's three comes in.

8 MR. NELSON: All right.

9 CHAIR: I think he has a new Exhibit 4.

10 MR. NELSON: This Exhibit 4, which, for the record,
11 was Exhibit 8 below. We'll see if this addresses your concern
12 about were there any solar arrays within the, the line. This
13 is a line of sight from the south west corner looking up to the
14 north east corner, that Patrick and Thanikan Fales residence at
15 14533 and you will agree, sir, that someone standing at that,
16 at, at the, at that location in the north east corner will be
17 able to look down and see unobstructed the solar arrays?

18 MR. THALER: No, I don't think so, hm hm. Well, I
19 get, I think this is the house that Mr. Nelson is talking
20 about. There's not really anything up in this corner. There's
21 really nothing up in this corner right here and so, the array
22 is here and there's a line of existing vegetation that you can
23 see it right there. So, I'm, I'm sorry, Mr. McComas. So,
24 there's vegetation right there that is shown on the plan right
25 here.

1 CHAIR: The record is not going to know right here,
2 right there.

3 BOARD: Yeah. And if you could probably start with
4 where you think the house location is on that map.

5 MR. THALER: Okay. The house is to the north east of
6 the property. There is a line of existing landscaping just to
7 the south of the house and there is not much solar array up in
8 this upper right corner. And so, the, the question is, can I,
9 can I say that they're going to be able to see the solar array.
10 I don't know.

11 BOARD: So, Mr. Thaler, just for me, I think this is
12 exhibit what, your two or one, this aerial? Mr. Schmidt?

13 MR. SCHMIDT: Yeah, it is --

14 BOARD: This is the house that you're talking about
15 because I can't --

16 MR. SCHMIDT: It's Petitioner's exhibit number two.

17 BOARD: (inaudible).

18 CHAIR: Mr. Thaler, you're hitting the microphone.

19 BOARD: Yeah, you're hitting the microphone. So,
20 that's the, that's the house that you're talking about?

21 MR. THALER: Right, so there's, there's landscaping
22 there and not much array here. Can they see that? I don't
23 know. I don't know.

24 MR. NELSON: The landscaping that you're proposing to
25 plant will be how tall on the day of planting, how tall five

1 years after?

2 MR. THALER: It's all laid out here. The, the big
3 deciduous trees are two inch caliber. Now, I don't, this is
4 really Mrs. McArthur expertise to which caliber, but I don't
5 know, twelve feet or so, maybe.

6 MR. NELSON: Whoa, whoa, whoa, whoa. I object.

7 MR. THALER: I'm going to say I don't know.

8 MR. NELSON: Okay, fair enough. So, you don't know
9 how tall it will be when you plant and you don't know how tall
10 it'll be in five years, is that true?

11 MR. THALER: Well, not exactly. The, the, the
12 planting heights are all indicated on the plan for the various
13 plants. So, for instance, the evergreens are planted at six to
14 eight feet high. This comes right out of the landscape manual.
15 What I, what I personally don't know is how tall a two inch
16 caliber tree is. I just planted some but it's not really my
17 expertise. They grow as much as a foot a year, but that's a
18 question for Ms. McArthur if we want (inaudible) on that.

19 MR. NELSON: All right. Let me ask you a few
20 questions about 502.1, the famous 502.1. And I know you went
21 through A through I. A, of course, is the question of whether
22 it's detrimental to the health, safety, general welfare of the
23 locality involved. I want to ask a few questions about
24 locality. I'm not asking about conformance with 502.1-A, I'm
25 just asking questions related to the locality. Does the

1 subject property border a scenic road?

2 MR. THALER: Yes.

3 MR. NELSON: Is the subject property surrounded by
4 land on the north that's higher than it? Is the land to the
5 north higher --

6 MR. THALER: Everybody, every property has somebody
7 who's higher and somebody who's lower.

8 MR. NELSON: Well, no, I'm talking about borderings.
9 If the bordering property to the north is higher than the
10 subject property.

11 MR. THALER: Yes.

12 MR. NELSON: The land is in the agricultural
13 preservation area.

14 MR. THALER: I don't know.

15 MR. NELSON: You don't know whether the soils are
16 prime and productive.

17 MR. THALER: I don't know.

18 MR. SCHMIDT: Objection. Same objection as before.

19 MR. NELSON: You do know --

20 CHAIR: Okay, sustained. Go ahead.

21 MR. SCHMIDT: Okay.

22 MR. NELSON: You do know that there's a large farming
23 community in that part of Baltimore County?

24 MR. THALER: Yes, there's farming in this area.

25 MR. NELSON: Okay.

1 MR. THALER: Sure.

2 MR. NELSON: Now, 502.1-G addresses the consistency
3 with the zoning classification consistency with the spirit and
4 intent of the zoning regulations. I want to ask you factual
5 questions about this section. Not whether you think it, it
6 meets it, but factual questions. With respect to the zoning
7 classifications and with respect to the intent of the zoning
8 regulations, you can't tell us whether this is in an
9 agricultural preservation area or not, can you?

10 MR. THALER: I just don't know.

11 MR. NELSON: You can't tell us whether the soils are
12 productive or not, can you?

13 MR. SCHMIDT: Objection.

14 CHAIR: Sustained.

15 MR. NELSON: With respect to Section 4-F, the special
16 recollection, regulations, subpart 104-6, is the landscaping
17 buffer. Are you there?

18 MR. THALER: Go ahead.

19 MR. NELSON: Does the word soft or soften appear in
20 that section?

21 MR. THALER: It does not. It refers to screening of
22 scenic views, which this is not, where when you read the,
23 where, when you read the CMDP section on scenic view, my, our
24 interpretation, if you will, is not to prevent, is not, it
25 says, you don't have a wall so that you can't see anything, you

1 saw, you, our words, you soften and you filter the view.

2 MR. NELSON: All right. Well, now, Mr. Thaler, you
3 were referring to the second sentence of paragraph six, were
4 you not?

5 MR. THALER: Screening, yeah, yes.

6 MR. NELSON: That says screen, screening of State and
7 local scenic routes and scenic views is required in accordance
8 with the landscape manual.

9 MR. THALER: That's right.

10 MR. NELSON: I want to ask you about the first
11 sentence.

12 MR. THALER: Okay.

13 MR. NELSON: And your point is, that when you go to
14 the landscape manual, there's this theme of softening, that's
15 your point?

16 MR. THALER: CMDP, scenic view section.

17 MR. NELSON: Okay.

18 MR. THALER: Yes.

19 MR. NELSON: All right. I want to ask you about the
20 first sentence.

21 MR. THALER: Go ahead.

22 MR. NELSON: This talks about a solar facility that
23 is visible from adjacent residentially used property or public
24 street.

25 MR. THALER: Shall have perimeter screening, shall

1 have a landscape buffer. Actually, the word says landscaping
2 buffer shall be provided around the perimeter of any portion of
3 the facility that's visible from the adjacent residentially
4 used property.

5 MR. NELSON: I can read those words. My question is,
6 does the word soft or soften appear in that sentence?

7 MR. THALER: No, it appears in the next sentence.
8 It, it's, it's implied in the next sentence.

9 MR. NELSON: Okay and the next sentence talks about
10 scenic routes and scenic views, the first sentence speaks about
11 adjacent to residentially zoned land, residentially used land.

12 MR. THALER: Yeah, a perimeter landscape buffer, yes.

13 MR. NELSON: Madam Chair, may I just have two minutes
14 to speak with my client?

15 CHAIR: Certainly.

16 MR. NELSON: I may be, I think I'll streamline it.

17 CHAIR: Certainly.

18 (RECORDING PAUSED - 03:42:34 PM)

19 (ON RECORD - 03:46:02 PM)

20 CHAIR: All right, back on the record. Mr. Nelson,
21 do you have any other questions?

22 MR. NELSON: Just, just very briefly. Mr. Thaler,
23 you will agree, will you not, that special regulation 4-F-104
24 allows the Board of Appeals to consider the topography when
25 imposing certain conditions on any solar facility?

1 MR. THALER: Could you be more specific, what you're
2 referring to?

3 MR. NELSON: Paragraph ten.

4 MR. THALER: Paragraph ten. Yes.

5 MR. NELSON: All right. So, you interpret that
6 section to say that if the topography is such, that there are
7 differences in elevation, this statute, this ordinance gives
8 the Board of Appeals the authority to address the differences
9 in topography to make sure the screening is adequate.

10 MR. THALER: Well, I don't think it's even necessary
11 to say that. This is a de novo hearing, the Board of Appeals
12 can, can, if, if they want, approve with what really whatever
13 conditions they want to impose. And if the Board of Appeals
14 felt that there was some special condition necessary here, they
15 certainly have the authority to do it.

16 MR. NELSON: That's all I have. Thank you.

17 CHAIR: Okay. Any questions on re-direct?

18 MR. SCHMIDT: Just, just a couple. Mr. Thaler, let
19 me ask you about that very section Mr., that Mr. Nelson, do you
20 have that in front of you?

21 MR. THALER: Yes, I do.

22 MR. SCHMIDT: And that reads, does it not, in
23 granting a special exception, and I'm paraphrasing, the Board
24 of Appeals on appeal may impose conditions or restrictions on
25 the solar facility use as necessary to protect the

1 environmental and scenic views and to lessen the impact of the
2 facility on the health, safety and general welfare of the, of
3 the property. It indicates lessen the impact, does it not?

4 MR. THALER: Yes.

5 MR. SCHMIDT: It doesn't say eliminate all impacts on
6 the surrounding properties, does it?

7 MR. THALER: No, it doesn't.

8 MR. SCHMIDT: Okay. Let me ask you if I can, also,
9 the, you testified I think that the area of the special
10 exception was about nine and a half acres of the twenty acre
11 site, correct?

12 MR. THALER: Correct.

13 MR. SCHMIDT: But that's, the area of the special
14 exception is shown on the site plan, is it not?

15 MR. THALER: Yes.

16 MR. SCHMIDT: And is the area of the special
17 exception entirely made up of where the panels are?

18 MR. THALER: No.

19 MR. SCHMIDT: Okay. So, are there areas of the
20 special exception where there are no panels?

21 MR. THALER: Yes.

22 MR. SCHMIDT: For example, is the fifty foot buffer
23 from the panels to the, the fifty foot that's required, is that
24 also within the area of the special exception generally?

25 MR. THALER: Yes.

1 MR. SCHMIDT: Okay. So, the, it's not nine and a
2 half acres of panels as has been suggested?

3 MR. THALER: Correct.

4 MR. SCHMIDT: Okay. Let me ask you also if I can a
5 couple of things about the landscaping plan. Andrew, can you
6 hold this up for me? Mr. Nelson, I think, drew your attention
7 --

8 BOARD: Which exhibit are you looking at?

9 MR. SCHMIDT: I'm referring to Petitioner's exhibit
10 number ten, the landscaping plan. You testified there was
11 substantial screening in the area proposed near the access
12 drive, drive of Not Fry Road, correct?

13 MR. THALER: Yes.

14 MR. SCHMIDT: Is there also screening proposed north
15 of that location along the frontage in Hanover Pike?

16 MR. THALER: Yes.

17 MR. SCHMIDT: Along the area on the one ex, one
18 photograph I think was marked as six or eight or 11-H, is there
19 landscaping proposed in that area?

20 MR. THALER: Yes.

21 MR. SCHMIDT: And is there existing landscaping and
22 trees along Hanover Pike, even to the north of that?

23 MR. THALER: Yes.

24 MR. SCHMIDT: Similarly, up by the Fales property, is
25 there existing vegetation on our property, not the Fales

1 property, is there existing vegetation on our property to the
2 south of the Fales property?

3 MR. THALER: Yes.

4 MR. SCHMIDT: Will that be retained?

5 MR. THALER: Yes.

6 MR. SCHMIDT: Is there additional proposed
7 supplemental screening in that area?

8 MR. THALER: Yes.

9 MR. SCHMIDT: Okay, thank you.

10 MR. THALER: Was that picture you had a Google view?

11 MR. SCHMIDT: Yes.

12 MR. THALER: Okay. That, that explains the
13 discrepancy.

14 MR. SCHMIDT: How so?

15 MR. THALER: Well, apparently, apparently that
16 picture, which I didn't know who took it, is a, now that I
17 thought about it, is a Google view, is a print of a Google view
18 and Google view has this big thing on the top of the car, this
19 big camera, (inaudible), on the top of the car and that, I
20 couldn't explain how their view and the view I saw with my own
21 eyes didn't match. To be facetious, I said, standing on the
22 top of the car but, in fact, that's what it was. It's the
23 Google, the Google car on the top of the car.

24 BOARD: Is that the case in all those photographs in
25 that packet or is it just that one?

1 MR. THALER: Well, I, I did, I didn't take the
2 photographs and so I didn't know that somebody standing there
3 didn't take them. But apparently, other than A and B, which I
4 took, the, those, that's Google view.

5 MR. SCHMIDT: They're marked, Mr. McComas, in the top
6 left hand corner of the photos, that they're Google views. I'm
7 referring, Mr. Thaler testified that he took A, B and C, B and
8 C being the same thing.

9 MR. THALER: No, no, A and, oh, okay. I took two
10 pictures, A and B.

11 MR. SCHMIDT: And then if you look at the one
12 starting D, actually if, if you look at D, right above the
13 number two at the bottom it says Google, see it? And then in
14 the top left hand corner, it shows that it's Google. If I can
15 approach I'll show you what I'm talking about.

16 BOARD: No, I see it, I got it.

17 MR. SCHMIDT: You see what I'm talking about? So,
18 all those other ones are actually Google views because they all
19 have that same language in the, that black, sort of black box
20 in the top left hand corner of the photo that says Google.

21 MR. THALER: Okay. In fact, there's, there's a hill
22 that, in fact, Hanover Pike is depressed --

23 CHAIR: Did you, did you, were you asking a question?

24 MR. NELSON: No, you know, now it's just a free for
25 all.

1 CHAIR: Okay. We, we, yeah, we just want to direct,

2 --

3 MR. SCHMIDT: Okay.

4 CHAIR: -- (inaudible) couple re-direct questions.

5 MR. SCHMIDT: All right. Let me, let me refer Mr.
6 Thaler to Petitioner's Exhibit 11-H, which I believe also says
7 the numeral six at the bottom of it, which was the photograph
8 that I think Mr. Nelson referred you to, did he not?

9 MR. THALER: Yes.

10 MR. SCHMIDT: And can you explain, if you know, why
11 that photograph is not consistent with what you believe you saw
12 when you were there?

13 MR. THALER: Okay. This is not consistent with what
14 I saw, it's what I got (inaudible) up with Mr. Nelson in. What
15 I saw is that Hanover Pike is dis, depressed with respect to
16 the property and there's a certain amount of foliage up there
17 and you really can't see the property in either direction, you
18 can't see 30, Hanover Pike or the property either way. And I
19 reflect that on the picture that I took with my own eyeballs.
20 I couldn't explain this, but now that explains it. This must
21 be taken from a very, you, this must be taken, this, this does
22 not accurately reflect what I saw out in the field, let me say
23 it that way. And because it's Google, I, I wouldn't place too
24 much accuracy on Google.

25 MR. SCHMIDT: It's our fault for introducing it.

1 CHAIR: Well, these are, these are your exhibits, so.

2 MR. SCHMIDT: These are our exhibits.

3 MR. THALER: I'm impeaching our own exhibits.

4 MR. SCHMIDT: Ms. McArthur, we'll have to blame her
5 and she's not here. Okay, so we'll blame Ms. McArthur.

6 CHAIR: They're in, all right, they're in evidence.

7 MR. SCHMIDT: She was the one that produced those
8 photographs. Okay. I wanted to ask you about the Socor plan.
9 You, you were preparing to offer an explanation about that plan
10 but let me ask a couple of questions. This is, I believe,
11 Protestant's exhibit number one, is it not?

12 BOARD: Yes.

13 MR. SCHMIDT: This plan apparently was prepared by
14 Larson Engineering, correct?

15 MR. THALER: Apparently.

16 MR. SCHMIDT: At least they're, they're the ones who
17 name appear on the top right hand corner of the plan. Their
18 address is listed as Naperville, Illinois, is that correct?

19 MR. THALER: That's correct.

20 MR. SCHMIDT: Okay. Mr. Thaler, do you, first of
21 all, this plan proposes a solar facility and the actual panels,
22 panels on the entire property, does it not?

23 MR. THALER: Correct.

24 MR. SCHMIDT: So, this plan proposed to cut down all
25 the trees in the north of the property and construct solar

1 facilities there, did it not?

2 MR. THALER: Yes.

3 MR. SCHMIDT: It also proposed to have the solar
4 facility located in this portion of the, in this portion of the
5 site near where you identified certain wetlands, did it not?

6 MR. THALER: Yep.

7 MR. SCHMIDT: Okay. It also proposed, it also
8 identified --

9 MR. THALER: I'm sorry, yes.

10 MR. SCHMIDT: -- it also identified a, a, a quote,
11 inner, existing intermittent stream running through the
12 property, did it not?

13 MR. THALER: Yes.

14 MR. SCHMIDT: And, and that is in essentially the
15 same location as the agricultural waterway, did it not?

16 MR. THALER: It is the, it apparently is the
17 agricultural waterway.

18 MR. SCHMIDT: Okay. It also showed a quote, fifteen
19 foot stream buffer typical from that stream, did it not?

20 MR. THALER: Um hm.

21 MR. SCHMIDT: It, what is the --

22 MR. THALER: Sorry, yes.

23 MR. SCHMIDT: What is the requirement for a buffer
24 for a stream?

25 MR. THALER: Well, this plan is all screwed up.

1 MR. SCHMIDT: Okay.

2 MR. THALER: (inaudible).

3 MR. SCHMIDT: And can you explain why?

4 MR. THALER: (inaudible) get out of here.

5 MR. SCHMIDT: Yes.

6 MR. THALER: Okay. So, Socore, Socore, or Socore
7 called us up probably in late 2017, I think. Socore is a
8 Chicago energy company and they said we're having a lot of
9 trouble without --

10 MR. NELSON: Object to the hearsay.

11 CHAIR: Yeah, it just, you, just, you can probably
12 just cut most of this --

13 MR. SCHMIDT: Yeah, don't say what they told you.
14 What was your understanding.

15 CHAIR: Yeah.

16 MR. THALER: Okay. They're having, they're having
17 trouble, they said, can I help them and they send me this plan
18 and this plan doesn't look right to me, okay? It's got a
19 stream coming down the middle. I've been doing this for fifty
20 years, it didn't look, it didn't look right. A stream, streams
21 usually don't occur until you have somewhere between thirty and
22 seventy-five acres of drainage area draining to them. Then you
23 have sufficient ground water to get a stream. It didn't feel
24 right. So, I went out to the site and I used my stream
25 detector, which are my boots. My boots were completely dry out

1 here and I called them up and I said, there's no stream,
2 there's no stream here. And, in fact, what you have is you
3 have an Illinois engineer, doesn't know what he's doing in
4 Baltimore County.

5 First of all, it's more than two megawatts, you know,
6 you can only go to two megawatts. Second of all, he takes down
7 all the trees, you know, absolutely all the trees. He's got
8 the wetlands. He shows, he shows the wetlands correctly but
9 the buffers are wrong. He's got a fifteen foot stream buffer
10 and a twenty-five foot wetland buffer. Well, they're seventy-
11 five feet and a hundred feet in Baltimore County. This guy is
12 an Illinois guy, he didn't know what he was doing. This plan
13 is complete, I don't want to use an expletive, it's, this plan
14 is completely worthless. That's what I told him, we got hired,
15 we fixed it.

16 MR. SCHMIDT: I have no other questions of Mr.
17 Thaler.

18 CHAIR: Okay. Any other questions of Mr. Thaler, Mr.
19 Nelson?

20 BOARD: You got any other questions?

21 MR. NELSON: No.

22 CHAIR: Okay.

23 BOARD: I, I have a couple.

24 CHAIR: Okay.

25 BOARD: So, in your professional opinion, is the

1 swale manmade?

2 MR. THALER: Oh, it's definitely manmade.

3 BOARD: Okay.

4 MR. THALER: I'm not sure if Mr. Elseroad testified
5 to it, he made it. It's definitely manmade.

6 BOARD: And then, just for, for, for, to, and you
7 just kind of answered it there, but let's say it was a stream,
8 the setback is how far?

9 MR. THALER: Seventy-five feet on either side.

10 BOARD: And in the diagram here, there looks like
11 there's some space in between the rows anyway. So, let's say
12 it was a stream and let's say it was seventy-five, how far
13 would that all, how, how, how many of the, how far would that
14 cut into where the arrays are, can you tell from that map?
15 You understand my question? Is, assuming the thing, it looks
16 like there's already a little bit of a setback. Assuming it is
17 a stream, --

18 MR. THALER: It, it might be a little bit.

19 BOARD: Like how close are you to that setback
20 anyway?

21 MR. THALER: If it were a stream, we'd need a hundred
22 and fifty feet. You've got, oh, I don't know, roughly a
23 hundred, you'd need twenty-five --

24 BOARD: So, sort of, it would be nibbling on the
25 array?

1 MR. THALER: You would nibble a little bit.

2 BOARD: Thank you.

3 MR. THALER: That's a tech, that's a technical term.

4 BOARD: Thank you.

5 CHAIR: Is that all?

6 BOARD: Yep.

7 CHAIR: Okay, all right. Any other questions? Okay.

8 I think we're finished with Mr. Thaler's testimony.

9 MR. NELSON: I'm sorry. (inaudible).

10 CHAIR: I'm sorry, Mr. Nelson, what's that?

11 MR. NELSON: I have one of the exhibits I was going
12 to return.

13 CHAIR: Oh.

14 BOARD: Yeah, I do need exhibit number four.

15 CHAIR: Mr. Thaler, is this yours?

16 BOARD: Is that this?

17 CHAIR: You were using this, I thought. (inaudible).

18 MR. THALER: I would never, I would --

19 CHAIR: Well, that's what I thought, but then it was,
20 I thought you took this out of your pocket. Oh, (inaudible).

21 MR. THALER: Mrs. Murphy, could you throw that away
22 and use mine?

23 CHAIR: (inaudible).

24 MR. THALER: Here, here. You won't have to disclose
25 this as a gift.

1 CHAIR: No, that's okay. You can, you can have it.
2 Okay.

3 MR. SCHMIDT: I think, Ms. Murphy, we're done for the
4 day, I believe.

5 CHAIR: Right, and we have all your exhibits in
6 evidence.

7 MR. SCHMIDT: Yes.

8 CHAIR: I think, believe Mr. Nelson's exhibits are
9 all in evidence.

10 MR. SCHMIDT: Yes.

11 CHAIR: And so, we have the next two days set in
12 July.

13 MR. SCHMIDT: Yes, and, let me just ask one
14 housekeeping, do you want me to keep these or take them off the
15 board and give them to Ms. Cannington?

16 CHAIR: I think we have to bring them in there.

17 MR. SCHMIDT: Okay.

18 CHAIR: Either way, however, --

19 MR. SCHMIDT: Sometimes Mr. Beverungen has asked us
20 to keep them because he doesn't like all these big boards
21 cluttering his office.

22 CHAIR: They're, they're very particular.

23 MR. SCHMIDT: But we'll put them in.

24 CHAIR: She likes to keep everything --

25 MR. SCHMIDT: No problem. Does she want, if you,

1 I'll ask her whether she wants them off the boards or not.

2 BOARD: Okay.

3 CHAIR: I don't think they mind, I don't think she
4 minds.

5 MR. SCHMIDT: Okay. We will hand them up, okay.

6 CHAIR: Oh, that's right. Did we want to start
7 earlier next time, just to make sure we're finished, I mean, --

8 MR. SCHMIDT: I'm fine starting at 9:00.

9 CHAIR: Would you like to start at 9:00, Mr. Nelson?

10 MR. SCHMIDT: That's okay with me. We might be able
11 to finish next time, I don't know, depending on how long Mr.
12 Nelson is going to take.

13 MR. NELSON: I mean, whatever the, whatever folks
14 want to do.

15 CHAIR: You're okay with 9:00, if we start then? Can
16 we agree on the --

17 MR. NELSON: Yeah, (inaudible).

18 CHAIR: Sure, 9:00.

19 MR. SCHMIDT: Yeah, 9:00 is good. We might finish
20 next time.

21 CHAIR: Okay.

22 MR. SCHMIDT: I should be fairly quick with both my
23 witnesses.

24 CHAIR: Okay. Sounds good. Okay, thanks very much.

25 MR. SCHMIDT: Thank you.

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CHAIR: Great job.

VOICES: Thank you.

(OFF THE RECORD - 04:01:53 PM)

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4 CERTIFICATE OF TRANSCRIBER

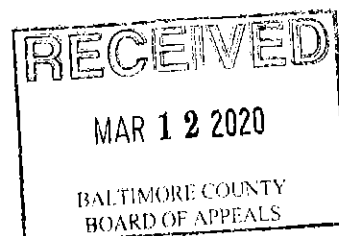
5 I hereby certify that the hearing in the matter of
6 Woodensburg Land and Cattle Company, LLC, Legal Owner and
7 Chesapeake Energy One, LLC, Lessee, case numbers 17-107-X and
8 CBA-19-018, heard before the Board of Appeals of Baltimore
9 County, May 2, 2019 were recorded by means of audiotape.

10 I further certify that, to the best of my knowledge and
11 belief, page numbers 1 through 219 constitute a complete and
12 accurate transcript of the proceedings as transcribed by me.

13 I further certify that I am neither a relative to nor an
14 employee of any attorney or party herein, and that I have no
15 interest in the outcome of this case.

16 In witness thereof, I have affixed my signature this 24th
17 day of February, 2020.
18
19
20

21 *Christine R. Leary*
22 Christine R. Leary
23 Transcriber
24
25



**WOODENSBURG LAND AND CATTLE COMPANY, LLC, LEGAL OWNER
CHESAPEAKE ENERGY ONE, LLC - LESSEE
CASE NUMBERS: CBA-19-018/17-107-X**

Pursuant to Notice, the above-entitled hearing was held before the Board of Appeals for Baltimore County at the Jefferson Building, Second Floor, Suite 203, 105 West Chesapeake Avenue, Towson, Maryland 21204.

WILLIAM A. MCCOMAS, BOARD

G. MACY NELSON, ESQUIRE

Christine R. Leary
3129 Hiss Avenue
Parkville, Maryland 21234

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1 (ON RECORD - 10:02:14 AM)

2 CHAIR: Okay. Good morning, everyone.

3 VOICES: Good morning.

4 CHAIR: (inaudible) rambunctious crowd. We're here
5 in the matter of Woodensburg Land and Cattle Company, LLC, this
6 is SGC Power, LLC, case number 17-107-X and this is day two of
7 the special exception case. Why don't we have attorneys for
8 the record?

9 MR. SCHMIDT: Sure. Good morning, Chairwoman Murphy
10 and members of the panel. I'm Lawrence E. Schmidt, with the
11 Law Firm of Smith, Gildea & Schmidt, with offices in Towson at
12 600 Washington Avenue on behalf of the Petitioners, property
13 owners in this matter.

14 CHAIR: Okay. Thank you, Mr. Schmidt.

15 MR. NELSON: Good morning. Macy Nelson on behalf of
16 the citizen, Protestants in this case.

17 CHAIR: All right and my notes reminded me that we
18 were still in the Petitioner's case.

19 MR. SCHMIDT: That's correct. I think in the first
20 day you actually heard from Mr. Elseroad, who is the principal
21 of Woodensburg, LLC, the owner of the property. Then you also
22 had testimony from Mr. Copus, who is wit SGC Power, which is
23 the company, which is, the solar company which is actually
24 involved in the construction and development of the site. And
25 then Mr. Thaler testified at some length, who is the

1 engineer/surveyor, whose company and firm prepared the plan
2 which I took the liberty of taking from your file. It's the
3 only one, the exhibit, the rest of them you should still have,
4 Ms. Joliet.

5 BOARD: Thank you.

6 MR. SCHMIDT: But I put it on the board and that's
7 Petitioner's number one. So, Ms. Murphy, --

8 CHAIR: Okay.

9 MR. SCHMIDT: -- just in terms of my case, I have two
10 more witnesses this morning. Mr. Leskinen, who is an
11 environmental expert and also Mr. Barrett, who is a glare
12 expert. That, I, and that would, I would anticipate conclude
13 my case, subject to any rebuttal that I'm going to have.

14 CHAIR: Blare is the last name?

15 MR. SCHMIDT: Barrett.

16 CHAIR: Oh, Barrett, sorry. Okay. And Mr. Nelson,
17 what do you think for your case? I know we have day two and
18 three scheduled, just trying to see where we are.

19 MR. NELSON: My, and my clients are hopeful that
20 we're going to conclude today.

21 CHAIR: Oh.

22 MR. NELSON: That's the goal. So, and I've chatted
23 with Mr. Schmidt about the schedule. So, we have (inaudible)
24 landscape expert who is here now and ready to go the moment the
25 Board is ready to hear from him when Larry, Mr. Schmidt

1 finishes his case. Then I have my citizen clients, but we have
2 no other expert witness per se and I do know that I met in the
3 hall this morning several citizens, who are not my clients, but
4 I understand that they wanted to address the Board. But I
5 don't know whether it's two or three of them and I don't know
6 the scope of their testimony but (inaudible) shouldn't be too
7 extensive, but we'll see. But they're not my clients.

8 CHAIR: Understood, okay.

9 MR. NELSON: So, we'll push forward to, as
10 efficiently as we can, you know? I'm hopeful.

11 CHAIR: Sounds like we're going to Thursday, just
12 adding up the numbers, probably will.

13 MR. SCHMIDT: Sure, just, yeah, --

14 CHAIR: I'm, I'm just --

15 MR. SCHMIDT: -- just, just in terms of the number of
16 people but we'll move as quickly as we can.

17 CHAIR: That's, that's fine.

18 MR. SCHMIDT: And we're, you know, we're at your
19 pleasure so.

20 CHAIR: And we probably need to get out of here
21 probably by 4:30.

22 MR. SCHMIDT: Today?

23 CHAIR: Is that all right?

24 BOARD: Four.

25 CHAIR: Four, four. I, four, we need to go at 4:00,

1 that's fine with me.

2 MR. SCHMIDT: Well, it is my wedding anniversary
3 today, so I have --

4 CHAIR: Uh oh, you're in trouble.

5 MR. SCHMIDT: -- dinner arrangements and I have to be
6 home for, for dinner.

7 CHAIR: Okay. That, you better not be late.

8 MR. SCHMIDT: I better not be late.

9 CHAIR: You better not be late. I'm not sure there's
10 air conditioning on in here either by the way, so I mean, this
11 is what we have. I don't know if everybody's, we can't open
12 the windows because I think it would be worse, so. It is what
13 it is. Mr. Thaler's already got his jacket off. All right.
14 Why don't we begin then?

15 MR. SCHMIDT: Okay.

16 CHAIR: Sounds good.

17 MR. SCHMIDT: Mr. Leskinen?

18 BOARD: Raise your hand. Do you swear and under the
19 penalties of perjury, that the testimony you're about to give
20 is true and correct to the best of your knowledge and belief?

21 MR. LESKINEN: I do.

22 BOARD: Please state your name, your business, your
23 address for the record and spell your last name.

24 MR. LESKINEN: My name is Henry Leskinen, L-E-S-K-I-
25 N-E-N, I'm with Eco Science Professionals, P.O. Box 5006, Glen

1 Arm, Maryland 21057.

2 BOARD: You sit down there and I guess adjust the
3 microphone so the computer here can pick you up.

4 MR. LESKINEN: Okay.

5 MR. SCHMIDT: Mr., --

6 CHAIR: And I believe Mr. Leskinen has been here
7 before?

8 MR. SCHMIDT: Yes.

9 MR. LESKINEN: Yes.

10 CHAIR: I believe and I, in other solar facility
11 cases. You're offering as an expert, I would imagine?

12 MR. SCHMIDT: Yes. I have a resume which I can hand
13 up, which I think would be exhibit number fourteen.

14 BOARD: That's correct.

15 MR. SCHMIDT: Do you want four --

16 MR. NELSON: Fourteen?

17 BOARD: Yes.

18 MR. SCHMIDT: Fourteen, I believe it is. Do you want
19 four copies (inaudible)?

20 BOARD: Yes, please.

21 MR. SCHMIDT: Okay.

22 BOARD: Thank you.

23 MR. SCHMIDT: If I can approach, I will --

24 BOARD: Thank you.

25 MR. SCHMIDT: -- hand them and I can certainly voir

1 dire the witness but I think Mr. Leskinen has testified before
2 you all a number of times. He is, as indicated at the
3 beginning of his resume, a certified wetland delineator with
4 certification and also qualified under the Forest Conservation
5 Act so he's an ecologist and I know has testified a number of
6 times before both the Administrative Judge as well as the, the
7 Board in other cases. So, Ms. Murphy, I can question him or
8 just offer him?

9 MR. NELSON: Well, may I be heard just briefly?

10 CHAIR: Sure. I just want to know first what is the
11 area that you're offering him and specifically, just so we have
12 it for the record, Mr. Nelson, you'll know.

13 MR. SCHMIDT: Yeah, as you might recall from the
14 first hearing, there's an area of the property, I'm going to
15 approach the site plan, which is exhibit number one --

16 MR. NELSON: No, what subject matter?

17 BOARD: We just need the subject matter.

18 CHAIR: That, the subject matter.

19 MR. SCHMIDT: Oh, okay. It's about the wetlands, or
20 the alleged wetlands, on the subject property.

21 CHAIR: So, you're, he's going, he's going to testify
22 in the area of wetlands?

23 MR. SCHMIDT: Yes, yes, ma'am.

24 CHAIR: As, as an ecologist?

25 MR. SCHMIDT: Yes.

1 CHAIR: Okay.

2 MR. SCHMIDT: And he's a, as indicated, he is --

3 MR. NELSON: No objection.

4 MR. SCHMIDT: -- objected, he is certified by the
5 Army Corps, I believe, who gives the certification.

6 MR. LESKINEN: Yes.

7 MR. SCHMIDT: Army Corps of Engineer, so he's going
8 to testify about the streams and wetlands on the property.

9 CHAIR: I just wanted to get the area correct.

10 MR. SCHMIDT: Yes.

11 CHAIR: Okay. So, there's no objection to his
12 expertise, Mr. Nelson?

13 MR. NELSON: No.

14 CHAIR: Okay. So, you don't need to voir dire.

15 MR. SCHMIDT: Okay. If he's accepted, that's fine.

16 CHAIR: He is.

17 MR. SCHMIDT: Okay. Mr. Leskinen, you are with Eco
18 Science Professionals, correct?

19 MR. LESKINEN: That's correct.

20 MR. SCHMIDT: And you're a principal of that company?

21 MR. LESKINEN: That's correct.

22 MR. SCHMIDT: Okay. Was there a time that your
23 company and you were retained as it relates to this project?

24 MR. LESKINEN: Yes, there was.

25 MR. SCHMIDT: Just, how long ago, if you have an idea

1 when that was, how long have you been familiar with this
2 property?

3 MR. LESKINEN: Since January of 2017.

4 MR. SCHMIDT: Okay and what were you asked to do as
5 it relates to this property and this application?

6 MR. LESKINEN: I was asked to go out to the site and
7 perform a wetland delineation of the property and also assess
8 any forest resources that were present on the property.

9 MR. SCHMIDT: Okay and in terms of that task or those
10 tasks, what, what do you do to do that? How's that happen?

11 MR. LESKINEN: I, I visit the site and perform a
12 field delineation of any wetlands and waters on the property.
13 Specifically what I do is I go out and look for evidence of
14 wetlands, hydric soils, hydrophytic vegetation, presence of
15 water, I do sampling across the areas of the site, looking at
16 all these parameters and when I find areas that meet all three
17 parameters, I define them as wetlands. Hydric soils,
18 hydrophytic vegetation and presence of hydrology.

19 MR. SCHMIDT: Okay.

20 MR. LESKINEN: And then for waters of the U.S., you
21 look for the same types of characteristics in a flowing
22 channel.

23 MR. SCHMIDT: Okay. So, and I think you've kind of
24 touched on this, but if you could just explain for the record,
25 wetlands is just not necessarily property that is wet, is there

1 a classification or a determination that some agency, the Army
2 Corps or Baltimore County, whoever, tells you how to judge
3 whether a property is a wetland?

4 MR. LESKINEN: Yes, there's a 1987 wetland
5 delineation manual and there have been supplements to that
6 manual that have been published. In this case, we would use
7 the 2012 supplement for the eastern mountains and piedmont
8 region.

9 MR. SCHMIDT: Okay.

10 MR. LESKINEN: Which just further defines the
11 criteria to use in that phys, physiographic region.

12 MR. SCHMIDT: Okay and what are, what the criteria?
13 I think you touched on them.

14 MR. LESKINEN: Yeah.

15 MR. SCHMIDT: But what, how does that work?

16 MR. LESKINEN: We're, we're looking for evidence of
17 plants that predominantly grow in wetlands.

18 MR. SCHMIDT: Okay.

19 MR. LESKINEN: We're looking for soils that indicate
20 the presence of ground water, saturation or surface water
21 ponding. Typically, those are identified by low cromas,
22 meaning grayish soils with modeling in the soils.

23 MR. SCHMIDT: Okay.

24 MR. LESKINEN: And then, hydrology obviously. At
25 different points of the year, there may or may not be visible

1 hydrology but we look for things such as evidence that the area
2 is ponding, the hydric soil suggests that ground water moves up
3 and down through the, the column. Obviously, the obvious
4 indicators are if you see surface water laying in a, in a wet,
5 you know, in an area with wetland plants and soils, you, you
6 have indicators, but there are times of the year where the
7 hydrologic component isn't always visible.

8 MR. SCHMIDT: Okay.

9 MR. LESKINEN: So, we have to use other secondary
10 criteria to make those determinations.

11 MR. SCHMIDT: Okay. So, it could be a dry summer but
12 it could still be a wetland?

13 MR. LESKINEN: It could still be a wetland, that's
14 correct.

15 MR. SCHMIDT: Okay and using that criteria in your
16 analysis here, and maybe you can approach the site plan on the
17 board, where are the areas, if any, on this property, Mr.
18 Leskinen, where are, where there are wetlands, wetlands or
19 streams or water res, whatever in your judgment?

20 MR. LESKINEN: I identified a pocket of wetlands up
21 here in a low spot at the head of this swale. This area
22 exhibited hydric soils, a marginal plant community but it did
23 make the criteria for hydrophytic vegetation and there was
24 evidence that hydrology --

25 BOARD: Can, can you, can you mark, can, can you, ca,

1 can you mark it?

2 MR. LESKINEN: -- was present at some time.

3 BOARD: Can you give him a different color? Can you
4 give him a --

5 MR. SCHMIDT: Yeah, let's make, if we can --

6 BOARD: Okay, okay.

7 MR. SCHMIDT: -- I think Mr. Thaler testified about
8 this on the first day and marked it in yellow.

9 BOARD: Oh, right, there's one down, oh, I'm sorry.

10 BOARD: Oh, it's the same? Okay.

11 BOARD: I, because I can't, I can't see it, there's a
12 glare.

13 MR. SCHMIDT: If there's any different, --

14 MR. LESKINEN: Yeah, I'll just --

15 MR. SCHMIDT: So, Mr. --

16 BOARD: Well, be consistent, be consistent, I think,
17 is, is, on the marking, right? Isn't that what you're saying?

18 MR. SCHMIDT: Yeah, well, I was saying Mr. Leskinen
19 can do it in pink and Mr. Thaler did it yellow.

20 BOARD: All right.

21 BOARD: Okay.

22 MR. SCHMIDT: So, you know who did what.

23 BOARD: Thank you.

24 MR. SCHMIDT: Okay, so you're actually go ing to
25 show, go ahead. Okay.

1 MR. LESKINEN: This was the one area that we
2 identified as a wetland. There was a second area down here,
3 which most of this was farmed. This was actually tilled, there
4 was a little area that wasn't tilled, but based on the fact
5 that there were soils and evidence of hydrology, we flagged it
6 as a farm non-title wetland, which was right there.

7 BOARD: Where it's marked yellow?

8 MR. LESKINEN: Yes.

9 MR. SCHMIDT: Okay.

10 MR. LESKINEN: And then we identified two stream
11 channels on the property. There's a stream head that begins
12 right in here, drain, comes down and drains underneath Not Frye
13 Road, through a fifteen inch culvert pipe and continues down to
14 a larger tributary to the north branch of the Patapsco that
15 runs right down here, along the Route 30 frontage.

16 BOARD: Is the south west corner of the property,
17 just to keep the record --

18 MR. LESKINEN: That's correct. In the south west
19 corner of the property.

20 MR. SCHMIDT: And, and it looks like that, that
21 stream or streams that you've described, Mr. Thaler had put on
22 there a red line marked FP for flood plain and is that the
23 streams associated with that flood plain?

24 MR. LESKINEN: That's correct. That flood plain is
25 most likely associated with this larger tributary to the north

1 branch of the Patapsco.

2 MR. SCHMIDT: Okay. So, it looks like your pink
3 markings are consistent with what Mr. Thaler described and
4 marked.

5 MR. LESKINEN: That's correct.

6 MR. SCHMIDT: Okay. Mr. Leskinen, there's an area
7 that there, we've heard some testimony about and some questions
8 from Mr. Nelson and I'm just going to refer to this, which is
9 the area where there are not solar panels proposed, which is
10 sort of in between and almost a line to the area of the, I'm
11 going to say the north east area of wetlands on the --

12 MR. LESKINEN: Um hm.

13 MR. SCHMIDT: -- as we're looking on the plain, sort
14 of the right side of the property and extends down to the
15 wetland area more on the southern portion of the property near
16 Not Frye Road. Are there wetlands in that area, as I'm
17 indicating?

18 MR. LESKINEN: No.

19 MR. SCHMIDT: There was testimony about that area
20 being a swale and Mr. Elseroad, who's the owner of the
21 property, talked about it was used or sometimes the property,
22 when it was farmed actively drains to that. Can you tell us
23 why that's not a wetland, what, what you look at there?

24 MR. LESKINEN: Well, it's neither a wetland nor a
25 stream. Again, we discussed the wetlands and the criteria that

1 are necessary for an area to be identified as a wetland. You
2 need the presence of hydric soils, hydrophytic vegetation and
3 hydrology. The vegetation in this swale is dominated by upland
4 plant species, dog bane, tall goldenrod, Kentucky fescue,
5 Kentucky blue grass, purple top grass. They're not wetland
6 species.

7 MR. SCHMIDT: Okay.

8 MR. LESKINEN: When you take soil borings through
9 this swale, and I took numerous borings to a depth of over two
10 feet with a hand auger, soil colors are bright. They're
11 typically two five wise, six four to ten YR six four, which is
12 kind of a yellowish orange color.

13 MR. SCHMIDT: Okay.

14 MR. LESKINEN: That indicates that iron is not
15 reducing in the soil because there's still the orange color,
16 there's oxidation. If water were saturating those areas, it
17 would pull the oxygen out of the soil and typically in those
18 situations the soil becomes gray.

19 MR. SCHMIDT: Okay.

20 MR. LESKINEN: You get a grayish color to the soil.
21 That's not present in there. Furthermore, there's no active
22 flow in there on a consistent basis. You go there after a
23 heavy rainstorm and there's water moving through that swale.
24 That's the purpose of the swale. It was a best management
25 practice for the farm field so that any sediment coming down

1 off of the farm field would have a chance to somewhat settle
2 out in the swale. But then once you get down here, you do
3 start picking up wetland characteristics. The soils start to
4 show the, the low matrix colors, the gray, the gray color and
5 ultimately you did pick up the head of a stream right down
6 here.

7 MR. SCHMIDT: Okay.

8 MR. LESKINEN: So.

9 MR. SCHMIDT: What's the best management practice, as
10 you use that term? What does that mean?

11 MR. LESKINEN: That's an agricultural practice to try
12 to minimize erosion off of farm fields, trying to protect water
13 quality of other wetlands and streams.

14 MR. SCHMIDT: Okay and would the, and would the use
15 of that channel or swale be a best management practice here?

16 MR. LESKINEN: Yeah, typically they're, they're put
17 in for that reason.

18 MR. SCHMIDT: Okay. Now, I'm, I have a, just a
19 smaller copy and it's very similar to the site plan. I'll
20 give, I'll mark this as Protestant's, I'm sorry, Petitioner's,
21 not Protestant's, number fifteen.

22 MR. NELSON: I didn't get a copy of fourteen. Do you
23 have an extra fourteen?

24 MR. SCHMIDT: Sure, yes, I do, I do. That's the
25 resume. Here you go, Mr. Nelson. And I marked the top one,

1 Ms. Jolivet.

2 BOARD: Thank you.

3 MR. SCHMIDT: I have four copies.

4 BOARD: Yes.

5 MR. SCHMIDT: Mr. Leskinen, and I know you've got the
6 site plan and this is a similar drawing but let me hand you a
7 copy as well.

8 MR. LESKINEN: Um hm.

9 MR. SCHMIDT: Did you put together a plan sort of
10 summarizing your conclusions insofar as where the environmental
11 resources were and where the stream and the wetland area, as
12 you've described, are located?

13 MR. LESKINEN: Yes, I did.

14 MR. SCHMIDT: And is that plan that you have in front
15 of you, is that, is that the plan that you've just described?

16 MR. LESKINEN: Yes, it is.

17 MR. SCHMIDT: Okay. Is there anything else on there
18 that you want to bring to the attention of the Board that you
19 haven't explained already? I don't want to be repetitious.

20 MR. LESKINEN: No, the only, the only thing I would
21 say is that as part of the County criteria, we were required to
22 establish a forest buffer around the, the wetlands and the
23 streams and we went ahead and did that in accordance with the
24 criteria established by Baltimore County.

25 MR. SCHMIDT: Okay and what is a forest buffer?

1 MR. LESKINEN: It is a protective zone around
2 wetlands and streams to help maintain the water quality of
3 those resources.

4 MR. SCHMIDT: And is any of the proposed development
5 here, in terms of the location of the arrays, does it, does,
6 does that proposal respect that buffer and has the buffer been
7 maintained from those areas.

8 MR. LESKINEN: Yes.

9 MR. SCHMIDT: Okay. Did you submit your findings to
10 Baltimore County and, if so, to what department?

11 MR. LESKINEN: I submitted them to the Department of
12 Environmental Protection and Sustainability.

13 MR. SCHMIDT: Okay and what, if any, feedback did you
14 get from that department regarding your plan and this, your
15 submission?

16 MR. LESKINEN: The department approved my submission.

17 MR. SCHMIDT: Okay. So, they approved the
18 delineation that, wetland and stream delineation that you --

19 MR. LESKINEN: Yes.

20 MR. SCHMIDT: -- marked as shown here?

21 MR. LESKINEN: Yes.

22 MR. SCHMIDT: Okay. You also indicated that you
23 analyzed, one of the things that you do as an ecologist is take
24 a look at forest.

25 MR. LESKINEN: Um hm.

1 MR. SCHMIDT: And just, can you tell us in terms of
2 this site what, if any, areas of forest there are and I guess
3 first of all, and how you determined that?

4 MR. LESKINEN: Well, the forest on the property I'm
5 going to point to the drawing, is along kind of the northern
6 north western portion of the site. There were two stand types
7 up there. A, a lot of the forest is a white pine plantation
8 that was planted out there many years ago. It's in okay
9 condition but there's a lot of dead fall in those pines. And
10 then there was a small area of, if I remember, of a mixed oak.
11 But that was a very small portion of the forest. The majority
12 of it was, was the white pines.

13 MR. SCHMIDT: Okay. Is any of this proposal located
14 in the area of forest or will it disturb that forest?

15 MR. LESKINEN: No, no forest will be disturbed under
16 this proposal.

17 MR. SCHMIDT: How about the area, how would you just
18 describe it from an environmental characteristic, the area
19 where the proposal and the arrays are proposed? Is it open
20 land or is it forested or are they --

21 MR. LESKINEN: It's been, it's been, it was formerly
22 crop field and when I originally did my work it was crop field.
23 The property owner has since stabilized it with a native seed
24 mixture to establish good cover on the property but it's open
25 and unforested.

1 MR. SCHMIDT: Unforested at this time.

2 MR. LESKINEN: Yes, sir.

3 MR. SCHMIDT: Okay. Thank you, Mr. Leskinen and I
4 don't have any other questions, Ms. Murphy. And I would offer,
5 if I haven't, exhibit number fifteen, which is, again, just Mr.
6 Leskinen's plan.

7 CHAIR: Any objection to fifteen?

8 MR. NELSON: No.

9 CHAIR: No objection. Cross?

10 MR. NELSON: Thank you.

11 MR. LESKINEN: Would you like me to sit --

12 MR. NELSON: Yeah, that'd be, whatever is most
13 comfortable, you can have a seat, Mr. Leskinen.

14 MR. LESKINEN: Okay.

15 MR. NELSON: You, you mentioned the far, the tree
16 stand on the northern edge of the subject property.

17 MR. LESKINEN: Um hm.

18 MR. NELSON: I want to direct your attention to that
19 and I, I imagine you've been there, you've walked through that?

20 MR. LESKINEN: Um hm.

21 MR. NELSON: You have to say yes or no for the
22 record.

23 MR. LESKINEN: Yes.

24 MR. NELSON: And you mentioned that you observed dead
25 fall, I think that was your phrase.

1 MR. LESKINEN: Um hm.

2 MR. NELSON: You have to say yes or no.

3 MR. LESKINEN: Yes.

4 MR. NELSON: What does dead fall mean?

5 MR. LESKINEN: That means trees that have died and
6 have fallen over.

7 MR. NELSON: All right and that's a traditional,
8 standard, unexpected and expected find when you walk through a
9 stand of tree, you'd expect to see some dead fall?

10 MR. LESKINEN: That's correct.

11 MR. NELSON: All right. So, now, there's a stand of
12 trees just off the southern edge of the property. You've seen
13 that, have you not?

14 MR. LESKINEN: Yes, I have.

15 MR. NELSON: And you'd expect dead fall in that stand
16 of trees, would you not, over time?

17 MR. LESKINEN: Over time, you'd expect some, that's
18 correct.

19 MR. NELSON: Right, okay. All right. Now, and there
20 are other causes of, events that cause trees to fall or die,
21 are there not?

22 MR. LESKINEN: That's correct.

23 MR. NELSON: All right and the operator of this solar
24 facility that's depicted on Exhibit 15 doesn't have control
25 over the stand of trees that's offsite, does he, or does it?

1 MR. LESKINEN: That's my understanding, he does not.

2 MR. NELSON: Okay. Now, let's look together at this
3 site plan in which you've delineated the, in pink, the, the
4 wetlands area and this, this sketch has it, this diagram has on
5 it, does it not, topal lines?

6 MR. LESKINEN: Correct.

7 MR. NELSON: And you're trained to read topal lines?

8 MR. LESKINEN: Correct.

9 MR. NELSON: And so we, together, can look at this
10 plat and we can delineate for the benefit of the board the low
11 point of the area, I won't use the word stream, swale, but the
12 area between where you say that when there's a rain event water
13 flows, we can delineate that on this map, can we not?

14 MR. LESKINEN: Correct, it can.

15 MR. NELSON: And the way we do that is we look at the
16 points of the topal lines. Now, I'm tracing the low point
17 there, am I not?

18 MR. LESKINEN: You are.

19 MR. NELSON: All right. So, let's together draw a
20 line and, and I'm going to show you where I'm going to draw it
21 and I want to make sure that you agree. I'm going to draw a
22 line that connects these points or these topal lines, all
23 right?

24 MR. LESKINEN: Okay.

25 MR. NELSON: And you agree that those depict the, the

1 low point of the land?

2 MR. LESKINEN: Correct.

3 MR. NELSON: Okay. So, I'm going to, I'm going to
4 start here, I'll start here at the, at the, at the north
5 eastern edge of your wetland, all right? Go there, that's
6 correct so far, right?

7 MR. LESKINEN: Um hm.

8 MR. NELSON: There, that's correct, am I right?

9 MR. LESKINEN: Actually, let me, I think I left my --

10 MR. SCHMIDT: Do you want a pair?

11 MR. LESKINEN: I, I have --

12 MR. NELSON: Take your time.

13 MR. LESKINEN: I just want to make sure I'm --

14 MR. NELSON: Yeah, yeah.

15 MR. LESKINEN: The age is getting to me.

16 MR. NELSON: Yeah, I, I, I,

17 MR. LESKINEN: I can see from two hundred yards but I
18 can't see from four feet.

19 MR. NELSON: All right. So, so what I'm going to do
20 here is draw a line that connects the low point of each topal
21 line and I want to make sure that I do it in a way that is
22 consistent with the way you interpret this map, okay?

23 MR. LESKINEN: Correct, okay.

24 MR. NELSON: And my goal is to do it accurately.

25 MR. SCHMIDT: Well, why don't you have the witness do

1 it?

2 MR. NELSON: Well, because he said he had a hard time
3 seeing. That's correct so far, right?

4 MR. LESKINEN: That's correct.

5 MR. NELSON: Correct?

6 MR. LESKINEN: That's fine.

7 MR. NELSON: Correct?

8 MR. LESKINEN: Yes.

9 MR. NELSON: Correct?

10 MR. LESKINEN: Yes.

11 MR. NELSON: Correct?

12 MR. LESKINEN: Um hm. Yes.

13 MR. NELSON: Okay.

14 MR. LESKINEN: You're a good artist.

15 MR. NELSON: Well, thank you. Can we agree that the
16 proposed location of the solar panel, panels is on top of the
17 low point of this land?

18 MR. LESKINEN: It appears that the edges of a few of
19 the arrays do touch that, yes.

20 MR. NELSON: All right. Well, you use the word
21 appears. I'm asking whether, in fact, if those, if this
22 illustration depicts the correct location of the solar panels,
23 is the solar, are portions of the solar panels on top of the
24 low point of this property?

25 MR. LESKINEN: Yes.

1 MR. NELSON: All right. And so, the low point, just
2 so the record is clear, is the point through which water flows?

3 MR. LESKINEN: Correct.

4 MR. NELSON: Now, you did your delineation when, Mr.
5 Leskinen?

6 MR. LESKINEN: January of 2017.

7 MR. NELSON: Have you been, have you done a
8 subsequent delineation subsequent to January of 2017?

9 MR. LESKINEN: I have not done a subsequent
10 delineation, but I have been to the site.

11 MR. NELSON: Okay. So, for example, well, on Jan, in
12 January of 2017, was there water flowing?

13 MR. LESKINEN: Not in that, not in that swale, no.

14 MR. NELSON: Okay. But in January 2017, that's the
15 day you took the augers of the soil?

16 MR. LESKINEN: Correct.

17 MR. NELSON: Have you augured the soil since January
18 of 2017?

19 MR. LESKINEN: Yes.

20 MR. NELSON: When?

21 MR. LESKINEN: Prior to our previous hearing before
22 the zoning commissioner.

23 MR. NELSON: All right. So, just so the record is
24 clear, we're talking about before the Administrative Law Judge?

25 MR. LESKINEN: Yes, correct. The day before.

1 MR. NELSON: And that was in September 2018, I
2 believe.

3 MR. LESKINEN: That's correct.

4 MR. NELSON: All right. So, so you did augers in
5 January of 2017 and then at some point in September 2018, plus
6 or minus a week or so.

7 MR. LESKINEN: Correct.

8 MR. NELSON: Since then?

9 MR. LESKINEN: No.

10 MR. NELSON: No. Okay. When you went back to the
11 site in September of two, and, and I'm not trying to pin you
12 down to a precise date, but that, the second visit, was there
13 water flowing in this swale area?

14 MR. LESKINEN: No.

15 MR. NELSON: All right. So, it's fair to say that
16 you have never seen water flowing in that swale area?

17 MR. LESKINEN: That's correct.

18 MR. NELSON: But you would agree that, that, that if
19 my client said there's water flowing there, that you wouldn't
20 dispute that fact, would you? That they had seen water
21 flowing?

22 MR. LESKINEN: Well, I'd have to see the evidence as
23 to when they said they saw it.

24 MR. NELSON: Right.

25 MR. LESKINEN: Because if it's immediately after a

1 rainfall, I would expect that there would be water in that
2 swale.

3 MR. NELSON: Um hm. Now, how many times have you
4 been to the site since September 2018?

5 MR. LESKINEN: Two times.

6 MR. NELSON: Two times. When were they?

7 MR. LESKINEN: Two weeks ago and last Friday.

8 MR. NELSON: All right. Did you test the soils on
9 those two visits?

10 MR. LESKINEN: No, I did not.

11 MR. NELSON: Did you see water flowing there?

12 MR. LESKINEN: Not in the swale.

13 MR. NELSON: All right. Did you see, you mentioned
14 certain trees. What trees did you see in that area, or grasses
15 did you see there, sir? I'm talking about the area that you
16 described as a swale between the wetlands.

17 MR. LESKINEN: Tall goldenrod, Kentucky fescue,
18 Kentucky bluegrass, dogbane and some purple top grass.

19 MR. NELSON: How about juncus, did you see juncus?

20 MR. LESKINEN: Not in that part of the swale.

21 MR. NELSON: Did you see juncus anywhere at this
22 site?

23 MR. LESKINEN: Yes.

24 MR. NELSON: Where? Could you describe that?

25 MR. LESKINEN: I saw juncus down in here, there was

1 some juncus here, there was actually a little bit scattered in
2 amongst the fescue here as I noted in the report. There was
3 some mix of wetland and upland plants here, but the soils and
4 hydrologic criteria didn't make it and that's where I saw
5 juncus in there. It may have been one or two scattered about,
6 they were in areas of hydric soil.

7 CHAIR: The record is not going to pick up here and
8 there.

9 MR. LESKINEN: Okay.

10 CHAIR: So, you might, Mr. Nelson, you might want to
11 make sure --

12 MR. LESKINEN: Okay.

13 CHAIR: -- that the record reflects what you, what
14 his answer is.

15 MR. LESKINEN: The juncus were seen within areas that
16 were delineated as wetlands and there were a few below this
17 area that were shown as non-wetland.

18 MR. NELSON: All right.

19 MR. SCHMIDT: Just for the record, that's, when you
20 said in this area, --

21 MR. LESKINEN: The wetland to, to the west of the
22 wetland at the southern end of the site.

23 MR. SCHMIDT: Okay.

24 MR. NELSON: All right. Let me ask you a very
25 precise question and I don't mean to be accusatory, I'm just

1 trying to make the record clear, I want to talk about the area
2 of what you characterize as swale, that's above the south west
3 wetland and below the north eastern wetland, the, the swale
4 that we drew with the black magic marker.

5 MR. LESKINEN: Um hm, yes.

6 MR. NELSON: Did you see any evidence of any juncus
7 grass in that area?

8 MR. LESKINEN: Yes.

9 MR. NELSON: All right.

10 MR. LESKINEN: One, one or two.

11 MR. NELSON: One or two.

12 MR. LESKINEN: Yes.

13 MR. NELSON: All right. Would you be kind enough to
14 mark on the plat, here's a magic marker, where you saw the
15 juncus between the wetlands?

16 MR. SCHMIDT: Mr. Nelson, how about if we do a
17 different color?

18 MR. NELSON: That's fine.

19 MR. SCHMIDT: Just so --

20 MR. LESKINEN: I'm not sure I can put the specific
21 location of it. I mean, there was a couple scattered in
22 amongst the upland vegetation.

23 MR. SCHMIDT: We can use, we can use red. We don't
24 have, we haven't used red yet. We used pink and yellow and
25 black.

1 MR. NELSON: Take your time.

2 MR. LESKINEN: Couple up through here.

3 MR. NELSON: Couple?

4 MR. LESKINEN: Yep.

5 MR. NELSON: All right. So, why don't, you have one
6 marked there, why don't you draw a couple marks there?

7 MR. LESKINEN: I'm just trying to recall, I think
8 there might have been one clump or so up in here.

9 MR. NELSON: All right and so the record is clear,
10 and you've made a couple marks in red, which are an indication
11 of where you have a memory of seeing juncus?

12 MR. LESKINEN: Yes.

13 MR. NELSON: Now, a juncus is a species of grass that
14 grows in hydric soil, does it not?

15 MR. LESKINEN: Predominantly in hydric soils, that's
16 correct.

17 MR. NELSON: Okay. Did you see any willow trees in
18 this area?

19 MR. LESKINEN: Yes.

20 MR. NELSON: And let's draw that in blue, just so it,
21 here's a, do you have a blue pen?

22 MR. LESKINEN: I saw some willow trees to the west of
23 the, the area in question.

24 MR. NELSON: All right.

25 BOARD: The southernmost?

1 MR. LESKINEN: Yes, the southernmost wetland.

2 MR. NELSON: Okay. Let me direct your attention, if
3 I may, Mr. Leskinen, to the area between the two wetlands that
4 you delineated on this plat. Did you see any willow trees in
5 the area of the swale that, that you, in the area of what you
6 characterize as swale, between the two wetlands?

7 MR. LESKINEN: I don't recall any there, no.

8 MR. NELSON: Mr. Leskinen, you did your formal
9 delineation in, I think you said, January of 2017?

10 MR. LESKINEN: That's correct.

11 MR. NELSON: And you've been in your field for how
12 many years, sir?

13 MR. LESKINEN: Thirty-three years.

14 MR. NELSON: Good for you. During the course of your
15 career doing this, and all doing those years you've been doing
16 wetlands work? You have to say yes or no.

17 MR. LESKINEN: Yes.

18 MR. NELSON: You've had occasion, have you not, to
19 re-evaluate a site during the course of your career? You,
20 you've had occasions where you've done more than one
21 delineation on a particular site?

22 MR. LESKINEN: Yes.

23 MR. NELSON: And you've had occasion to do that when
24 there's been a substantial passage of time before a formal
25 decision is made on what to do with the land?

1 MR. LESKINEN: That's correct.

2 MR. NELSON: Well, it wouldn't be unreasonable in
3 this case, would it, for your client to agree to a second
4 wetlands delineation to see if anything has changed since
5 January of 2017? That wouldn't be an unreasonable thing, would
6 it?

7 MR. LESKINEN: Well, actually, in my opinion, it
8 would be because wetland delineations are good for five years.

9 MR. NELSON: Um hm, all right.

10 MR. LESKINEN: And this one was approved in May of
11 2017.

12 MR. NELSON: All right.

13 MR. LESKINEN: So, there's no reason to revisit it.

14 MR. NELSON: All right. So, what you're saying is
15 that all you do is you look at a calendar, if you're less than
16 five years, you're here four years, eleven months, you're good
17 to go. If you're five years, one year, you're not five years,
18 one month, you're not, is that your point?

19 MR. LESKINEN: That's what the regulations are, but
20 quite frankly, in the thirty-three years that I've done
21 delineations, I, even on sites I re-evaluated, I've never seen
22 any substantive changes to wetlands. The biggest changes have
23 been around 2011 and '12 when they changed the manual and we
24 had to look at things a little bit differently. But when we go
25 out and review sites and redo them, typically the conditions

1 don't change that often unless there's been some significant
2 change in the watershed that wasn't there before, but
3 typically, wetlands don't change that much in short periods of
4 time.

5 MR. NELSON: All right. But you wouldn't object if
6 the Board has conditioned any approval, said do, do a repeat
7 wetland delineation, would you?

8 MR. LESKINEN: Again, I don't see what the purpose
9 is. I've done the delineation that's been approved.

10 MR. NELSON: So, my question is, would you object to
11 it? Why are you looking at, I'm --

12 MR. LESKINEN: No, I'm, what I'm saying is I, that's
13 not my decision to make.

14 MR. NELSON: Right, okay. Fair enough.

15 MR. LESKINEN: That's not my decision to make,
16 that's, that would be my client.

17 MR. NELSON: Right. May I have just one moment?

18 CHAIR: Sure.

19 MR. NELSON: May I have Protestant's Exhibit 1,
20 please? It's a plat. Now, you say you did your delineation
21 in, in January of 2017?

22 MR. LESKINEN: That's correct.

23 MR. NELSON: All right. Let me show you Protestant's
24 exhibit number one already in evidence. Feel free to come
25 forward and look at this together with me. Have you seen this

1 exhibit before? The question is, have you seen this exhibit
2 before?

3 MR. LESKINEN: Yes.

4 MR. NELSON: All right and what is the date that this
5 plat was prepared?

6 MR. LESKINEN: July of 2016.

7 MR. NELSON: All right. So this is roughly six
8 months, plus or minus, before you did your delineation and this
9 is a plat that was prepared by another engineering firm and
10 it's true, is it not, that it's the subject property?

11 MR. LESKINEN: That's correct.

12 MR. NELSON: And they document the low area on the
13 property, do they not?

14 MR. LESKINEN: They do.

15 MR. NELSON: And what do they, how, what phrase do
16 they use to characterize the lower area of the property?

17 MR. LESKINEN: They call it an existing intermittent
18 stream.

19 MR. NELSON: All right. Now, an intermittent stream
20 is a stream that flows some of the time, but not all of the
21 time, is that correct?

22 MR. LESKINEN: That's correct.

23 MR. NELSON: And an intermittent stream is supplied
24 by both surface water and ground water, is that right?

25 MR. LESKINEN: Yes.

1 MR. NELSON: And so, if the ground water elevation
2 rises, it can supply water to the stream channel, is that
3 right?

4 MR. LESKINEN: Yes, it has to, but it has to have
5 ground water influence.

6 MR. NELSON: At some point during the year?

7 MR. LESKINEN: That's correct.

8 MR. NELSON: Right. And when the water decreases,
9 there's no ground water influence at that particular, when the,
10 when the ground water elevation lowers it doesn't intersect the
11 stream though, right?

12 MR. LESKINEN: Correct.

13 MR. NELSON: All right. So, we know, do we not, that
14 ground water elevations fluctuate during the course of a year,
15 five years, ten years?

16 MR. LESKINEN: That's correct.

17 MR. NELSON: All right and we can go, can we not, to
18 the USGS database to get ground water elevations for this area
19 around here, can we not?

20 MR. LESKINEN: I would think you could, yes.

21 MR. NELSON: All right. Have you done that in this
22 case?

23 MR. LESKINEN: No.

24 MR. NELSON: All right. So, you don't know what the
25 ground water elevation is for this area, do you?

1 MR. LESKINEN: No.

2 MR. NELSON: You don't know how much the ground water
3 fluctuates during the course of a year in terms of the
4 elevation?

5 MR. LESKINEN: No.

6 MR. NELSON: And in, you would, if, if you looked at
7 that data, because we could do that together with a computer,
8 couldn't we?

9 MR. LESKINEN: Correct.

10 MR. NELSON: You've done that?

11 MR. LESKINEN: Yes.

12 MR. NELSON: Bring up the map, you find the nearest
13 well, you hit it, you look at the data, right?

14 MR. LESKINEN: Correct.

15 MR. NELSON: And then you go back twenty years,
16 right?

17 MR. LESKINEN: That's fine, correct.

18 MR. NELSON: All right and if you did that work prior
19 to this case, you and you saw that there was a fluctuation that
20 said ten feet in the elevation of ground water, that wouldn't
21 surprise you, would it?

22 MR. LESKINEN: Probably not.

23 MR. NELSON: All right and we also know that January
24 is not when most hydrogeologists think there's the seasonally
25 high water table, is it? Come on.

1 MR. LESKINEN: Probably not the highest water table.

2 MR. NELSON: Probably not. Of course not.

3 MR. LESKINEN: Right.

4 MR. NELSON: Right. In fact, the seasonal high water
5 table is usually May and June, isn't it?

6 MR. LESKINEN: Probably April and, March and April.

7 MR. NELSON: Okay. March, April, but not January.

8 MR. LESKINEN: Not January.

9 MR. NELSON: All right. So, you, the one time you
10 did your delineation, you picked a time of the year when the
11 ground water elevation was low probably, right? You didn't
12 check --

13 MR. LESKINEN: That's an assumption. You don't know
14 that. You don't know if it's low or not.

15 MR. NELSON: Whose got the burden of proof, you or
16 me?

17 MR. SCHMIDT: Objection. Objection. That's a legal
18 question, I mean, he's, whose got the burden of proof?

19 CHAIR: Overruled. Go ahead, it's cross, go ahead.

20 MR. SCHMIDT: Go ahead, Mr. Leskinen.

21 CHAIR: Go ahead.

22 MR. LESKINEN: Okay. That's, it, it could be lower,
23 that's correct.

24 MR. NELSON: It could be lower.

25 MR. LESKINEN: Right.

1 MR. NELSON: Well, for you to do, to, to really
2 scrutinize whether this is an intermittent stream or just
3 surface water flow would be helpful, would it not, for you to
4 know the ground water elevations?

5 MR. LESKINEN: Not necessarily, because, as I
6 indicated in my earlier testimony, if there was ground water
7 influence in the soil column, you would see it in the soils.
8 There would be hydric soil characteristics which are not
9 present.

10 MR. NELSON: And there would be hydric plant
11 characteristics, which are present, such as juncus?

12 MR. LESKINEN: But not dominant.

13 MR. NELSON: Not dominant, okay.

14 MR. LESKINEN: Not dominant.

15 MR. NELSON: Not dominant.

16 MR. LESKINEN: You can have a couple of, black
17 willows will grow in people's backyards that are upland lawns.

18 MR. NELSON: Um hm.

19 MR. LESKINEN: Just because there's one or two juncus
20 here and there in a community dominated by upland vegetation,
21 does not a wetland hydrophytic community make.

22 MR. NELSON: All right. That's all I have. Thank
23 you for your time.

24 MR. LESKINEN: Um hm.

25 CHAIR: Okay. Any re-direct?

1 MR. SCHMIDT: Yeah. Yeah, a little bit. Mr.
2 Leskinen, just if you can, go up to the plan.

3 MR. LESKINEN: Um hm.

4 MR. SCHMIDT: In the very top right corner of the
5 plan it has the name of the company, I think it's Socore
6 Engineering who prepared that plan apparently, is that correct?

7 MR. LESKINEN: Actually, it looks like it might have
8 been Larson Engineering.

9 MR. SCHMIDT: Okay.

10 MR. LESKINEN: As the consultant.

11 MR. SCHMIDT: And Socore as the engineer?

12 MR. LESKINEN: Yes. The client.

13 MR. SCHMIDT: Or that was the client, okay. And then
14 Larson prepared the plan?

15 MR. LESKINEN: Right.

16 MR. SCHMIDT: Does that show any kind of forest
17 buffer on the, for the alleged intermittent stream?

18 MR. LESKINEN: Yeah, it actually shows a fifteen foot
19 stream buffer, which I'm not sure where they got that from
20 because there's nothing in the County regulations that would
21 permit a fifteen foot stream buffer.

22 MR. SCHMIDT: What's a typical stream buffer?

23 MR. LESKINEN: In a use one water, waterway, it can
24 be anywhere from seventy-five to a hundred feet. Typically,
25 use three would be a hundred feet minimum.

1 MR. SCHMIDT: All right. So, that clearly the
2 engineer who prepared this had no idea what the County standard
3 is as it relates to forest buffers are?

4 MR. LESKINEN: That's correct.

5 MR. SCHMIDT: Okay. In terms of, you said you were
6 out there in January of '17 is when you did your analysis.

7 MR. LESKINEN: Um hm.

8 MR. SCHMIDT: Had you made a submittal at that time
9 to the County, is that, environmental --

10 MR. LESKINEN: That's correct.

11 MR. SCHMIDT: Did they ask for any revisions or
12 additional work before they approved it?

13 MR. LESKINEN: Yes.

14 MR. SCHMIDT: What was the nature of the additional
15 work?

16 MR. LESKINEN: They wanted a minor adjustment to the
17 wetland boundary. They wanted, on the lower wetland and the
18 southern end of the site, they wanted me to extend that wetland
19 finger up a little bit. There was a deep erosion cut there and
20 they thought that that was regulatory. I, I didn't necessarily
21 agree but we went ahead and, and placed it in as part of the
22 resource. And then there were some modifications to the buffer
23 analysis.

24 MR. SCHMIDT: Okay. Are those modifications and
25 revisions that you described, are they reflected on

1 Petitioner's exhibit number one and also fifteen, which is the
2 smaller drawing that we submitted, the one that you did?

3 MR. LESKINEN: Well, they're reflected on our
4 drawing.

5 MR. SCHMIDT: On, on Petitioner's Exhibit 1?

6 MR. LESKINEN: Yeah, these, these don't have the
7 correct buffers on.

8 MR. SCHMIDT: Okay. The, the Protestant's exhibit
9 doesn't have the --

10 MR. LESKINEN: Right, right.

11 MR. SCHMIDT: -- correct buffers. But the plan that
12 we've submitted in this case as number one, which is the one on
13 the board now, reflects all the revisions that you made at the
14 request of Environmental Protection?

15 MR. LESKINEN: That's correct.

16 MR. SCHMIDT: And with those revisions, is the, is
17 the proposed development, the arrays and the other development
18 of this site still with outside, outside the area of the
19 environmental resource and the associated buffers?

20 MR. LESKINEN: That's correct.

21 MR. SCHMIDT: Okay. I'm going to put this in and I
22 only have one copy. Maybe at a break I'll make some other
23 copies if that's okay. I'll show it to Mr. Nelson.

24 MR. NELSON: That's Exhibit 8 already.

25 MR. SCHMIDT: Is it in already? I didn't think it

1 was, I missed it. Oh, okay. I, I stand corrected, I didn't
2 see it.

3 MR. NELSON: Always trying to help.

4 MR. SCHMIDT: Yeah, thank you. Let me show it to
5 you, then it's in. I just missed it when I looked at the list.
6 And, Mr. Leskinen, just so it's clear, is this the letter that
7 you received in response from the Department of Environmental
8 Protection approving your delineation?

9 MR. LESKINEN: Yes, it is.

10 MR. SCHMIDT: Now, you did the delineation, as Mr.
11 Nelson indicates, in the beginning of 2017, in January, is that
12 correct?

13 MR. LESKINEN: That's correct.

14 MR. SCHMIDT: And you've been out there twice in the
15 last month or so?

16 MR. LESKINEN: That's correct.

17 MR. SCHMIDT: Have you seen anything while you've
18 been out on this site which leads you to conclude that you
19 ought to do another delineation, the conditions have changed or
20 something looks suspicious that you think a delin, another
21 delineation is warranted?

22 MR. LESKINEN: No.

23 MR. SCHMIDT: Okay and you said that the delineations
24 have basically a life span of five years?

25 MR. LESKINEN: That's correct.

1 MR. SCHMIDT: Where is that from? What's that
2 standard from? Who, who, who came up with five years?

3 MR. LESKINEN: State of Maryland, the Corps of
4 Engineers and Baltimore County has generally followed suit on
5 that as well.

6 MR. SCHMIDT: Okay and so, obviously, as you've
7 indicated, your delineation is two and a half years old at this
8 point in time?

9 MR. LESKINEN: That's correct.

10 MR. SCHMIDT: Okay. Insofar as, just to respond to
11 some of Mr. Nelson's questions, hydric soils, could soils
12 become hydric if they're not hydric? Is there a process by
13 which that works?

14 MR. LESKINEN: Yes.

15 MR. SCHMIDT: How long does that usually take?

16 MR. LESKINEN: It takes a long time for soils to
17 change to exhibit hydro characteristics. I mean, we're not
18 talking six months, a year or two, we're talking years.

19 MR. SCHMIDT: Well, fifty years?

20 MR. LESKINEN: Ten, twenty, thirty years.

21 MR. SCHMIDT: Okay. Okay. Any evidence that you saw
22 that the soils when you went out there even recently have
23 changed any kind of characteristic?

24 MR. LESKINEN: No.

25 MR. SCHMIDT: Okay. Yeah, would the, if, if there

1 were, if there were water consistently in that channel, would
2 that potentially cause the soils to change?

3 MR. LESKINEN: That would, that would be one of my
4 basis for calling it a stream, if there was hydric soils
5 present, I would note at some point in the year, ground water
6 was influencing that channel.

7 MR. SCHMIDT: Okay and we talked about juncus, which
8 is what, just for the record?

9 MR. LESKINEN: It's soft rush, it's a, it's a needle
10 like plant that can grow to about eighteen inches to two feet
11 in some places and it typically grows in very wet areas. But
12 it will also grow in areas where the soil is a bit compacted
13 and water can sit for a little bit, even though the soils are
14 not hydrated.

15 MR. SCHMIDT: Okay and that's what you saw out here
16 where you marked in red?

17 MR. LESKINEN: Right. Typically, in a lot of
18 wetlands, you get situations where you have both wetland and a
19 little bit of upland plants growing. In a wetland, you can
20 have the reverse. In an upland, you can have predominantly
21 upland plants and an occasional wet plant for whatever reason
22 grows there. But we're required, as part of the delineation,
23 to look at the dominant plant species to establish whether we
24 have hydrophytic vegetation.

25 MR. SCHMIDT: Okay, very well. Thank you, Mr.

1 Leskinen. I don't, I don't have any other questions.

2 MR. NELSON: Just a few follow-up, I'll be very
3 brief.

4 CHAIR: Based on those questions you do, okay.

5 MR. NELSON: Very brief. Mr. Leskinen, I'll be very
6 brief. I wanted to follow up on counsel's question about the
7 setback requirement. You were critical of the reference on
8 Exhibit 1 to a fifteen foot setback.

9 MR. LESKINEN: Um hm.

10 MR. NELSON: I'll direct your attention, that --

11 MR. LESKINEN: Yes.

12 MR. NELSON: All right and your point, sir, was
13 those, that they're wrong. In fact, it's probably a hundred
14 foot setback if, in fact, it's a stream.

15 MR. LESKINEN: If they had a stream, they would have
16 a setback, that's correct?

17 MR. NELSON: Okay and you, and I think you said that
18 if it were a stream, it would be a use three stream?

19 MR. LESKINEN: It's a use one stream.

20 MR. NELSON: I'm sorry, (inaudible)?

21 MR. LESKINEN: I, Mr. Schmidt asked me about buffers.
22 I said it was a use one stream, it could be seventy-five to a
23 hundred feet, which this is. This watershed here is use one.
24 If it was a use three, it could, the minimum buffer would be a
25 hundred feet. We were talking about buffers in a generic

1 sense. This watershed is use one p.

2 MR. NELSON: 1-P?

3 MR. LESKINEN: Yes.

4 MR. NELSON: You're certain?

5 MR. LESKINEN: Yes.

6 MR. NELSON: All right and, and buffer for a use one
7 stream is how many feet?

8 MR. LESKINEN: Minimum buffer would be seventy-five
9 feet and it can go beyond that, based on County protocol, steep
10 slope or vertical slope.

11 MR. NELSON: All right. So, let's just take the
12 minimum buffer. Is that measured from the center of the
13 stream, or is that from stream edge to edge?

14 MR. LESKINEN: Edge to edge, from the bank of the
15 stream.

16 MR. NELSON: All right. So, if we do the smallest
17 available buffer for use 1-P stream, P means it drains to a
18 reservoir?

19 MR. LESKINEN: Correct.

20 MR. NELSON: If we the minimum buffer from edge to
21 edge, you need to protect a hundred and fifty feet?

22 MR. LESKINEN: That's correct.

23 MR. NELSON: All right. Let's look together at this
24 plat and use your scale or use whatever technique you want, and
25 tell us how many feet separate the solar panels at the closest

1 location. Let's just take this right here.

2 MR. LESKINEN: So, it looks like it's probably, the
3 closest ones are probably about fifty to sixty feet apart.

4 MR. NELSON: All right. So, if it's a use 1-P
5 stream, you need a hundred and fifty feet and these solar
6 facility panels are closer than that together, are they not?

7 MR. LESKINEN: That's correct.

8 MR. NELSON: That's all I have, thank you.

9 CHAIR: All right.

10 MR. SCHMIDT: Thank you.

11 CHAIR: Thank you, sir.

12 MR. LESKINEN: You're welcome.

13 CHAIR: All right. Anyone need a break? No, good to
14 go?

15 MR. SCHMIDT: We're good.

16 CHAIR: All right. Next witness?

17 MR. SCHMIDT: I would call Steven Barrett.

18 BOARD: Do you swear and affirm under the penalties
19 of perjury, the testimony you're about to give is true and
20 correct to the best of your knowledge and belief?

21 MR. BARRETT: Yes, I do.

22 BOARD: Please state your name, your business, your
23 address for the record and spell your last name.

24 MR. BARRETT: It's Steven Barrett, B as in boy-A-
25 double R-E-double T, and my business is Barrett Energy

1 Resources Group and the address is P.O. Box 1004, Concord,
2 Massachusetts 01742.

3 MR. SCHMIDT: You can have a seat. Welcome to
4 Baltimore County, Mr. Barrett.

5 MR. BARRETT: Thank you.

6 MR. NELSON: Welcome.

7 MR. SCHMIDT: Mr. Barrett, tell, you've described, or
8 you've named your business, what's the nature of Barrett Energy
9 Resources Group? What, what's the type of business? What do
10 you do there?

11 MR. BARRETT: Broadly, I provide consulting support
12 to renewable energy companies. But a bulk of my work is
13 related to working with solar developers in airports to make
14 sure that solar facilities are sited safely and compatib,
15 compatibly with airports and protecting aviation receptors.

16 MR. SCHMIDT: Okay.

17 BOARD: Can you move the microphone closer to your
18 mouth so the recording will pick you up?

19 MR. BARRETT: Sure.

20 BOARD: Yeah, thanks.

21 MR. SCHMIDT: Okay and what's your occupation? I
22 mean, if somebody asks you what do you do, what, what do you
23 say you do? Are you an environmental consultant or a solar
24 consultant or what?

25 MR. BARRETT: I say I'm a renewable energy

1 consultant. But again, often times I'll specify that I do a
2 lot of work with airports and solar and that's kind of my
3 specialty.

4 MR. SCHMIDT: Okay. Can you tell us a little bit
5 about your educational background?

6 MR. BARRETT: Sure. I, you know, got a B.A. at Union
7 College, you know, searching for what I wanted to do, then got
8 a Master's at Univ, University of Virginia, spent five years
9 living in this area and, in environmental science and then from
10 there, went into environmental permitting, began specializing
11 in renewable energy.

12 MR. SCHMIDT: Okay. Do you have any type of
13 certifications or accreditations?

14 MR. BARRETT: I'm a LEAD credited professional so
15 that's basically supporting a lot of sustainability,
16 development and it incorporates a lot of renewable energy.

17 MR. SCHMIDT: Okay. Now, you've, you've talked
18 about, and Chairwoman Murphy, I'm, I'm going to have Mr.
19 Barrett testify about a glare analysis, which he reviewed and
20 approved. So, just to tell the Board and Mr. Nelson where I'm
21 going. But let me ask you, if I can, Mr. Barrett, can you give
22 us a little background. You mentioned you talked, you worked
23 with airports related to solar facilities and glare. Can you
24 tell us a little bit about that background work and in terms of
25 the standards that are used to analyze glare. If there are any

1 and how they, how they've developed. If you could just kind of
2 walk us through that.

3 MR. BARRETT: Sure. I mean, as a start, I was hired
4 by an aviation consulting firm about ten years ago because I
5 have experience in renewable energy and they were getting a lot
6 of questions from their clients, this was around 2008, 2009,
7 about solar and climate change and these types of questions.
8 So, basically, I came on to help them address these questions
9 for their clients and one of the first things the FAA did was
10 recognizing our specialty at the consulting firm, was to hire
11 us to develop the FAA solar guidance document. So, I became
12 the lead author, co-author, with Jake Plan (phonetic) of FAA in
13 Washington and that document, basically at that time, there had
14 been a few large solar projects at airports, primarily in
15 California and Colorado and the FAA wanted to understand from a
16 regulatory perspective what it should be advising airports that
17 wanted to do projects, as well as their regulators, how to
18 address potential impacts. So, that was kind of the genesis.

19 In that document, we recommended that the FAA come up
20 with some type of way to analyze glare because we had found
21 that airports were kind of working with the FAA ad hoc ways to
22 you know, say is glare going to be an issue, is there really
23 glare from solar panels. So, they were struggling with that
24 issue, so in that guidance document, we recommended that a
25 modeling program be developed.

1 MR. SCHMIDT: Okay. So, you were involved in the
2 preparation of this modeling program?

3 MR. BARRETT: Right. So, so shortly thereafter,
4 maybe three, two or three years after the guidance document
5 came out, the, I worked on a project with the National Academy
6 of Sciences that was looking at airports and energy technology
7 and making sure that, that energy technology was being cited in
8 a safe way, including solar, and as part of that project, we
9 worked with (inaudible) national laboratories, part of the
10 Department of Energy to analyze the reflectivity of ten
11 commercially available solar panels. That reflectivity data
12 was incorporated into the solar glare hazard analysis tool,
13 which was developed by Sandia (phonetic) and then I was asked
14 to pilot test, pilot as in test the modeling software.

15 MR. SCHMIDT: Not fly a plane?

16 MR. BARRETT: Not fly a plane.

17 MR. SCHMIDT: Okay.

18 MR. BARRETT: And to, to test that model before it
19 was fully related to the public, which I did. And then the FAA
20 released a policy and requirement to use the tool in October
21 2013 and that's the industry standard right now.

22 MR. SCHMIDT: Okay. Have you published any type of
23 articles or journals about the work that you've described as it
24 relates to solar facilities and glare analysis and the issues
25 that you've described with the FAA?

1 MR. BARRETT: Yes. I've published four other reports
2 funded by the National Academy of Sciences, which manages the
3 FAA's research program. So, I've been the lead offer on four
4 of those reports related to renewable energy and airports,
5 which addresses business opportunities, safety, business
6 planning, all, all those types of issues.

7 MR. SCHMIDT: Okay. Now, you told me this morning
8 you had never been to Towson, Maryland this morning. So,
9 obviously, you've never testified before any type of body or
10 Court in Baltimore County, is that correct?

11 MR. BARRETT: That's correct.

12 MR. SCHMIDT: Have you testified in any other states
13 before any body, any type of legislative or quasi-judicial or
14 judicial bodies about glare and about your work with the FAA
15 and your assist, your part of the development of the modeling
16 and the analysis that's used.

17 MR. BARRETT: Right. Yeah, I've test, I, yes, I've
18 testified in North Carolina, New Jersey and Massachusetts
19 before County and local Boards on, specifically on the issue of
20 solar glare.

21 MR. SCHMIDT: And were you accepted as an expert
22 witness in those cases?

23 MR. BARRETT: Yes, I was.

24 MR. SCHMIDT: Okay. I'm going to show you, and I'll
25 hand this, I think we're up to sixteen, Ms. Jolivet, I believe?

1 BOARD: Yes, you are.

2 MR. SCHMIDT: Okay. Give one to Mr. Nelson. Now,
3 Mr. Barrett, I'm going to hand you a copy of a document and
4 just ask if you can identify that.

5 MR. BARRETT: Yes, this is my resume and list of
6 publications that sub, substantially represent my
7 qualifications.

8 MR. SCHMIDT: Okay and some of those publications are
9 among the ones that you had referenced, that you had
10 participated in as either the lead person or a joint author as
11 it related to glare issues and the development of the modeling
12 by the FAA?

13 MR. BARRETT: Yes, that's correct.

14 MR. SCHMIDT: Okay. I would offer Mr. Barrett as an
15 expert witness. Obviously he's going to, this is sort of an
16 unusual field of endeavor, but he's going to testify about a
17 glare analysis that was done in this case and how that was put
18 together and its results and that will be the nature of his
19 testimony.

20 CHAIR: Any voir dire?

21 MR. NELSON: Yeah, I have a few questions.

22 CHAIR: All right.

23 MR. NELSON: Good morning, Mr. Barrett.

24 MR. BARRETT: Good morning.

25 MR. NELSON: The solar guidance document, you, you

1 were the lead author over on that?

2 MR. BARRETT: I was, yes.

3 MR. NELSON: All right.

4 MR. BARRETT: Co-author with Jake Plan from the FAA.

5 MR. NELSON: Um hm and if we had a copy of that
6 document now, if we looked at that, we would draw the
7 conclusion that this is a document that talks about the effect,
8 if any, of solar panels on a pilot's ability to, to fly a plane
9 safely?

10 MR. BARRETT: It covers a lot more than that. But it
11 covers primarily from glare impacts on what we call aviation
12 sensitive receptors, we're looking at pilots on final approach
13 to an airport as well as air traffic control towers, which are
14 stationary receptors on the ground. But you can look at any
15 other types of, of aviation receptors. I've been asked by
16 airports to look at control towers that are operated by
17 airlines on airport or other points on the airport facility.

18 MR. NELSON: But the point, and I don't say this
19 critically, but I'm just trying to understand, the, the, the
20 thrust of the article was to try to provide a guidance document
21 to help analyze the effected glare on aviation receptors?

22 MR. BARRETT: That's correct.

23 MR. NELSON: Okay and what's the typical height of an
24 aviation receptor?

25 MR. BARRETT: Again, it can be any. As I mentioned,

1 the regulations or the policy, requires you to look at pilots
2 on final approach and air traffic control towers. I've looked
3 at air traffic control towers probably as low as maybe fifty
4 feet.

5 MR. NELSON: Fifty feet?

6 MR. BARRETT: Yes.

7 MR. NELSON: So, fifty feet above, you mean a solar
8 panel?

9 MR. BARRETT: Fifty feet above ground elevation. So,
10 wherever the, the air traffic control tower is, the height
11 would be fifty feet above that.

12 MR. NELSON: Fifty feet above the base of the tower
13 or fifty feet above the, the, the, the area where the solar
14 panels are?

15 MR. BARRETT: Fifty feet above the land surface where
16 the tower is located.

17 MR. NELSON: Okay. So, --

18 MR. BARRETT: So, the, the solar facility might have
19 been on top of a, a parking garage. I've done many of those
20 analysis and so the solar project is actually fifty to seventy-
21 five feet above ground level as well.

22 MR. NELSON: What I'm trying to understand is what's
23 the lowest level you've studied for an aviation receptor as
24 compared to the solar panel?

25 MR. BARRETT: I've done many analysis of homes and

1 motor, motorists, similar to this project where you're looking
2 at the receptor, the person, the driver being five feet above
3 ground level and the Board approving that. So, in the aviation
4 --

5 MR. NELSON: No, I understand that's your expert
6 testimony. I was asking you about your solar guidance
7 document.

8 MR. BARRETT: Okay.

9 MR. NELSON: Aviation receptors.

10 MR. BARRETT: Okay.

11 MR. NELSON: What's the shortest distance there that
12 you studied?

13 MR. BARRETT: I would say that for Salt Lake City
14 Department of Airports, which I did an analysis in the spring,
15 they were interested in looking at the impacts or potential
16 impacts from glare from Delta's control tower, which was
17 approximately twenty feet above ground level looking across at
18 two of their fire stations that they were going to put solar on
19 top of.

20 MR. NELSON: Um hm.

21 MR. BARRETT: And the height of those buildings were
22 approximately fifteen to twenty feet above ground.

23 MR. NELSON: Um hm.

24 MR. BARRETT: So, it's a pretty similar view, pretty
25 level.

1 MR. NELSON: Um hm. In your preparation of this
2 case, and we'll touch on this in a moment when we, but do you
3 know the relative topography of this site?

4 MR. BARRETT: I do, yes.

5 MR. NELSON: Yeah, what's the high, what's the low?

6 MR. BARRETT: I don't know specifically those numbers
7 but I have been to the site and I have reviewed the plans, like
8 the top, top, topographical plans that you pointed out. I know
9 how to read those, so I have, and I've been to the site, so I
10 have a good feeling for exactly the location of the houses
11 close to the site and the relative location topographically of
12 the solar facility.

13 MR. NELSON: All right. So, you were at the site
14 this morning?

15 MR. BARRETT: I was, yes.

16 MR. NELSON: Well, and that, that, that inspection,
17 that, that site visit is part of your preparation for this
18 testimony, right?

19 MR. BARRETT: Yes.

20 MR. NELSON: Can you show me on the big plat where
21 the houses are?

22 MR. SCHMIDT: Objection. I think this is beyond voir
23 dire.

24 MR. NELSON: All right. I'll come back. I'll come
25 back.

1 CHAIR: That can be --

2 MR. NELSON: Now, I'm looking at your, your, your
3 curriculum vitae and first thing you mention is LEAD certified
4 since 2008, right? You have to say yes.

5 MR. BARRETT: Yes.

6 MR. NELSON: Now, when I hear LEAD certification, I
7 think of buildings, LEAD applies to buildings, sustainable
8 buildings, does it not?

9 MR. BARRETT: Not only buildings, there's also a LEAD
10 for neighborhood development, which is campus wife. LEAD is
11 actually done for airports as well.

12 MR. NELSON: Um hm.

13 MR. BARRETT: Universities are developing it, so it's
14 not just for buildings, it's trying to look holistically at
15 campus developments.

16 MR. NELSON: All right. But it doesn't, LEAD, the
17 concept of LEAD approval doesn't invoke glare.

18 MR. BARRETT: Not, there isn't a specific question
19 about glare, but there is certainly site suitability questions
20 where glare might be brought up as part of determining whether
21 or not a particular project meets the LEAD test and earns the
22 LEAD points.

23 MR. NELSON: Now, did I understand you to say that
24 you were involved with the preparation in 2013 industry
25 standards for glare at airports?

1 MR. BARRETT: What I said was that I was involved in
2 the development of the modeling tool that came out and was
3 required as part of the FAA solar policy, which was issued in
4 2013.

5 MR. NELSON: Okay.

6 MR. BARRETT: So, I did not sit on any board or
7 advise the FAA prior to them releasing the policy.

8 MR. NELSON: All right and the policy is for what?

9 MR. BARRETT: It is for airports that want to site
10 solar projects and making sure that those projects are
11 compatible with aviation receptors.

12 MR. NELSON: All right. So, when you tested the
13 model, you weren't analyzing the effect of solar panels on
14 nearby residential communities?

15 MR. BARRETT: That is not part of the solar policy.

16 MR. NELSON: All right.

17 MR. BARRETT: But it is being used commonly for that
18 reason.

19 MR. NELSON: Right. My question was, when you tested
20 the software, you weren't looking at the effect of the solar
21 panels on residential communities?

22 MR. BARRETT: No, we were looking at glare.

23 MR. NELSON: But not on residential communities, the
24 effect of glare on the aviation industry?

25 MR. BARRETT: That was the context, but the data that

1 was collected that went into the model represents potential for
2 glare, regardless of the receptor.

3 MR. NELSON: Madam Chair, I object to Mr. Barrett's
4 expertise and not in the aviation industry. I think he's got
5 some nice work there. But in the context of solar facility in
6 an agricultural area in northern Baltimore County, the problem
7 (inaudible) with the surrounding residential community, I, I
8 don't think he's got the requisite expertise to address that.
9 I'm not hung up on the fact that he hasn't testified before the
10 Board before, I welcome him from out of town, but I think that
11 his, his experience is different from what's at issue in this
12 case and I would respectfully object to his acceptance as an
13 expert in this narrow case.

14 CHAIR: Okay, understood.

15 MR. SCHMIDT: I mean, I don't know if you want to
16 hear from me but I, I frankly, don't know how much more of an
17 expert with, the Board could possibly hear from from the guy
18 who participated in the development of the standards.
19 Obviously this is not an expertise like an engineer where
20 you're licensed or certified by the State of Maryland or by any
21 State. But certainly, Mr. Barrett has a wealth of experience
22 and participation in analyzing the impacts of glare. So, the
23 mere fact that he hasn't analyzed previously the impact of
24 glare on a particular residence, and I think he said the
25 application is the same whether it's an air, airport receptor

1 or a residence, I think his qualifications speak for them, for
2 themselves.

3 CHAIR: And my notes reflect that he actually said
4 that he did analysis on homes and motorists and that at, at
5 those points it was, I think, five foot above ground level is
6 what he actually said so.

7 MR. SCHMIDT: Yes.

8 CHAIR: While I was taking notes --

9 MR. BARRETT: And I've done that in Maryland on
10 several projects.

11 CHAIR: Right.

12 MR. BARRETT: I just have never testified before this
13 type of hearing.

14 CHAIR: And then he has testified in other cases. He
15 indicated he testified in North Carolina, New Jersey,
16 Massachusetts before County and local boards on solar glare and
17 was accepted as an expert in the area of solar glare. The
18 aviation guidance document is used as he indicated as part of
19 the industry standard for how you analyze glare. We certainly
20 have a factor that we need to consider on glare. We've had
21 experts in other solar facility cases who have testified about
22 this, this issue. In particular, the Maryland Rules I think
23 indicate very clearly that an expert should be admitted if they
24 have the background, education, experience, hands on, any other
25 type of experience that could assist the Board in understanding

1 an issue that perhaps we wouldn't necessarily be able to
2 understand ourselves without the assistance of an expert. So,
3 I, I think in my view, he's qualified to testify about the
4 glare analysis he's done, glare analysis in general and the
5 guidance document as, as it pertains to this. Any, any other
6 thoughts, colleagues?

7 BOARD: (inaudible).

8 CHAIR: Okay.

9 BOARD: Same.

10 CHAIR: All right. We'll accept him in, in that area
11 and go ahead, Mr. Schmidt, on your merits.

12 MR. SCHMIDT: Okay, thank you. Mr. Barrett, did
13 there come a time that you were retained as it related to the
14 subject property for a glare analysis?

15 MR. BARRETT: Yes.

16 MR. SCHMIDT: And as you indicated, you have been to
17 the property before?

18 MR. BARRETT: Yes, I have.

19 MR. SCHMIDT: Can you just kind of take us through,
20 since this is a little bit of an unusual discipline, when
21 you're hired in a case such as this, and as you've done here,
22 how, you know, what you do in terms of what, what's the
23 modeling that you use and just kind of walk us through the
24 steps to prepare an analysis, how you get to your conclusions
25 before I, I even ask you about them, but the process to go

1 through and evaluate a particular scenario such as this.

2 MR. BARRETT: Sure. It's really a three stage
3 process for a project like this to do the analysis.

4 The first stage is doing the, using the FAA's glare
5 model, which is the best tool that's out there, to look at
6 potential glare on sensitive receptors, whether or not they're
7 aviation or neighborhood, the glare does not, I'm sorry, the
8 model does not determine whether or not the receptor is
9 aviation or not. So, that has been recognized as, as the best
10 tool to use.

11 So, the first thing we would do is take a look at the
12 potential receptors that might be affected for, and use those
13 for modeling so we'll look at residential homes close by and
14 roadways and motor vehicles. So, those are typically the
15 receptors we look for.

16 MR. SCHMIDT: And did you do that here?

17 MR. BARRETT: Yes, I did.

18 MR. SCHMIDT: Okay. So, you identified certain
19 receptors, adjacent properties, the, the adjacent Maryland
20 Route 30 as a, a receptor, is that correct?

21 MR. BARRETT: Yes, and I'll clarify that SGC actually
22 prepared the initial report analysis. I reviewed it, I also
23 reran the model myself independently and the receptors they
24 chose were all appropriate and as much or more than I might do
25 on a typical site.

1 MR. SCHMIDT: Okay and how does the model work? I
2 mean, what, is that software, is that a program, can you
3 explain to the Board what that is when you say, you know, we
4 did the modeling here?

5 MR. BARRETT: Sure. Yeah, the, the model is a
6 Google, Google Earth based tool. So, basically, what you do
7 is, is you enter into the model, which you can access over the
8 internet. There's a subscription fee for it. And then you
9 locate the solar facility site and you draw its footprint on
10 the Google Earth so you can see where it is and, you know, draw
11 a polygon around the, around the site. And then you identify
12 the receptors that you want to analyze and you put
13 characteristics for both the solar facility and the receptor so
14 for the solar facility, you put the height above ground, the
15 solar panels would be, if it's fixed or tracking, so the
16 different designs, what the top angle is and you can even
17 program in if it has anti-reflective coating or not on the
18 panel surface.

19 So, you program in all of that information and you
20 select the receptors and, again, with the receptors, you'd
21 identify where they are, as well as the height above ground and
22 then you click go and the model analyzes that. It
23 automatically has programmed the sun's path throughout the year
24 for that specific geographic location. So, you don't have to
25 figure that out and it produces results at one minute

1 increments so that if you're looking at a particular receptor,
2 it will analyze from January 1st at midnight and at one minute
3 all the way through the year. And the sun's path changes not
4 only during the day as it comes across the sky but also
5 seasonally and it takes into account all of that information.

6 MR. SCHMIDT: Okay. So, you can literally say July
7 23rd at 11:17, we can figure out, the program will figure out
8 where the sun is at that time and do an analysis for this
9 particular property based on the location of the panels and the
10 height of the receptor and so on and so forth?

11 MR. BARRETT: Yes, that's correct.

12 MR. SCHMIDT: Okay. So, that's sort of step one to
13 to run that program, is that correct?

14 MR. BARRETT: Right. That's step one.

15 MR. SCHMIDT: Okay and that was done in this case?

16 MR. BARRETT: That was done in this case.

17 MR. SCHMIDT: Okay. So, once you get all that data
18 from that analysis and program, tell me about step two.

19 MR. BARRETT: So, for non-aviation receptors like
20 here, you have to take a second step, which is to locate the
21 vegetation and the terrain. Because the model was developed
22 for airports, which are flat, very spread out, open places with
23 no trees, no structures, which would be a problem for aviation,
24 we have to do the second step and, again, using Google Earth,
25 we can look at the terrain around a project site and we can

1 also look at vegetation and program that into the model.

2 So, basically we'll call this a line of sight
3 analysis and because it uses Google Earth, it's consistent with
4 the, the solar glare hazard analysis tool, which is also
5 Google, Google Earth based. So, they're very compatible
6 together.

7 So, what we can do is we can select the receptor and
8 we can draw a line from a home to the place on the solar array
9 where a glare is produced and the model will show you exactly
10 where, you know, if it's the east side or the west side or the
11 entire part, so we can draw a line and then create an elevation
12 profile. This is all in Google Earth, and see what the terrain
13 is between the receptor and the solar project and then you can
14 program in existing vegetation.

15 MR. SCHMIDT: Okay.

16 MR. BARRETT: So, we did that for all of the
17 receptors where the model predicted glare, which I believe was
18 nine of the thirteen.

19 MR. SCHMIDT: Okay. So, you had nine receptors that
20 you identified initially, I'm sorry, thirteen ident, thirteen
21 receptors that you identified initially and then nine where
22 there would be glare before you take into account the terrain
23 and the landscaping?

24 MR. BARRETT: That's correct.

25 MR. SCHMIDT: Now, so you look at existing

1 vegetation, is that correct?

2 MR. BARRETT: Yes, and you can also look at any
3 proposed vegetation.

4 MR. SCHMIDT: All right. Well, there is a landscape
5 plan proposed in this case, were you aware of that?

6 MR. BARRETT: Yes, I was.

7 MR. SCHMIDT: And did you also consider the impact of
8 any additional landscaping that might be planted here, in
9 addition to what's already around this site?

10 MR. BARRETT: Yes, normally, I would go through and
11 just initially look at the existing vegetation and terrain and
12 screen out any receptors where the model identified there'd be
13 glare.

14 MR. SCHMIDT: Right.

15 MR. BARRETT: But we know that there won't be because
16 they can't see the solar facility, whether there's a forest
17 between them or there's a hill between them, so we screen those
18 out initially and then we focus on the ones where vegetation,
19 including additional vegetation, can help solve any issues.

20 MR. SCHMIDT: Okay. So, that's step two, okay. How
21 about step three? What do we do then?

22 MR. BARRETT: Well, step three is really the, looking
23 in and incorporating any mitigation. So, I would say step
24 three is really looking at whether or not we need to provide
25 any land, landscape planning, to planting, to mitigate any

1 potential glare that still could potentially be seen from a
2 receptor to the site.

3 MR. SCHMIDT: Okay and the process that you've
4 described, Mr. Barrett, is, is that the process which is
5 accepted as sort of in your industry in terms of that's the,
6 the mechanics or the protocol that you would follow for an
7 airport or for a residence or for, that's generally how it
8 works in terms of that process when you're doing a glare
9 analysis?

10 MR. BARRETT: That is correct.

11 MR. SCHMIDT: And was that followed here?

12 MR. BARRETT: Yes, it was followed.

13 MR. SCHMIDT: Okay. I'm going to hand you, sir, and
14 I'll give Mr. Nelson a copy, you indicated that there was a
15 glare analysis done here and I'm going to have this marked as
16 the next exhibit, but I'll have the witness identify it. Mr.
17 Barrett, I'm handing you a document and can you identify that?

18 MR. BARRETT: Yes, it's a solar photo (inaudible)
19 glare assessment. Again, it was prepared by SGC Power. I
20 reviewed this and then I also repeated a number of the steps
21 just to make sure that I was comfortable with the analysis that
22 was done.

23 MR. SCHMIDT: Okay. Mr. Barrett, if I can, and I
24 don't want you to read the entire report, but if you could
25 maybe hit, I guess, some of the summaries or highlights as

1 you've described the process, how it was actually implemented
2 here if there are specific pages of the report maybe where the
3 observation points were, something that you want to direct the
4 Board to, speak for itself and we'll introduce it. But just
5 give us sort of what you looked at and how you corroborated the
6 findings here.

7 MR. BARRETT: Sure. I refer the Board to page five.
8 This is really important background information on the
9 technology, photovoltaic, versus concentrating solar panels
10 which is where you use mirrors to reflect sonic heat to produce
11 energy. So, to be clear, this is a photovoltaic technology
12 that is designed to absorb the light, not reflect it, and
13 that's how electricity is produced and I believe a previous
14 witness kind of described, described the technology but it's
15 important to understand from a glare perspective, that the
16 point of the technology is to capture as much light as possible
17 and not reflect light that's wasted, I guess you could say, by,
18 because of the panel surface is very clear and flat, there's a
19 potential, still some small potential, for reflectivity and
20 that's why we look at the issue.

21 MR. SCHMIDT: Okay.

22 MR. BARRETT: Then, I guess it's fairly complicated,
23 but on page seven is just some background on quantifying glare,
24 there's some background on the model. So, I'd refer to page
25 seven for that.

1 And then I guess I would refer you to page twelve,
2 which is a snapshot of the program, so that's actually the user
3 interface of the program, which is a Google Earth map that you
4 see. You draw the footprint of the solar facility on the
5 Google Earth map and that's in blue. And then the little red
6 dots around are the observation points that were selected for
7 analyzing.

8 MR. SCHMIDT: And how did we, how did we select or
9 how were those specific locations selected and why, if you
10 know?

11 MR. BARRETT: Mostly, just because they are the
12 closest ones to the project site. Also, not to get into too
13 much detail, but often times the glare, because the receptor is
14 low to the ground, they would need to see glare coming off the
15 panels when the sun is also low in the horizon. So, that means
16 because the sun rises in the east and sets in the west, those
17 would be the areas that you'd really want to be focusing on.

18 MR. SCHMIDT: Okay.

19 MR. BARRETT: And then, page thirteen lists the
20 results in table three and so that provides the number of
21 minutes of glare potential and then page fourteen and fifteen
22 presents specific information that's produced by the modeling
23 tool and the line of site analysis on page fifteen that shows
24 how topography and vegetation will obstruct any view of the
25 glare.

1 MR. SCHMIDT: Okay. Now, Mr. Barrett, obviously we
2 are not contending that every panel is going to be invisible
3 from every point off site, so there will be locations off site
4 where you will be able to see panels, correct?

5 MR. BARRETT: That is correct.

6 MR. SCHMIDT: Okay. But with that said, did you draw
7 any conclusions as to whether the glare here would be
8 problematic or would be an impact here that would be
9 detrimental to the health and safety, general welfare of the,
10 of the surrounding locale?

11 MR. NELSON: Objection. Expertise. This is a
12 factual question and I assert, it's going to the 502.1 criteria
13 here. I don't think it's an area that falls in the area of his
14 expertise, even as defined by the Chairwoman.

15 CHAIR: Okay. I mean, I think it does, I think the
16 question was about glare and (inaudible) --

17 MR. SCHMIDT: Yes, yeah, I'm limiting it to glare,
18 I'm not asking him about anything else.

19 CHAIR: That's, that's what I had written down, Mr.
20 Nelson, so overruled. Go ahead.

21 MR. SCHMIDT: Go ahead, Mr. Barrett, you can answer.

22 MR. BARRETT: Yes, so, I, I mean, the glare impact on
23 the public would be looking at these different receptors and
24 so, as an example, motor vehicles traveling on Hanover Pike, my
25 conclusion related to that was that the drivers are looking,

1 driving north or south, looking at the road and the one area
2 where they're passing the site and there's no existing
3 vegetation, they may actually see out of their periphery the
4 solar project if there's no glare, maybe a glint of glare,
5 something like that. But they will not be looking at it and so
6 I would consider that impact to be insignificant.

7 MR. SCHMIDT: Okay.

8 MR. BARRETT: And as far as the residences, most of
9 the residences are shielded by terrain and topography, as well
10 as existing vegetation and any potential impacts from other
11 residences would be minimized by the proposed landscape plan.

12 MR. SCHMIDT: Okay and is the site, is there anything
13 about this site that makes it more, the impacts of the glare or
14 the glare that's produced here worse than other properties or
15 similar properties in Baltimore County?

16 MR. BARRETT: No, actually typically a site that is
17 flat and wide open and no existing vegetation, flat terrain,
18 these are areas where the solar projects may be seen more
19 clearly. So, I would say that the topography, the fact that
20 this is kind of low, low lying in a, I guess a bowl area,
21 minimizes the potential effect of glare.

22 MR. SCHMIDT: Okay. So, would you say that then this
23 is certainly better than an open flat farm field, for example,
24 that might exist nearby, which would be devoid of vegetation
25 and very flat, say compared to its neighbors or the adjacent

1 roadway?

2 MR. BARRETT: Yes, I would say that.

3 MR. SCHMIDT: Okay. Okay. Is there any, other than
4 the landscaping that's proposed, is there anything else that
5 you would recommend or you believe is needed, Mr. Barrett,
6 that's not shown on the plan that would, you know, in your
7 analysis, that you think would be required here? From a, from
8 a standpoint of reducing or minimizing glare? Or is --

9 MR. BARRETT: No, I wouldn't recommend anything.
10 I've done a lot of these projects and typically if there's an
11 area on the project site that you want to make sure that
12 impacts are minimized, landscaping is the most common practice.

13 MR. SCHMIDT: Okay. I don't have any further
14 questions of the witness. Thank you.

15 CHAIR: Thank you. Cross?

16 MR. SCHMIDT: Oh, and I'm sorry, I would offer
17 Exhibit 15, I believe it's 15, 15 or 16?

18 BOARD: The last one was seventeen (inaudible).

19 MR. SCHMIDT: I'm sorry, I'm behind, seventeen. Yes,
20 yes.

21 BOARD: (inaudible).

22 MR. SCHMIDT: I would offer, if I haven't formally
23 done so, both of those.

24 CHAIR: Any objection to sixteen or seventeen?

25 MR. NELSON: No, but the resume is sixteen, the

1 report is seventeen?

2 CHAIR: Correct.

3 MR. SCHMIDT: Yes.

4 BOARD: That's correct.

5 MR. NELSON: No objection.

6 CHAIR: No objection. Thanks.

7 MR. SCHMIDT: Thank you.

8 MR. NELSON: Mr. Barrett, does your website identify
9 all the work that you just described, (inaudible) doing over
10 the years?

11 MR. BARRETT: Somewhat, it needs some help so as, as
12 a sole proprietor I haven't put a lot of information into the
13 website. It's actually been changing a little bit, so.

14 MR. NELSON: All right. So, if I went to your
15 website, I wouldn't see all this?

16 MR. BARRETT: I think it says under construction
17 right now but that's because I'm switching from, from a word
18 press design, which did say all that stuff, to a WebEx, I think
19 it's called.

20 MR. NELSON: Fair enough. All right, I just wanted
21 to, thank you. Now, you know, sometimes I feel like the world
22 has passed me by. You've been talking about Google Earth. Do
23 you use Google Earth or Google Earth Pro?

24 MR. BARRETT: Google Earth Pro.

25 MR. NELSON: Right. You have to pay a fee to get

1 that or is that (inaudible)?

2 MR. BARRETT: No, it's open (inaudible).

3 MR. NELSON: And I guess you on there and you can key
4 in an address and it comes up?

5 MR. BARRETT: Yep.

6 MR. NELSON: And you can zoom in or zoom out?

7 MR. BARRETT: That's right.

8 MR. NELSON: And lots of times on these cases,
9 someone brings up a Google Earth photograph and people question
10 the reliability. I mean, do you have confidence in the Google
11 Earth data?

12 MR. BARRETT: I do, yes.

13 MR. NELSON: And you mentioned a few phrases that
14 were of interest to me, because they're new to me. One was the
15 line of sight (inaudible), what, what were you describing
16 there?

17 MR. BARRETT: What the line of sight, or in Google
18 Earth it's called developing elevation profile.

19 MR. NELSON: Hm.

20 MR. BARRETT: Allows a user to select one location,
21 draw a line to another location and gives you a cross sectional
22 view of what the topography is in between those two viewpoints.

23 MR. NELSON: So, if the Board were to do that, as
24 described by you, you could pick two places in, on, on the
25 ground and see if there's a direct line, a sight, between those

1 two places or if there's a hill in between?

2 MR. BARRETT: That's correct.

3 MR. NELSON: Have you used that tool a lot?

4 MR. BARRETT: Yes.

5 MR. NELSON: Is that reliable?

6 MR. BARRETT: Yes.

7 MR. NELSON: And how does it know the elevations?

8 MR. BARRETT: I can't tell you exactly what the basis
9 of the information is but typically every state produces
10 information that's been collected remotely from satellites and
11 a lot of the topography information that's entered into record
12 is collected remotely. So, I think it's a similar type of
13 implication.

14 MR. NELSON: So, if I question the reliability of the
15 elevation in Google Earth Pro, the total elevations, you'd say,
16 Nelson, you're wrong, it's reasonably reliable?

17 MR. BARRETT: Yeah, I would say it's not survey,
18 hasn't been surveyed on the site, but it's representative of,
19 you know, if you looked at a, an old USGS topographic map, I
20 would say it's similar accuracy.

21 MR. NELSON: Um hm. Now, I'm trying to understand
22 your methodology. I have in my mind's eye, a picture of the
23 subject property. You've delineated with a paragon line and a
24 Google Earth Pro, the footprint of the solar facility.

25 MR. BARRETT: Yes.

1 MR. NELSON: So, you just click polygon and hit each
2 corner of the subject property, is that what you do?

3 MR. BARRETT: Yes, usually I do the footprint of the
4 solar project because that's what we're focused on.

5 MR. NELSON: Now, how do you locate the receptors?

6 MR. BARRETT: Just based on best professional
7 judgment, but typically we're looking at receptors that are
8 clo, closest to the solar project, because as you get further
9 away, potential glare or view of the project diminishes. So,
10 as I had mentioned in my testimony, often times we're focused
11 on east of a project or west of a project because of the rising
12 and setting sun, but also we'll look at north and south just to
13 make sure the, the model is producing the results that we might
14 expect.

15 MR. NELSON: Or north east or north west, right?

16 MR. BARRETT: Yes.

17 MR. NELSON: Or south east or south west?

18 MR. BARRETT: Yes.

19 MR. NELSON: Now, of course the first I'm, I've seen
20 this report is about ten minutes ago. So, I usually start with
21 executive summary, just because it makes life easier. Can we
22 do that, page three?

23 MR. BARRETT: Sure.

24 MR. NELSON: Near the bottom, (inaudible) follows.

25 (inaudible) neighbors and motorists to the east, south and west

1 of the array may experience glare mid-February to late October,
2 you see that, sir?

3 MR. BARRETT: Yes.

4 MR. NELSON: Now, the first bullet point is homes to
5 the north west, so you, you, what this summary says, there may
6 be glare to the east, south and west, right? The first bullet
7 point is homes to the north west, that would be what, could you
8 show that to us?

9 MR. SCHMIDT: Macy, why don't we take Protestant's
10 exhibit down? This might be helpful.

11 MR. BARRETT: I'm actually not sure if this graphic
12 is wide enough, but we looked at north west being a couple of
13 homes on the west side of Hanover Pike.

14 MR. NELSON: All right.

15 MR. BARRETT: So, that would be north west.

16 MR. NELSON: All right. So, just, --

17 BOARD: And the record (inaudible) report, is that
18 observation eight and observation point ten?

19 MR. BARRETT: That's correct.

20 MR. NELSON: Okay. All right. So you looked at
21 homes to the north west, correction, to the north west and you
22 looked at homes to the east.

23 MR. BARRETT: That's correct.

24 MR. NELSON: And either use your report or this
25 illustration on the board, what, which, could you depict the,

1 whatever is easier for you, the homes to the east.

2 MR. BARRETT: To the east, I guess that's best to
3 look at page twelve of the report, would be due east as
4 observation points two, three and twelve, observation point one
5 is east, south east, depends on how you want to define it.

6 MR. NELSON: All right. What bullet point addresses
7 the home sites to the south of the subject property?

8 MR. BARRETT: I guess I would say it's referring to
9 observation point eleven.

10 MR. NELSON: My question, sir, is which bullet point,
11 of which there are five, specifically identifies the home sites
12 to the south?

13 MR. BARRETT: You're referring to the bullet points
14 on page three that you were initially --

15 MR. NELSON: That's right.

16 MR. SCHMIDT: Ms. Jolivet, can I have the extra copy
17 of that? (inaudible).

18 MR. BARRETT: So, it says neighbors, motorists to the
19 east, south and west.

20 MR. NELSON: You're talking about motorists. I'm
21 asking you about home sites. Which bullet point identifies the
22 home sites to the south of the so proposed solar facility,
23 that's the question. Not motorists, home sites.

24 MR. BARRETT: If you're referring to bullet points on
25 page three, it says neighbors and motorists to the east, south

1 and west. Is that not south? Is that not what you're asking?

2 MR. NELSON: That, that's the summary.

3 MR. BARRETT: Okay.

4 MR. NELSON: In bold. I asked you about the bullet
5 points because the first bullet point you identify the
6 neighboring homes to the north west, the second bullet point is
7 neighboring homes to the east, the third bullet point is
8 motorists on Frye Road. My question is, is there, can we not
9 agree that there's no bullet point that specifically addresses
10 the residential home sites to the south?

11 MR. BARRETT: I would agree, yes.

12 MR. NELSON: Okay. Now, we know, do we not, that
13 there are two home sites to the south? Do we not? We know
14 that there's a, a site here owned by the Mirabiles.

15 MR. BARRETT: There's no home there.

16 MR. NELSON: My question, sir, used the phrase, word,
17 home site. There's a home site to the south, is there not,
18 owned by the Mirabiles? A parcel of land?

19 MR. SCHMIDT: Is, I'm sorry, Mr. Nelson.

20 MR. BARRETT: Yeah.

21 MR. SCHMIDT: Do you mean is there a piece of land to
22 the south?

23 MR. NELSON: The question is, is there a parcel of
24 land where someone has the right to build a home --

25 MR. SCHMIDT: Right.

1 MR. NELSON: -- in accordance with Baltimore County
2 development regulations?

3 MR. BARRETT: Home site here might be deter, defined
4 in a different way. So, if you're asking me is there land to
5 the south where you can building and do other things, yes.

6 MR. NELSON: All right. Okay and you did not
7 identify that as a receptor, did you?

8 MR. BARRETT: No.

9 MR. NELSON: All right. Now, we could use the tools
10 that you've described if you look at that site, could we not?

11 MR. BARRETT: Yes.

12 MR. NELSON: Now, you've been to the site, so you can
13 identify this as a view, everyone has the same copy.

14 BOARD: Do you have one extra?

15 MR. NELSON: I thought I gave three to the Board, you
16 want four --

17 BOARD: Um hm, because mine is for the Board file and
18 I want one for me, if possible, so.

19 MR. NELSON: I have two if you want.

20 BOARD: Yep, I'm good, thank you.

21 MR. NELSON: All right. So, we can agree, Mr.

22 Barrett, that this is a photograph that's looking from this
23 land to the south of the access road north of the subject
24 property?

25 MR. BARRETT: Yes.

1 MR. NELSON: All right. I'd like to move into
2 evidence as Protestant's exhibit, what's our next number, I'm
3 sorry?

4 BOARD: Hold on.

5 MR. NELSON: Beg your pardon?

6 BOARD: Number five.

7 MR. NELSON: Thank you. All right and that's a
8 reasonably accurate depiction of that view, is it not?

9 MR. BARRETT: Yes.

10 MR. NELSON: All right. Now, we can go to Google
11 Earth Pro and look at the relative elevations of this site and
12 the subject property, can't we?

13 MR. BARRETT: Yes.

14 MR. NELSON: And we can use the elevation tool that
15 you described to us to understand the difference in the
16 elevations?

17 MR. BARRETT: Yes.

18 MR. NELSON: We can use that tool to look at the line
19 of sight from this, this location across the subject property,
20 can't we?

21 MR. BARRETT: Yes.

22 MR. NELSON: So, let's look at that, because I've
23 done that. Now, I'd like to mark this as Protestant's Exhibit
24 6.

25 BOARD: Six.

1 MR. NELSON: Now, for starters, Mr. Barrett, Exhibit
2 6 is a printout of this line of sight with the, with the
3 elevation template at the bottom, right? You've seen these a
4 thousand times?

5 MR. BARRETT: Yes.

6 MR. NELSON: By the way, how do you make a copy, when
7 you bring it up, you have to do a screenshot or can you save it
8 somehow?

9 MR. BARRETT: I usually do a screenshot.

10 MR. NELSON: Yeah, it's weird, isn't it?

11 MR. BARRETT: Yeah, it's a problem.

12 MR. NELSON: So, it's not just me?

13 MR. BARRETT: No.

14 MR. NELSON: All right.

15 MR. SCHMIDT: Well, it is you about certain things,
16 Mr. Nelson.

17 MR. NELSON: All right. So, just looking at this
18 exhibit, the, we'll, we'll get to the elevation in a moment,
19 that it depicts the subject property, does it not?

20 MR. BARRETT: Um hm, yes.

21 MR. NELSON: You have to say yes. And it sub, it
22 depicts the, the, the, the, the parcel of land to the south,
23 which is designated as 14517 Hanover Pike, you see that?

24 MR. BARRETT: Yes.

25 MR. NELSON: And you saw that trailer this morning

1 when you were out there at the site?

2 MR. BARRETT: Yep.

3 MR. NELSON: Um hm and just looking at this exhibit,
4 it sure looks like the trailer property is looking down over
5 the subject property. Correction, looking up, I misspoke, I
6 had it reversed, I beg your pardon.

7 MR. BARRETT: Yes.

8 MR. NELSON: And that's consistent with what you saw
9 in the field this morning?

10 MR. BARRETT: Yes.

11 MR. NELSON: So, you would accept this as a
12 reasonably accurate depiction of the line of sight from point,
13 from point B looking to point A, or point A looking to point B?

14 MR. BARRETT: Yes.

15 MR. NELSON: All right. I'd like to move into
16 evidence Exhibit 6, please.

17 CHAIR: Any objection to five or six?

18 MR. SCHMIDT: No.

19 MR. NELSON: All right. So, we can agree that you
20 didn't analyze, the report that you reviewed, didn't analyze
21 this location?

22 MR. BARRETT: It did not.

23 MR. NELSON: All right.

24 BOARD: Thank you.

25 MR. NELSON: Now, let me show you what I can mark as

1 Exhibit, for identification, as Exhibit 7. And this has a, the
2 same location but looking to the north west. All right?

3 MR. BARRETT: Yes.

4 MR. NELSON: This appears to be a reasonably accurate
5 depiction of the relative topography of these, of this line of
6 sight?

7 MR. BARRETT: Yes.

8 MR. NELSON: Based on your inspection this morning.
9 I'd like to move into evidence Exhibit 7.

10 CHAIR: Any objection?

11 MR. SCHMIDT: No objection.

12 MR. NELSON: All right. You didn't analyze this in
13 your report, did you?

14 MR. BARRETT: I did not.

15 MR. NELSON: Um hm and it's fair to say there's some,
16 that if you and I are standing together at point B, there would
17 be nothing obstructing our view of point A, would there?

18 MR. BARRETT: I don't think there would be.

19 MR. NELSON: All right. Now, you talked about,
20 normally you try to focus on the north, the east west view
21 because the sun rises in the east, sets in the west and you
22 also look just at the north south view. But it's not as acute
23 and a problem I think in terms of glare, is that right?

24 MR. BARRETT: That's correct.

25 MR. NELSON: All right. Well, I'm, we're not quite

1 due west here, this line of sight, but it, you know, it's
2 probably, the compass angle is probably two hundred and eighty
3 degrees, isn't it? It's pretty, it's within ten or fifteen
4 degrees of due west, isn't it?

5 MR. BARRETT: Hard to say looking at it but, yeah. I
6 would say it's, it's --

7 MR. NELSON: Well, there's a compass rose at the top,
8 isn't there? Maybe not, but it's close. I mean, it's in a
9 westerly direction, is it not?

10 MR. BARRETT: North west, sure.

11 MR. NELSON: All right. Would you expect glare
12 there?

13 MR. BARRETT: There may or may not be, I'm not a
14 hundred percent sure. Basically, as I mentioned before, we
15 focus on east and west and the amount of north east to south
16 east that kind of view so the sun rises in the summertime very
17 far to the north on the horizon. So, say the compass rose
18 sixty or so, is about where it rises. And then, as we come
19 down to the solstice, I'm sorry, the equinox, whether it be
20 spring or fall, it's rising due east, ninety degrees. And then
21 in the wintertime, it's rising in the south east, very far in
22 the southern sky. So, that's kind of the area that you would
23 be looking at, so here is your view that you entered into
24 exhibit looking north west, would only, the only potential for
25 glare would be if the sun is rising in the summer, I'm sorry,

1 setting in the summertime, when the sun is setting very far to
2 the north. And I don't know if, looking at this, if it fits
3 that break or not, but that would be the small time period when
4 it's possible that you could see glare.

5 MR. NELSON: All right.

6 MR. BARRETT: So, I think that, you know, this would
7 also come under the landscape plan in mitigating impacts with
8 the landscape plan.

9 MR. NELSON: All right. So, let me just establish a
10 few facts. Number one, you haven't analyzed it, the glare
11 piece?

12 MR. BARRETT: That's correct.

13 MR. NELSON: So, you don't know?

14 MR. BARRETT: I don't know. I know from my best
15 professional judgment, as I described, the, the small area
16 where it would be, it would be around the summer solstice.

17 MR. NELSON: Okay. But you say not to worry because
18 there's landscaping that'll take care of it?

19 MR. BARRETT: The landscape is, plan is the
20 mitigation that would be able to address that, block the view.

21 MR. NELSON: Well, all right. Okay. So, your
22 opinion is the landscape mitigation plan will block the view of
23 point A from point B on Plaintiff's exhibit, Protestant's
24 Exhibit 7?

25 MR. BARRETT: Yes.

1 MR. NELSON: All right. What in the landscape plan
2 will do that?

3 MR. BARRETT: Planting trees along Frye north of Not
4 Frye Road to obstruct the view or intercept the view between
5 the receptor you've identified and portions of the solar
6 project.

7 MR. NELSON: All right. So, the plan is to plant
8 trees at the lowest point of the terrain and they will obstruct
9 the view from point B looking at point A, that's your view?

10 MR. BARRETT: That would be the best way to mitigate
11 the glare.

12 MR. NELSON: All right. So, okay, how tall do those
13 trees have to be to obstruct that line of sight?

14 MR. BARRETT: I don't have the, I mean, the, --

15 MR. NELSON: Well, we know that because you've told
16 us that these topographical elevation models at the bottom are
17 accurate, so we have that data right now before you?

18 MR. BARRETT: Right.

19 MR. NELSON: All right. How, how --

20 MR. BARRETT: But I, I can't see, you don't have the
21 scale at the bottom of it, so I can't really tell based on what
22 --

23 MR. NELSON: Well, look, look to your left. You know
24 how to do the scale on the left, it's right there.

25 MR. BARRETT: No, that's the elevation, but as far as

1 you're saying that you're at the low, the lowest point, or
2 planting trees at the lowest point, I can't tell exactly where
3 that is based on this.

4 MR. NELSON: Okay. Well, let's assume hypothetically
5 that the low point of the road at the edge of the property is
6 right at the low, low point of the, of the topographic
7 elevation, basically in the center of the cross section. How,
8 --

9 MR. BARRETT: It doesn't, doesn't look like that to
10 me but, we don't know because you don't have the scale on here.

11 MR. NELSON: Hm. All right. Let's assume I'm right.
12 How tall must that tree be?

13 MR. BARRETT: We're assuming that you're right?

14 MR. NELSON: That's right.

15 MR. BARRETT: Well, there's a, there, I think there's
16 a big difference between the lowest point and moving, again, I
17 don't have the scale, so I don't know much but you know, the
18 elevation comes up fairly quickly. So, very quickly, you're
19 going up five, ten feet, which can make a big difference in
20 planting a tree.

21 MR. NELSON: Well, I believe, --

22 MR. BARRETT: So, I don't, I'm, I'm not sure, I can't
23 answer --

24 MR. NELSON: All right.

25 MR. BARRETT: -- your question.

1 MR. NELSON: All right. I understand your point.
2 Every foot matters. But you've expressed the opinion that the
3 landscaping plan will obstruct the view between point B looking
4 at point A. You told us that under oath. I'm exploring that
5 opinion with you right now. That's what we do in cross
6 examination.

7 MR. BARRETT: Right.

8 MR. NELSON: All right? That's the way the system
9 works, so I'm testing your thesis.

10 MR. BARRETT: Yep.

11 MR. NELSON: So, let's assume, hypothetically, that
12 I'm correct, that the low point of the land is, is at the, the,
13 the, the private access road, right on that red line. Would
14 you agree that the difference in elevation is thirty-one feet
15 just from, from the bottom, low point to the high point?

16 MR. BARRETT: So, it's thirty-one feet from the low
17 point to the high point on the right. Okay?

18 MR. NELSON: All right. So, what that means --

19 MR. BARRETT: But that's not the elevation of the
20 solar project.

21 MR. NELSON: Right, so that makes your argument even
22 tougher, right?

23 MR. BARRETT: Well, we don't know what the elevation
24 is of the solar project, we can estimate it. It looks like
25 it's about six hundred feet.

1 MR. NELSON: All right and then how high is the solar
2 project?

3 MR. BARRETT: Four feet above that.

4 MR. NELSON: How high is the second floor of a house?
5 How high is the window on the first floor of a house?

6 MR. SCHMIDT: Objection. There, I mean, there's no
7 house there. There's a trailer.

8 CHAIR: But he's asking you hypothetically, so.

9 MR. SCHMIDT: Okay.

10 CHAIR: Overruled. Go ahead.

11 MR. SCHMIDT: All right.

12 MR. BARRETT: The elevation of a second floor is ten
13 feet, twelve feet, if you're sitting down. If you're standing
14 up, if you build a four story building it would be different,
15 so we don't know --

16 MR. NELSON: Right, all right. You don't know.

17 MR. BARRETT: -- I guess I'm not sure what, what
18 would be the --

19 MR. NELSON: The point I'm trying to make, if I'm
20 right about where the low point of this land is, that if you
21 plant a tree tomorrow that's thirty-one feet tall, put it in
22 the ground it's thirty-one feet tall, the top of that tree will
23 be at the bottom of the line of sight from point B looking at
24 point A?

25 MR. BARRETT: Yes, but I don't think that you're

1 right that the, the, it doesn't look to me that this, you'd be
2 planting trees at the bottom of this.

3 MR. NELSON: All right.

4 MR. BARRETT: So.

5 MR. NELSON: All right. You've told me the
6 landscaping plan will obstruct this view, tell me how it will
7 obstruct the view, under oath.

8 MR. BARRETT: Well, I think that if you planted the
9 trees on the north, just on the north side of Not Fry Road.

10 MR. NELSON: Um hm.

11 MR. BARRETT: That you would be approximately in the
12 five hundred and eighty-five to five hundred and ninety foot
13 area and I'm not saying that it would obstruct the entire view
14 all the time, so you may be able to see the project and you may
15 be able to see glare, but you would mitigate it so that it's
16 not, that it's similar to what you might see driving on the, on
17 the highway and seeing sunlight reflecting off of other
18 windshields. It would be similar to other things that you see
19 on the landscape.

20 MR. NELSON: All right. But the bottom line is, you
21 don't know, do you?

22 MR. BARRETT: I have not analyze, as we already
23 discussed, I didn't analyze that. But based on the
24 information, I think that the landscaping would minimize the
25 impacts, not eliminate any impacts, minimize them.

1 MR. NELSON: Now, let's look at page thirteen of
2 your, results of (inaudible). Do you have that there?

3 MR. BARRETT: Yep.

4 MR. NELSON: I'm looking at a column on the right,
5 yellow glare. What is yellow glare?

6 MR. BARRETT: The colors that are produced by the
7 model are relevant to the FAA standards. So, normally, when we
8 look at glare from non-aviation receptors, we don't focus much
9 on the different colors, but the colors are green, yellow and
10 red. Green is a lower level of intensity, red is the highest
11 level and yellow is in the middle.

12 MR. NELSON: Well, where do you document the red?

13 MR. BARRETT: There was no red there.

14 MR. NELSON: All right. So, when looking at the
15 yellow, is it fair to say that a higher number of minutes
16 generated, is that indicative of more glare as opposed to a
17 lower number?

18 MR. BARRETT: The numbers are the minutes of the
19 year.

20 MR. NELSON: All right.

21 MR. BARRETT: That glare could be seen from a
22 particular receptor without looking at other factors.

23 MR. NELSON: All right. I don't see, okay. Let's
24 just take a look at receptor number two, is that the highest?

25 MR. BARRETT: Yeah, it looks to be the highest.

1 MR. NELSON: Could you identify that on this plat on
2 the board? On the board?

3 MR. BARRETT: Right here.

4 MR. NELSON: All right. So, that's the Little
5 residence, have you been there?

6 MR. BARRETT: I had seen it, yes.

7 MR. NELSON: Um hm. Where'd you see it from?

8 MR. BARRETT: Not Fry Road.

9 MR. NELSON: Um hm.

10 BOARD: I couldn't see where he identified it. Just
11 (inaudible).

12 MR. NELSON: Could you point again?

13 MR. BARRETT: Sorry.

14 BOARD: (inaudible). Thank you. Thank you. Thank
15 you.

16 MR. NELSON: All right. So, that receptor sees the
17 glare in the morning or the afternoon?

18 MR. BARRETT: Afternoon.

19 MR. NELSON: Which way are the solar panels angled?

20 MR. BARRETT: Angled to the south.

21 MR. NELSON: So, if I see a 12,021 minutes a year,
22 how many hours is that?

23 MR. BARRETT: I didn't calculate it.

24 MR. NELSON: Well, you divide by sixty, right? And
25 that'll give us the number of hours and I guess they get credit

1 for nighttime, so there's a number of daytime hours that they
2 see glare, will see glare?

3 MR. BARRETT: Yes.

4 MR. NELSON: Um hm. Have you looked at the relevant,
5 the, the, the relative topographical location of that house
6 versus the rest of the solar panel?

7 MR. BARRETT: Yes.

8 MR. NELSON: Um hm and how, how does that stack up?

9 MR. BARRETT: The topography does not obstruct the
10 view, it's the existing vegetation on top of the, the terrain
11 that obstructs any current view.

12 MR. NELSON: So, when you say the topography doesn't
13 obstruct it, what it means is that there's nothing on the land
14 surface that will obstruct the view?

15 MR. BARRETT: Right, there's no earth that --

16 MR. NELSON: Right.

17 MR. BARRETT: -- rise in the land that creates an
18 obstruction.

19 MR. NELSON: All right. So, it's your opinion that
20 the proposed landscaping plan will obstruct 12,021 minutes per
21 year of glare at the Little residence?

22 MR. BARRETT: It will, well, there's existing
23 vegetation which obstructs any view and the landscaping plan
24 would further buffer that.

25 MR. NELSON: But you would agree that they will be

1 able to see the panels from their house, especially when
2 there's glare bouncing off of them?

3 MR. BARRETT: Not if the existing vegetation is
4 blocking.

5 MR. NELSON: Hm?

6 MR. BARRETT: I said, not if the existing vegetation
7 is blocking the view.

8 MR. NELSON: The existing vegetation. But you don't
9 whether the existing vegetation is blocking it or not, do you?

10 MR. BARRETT: From my review of it, it appears to me
11 that there is existing vegetation in the way.

12 MR. NELSON: Okay and that blocked the view in the
13 winter?

14 MR. BARRETT: The, the width of the forest that's in
15 between to me, based on my review, seemed to be sufficient to
16 minimize the glare.

17 MR. NELSON: All right. So, what your view is that
18 while the, the glare will be minimized?

19 MR. BARRETT: Yes.

20 MR. NELSON: Now, let me ask you about receptor, I'm
21 looking at page twelve of your report. And it identifies OP-
22 13, just west of the site, do you see that?

23 MR. BARRETT: Yes.

24 MR. NELSON: And that bullet point is right in the
25 center of Route 30, you see that?

1 MR. BARRETT: Yes.

2 MR. NELSON: Now, let's, let's go down Route 30, why
3 do they call it, all right, let's go down, they call it Route
4 1, but that's Hanover Pike, isn't it?

5 MR. BARRETT: I think it was just identified as Route
6 1 as --

7 MR. NELSON: As a designation.

8 MR. BARRETT: -- as analysis in the model.

9 MR. NELSON: Okay, again, I'm not hung up on it. But
10 I want to go down south and what I think is, what we call
11 Hanover Pike.

12 MR. BARRETT: Yes.

13 MR. NELSON: To observation point eleven, now I see
14 that's deep in the woods to the west of Hanover Pike. Now,
15 wouldn't that effect, the fact that the observation point is
16 not on the road, not on the scenic road, but to the west of the
17 road, buried in the woods, wouldn't that affect the view and
18 make it irrelevant to this question of whether there's a view
19 from Hanover Pike itself?

20 MR. BARRETT: No, because the model does not
21 incorporate the vegetation so we'd have to look at that after
22 the facts. So, the model results that you pointed to on page
23 thirteen identify OP-11 and says there's zero. That's not
24 related to the vegetation or that it's in the woods, it's
25 related to the fact that it's south of the solar panels.

1 MR. NELSON: Fair enough. But the elevation is
2 significant, isn't it?

3 MR. BARRETT: Yes.

4 MR. NELSON: All right. So, I mean, doesn't the land
5 to the west of Hanover Pike slope down?

6 MR. BARRETT: Yes.

7 MR. NELSON: Well, so, then observation eleven is at
8 a point that's lower than the crest of the road, isn't it?

9 MR. BARRETT: Right, but the topography is not
10 incorporated in the model analysis so it's just based on the,
11 the relevant elevation of the observation point in the solar
12 project. None of the elevation in between, it doesn't factor
13 that in. It doesn't factor in any of the vegetation in between
14 and it will still pick up potential glare based on the
15 difference in the elevation. So, it's not that it's in the
16 woods, it's not that it's below the, the, the roadway surface,
17 it's that it's south of the solar project, that's the reason
18 you get zero in the results.

19 MR. NELSON: Well, why do they pick a site at a lower
20 elevation in the woods off the road?

21 MR. BARRETT: Because there's a home there, or
22 residence, or something that was identified, a feature that
23 might be identified as being sensitive to glare.

24 MR. NELSON: All right. Let's go back to the
25 executive summary at page three. You talk about motorists,

1 this is the fourth bullet point at the top of page four,
2 motorists on Hanover Pike. Where's that observation point?

3 MR. BARRETT: Observation point thirteen and then the
4 blue line that's identified is a route analysis in the tool, so
5 you can also, you can look at individual receptor points, which
6 are the red. You can also look at routes, which are in the
7 turquoise color.

8 MR. NELSON: All right. All right. Can we agree
9 that you didn't analyze, and your colleagues didn't analyze,
10 the view from Hanover Pike at that, south of the site, at the
11 highest point looking down at the subject property?

12 MR. SCHMIDT: Objection. I mean, when you say
13 highest point, anywhere on Maryland Route 30? I mean, it's
14 shown in blue as to where they analyzed it.

15 CHAIR: Well, you can, you can redirect him on that
16 point.

17 MR. SCHMIDT: Okay.

18 CHAIR: So, overruled. Go ahead.

19 MR. NELSON: Did you do that? If so, --

20 MR. BARRETT: I guess I'm not, can you clarify what
21 you're identifying as being the highest point?

22 MR. NELSON: I'd be happy to do that.

23 BOARD: Thank you.

24 MR. NELSON: Let's mark this, I think we're at
25 Exhibit 8. This should be Exhibit 8, is that correct, Ms.

1 Jolivet?

2 BOARD: That's correct.

3 MR. NELSON: All right. Let's look at Exhibit 8
4 together, Mr. Barrett. This is a, a view, is it not, using
5 Google Earth Pro and the elevation profile at the bottom,
6 selecting point A as being a, a point on Hanover Pike, which is
7 designated on the left portion of the elevation profile, and
8 point B, which is the north east corner of the subject property
9 of the solar facility, all right?

10 MR. BARRETT: Yes.

11 MR. NELSON: And you had a criticism of one of the
12 exhibits before because we didn't mark where the boundary was.
13 This one does, doesn't it, with that red arrow?

14 MR. BARRETT: You captured it with a screenshot.

15 MR. NELSON: Right. Okay. So, we can eliminate that
16 ambiguity in your mind, can't we?

17 MR. BARRETT: We can, yes.

18 MR. NELSON: All right. So, this is a reasonably
19 accurate depiction of the, of the line of sight between point A
20 and Hanover Pike and point B at the north east corner, is it
21 not?

22 MR. BARRETT: Yes.

23 MR. NELSON: All right. I move in evidence
24 Protestant's Exhibit 8.

25 CHAIR: Any objection to eight?

1 MR. SCHMIDT: No.

2 MR. NELSON: All right.

3 MR. BARRETT: Can I comment on, on it or are you
4 going to ask a question about it?

5 MR. NELSON: I'll ask a question.

6 MR. BARRETT: Okay, all right.

7 MR. NELSON: Now, if you and I are standing together
8 at point A, looking to point B, will we be able to see it?

9 MR. SCHMIDT: See what?

10 MR. NELSON: If, the question was, if we're standing
11 at point A will the witness and I be able to see point B
12 assuming our eyes work?

13 MR. BARRETT: I'm not a hundred percent sure, just
14 because there's a lot of vegetation in between and I'd have to
15 assess whether or not that it, that the vegetation, which is
16 not represented in the, in the topographical cross section
17 would interfere with the view.

18 MR. NELSON: All right. Well, we have a photograph
19 of that, so maybe this will help.

20 MR. BARRETT: Okay.

21 MR. NELSON: Now, you've driven north on Hanover
22 Pike, you did that this morning, did you not?

23 MR. BARRETT: I did.

24 MR. NELSON: And --

25 VOICE: (inaudible).

1 CHAIR: Can we, can we not have talking in the back
2 (inaudible).

3 MR. NELSON: I'm sorry, (inaudible).

4 CHAIR: (inaudible) wasn't sure, I heard the voice
5 too, but you're not under oath and we can't have talking from
6 the audience. But go ahead, go ahead, Mr. Nelson.

7 MR. NELSON: All right. You've driven north on
8 Hanover Pike?

9 MR. BARRETT: Yes.

10 MR. NELSON: And, and you know that there are power
11 lines along each side of the road and you know that there's a
12 stand of trees on the Mirabile property just south of the
13 subject property and you know that the Fales residence is on
14 the north west corner of the subject property and you know that
15 the subject property is on the east side of Hanover Pike, you
16 know all that?

17 MR. BARRETT: Yes.

18 MR. NELSON: All right and you also know that if
19 you're driving up Hanover Pike, you can, in fact see the north
20 east corner of the subject property and there are no trees in
21 the way and this Exhibit 9 depicts that?

22 MR. BARRETT: Yes.

23 MR. NELSON: All right. Exhibit 9 is a reasonably
24 accurate depiction of what you'd see if you're looking, if
25 you're driving north on Hanover Pike, is it?

1 MR. BARRETT: Yes.

2 MR. NELSON: I move into evidence Protestant's nine.

3 CHAIR: Any objection?

4 MR. SCHMIDT: No objection.

5 MR. NELSON: All right. Now, all right, we got this
6 Exhibit 9 because you raised a question about Exhibit 8. Well,
7 how do we know whether the trees obstruct the view from point A
8 to point B? So, now we've established, have we not, that they
9 don't.

10 MR. BARRETT: Yes.

11 MR. NELSON: All right. The glare analysis, which
12 you've reviewed in this case, didn't analyze that view, did it?

13 MR. BARRETT: No, because it's too far to the south.
14 It's not geometrically possible to see glare from there because
15 the sun doesn't rise in the north.

16 MR. NELSON: Um hm.

17 MR. BARRETT: It rises to the east.

18 MR. NELSON: All right.

19 MR. BARRETT: And just like the other one, where I
20 said well, it's possible that you could see it because it's ri,
21 it may be setting in the north west, this one clearly is too
22 far to the north that it's not possible to, to see glare from
23 this point.

24 MR. NELSON: Okay. So, your opinion is, if you and I
25 are standing together at point A on this Exhibit 9, Exhibit 8,

1 you can't see glare from point B? Impossible?

2 MR. BARRETT: You, you can see the solar project as
3 you've represented, but you would not be able to see glare --

4 MR. NELSON: All right.

5 MR. BARRETT: -- because you have to be able to be in
6 a line between the receptor, the solar project and the rising
7 or setting sun.

8 MR. NELSON: Fair enough. But we can agree that
9 there's nothing in this plan, I'm not talking about glare now,
10 I'm just talking about the ability to perceive with one's eyes,
11 there's nothing that will obstruct that view?

12 CHAIR: But, but he's a glare expert, not whether --

13 MR. BARRETT: Yeah, I'm not, I'm not really --

14 CHAIR: -- way, one second, one second, he's a glare
15 expert and not whether or not you can see the facility. I
16 understand your question, but that's not really the issue. The
17 issue is whether or not you have glare and minimizes glare.

18 MR. NELSON: All right. You can see the panel?

19 CHAIR: But that was the same question, right? I
20 mean, it's the same question. Because it's not whether he can
21 see it or not. He's a glare expert. So, really the issue is,
22 whether or not you have glare, right? I mean, that's his
23 expertise, his narrow expertise.

24 MR. NELSON: Right, I mean, you're the boss, I'll
25 follow --

1 CHAIR: A person, person driving down the road can
2 see something and --

3 MR. NELSON: I'm, I think it's relevant but, but if
4 you disagree, I can move on.

5 CHAIR: Okay, okay.

6 MR. NELSON: It's not, (inaudible). May I just have
7 one moment to talk to my client (inaudible)?

8 CHAIR: Sure, absolutely. Take your time.

9 MR. NELSON: Mr. Barrett, you, excuse me, folks.

10 CHAIR: Thank you.

11 MR. NELSON: I respect people have degrees in
12 environmental science, I think it's a worthy cause and, and I
13 want to talk about some of the things you studied there, all
14 right, when you got your Master's? You talked about renewable
15 energy, that's a good thing, right?

16 MR. BARRETT: Yes.

17 MR. NELSON: Talked about recycling.

18 MR. SCHMIDT: Objection. I mean, he's been called as
19 a glare analysis, not recycling or environmental science. He
20 said what his degree was in, but I'm not producing him to
21 repeat Mr. Leskinen's testimony as an ecologist, for example,
22 so if it bears --

23 MR. NELSON: I'll ask more, I'll ask a more precise
24 question.

25 CHAIR: That sounds good. Sustained.

1 MR. NELSON: What's going to happen to these panels
2 after twenty-five years?

3 MR. SCHMIDT: Objection. That's well beyond the
4 scope of his expertise and Mr. Copus answered it last time.

5 CHAIR: I believe we had a witness on that and he, he
6 actually answered those questions about what you do after
7 twenty-five years, remove the panels, I think Mr. Thaler may
8 even have talked about it but I know Mr. Copus talked about it.
9 But he's, he's a glare expert as to what, I mean, so I don't
10 know how that's within his expertise.

11 MR. NELSON: Right. I simply want to establish, I
12 think it's relevant, that at the end of the period of time,
13 whatever period of time it is, that these panels will have to
14 be disposed of in a landfill, that's the --

15 MR. SCHMIDT: And, and the County requires it, 3717
16 requires a decommissioning agreement.

17 CHAIR: But even, but even still, that, but even
18 still, this expert is just here to talk about glare and, and
19 that's it, not whether or not something happens later.

20 MR. NELSON: All right. We'll, we'll, I'll, we'll
21 address that with another witness.

22 CHAIR: Oh, that sounds like a good plan, yeah.

23 MR. NELSON: All right. That's all I have, thank
24 you.

25 CHAIR: Okay. Any re-direct?

1 MR. SCHMIDT: Just a couple questions, Mr. Barrett.
2 Mr. Nelson asked you a lot of questions of being able, about
3 being able to see the panels from certain points, correct?

4 MR. BARRETT: Yes.

5 MR. SCHMIDT: And the panels, indeed, will be visible
6 from certain points around the subject property, correct?

7 MR. BARRETT: Correct.

8 MR. SCHMIDT: But I think you've explained this, but
9 just so, so I understand it, but glare is a function not of
10 just a, a line of sight between two points where somebody is
11 standing and where the, the, the item is that is reflecting or
12 causing glare, but it's also a function of where the sun is,
13 right?

14 MR. BARRETT: That's correct.

15 MR. SCHMIDT: Okay. So, for example, and if, I'm
16 just going to draw your attention, if I can, to page twelve and
17 thirteen. Ob, observation point eleven is to the south of the
18 site, is it not?

19 MR. BARRETT: Yes.

20 MR. SCHMIDT: And according to the table then on page
21 twelve, there is zero glare to that observation point, correct?

22 MR. BARRETT: That's correct.

23 MR. SCHMIDT: And that's based on the modeling that's
24 done?

25 MR. BARRETT: Right.

1 MR. SCHMIDT: And even if you could see the panels
2 from there, there would still be zero glare, is that correct?

3 MR. BARRETT: That's correct.

4 MR. SCHMIDT: Why is that? Can you just explain how
5 that all relates to the position of the sun? I know you've
6 talked about it, but just to make it clear?

7 MR. BARRETT: Yeah, it's not possible to see glare
8 from observation point eleven because the sun is rising further
9 to the east. So, you have to basically draw a line between the
10 observation point, the solar project and the sun to be able to
11 possibly see glare. So, in this case, the sun will never be
12 rising in the north, would only be rising in the north east to
13 the south east, somewhere in that area. So, we know with
14 confidence just based on geometrics, that it's impossible to
15 see glare looking from the south and looking north across the
16 solar project.

17 MR. SCHMIDT: And is that, and is that why, I think
18 you said at the very beginning of your testimony, that the real
19 key issues are the properties to the east and to the west of
20 the site?

21 MR. BARRETT: That's correct.

22 MR. SCHMIDT: And that's because of the geometry and
23 line created, if you, I think you expressed it as a line,
24 between the sun and the panels, correct?

25 MR. BARRETT: That's correct.

1 MR. SCHMIDT: Okay and then additionally, I know, if,
2 if we look, for example, I want to draw your attention to page
3 seventeen because Mr. Nelson asked you about a couple of these
4 points. The photos thereon show some of the existing
5 vegetation that is, that is there, correct?

6 MR. BARRETT: Correct.

7 MR. SCHMIDT: And will, will that serve to block any
8 glare as well?

9 MR. BARRETT: That's correct.

10 MR. SCHMIDT: And that also indicates that those
11 trees, the southernmost trees, are actually evergreen trees,
12 correct?

13 MR. BARRETT: That's correct.

14 MR. SCHMIDT: I know you're not a botanist, but
15 evergreen trees stay, stay full all year, correct?

16 MR. BARRETT: That's correct.

17 MR. SCHMIDT: So, they're not deciduous, okay. And,
18 sorry, sorry. The Board's indulgence for just a second. Okay.
19 Let, let me ask you, Mr., Mr. Barrett, if I can, and if I can
20 get you to turn to page twenty-three. The, the Not Fry Road as
21 it's called, is to the south of the site, correct?

22 MR. BARRETT: Yes, that's correct.

23 MR. SCHMIDT: And, and again, is there, maybe these
24 drawings and photographs, did these drawings tell us anything
25 about the amount of the glare that will be reflected towards

1 Not Fry Road and the properties adjacent to Not Fry Road,
2 again, because of the geometry of the sun and the relationship
3 of the reflection, if it's due south almost or south south east
4 or south south west, what would be the type of glare that you
5 would expect there?

6 MR. BARRETT: Yeah, it may be hard to fully
7 understand, but there's a graphic on page twenty-three called
8 simplified annual glare in the nations, and it shows the
9 project site and it shows Not Fry Road in a bluish color to the
10 south and you'll see, again, it's, it's not obviously
11 intuitive, but you'll see there's, there's very little color
12 that's going to the south across Not Fry Road and that's
13 basically what you're saying is that there's no way for glare
14 to affect receptors to the south.

15 MR. SCHMIDT: Okay and your study was based on the
16 location of certain observation points, as you've described,
17 correct?

18 MR. BARRETT: That's correct.

19 MR. SCHMIDT: And also, I'm trying to remember the
20 page number, you, you indicated that the, I think the modeling
21 can also take into account an actual stretch of roadway, is
22 that correct?

23 MR. BARRETT: That's correct.

24 MR. SCHMIDT: Can you explain how that works and I
25 think it's shown, find the right page, actually on page twelve,

1 that there's a blue line, turquoise line, superimposed on,
2 well, it calls it Route 1, which is actually Maryland 30 and
3 then Route 2, which is actually Not Fry Road, correct?

4 MR. BARRETT: That's correct.

5 MR. SCHMIDT: So, did the analysis also then take
6 into account those stretches of roadway, both Maryland Route 30
7 and Not Fry Road?

8 MR. BARRETT: That's correct. What you do is you
9 select the point of the route you want to analyze and then you
10 can add some information on elevation. I would say it's not
11 survey grade, so it's a good kind of first test, and then if
12 you want to look at particular observation points along that
13 route, like we did for observation point thirteen, then you can
14 get specific information on a particular part of the route.
15 But yes, indeed, we looked at both of those routes, Hanover
16 Pike and Not Fry Road.

17 MR. SCHMIDT: Okay and Fry Road is obviously due, due
18 south?

19 MR. BARRETT: That's correct.

20 MR. SCHMIDT: And Hanover Pike runs in a north/south
21 axis, correct?

22 MR. BARRETT: That's correct.

23 MR. SCHMIDT: Okay. So, it's to the east of the site
24 but obviously a lot of the stretch is to the, stretches of that
25 road are to the north and to the south, correct?

1 MR. BARRETT: That's correct.

2 MR. SCHMIDT: Okay. Okay. Board's indulgence for
3 just a second. Okay. Let me draw your attention also, if I
4 can, to, to page twenty-one of, of the report, if I could? And
5 I think there's, there's a, there's a, a chart called the glare
6 reflections on PV footprint. Can you, can you, can you
7 interpret that for us, Mr. Barrett? What is that showing about
8 glare to the south, particularly, and to the north,
9 particularly as it relates to the photos that are immediately
10 below? Those are one of the observation points that, number
11 thirteen, that Mr. Nelson asked you about.

12 MR. BARRETT: Right. So, for each observation point
13 that you analyze, the report produces information on what that
14 glare could occur seasonally. But it also shows what part of
15 the solar array the glare is coming from and that helps inform,
16 if we do a line of sight analysis, where we should be doing
17 that too. And so, in this example, the graphic on, on the
18 upper right is the footprint of the solar array and it shows
19 that the potential glare that would be coming from it is from
20 the very south south west portion and so relative to the photos
21 below, basically you'd be driving north or south on Hanover
22 Pike and you'd come to the space where you might be able to see
23 the solar project if you turned your head and looked that way.
24 But it would be such a small amount of glare as shown from the
25 southern part of this array, you'd be facing north or south, so

1 your eyes are on the road. You would barely even be able to
2 see it. You might perceive it, but it would not be any type of
3 effect on your ability to see the road.

4 MR. SCHMIDT: And obviously, that shows that exhibit,
5 or the drawing on page twenty-one shows that the glare is
6 actually being reduced, produced by that portion of the array
7 field, which is in the southern portion of the array field,
8 correct?

9 MR. BARRETT: That's correct.

10 MR. SCHMIDT: And not the one that's at the higher
11 elevation than Mr. Nelson mentioned, correct?

12 MR. BARRETT: That's correct.

13 MR. SCHMIDT: And these photographs also show, to a
14 certain extent, well, they definitely show the vegetation
15 that's out there in both of those directions, correct?

16 MR. BARRETT: That's correct.

17 MR. SCHMIDT: And the top, and the terrain and
18 topography as well?

19 MR. BARRETT: Yes.

20 MR. SCHMIDT: Okay, okay. Okay. I don't have any
21 other questions of the witness.

22 CHAIR: Do you have questions based on those
23 questions?

24 MR. NELSON: Yeah. I, the, because there were some
25 topics that were raised. I'll be very brief. I'd like to

1 follow up on your comments about your, page twenty-three. This
2 was something that came up in your re-direct, I wanted to
3 follow-up on that. Are you there, sir, Mr. Barrett?

4 MR. BARRETT: Yes, I am.

5 MR. NELSON: All right and what we're talking about
6 here is Not Fry Road, which is depicted on this illustration
7 here, is that right?

8 MR. BARRETT: That's correct.

9 MR. NELSON: And I'd like to show you, put an aerial
10 photograph up, which might be easier for everyone just to
11 visualize. This is just that blow-up Google Earth Pro, you've
12 seen a thousand (inaudible) --

13 MR. BARRETT: I have seen it, yes, thank you.

14 MR. NELSON: Okay and you can see Hanover Pike here,
15 and although the roams, the road is not designated here, this
16 is Not Fry Road, this is the subject property, you, you're
17 familiar?

18 MR. BARRETT: Yes.

19 MR. NELSON: This is a reasonably accurate depiction,
20 isn't it?

21 MR. BARRETT: It is, yes.

22 MR. NELSON: I'd like to mark this as Protestant's
23 Exhibit 10. Is that right, ten?

24 BOARD: Yes.

25 MR. NELSON: And I'd like to move that into evidence,

1 please.

2 CHAIR: Any objection?

3 MR. SCHMIDT: No.

4 MR. BARRETT: Do you know what the date is on the
5 aerial photography? Because you can get, you know, various,
6 you know, current and --

7 MR. NELSON: Yeah.

8 MR. BARRETT: -- you can also get historic, so.

9 MR. NELSON: The, the answer is I don't know exactly.
10 My practice is to get the most current one or the one with the
11 highest resolution.

12 MR. BARRETT: I'm not doing the cross examination so,
13 I just asked a question.

14 MR. NELSON: Yeah, but it, it's, I was looking for a
15 high resolution, reasonably recent, and we can go back into the
16 data to confirm it, but the, down here it says 2018, but I
17 don't, it doesn't give us the month and the day. All right.
18 So, this is what we call the private road, Not Fry Road, is
19 that right?

20 MR. BARRETT: Yes.

21 MR. NELSON: And on re-direct, counsel directed you
22 to the bottom of page twenty-three of your report, which in
23 figure eight shows two photographs, does it not?

24 MR. BARRETT: Yes.

25 MR. NELSON: And this says, the visibility of the

1 array, meaning the solar array, from eastern points on Fry
2 Road, what you mean is Not Fry Road, the private road, right?

3 MR. BARRETT: Yes.

4 MR. NELSON: So, what you're saying is, the
5 visibility to the solar array, if you're east of it looking to
6 the west, is that right?

7 MR. BARRETT: Yes.

8 MR. NELSON: Okay. You conclude, do you not, quote,
9 there is potential for glare at this point?

10 MR. BARRETT: Yes.

11 MR. NELSON: But you say, not to worry, I'm
12 paraphrasing, quote, the section of the road is not a public
13 road, right?

14 MR. BARRETT: That is part of the evaluation of
15 roadway impacts is the number of motorists, the amount of
16 danger, I guess you could say.

17 MR. NELSON: All right.

18 MR. BARRETT: So, I, I guess the, the, the context is
19 relative to the amount of activity on the roadway and the speed
20 of the vehicles.

21 MR. NELSON: All right. So, risk of injury, --

22 MR. BARRETT: So, that's a consideration.

23 MR. NELSON: -- we're talking about risk of injury.

24 If it's a public road with a lot volume of traffic, there's a
25 greater risk of injury than if just a few people commuting

1 daily up that private road? So, --

2 MR. BARRETT: Yeah, I think speed is --

3 MR. NELSON: -- as a society, we can accept the risk
4 if the number of people at risk is small enough, is that what
5 you're saying?

6 MR. BARRETT: I think speed is probably the more
7 important issue. How fast the vehicles would be driving.

8 MR. NELSON: All right. Then you say, it is a
9 private road solely driven by the few residents whose houses
10 are east of the, of, of the array, is that right?

11 MR. BARRETT: Yes.

12 MR. NELSON: Who lives to the east?

13 MR. BARRETT: I don't know them personally.

14 MR. NELSON: All right. Can you identify, not the
15 name, but the houses?

16 MR. BARRETT: Yeah.

17 MR. NELSON: All right.

18 MR. BARRETT: They're the observation points that we
19 analyzed.

20 MR. NELSON: All right. Let's go through those. You
21 want to tell us what they are?

22 MR. BARRETT: Well, I can refer to the observation
23 points, which are --

24 MR. NELSON: Okay, fair enough.

25 MR. BARRETT: -- one, two, three, six, seven and

1 twelve. There may be others that are driving, using that road
2 so I'm not saying I have everyone whom might drive on it.

3 MR. NELSON: All right. So, the orientation of Not
4 Fry Road is close, it's not exactly east/west, but it's close
5 enough, these east/west access, to get glare at the beginning
6 of the day, if you're going one direction, and glare at the end
7 of the day if you're going the same direction?

8 MR. BARRETT: The opposite direction.

9 MR. NELSON: Okay and then the reverse is also true,
10 if someone is doing the reverse commute, they got it both ways
11 too, don't they?

12 MR. BARRETT: Yeah, I, I guess, so if you're on the
13 east side of Not Fry Road and you're driving west, you could
14 potentially see glare as you come out of the forested area to
15 the north and you see the solar project. You may initially see
16 some glare based on just orientation. You're looking west
17 north west, it's possible you could see glare as you continue
18 along and the array is, is coming further to your periphery,
19 you won't see it.

20 MR. NELSON: All right. That's what time of day?

21 MR. BARRETT: And then we'll be including the
22 landscaping, and that will mitigate any potential glare.

23 MR. NELSON: But what time of day was that that you
24 just described?

25 MR. BARRETT: That is when the sun is setting in the

1 west.

2 MR. NELSON: All right.

3 MR. BARRETT: So, it would be in the evening.

4 MR. NELSON: What about when the sun is rising in
5 the, in the east and you're coming in the other direction?

6 MR. BARRETT: The sun is rising in the east, you'd be
7 driving Not Fry Road going from west to east, towards the
8 homes, that would be in the morning.

9 MR. NELSON: Um hm.

10 MR. BARRETT: And the orientation is such that you're
11 going a little bit more to the north east, that I would say it
12 would be more difficult to see across the solar project to the
13 sun unless it's, it's rising around the solstice.

14 MR. NELSON: All right. But there are going to be
15 times during the year when you can see (inaudible) glare?

16 MR. BARRETT: And that's what the vegetation
17 mitigation will be planted to address because you'll be sitting
18 about five feet above the roadway.

19 MR. NELSON: Um hm.

20 MR. BARRETT: And so, the vegetation will provide
21 screening.

22 MR. NELSON: Um hm. And so, I'm just trying to
23 understand the dominant reason that you're not too worried
24 about Not Fry Road. Is the dominant reason is that the risk of
25 personal injury is low because there are only six houses back

1 there? Or is the dominant reason that the speed is slow enough
2 that there's not the risk of injury? Or is the dominant reason
3 something else?

4 MR. BARRETT: I think the first level of evaluation
5 is speed.

6 MR. NELSON: Um hm.

7 MR. BARRETT: I would not say we consider the number
8 of people that use the road, that's not of particular
9 consideration. But if you're kind of characterizing the road,
10 you'd say it's used primarily by local residents and it's a
11 gravel road and speeds are low, so that would be a
12 characterization of the activity on the road.

13 MR. NELSON: All right.

14 MR. BARRETT: But as far as, you know, concern about
15 potential glare, I think that the vegetation is important for
16 mitigating any potential --

17 MR. NELSON: Right, I understand what you just said
18 here but, of course, that's not what you said in your report.
19 Because in your report, at the bottom of page twenty-three,
20 you're identifying, you're discounting it because there are
21 only a few residents who will be on this road.

22 MR. SCHMIDT: Objection. The report speaks for
23 itself and the witness has given his testimony.

24 CHAIR: That's all right. Understood. Cross
25 examination, overruled.

1 MR. SCHMIDT: It says that, doesn't it? You're,
2 you're talking about not the speed but the number of residents
3 in your report?

4 MR. BARRETT: The, the report, you know, says that.
5 In my testimony here, I would say that the more important
6 factor is speed.

7 MR. NELSON: Fair enough. That's all I have.

8 CHAIR: All right.

9 MR. SCHMIDT: No other questions.

10 BOARD: Would you put this number ten, (inaudible).
11 Thank you.

12 BOARD: I have a couple questions. Just to reconcile
13 your testimony, the report and the tool.

14 MR. BARRETT: Sure.

15 BOARD: So, I'm on page twenty-five and it says here,
16 the house designated as, by OP-2 showed the highest number of
17 minutes for potential glare of twelve thousand minutes. And,
18 and that's because the tool is not factoring in the landscape
19 or the altitude and it's just saying hey, that house has twelve
20 thousand minutes in, in, basically in a bubble.

21 MR. BARRETT: Right.

22 BOARD: Just looking at, focusing to, only on glare,
23 no other variable considered?

24 MR. BARRETT: Right. Based on the location of the
25 house, the location of the solar project and the path of the

1 sun, not factoring in vegetation, terrain.

2 BOARD: Okay and then, and then later on you say in
3 the mitigation of glare, it says here, the tree cover fully
4 obstructs the actual visibility of glare from most all
5 observation points with potential glare. This includes OP-2,
6 which is, in your professional judgment, you saw that there are
7 trees right on that person's property and, and you said that's
8 blocking the glare a hundred percent?

9 MR. BARRETT: That's correct and then in addition to
10 that, we'd be doing as part of the landscaping plan --

11 BOARD: That's where I was going to go next. So, if,
12 in your professional observation, if it was wrong, the
13 landscaping would, if, if, if it's properly done, would, would
14 be a secondary, you know, layer of screening from the glare?

15 MR. BARRETT: That's correct.

16 BOARD: Thank you.

17 CHAIR: Okay. All right. Thank you, sir.

18 MR. BARRETT: Thank you.

19 CHAIR: Any objection to Protestant's ten?

20 MR. SCHMIDT: No.

21 CHAIR: Okay. All your exhibits are in.

22 MR. SCHMIDT: And Ms. Murphy, that would be the
23 Petitioner's case, save for any rebuttal that we might have and
24 I just wanted to make sure that all the exhibits that I have
25 identified and produced, I believe have been accepted as well.

1 CHAIR: I believe so. I don't think there was any
2 objection.

3 MR. SCHMIDT: I think we're fine. And I will return
4 this report to --

5 BOARD: No, that was an extra.

6 MR. SCHMIDT: Oh, okay.

7 BOARD: Yes.

8 MR. SCHMIDT: I wondered why I didn't have the
9 current one in front of me.

10 CHAIR: So, I, it's time for lunch, so how long do we
11 want for lunch, an hour?

12 MR. SCHMIDT: That's fine, it's up to you and then we
13 can start Mr. --

14 CHAIR: An hour, is an hour good for you?
15 (inaudible).

16 (RECORDING PAUSED - 12:33:49 PM)

17 (ON RECORD - 01:22:37 PM)

18 CHAIR: All right. We're back on the record. We'll
19 hear the Protestant's case. All right, Mr. Nelson, first
20 witness?

21 MR. NELSON: Thank you. Our first witness is going
22 to be Ted Carter, landscape architect. Before I call him, I'd
23 like to move into evidence a copy of the staff comments. I
24 have a packet.

25 MR. SCHMIDT: Thank you.

1 MR. NELSON: The intention was to have every staff
2 comment in chronological order. If there is an omission, Mr.
3 Schmidt, I'm happy to be corrected. My intention was to have
4 every one there. That should be Exhibit 11, I believe. Any,
5 any problem there? Is that in?

6 MR. SCHMIDT: Well, I guess the only thing I would
7 say, the information at the end is not what I would call the
8 staff comments.

9 MR. NELSON: The last two pages?

10 MR. SCHMIDT: Yes. I mean, the zoning, the Zoning
11 Advisory Committee comments, as they're called, the ZAC
12 comments, for this particular case, I think are in your file
13 already, Chairwoman Murphy. And so, you know, some, I don't
14 have an objection to them. I mean, some of them have been
15 superseded, as this case has, has gone along. You know, when
16 Bill 20, when Bill 3717 was passed, that's, that reset the
17 County's requirements as it relates to solar facilities, so
18 obviously, I mean, I would argue that the ones that were
19 prepared after that date superseded the earlier ones. But, and
20 I don't have an objection, I mean, they're County documents, in
21 an administrative proceeding, I think they're admissible. The
22 last couple pages are not, are not specific to this case, I
23 don't believe.

24 MR. NELSON: 5928 Fry Road, subject.

25 MR. SCHMIDT: No, the, the last two from Andrea

1 VanArsdale and Scott Phillips.

2 CHAIR: I don't have that.

3 MR. NELSON: The, was there a mistake in the
4 collating?

5 MR. SCHMIDT: These? Okay.

6 MR. NELSON: Take that.

7 MR. SCHMIDT: Well, here, take those back. Okay. He
8 gave me two additional pages which you don't have.

9 MR. NELSON: I'm sorry, that was --

10 MR. SCHMIDT: Okay, so with that being deleted --

11 MR. NELSON: How that happened, I don't know, but it
12 --

13 MR. SCHMIDT: The last one should be a comment from
14 Mr. Livingston dated July 10th, 2018, is that right?

15 MR. NELSON: Correct.

16 MR. SCHMIDT: Yeah, okay.

17 CHAIR: The last two pages are, seem to be --

18 MR. SCHMIDT: Yeah.

19 CHAIR: -- they seem to be the same.

20 MR. SCHMIDT: I think they are.

21 CHAIR: Okay.

22 MR. SCHMIDT: That's sort of the standard
23 environmental comment that we have to comply with the forest
24 buffer regulations, which are the ones for water quality,
25 streams, wetlands and flood plains and forest conservation.

1 CHAIR: Right.

2 MR. NELSON: All right. So, they're in. Sorry for
3 the confusion, the last two pages.

4 MR. SCHMIDT: No problem.

5 CHAIR: No problem. Protestant's eleven.

6 MR. NELSON: And may I have a, just a housekeeping
7 question? My records show that Petitioner's Exhibit 2 is the
8 colored landscaping schematic, Mr. Schmidt. And then I have
9 another plat, the landscaping plan, which has text in the upper
10 left hand corner. I just want to make sure I'm using the
11 correct exhibit number.

12 MR. SCHMIDT: I, I think you're referring to number
13 ten, is the other landscape plan and I'm not sure if there's a,
14 off the top of my head --

15 MR. NELSON: Oh, it is. It's number ten. I'm,
16 you're right, there it is. That answers my question.

17 MR. SCHMIDT: Okay.

18 MR. NELSON: Thank you for clarifying that, I was
19 confused. Okay. I'm ready to go. At this time, on behalf of
20 my citizen clients, I call Ted Carter to the stand, who is our
21 expert witness in landscape and design.

22 BOARD: All right. Do you swear and affirm under the
23 penalties of perjury, the testimony you're about to give is
24 true and correct to the best of your knowledge and belief?

25 MR. CARTER: I do.

1 BOARD: Please state your name and your business and
2 your address for the record, spell your last name.

3 MR. CARTER: Edward Carter, C-A-R-T-E-R, Pinehurst
4 Landscape Company, 4809 Long Green Road, Glen Arm, Maryland
5 21057.

6 MR. NELSON: Mr. Carter, did my client's engage you
7 to review some landscaping issues with, with respect to this
8 proposed solar project?

9 MR. CARTER: They did.

10 MR. NELSON: All right. Before we get into the
11 substance, let me ask you a few questions about your, your
12 professional experience. What is your line of work?

13 MR. CARTER: I'm a landscape contractor. I
14 specialize in doing high end residential work and construction
15 along with specializing (inaudible) where I work with landscape
16 architects and engineers on projects similar to what we have
17 here. In addition to that, I manage Pinehurst Nursery, which
18 is a fifty-five acre tree farm based in the same location as
19 Pinehurst Landscape Company where we grow large caliber
20 deciduous and evergreen trees.

21 MR. NELSON: All right. That's what's going on now.
22 Tell us about your experience in the landscaping world, when
23 did it begin? How old were you?

24 MR. CARTER: Well, my father started Pinehurst and I
25 grew up on the nursery so I started from a very young age,

1 digging holes on the weekends and over summers. I formally
2 came back to Pinehurst in 2009 and have been managing the
3 company since then. I have a Master's in Landscape
4 Architecture from Morgan State University and currently sit on
5 the board of Maryland Nursery Land, Landscape and Greenhouse
6 Association and (inaudible).

7 MR. NELSON: Mr. Carter, where, physically, is, is
8 your, is Pinehurst?

9 MR. CARTER: We're about the end of Dulaney Valley
10 Road, just north of Loch Raven Reservoir.

11 MR. NELSON: So, you're in Baltimore County?

12 MR. CARTER: Yes, sir.

13 MR. NELSON: All right and how long has Pinehurst
14 been in business in Baltimore County?

15 MR. CARTER: A little over fifty-four years.

16 MR. NELSON: And how many employees are working for
17 it now?

18 MR. CARTER: About twenty-two at the moment.

19 MR. NELSON: All right. Tell us a little bit about
20 your Master's in Landscape Architecture. What was the
21 curriculum? What things did you study and how does it apply to
22 your experience now working in, in the landscaping world?

23 MR. CARTER: Predominantly learned about sight
24 analysis and proper site design, along with just planning,
25 beyond just planning plans, also sort of created a proper

1 analysis for a site to make sure that the cohesive design
2 (inaudible) landscapes, egress and even things like
3 reforestation projects are part of what we study.

4 MR. NELSON: Have you had occasion to track over time
5 how all the landscape plans have evolved, how they, how they,
6 how the, the, the trees and the shrubs have progressed over
7 time? Is that something you've had the opportunity to do?

8 MR. CARTER: Yes, part of the landscape industry in
9 the insulation side requires typically to warranty the plant
10 material. It's contractually obligated in reforestation
11 projects, so we very often see what is going to thrive and
12 what's going to survive and what's going to die after it's
13 being installed. So, especially in the residential side of
14 things, we are very well versed in sort of what does well in
15 this climate and various soils, conditions that we work in.

16 MR. NELSON: All right. Now, have you had occasion
17 to track your own landscape designs to see how they've done
18 over time?

19 MR. CARTER: Oh, sure.

20 MR. NELSON: All right. Have you acquired expertise
21 in knowing how quickly certain shrubs, species of shrubs or
22 trees grow over time?

23 MR. CARTER: Yes.

24 MR. NELSON: Have you acquired expertise on the
25 likelihood of long term viability of a plant and shrub?

1 MR. CARTER: Um hm.

2 MR. NELSON: And do you, you have to say yes or no.

3 MR. CARTER: Yes.

4 MR. NELSON: Do you have expertise in knowing the
5 risk of certain shrubs or trees dying over time?

6 MR. CARTER: Yes.

7 MR. NELSON: And is that part of your bread and
8 butter of your --

9 MR. CARTER: Well, I'm not a botanist, it's certainly
10 part and parcel to what we do.

11 MR. NELSON: Um hm. Have you had occasion to develop
12 expertise in evaluating whether a proposed landscape design
13 will, will ob, obscure a certain view? Is that part of what
14 you do in, in your line of work?

15 MR. CARTER: Yes, we very often, sorry, --

16 MR. NELSON: Go ahead.

17 MR. CARTER: We very often work with communities and
18 very often in the landscape industry, whether it's single
19 residents or a whole community of homes, deal with neighbor
20 relations and sight lines are very much what we get involved
21 in.

22 MR. NELSON: Okay and do you have experience
23 addressing the viability or the, the sight line, line of sight
24 over time as shrubs either, and trees either grow or die, is
25 that something you do?

1 MR. CARTER: Yes.

2 MR. NELSON: Um hm. Madam Chair, at this time, I'd
3 offer Mr. Carter as an expert witness in landscaping generally,
4 with particular reference to the ability of certain landscaping
5 designs to obscure or obstruct a certain view.

6 CHAIR: All right. Any voir dire?

7 MR. SCHMIDT: Yes. Mr. Carter, are you an engineer
8 licensed in the State of Maryland?

9 MR. CARTER: I am not.

10 MR. SCHMIDT: Are you a surveyor licensed in the
11 State of Maryland?

12 MR. CARTER: I am not.

13 MR. SCHMIDT: Are you an architect licensed in the
14 State of Maryland?

15 MR. CARTER: No.

16 MR. SCHMIDT: Are you a registered landscape
17 architect licensed in the State of Maryland?

18 MR. CARTER: I am not.

19 MR. SCHMIDT: You are not? Okay. Have you ever
20 testified before the Baltimore County Board of Appeals
21 regarding landscaping?

22 MR. CARTER: No.

23 MR. SCHMIDT: Have you ever testified before the
24 Administrative Law Judge of Baltimore County as it relates to
25 landscaping?

1 MR. CARTER: No.

2 MR. SCHMIDT: Have you ever testified before any
3 Court or judicial body in the State of Maryland as it relates
4 to landscaping?

5 MR. CARTER: No.

6 MR. SCHMIDT: Have you ever testified before any
7 other administrative type of body, such as a Board of Appeals
8 or Zoning Commissioner or Planning Commissioner in any other
9 jurisdiction, other than Baltimore County in Maryland?

10 MR. CARTER: Nope.

11 MR. SCHMIDT: Okay. Have you ever prepared a
12 landscape plan for submission to Baltimore County, submission
13 and approval to Baltimore County?

14 MR. CARTER: I have not.

15 MR. SCHMIDT: Okay. Do you know who it is in
16 Baltimore County who would approve any landscape plan that
17 might be required in this in, in this case?

18 MR. CARTER: In this case?

19 MR. SCHMIDT: Yes, sir.

20 MR. CARTER: I don't know their name.

21 MR. SCHMIDT: Okay. Do you know what position that
22 is that the, that, if any, that Baltimore County has, which is
23 designated to approve landscape plans?

24 MR. CARTER: The plans?

25 MR. SCHMIDT: Um hm.

1 MR. CARTER: I would imagine it would be the
2 supervisor of zoning and planning.

3 MR. SCHMIDT: Okay. Would that be --

4 MR. CARTER: (inaudible) Richardson is his name.

5 MR. SCHMIDT: Carl Richards?

6 MR. CARTER: Or Richards, excuse me.

7 MR. SCHMIDT: Carl Richards, okay. That's who would
8 approve a landscape plan you believe? I'm just trying to make
9 sure I understand that.

10 MR. CARTER: Well, one of a few, yes.

11 MR. SCHMIDT: Okay. Okay. Do you know or have you
12 ever met James Herman before?

13 MR. CARTER: I don't believe so.

14 MR. SCHMIDT: Okay. How about Gene Tansy?

15 MR. CARTER: I don't believe so.

16 MR. SCHMIDT: How about Avery Harden?

17 MR. CARTER: I don't believe so.

18 MR. SCHMIDT: Okay. Those in sequence are the last
19 three landscape architects for Baltimore County. Do you know
20 what publications, if any, the County has which relate to
21 landscaping requirements in Baltimore County?

22 MR. CARTER: Most specifically the Baltimore County
23 landscape manual.

24 MR. SCHMIDT: Okay. Are you familiar with the
25 landscape manual?

1 MR. CARTER: Yes.

2 MR. SCHMIDT: Okay. In what capacity have you relied
3 or reviewed the landscape manual?

4 MR. CARTER: We have reviewed it thoroughly.

5 MR. SCHMIDT: For this case?

6 MR. CARTER: Yes.

7 MR. SCHMIDT: For any other cases ever?

8 MR. CARTER: As far as my studies, certainly.

9 MR. SCHMIDT: Okay. When you say part of your
10 studies, as part of your education or --

11 MR. CARTER: Master's in Landscape Architecture, yes.

12 MR. SCHMIDT: Okay. As part of the course work that
13 you took, you were, you, you were required to review the
14 Baltimore County landscape manual?

15 MR. CARTER: Certainly, yes.

16 MR. SCHMIDT: Okay and where did you take these
17 classes?

18 MR. CARTER: Morgan State University.

19 MR. SCHMIDT: Morgan State, I'm sorry, you said that.
20 Have you, excuse me, have you ever taught any course in
21 landscape architecture or landscaping?

22 MR. CARTER: A guest lecture but no, I have not been
23 a professor.

24 MR. SCHMIDT: Okay. Are there, other than the
25 landscape manual as it relates to this property, are there any

1 other sources in Baltimore County which would be relevant as it
2 relates to landscaping requirements?

3 MR. CARTER: The Baltimore County comprehensive
4 manual development policies. That's what I have here.

5 MR. SCHMIDT: Okay. Anything else?

6 MR. CARTER: And the Hanover Pike corridor study.

7 MR. SCHMIDT: Okay.

8 MR. CARTER: Along with some (inaudible) staff notes
9 as they discussed.

10 CHAIR: You're going, you're going to have --

11 MR. SCHMIDT: I'm sorry, I didn't, I didn't hear the
12 end of that.

13 MR. CARTER: I'm sorry. The Hanover Pike corridor
14 study.

15 CHAIR: Hanover Pike corridor study?

16 MR. NELSON: Corridor study.

17 CHAIR: Okay. Corridor study. Okay, just keep your
18 voice up there. You don't have to talk into the microphone.

19 MR. CARTER: Forgive me.

20 BOARD: Yeah, or adjust the microphone.

21 CHAIR: Just adjust it (inaudible) because you want
22 to make sure your voice is recorded so (inaudible).

23 MR. SCHMIDT: Is, is the Hanover Pike corridor study,
24 is that a, an area plan, as that term is referred to under
25 Baltimore County law, if you know?

1 MR. CARTER: I don't know to my knowledge of that.

2 MR. SCHMIDT: Okay. Is it part of the County's
3 master plan, if you know?

4 MR. CARTER: I believe so.

5 MR. SCHMIDT: You believe it is? Okay. When was it
6 adopted into the master plan, do you know?

7 MR. CARTER: It's dated right here, I believe April
8 19th, 1993.

9 MR. SCHMIDT: Nineteen ninety-three, okay. Okay.
10 Chairwoman Murphy, I'm not quite sure where the witness'
11 testimony is going to go. I certainly understand that the
12 gentleman is the president or, of, of Pinehurst Nurseries and
13 certainly he, in that capacity, he is what I would call a
14 landscaper and I'm sure a very good landscaper, but that is a
15 little bit different than what the requirements are imposed
16 here, which relate to the required preparation of a plan by a
17 registered landscape architect and to the extent he's going to
18 express opinions there, I do not believe, quite honestly, that
19 he's qualified. I would say you've heard from Mr. Thaler about
20 the landscaping and I know in prior cases, and I would expect
21 here and would agree here that we understand, when I say we, my
22 client understands that we will be required and I think the
23 Board has imposed as a condition in, in these cases, that we
24 have a landscape plan approved before we get any permits by Mr.
25 Herman, who is the County's landscape architect. And we would

1 agree to that condition here. But if the witness is going to
2 be talking about required landscaping and those issues, with
3 all respect, I do not believe he has the expertise to do so.

4 CHAIR: Okay. Mr. Nelson, you indicated he was going
5 to talk about landscaping in general and specifically I
6 understood about certain species of trees that would obscure
7 view, the views of, you know, the adjacent homes or, or
8 motorists or that type of thing, is that right?

9 MR. NELSON: (inaudible) the Chair is asking for the
10 preview, I think that's what you're asking. The outline of the
11 examination really focuses on three perspectives. One is from
12 Hanover Pike looking north and the question is whether the
13 vegetation will obscure the view. The second view is from what
14 I call the Mirabile property, Mirabile property, which is to
15 the south of Not Fry Road. This is the site that the solar
16 energy didn't, an expert didn't address, that's the second.
17 And third view is a view that Mr. Thaler addressed from Hanover
18 Pike looking east, you recall that Mr. Thaler disallowed his
19 own landscape architect's testimony on that view. This witness
20 will address that and the focus is on, on each subject matter,
21 is whether the proposed landscaping will obscure, obstruct the
22 view from those three locations. That's the thrust of his
23 (inaudible).

24 CHAIR: But, but your client, I mean, your witness is
25 not proposing to put in a plan?

1 MR. NELSON: No, no.

2 CHAIR: In other words, not, not suggesting that
3 that's what he's going to do, correct? That's not, that's not
4 why he's here.

5 MR. NELSON: We're addressing his views and --

6 CHAIR: The views.

7 MR. NELSON: -- whether, whether the proposed plan
8 will obscure these views and, if so, to what extent.

9 CHAIR: And really, that gets down to the type of
10 tree that's being planted, is that what I'm understanding?

11 MR. NELSON: Beg your pardon?

12 CHAIR: The type of tree that's going to be planted,
13 right? Or bushes, or whatever.

14 MR. NELSON: Well, that's the, I wouldn't pretend to
15 speak on behalf of the witness, but that's part of it, you
16 know, the, the type of tree, the complexity, I mean, the size
17 of the tree.

18 CHAIR: Right.

19 MR. NELSON: The location of the trees and shrubs.

20 CHAIR: Understood. Okay, all right.

21 MR. SCHMIDT: The problem that I have, Chairwoman
22 Murphy, is, is that, I mean, the way that, that Bill 3717 is
23 structured and been applied by the County is obviously that
24 bill, for example, has some language in it about landscaping,
25 which is required, perimeter landscaping is what the bill says

1 and Mr. Thaler testified about that. And as I just indicated,
2 I would expect that the Board would require, I think the County
3 will require even if the Board didn't require it, but the
4 County will require that we have a landscape plan approved by
5 Mr. Herman who is that person, it's not Mr. Richards. He's,
6 he's in the zoning office. But Mr. Herman is the County's
7 registered landscape architect. So, I mean, if we get
8 testimony here, just for example, where this witness says oh, I
9 think you ought to plant a, a maple tree there instead of an
10 oak tree, or whatever and I'm just making up the species of
11 trees, is, is that going to overrule that requirement for Mr.
12 Herman? I mean, Mr. Herman is required to approve a landscape
13 plan, so with all due respect to this witness, no matter
14 whatever he says, he, certainly he could go talk to Mr. Herman
15 and express his opinion. Mr. Herman will talk to anybody who
16 wants to come in, but is the, is the Board going to overrule
17 or, I mean, I just don't know how that will work, that's a
18 problem, it seems to me.

19 CHAIR: Right. I mean, but he wasn't, he's not
20 putting in a plan, he's not trying to seal a landscape plan,
21 he's not putting in an opposite plan saying, you know, it
22 should look like this, you know, your Petitioner's plan looks
23 like, you know, X and I think it should look like Y. That's
24 what --

25 MR. SCHMIDT: I think that's exactly what he's going

1 to say.

2 CHAIR: He is talking about, it sounds like really,
3 based on his experience, you know, the type of tree, I mean, so
4 you can certainly cross examine on that issue.

5 MR. SCHMIDT: Sure.

6 CHAIR: And, and so, we'll, you know, certainly hear,
7 you know, you through cross examination on that so.

8 BOARD: But getting to Mr. Schmidt's point though, is
9 it, some of that's getting punted into after here, but isn't
10 the purpose of this witness to, to maybe make conditions on the
11 type that would help the decisions down, after this hearing?

12 MR. NELSON: Because we're opposing the application,
13 there's no presupposition this will be approved. We oppose it
14 but --

15 CHAIR: I understand.

16 MR. NELSON: -- but that's part of it.

17 BOARD: I understand. But I just, if, if it was,
18 that's all.

19 MR. SCHMIDT: But I guess --

20 BOARD: But, but what, what I'm getting at is, is I
21 think the purpose of him, him is, is to put conditions, if it
22 were to be approved on, on what, on what that landscape plan
23 would look like.

24 MR. NELSON: That's part of what he's saying but
25 there's a lot more.

1 CHAIR: And ultimately, it has to comply with the
2 County regulations.

3 BOARD: Right.

4 CHAIR: It has to comply with what the landscape
5 architect approves so, you know, even, even, we have to take
6 that for what it's worth, so.

7 MR. SCHMIDT: Well, that, I mean, that's my problem.

8 CHAIR: Understood.

9 MR. SCHMIDT: I think Mr. McComas is touching on it.
10 But, I mean, again, just for example, if this witness says I
11 looked at the landscape plan and it's proposing white pines at
12 this location and I don't think that's a good idea, and then we
13 go to Mr. Herman with the landscape plan and he says I want
14 white pines at this location, is the Board, I mean, is the
15 Board going to overrule, I mean, how are we supposed to, how do
16 we handle this? I mean, I think this witness, what I heard, is
17 going to say exactly or testify exactly what you said he's not,
18 that you said he's not going to say, which is I think he's
19 going to say I've reviewed the landscape plan, I don't like it,
20 I think the species are wrong or whatever and then where does
21 that leave us, I guess is my question.

22 BOARD: Well, we've, we've heard that before
23 (inaudible) is we've heard that kind of testimony from some of
24 the community members, that they don't want, you know, non-
25 native plants.

1 MR. SCHMIDT: Yes.

2 BOARD: I mean, so that's, that's really the basis of
3 why I, I was asking about the purpose.

4 MR. SCHMIDT: Okay.

5 CHAIR: Right. So, we understand your reservations
6 and we'll weight all that.

7 MR. SCHMIDT: Okay. And I guess I can address it in
8 closing or whatever, but.

9 CHAIR: You can, well, and, and in cross, and in
10 cross.

11 MR. SCHMIDT: Okay.

12 CHAIR: I mean, obviously we have to, we have to go
13 along with what the County architect is going to do and what
14 the regulations require as opposed to what we, you know, the
15 three of us think is a better tree.

16 MR. SCHMIDT: Well, you have, you know, --

17 CHAIR: Right.

18 MR. SCHMIDT: -- the authority to do, I mean, the
19 Board, you're the boss.

20 CHAIR: We're going to comply with, we're going to
21 comply with what the law says.

22 MR. SCHMIDT: Okay. But, --

23 CHAIR: So, that's, that's the end of the story.

24 MR. SCHMIDT: As Judge Boone told me long ago, I'm
25 wearing the black dress, I can do whatever I want.

1 CHAIR: I remember that, I remember that.

2 MR. SCHMIDT: So, yeah, so, all right.

3 CHAIR: I think I was asked (inaudible).

4 MR. SCHMIDT: Okay, thank you.

5 CHAIR: Go ahead, Mr. Nel, okay, so we're going to
6 have Mr., I just already forgot your, Carter?

7 MR. CARTER: Carter.

8 CHAIR: Carter, we're going to have Mr. Carter
9 testify as an expert in the issue, in the area of landscaping
10 and with respect to views and whether or not he believes those
11 views are obscured or not.

12 MR. NELSON: Thank you.

13 CHAIR: Go ahead, Mr. Nelson.

14 MR. NELSON: Mr. Carter, did you, at my request,
15 review certain documents related to this case?

16 MR. CARTER: Yes.

17 MR. NELSON: And let's just, for the record, just
18 list the documents that you reviewed, starting at the top.

19 MR. CARTER: Okay. Inner office correspondence from
20 staff, the Hanover Pike corridor study, the Baltimore County
21 comprehensive manual development polices, the Baltimore County
22 landscape manual and zoning regulations for solar facilities
23 for Baltimore County as well.

24 MR. NELSON: All right and have you seen the color
25 schematic landscape plan and the version of the landscape plan

1 that has the selected species in the upper left hand corner?

2 MR. CARTER: Yes, I believe you're referring to the
3 conceptual landscape plan.

4 MR. NELSON: Okay. All right. Have you had occasion
5 to, is that an inventory of what you've seen in this case,
6 documents, in terms of --

7 MR. CARTER: That and some satellite imagery as well.

8 MR. NELSON: Okay. All right, we'll get to that.

9 Now, did you have occasion to inspect the site?

10 MR. CARTER: Yes.

11 MR. NELSON: When was that?

12 MR. CARTER: Just a little, earlier this spring.

13 MR. NELSON: Okay and we'll talk about the inspection
14 in greater detail, but just give us an overview where you were,
15 what roads you were on and, and generally what views you had
16 and then we're going to come back and talk about details later.

17 MR. CARTER: Um hm.

18 MR. NELSON: But just give us a sense of what you
19 looked at.

20 MR. CARTER: Looked at the site, predominantly up and
21 down Not Fry Road at various locations from the south and east,
22 took a few views up to, sort of the higher points of Hanover
23 Pike looking north bound towards the site, and then we traveled
24 further north to sort of the western side of the farm and then
25 to a residence near that white pine grove on the north west

1 corner of the property.

2 MR. NELSON: All right. So, for the sake of
3 simplicity, I wanted to ask you about three separate views.
4 The first will be the view looking north bound from Hanover
5 Pike, the second will be from the Mirabile property, you know,
6 to the south of the subject property looking north and third
7 will be on Hanover Pike looking east across the, the road to
8 the site. So, let's, and you're generally familiar with those
9 three views, are you not?

10 MR. CARTER: I am.

11 MR. NELSON: All right. So, let's first start with
12 Hanover Pike north and, and what I'd like to do is put my
13 copies of Exhibits 8 and 9 on the board. I know some people in
14 the audience couldn't see it and I'm sorry these aren't blow-
15 ups. Let me put Exhibit 8 and you have, do you have copies
16 there with you? You don't, do you? Oh, boy, sorry, folks.
17 The Board has copies of Exhibits 8 and 9 and counsel has also,
18 right? So, let's first start with Exhibit 8. This is the
19 exhibit you, you were here for the testimony of Mr. Barrett,
20 the solar witness?

21 MR. CARTER: Yes.

22 MR. NELSON: (inaudible) if you don't mind? I'm
23 sorry to folks this is such a small copy but it's what I have.
24 But the Board has copies, right?

25 BOARD: Yes, we do.

1 MR. NELSON: All right. So, you've seen this before?

2 MR. CARTER: Um hm.

3 MR. NELSON: In your own words, describe what this
4 document tells you.

5 MR. CARTER: You're looking at a, a sectional
6 elevation plan, or cut through of the site along with the
7 sunlight and it's showing, basically, a defined mark on Not Fry
8 Road and sort of the top peak of, of the proposed solar
9 facility, showing basically a variation of elevations from
10 Hanover Pike, starting at, sort of at that point to the far end
11 with a variation of topography somewhere around six thirty-
12 eight as a starting point in terms of the highest peak. I
13 would have to ballpark round, I think it's even noted, five
14 sixty-four as sort of the low point. And then coming back up
15 to a high point of somewhere in between five twenty-five and
16 five-thirty.

17 MR. NELSON: All right. Now, Mr. Barrett told us
18 that he thought that was a reasonably accurate depiction of the
19 elevation and the line of sight, do you agree with that?

20 MR. CARTER: Yes.

21 MR. NELSON: All right and just looking at this
22 document, if you're standing on Hanover Pike at point A and
23 looking to the north east corner of the solar facility at point
24 B, is there anything obstructing your view of that location?

25 MR. CARTER: Partially. Sorry, to look at to this

1 corner right there?

2 MR. NELSON: Yeah, the north east corner.

3 MR. CARTER: No.

4 MR. NELSON: Okay.

5 MR. CARTER: That's open.

6 MR. NELSON: All right. Now, let's look at Exhibit

7 9. Do you recognize this image?

8 MR. CARTER: Yes.

9 MR. NELSON: Okay and what, what is this image?

10 MR. CARTER: That's a view of Hanover Pike looking
11 north bound at the facility.

12 MR. NELSON: Okay.

13 MR. CARTER: Proposed facility.

14 MR. NELSON: And is this, and do we see the open
15 field on the right there, that, that's aligned roughly with
16 point B in Exhibit 8?

17 MR. CARTER: Um hm.

18 MR. NELSON: Okay. You have to say yes or no.

19 MR. CARTER: Yes.

20 MR. NELSON: All right. So, what do these
21 photographs together tell you about the ability of someone
22 driving north bound on Hanover Pike, the ability to see the
23 north east corner of the subject property?

24 MR. CARTER: You would be able to see the north east
25 corner of that property as well as I might add the west, north

1 west corner of the property.

2 MR. NELSON: Okay. All right. So, that's over here?

3 MR. CARTER: Um hm.

4 MR. NELSON: All right. You have to say yes or no.

5 MR. CARTER: Yes.

6 MR. NELSON: All right. Now, do you have an opinion,
7 Mr. Carter, based on your training and experience, based on
8 your work in the field, based on your experience tracking
9 landscape plans over time, do you have an opinion as to whether
10 the proposed landscaping plan will obscure the view that start
11 in the north east corner?

12 MR. CARTER: I believe over the course if I
13 understand a solar facility to be about twenty-five years, that
14 the plantings that are being proposed in, in concept, would not
15 necessarily get to the, the height needed to be able to create
16 the screening necessary for --

17 MR. NELSON: Okay. Let's just start year one.

18 MR. CARTER: Um hm.

19 MR. NELSON: How high is the planting?

20 MR. CARTER: They'll vary. If we're referring to the
21 trees, I assume we're not referring to shrubbery.

22 MR. NELSON: No.

23 MR. CARTER: But I think in the conceptual plan, they
24 were noted at somewhere between six to up to twelve feet tall.

25 MR. NELSON: Okay. So, what is the, the difference

1 in height from at the border to the top of the peak?

2 MR. CARTER: Looks like five ninety-four up to, five
3 ninety-four up to, it's vague, but let's say six thirty,
4 approximately.

5 MR. NELSON: Okay. So, that's thirty-six feet and we
6 know that we have an exhibit that shows the elevation of the
7 solar panel, right?

8 MR. CARTER: Um hm.

9 MR. NELSON: What was, do you remember what that was?
10 Do you want me to pull that out for you?

11 MR. CARTER: I, yeah, I don't recall off the top of
12 my head.

13 MR. NELSON: Okay. I'm sorry, folks. (inaudible)
14 delay. Here we go. We're looking, let's look at ex, may we
15 have Exhibit, Petitioner's Exhibit 4, please?

16 MR. SCHMIDT: Mr. Nelson, that's the one with the
17 photos of sort of the typical, yes, okay. Just to make sure
18 I'm following you. Thank you.

19 MR. NELSON: All right. So, let me show, show you,
20 Mr. Carter, what's Exhibit 4 and take a look at that. You've
21 seen that before, have you not?

22 MR. CARTER: Yes, I have.

23 MR. NELSON: All right and so the question I'm
24 asking, sir, is what's, according to Petitioner's Exhibit 4,
25 this is from the applicant, not from me, the height above the

1 ground of the solar panel?

2 MR. CARTER: Minimum of two feet and looks like a,
3 varies but they're referencing seven foot eleven and seven-
4 eighths.

5 MR. NELSON: All right. So, just shy of eight feet.

6 MR. CARTER: About eight feet.

7 MR. NELSON: All right. So, if, if this solar panel
8 is at its highest elevation at eight, at just shy of eight feet
9 and we know that the, the difference in grade is five ninety-
10 four versus, you said six thirty-six, or six thirty you said?

11 MR. CARTER: I would, I would have to say closer to
12 probably six thirty.

13 MR. NELSON: Okay. So, six thirty. So, you have
14 thirty-six feet difference in grade, plus call it seven feet,
15 thirty-six, that's forty-three feet difference in grade right?

16 MR. CARTER: Um hm, yes.

17 MR. NELSON: From the bottom to the top of the solar
18 panel. All right. So, let's say, what was the highest tree
19 they were going to plant? You say twelve feet?

20 MR. CARTER: Twelve.

21 MR. NELSON: Okay.

22 BOARD: Did you say five ninety-eight to six thirty?

23 MR. NELSON: No, I think I said five ninety-four,
24 five ninety-four to six --

25 BOARD: He said five, he said five ninety-eight so

1 that's why I just wanted to make sure that we had the right
2 number.

3 MR. NELSON: Take a look at that. The question is,
4 at --

5 MR. CARTER: Five ninety-four.

6 BOARD: Five ninety-four, thank you.

7 MR. NELSON: Right, okay. So, if the difference in
8 grade is thirty-six feet and if the solar panel might be seven
9 feet, that's thirty-six, forty-three feet and if you give them
10 the benefit of the doubt and say they're going to plant all
11 twelve feet, trees of twelve feet high on year one, on day one,
12 all right?

13 MR. CARTER: Correct.

14 MR. NELSON: Will that, on day one, obstruct the view
15 of the north east corner?

16 MR. CARTER: It will not.

17 MR. NELSON: Okay. So, we can just do the
18 arithmetic, right? We got forty-three minus, minus twelve,
19 right? They got thirty-one feet open, is that correct? Plus
20 or minus?

21 MR. CARTER: Your math is better than mine, sure,
22 plus or minus.

23 MR. NELSON: All right. If you were to plant a
24 twelve foot tree, what, what species would, what are the likely
25 species?

1 MR. CARTER: Well, I'll, I'll base that, my answer
2 upon the plant schedule that was on the conceptual landscape
3 plan.

4 MR. NELSON: Yes.

5 MR. CARTER: They've got a mix of deciduous and
6 evergreen trees, that evergreens being American holly, eastern
7 red cedar and white pine. The deciduous trees, the shade trees
8 are a mix of oaks, maple, some of the, the solar species are
9 water king hawthorn, analincur, very common plants you would
10 find that are native to this area, that you would find in any
11 landscape plan.

12 MR. NELSON: All right. Of those trees, what are
13 the, what are the fast, what's the most, fastest growing?

14 MR. CARTER: Probably the fastest growing out of
15 everything I just listed was probably the, the eastern white
16 pine.

17 MR. NELSON: Eastern white pine?

18 MR. CARTER: Um hm.

19 MR. NELSON: How many feet per year does that grow?

20 MR. CARTER: Once established, and that might take a
21 year or two, about two feet a year.

22 MR. NELSON: All right. So, if we got roughly thirty
23 feet to cover, it would take the one year to to get
24 established, plus fifteen years to get up to the height of the
25 solar panels, is that right? If you want to go thirty feet?

1 MR. CARTER: Well, if you're starting with a ten foot
2 tall tree, I, I think the evergreens are actually starting
3 around six to eight feet tall.

4 MR. NELSON: Okay.

5 MR. CARTER: So, let's say you're putting, in ten
6 years you're putting on twenty feet, so you'd be at twenty-six
7 to twenty-eight feet tall, so you'd need another year or two
8 more on top of that. So, certainly more than a decade.

9 MR. NELSON: Um hm. All right. Now, let me direct
10 your attention, well, do you have an opinion as to whether the
11 landscape plan with respect to that portion of the view from
12 Hanover Pike, whether it satisfies what the landscape manual,
13 the comprehensive design manual and Hanover Pike corridor
14 study, do you have an opinion --

15 MR. SCHMIDT: Objection. I don't believe this
16 witness is, has, I don't believe he has the expertise to be
17 able to express an opinion about compliance to documents which
18 he claims govern this issue. I think that's beyond being a
19 landscaper. Now he's drawing legal conclusions about whether
20 it is in compliance with certain documents.

21 CHAIR: All right. Well, we'll let you, we'll let
22 you cross examine him on that.

23 MR. SCHMIDT: Okay.

24 CHAIR: And, it, you know, there's a fine line here.
25 We kind of, you know, it blurs together but he did indicate in

1 voir dire that he does know the landscape manual, that he used
2 it in his Master's degree program and that's reviewed it for
3 this case, so we're going to go ahead and let him. Go ahead.

4 MR. CARTER: I think that the current plan in
5 relation, vis-à-vis, this image right here is inadequate in
6 terms of achieving the guidelines that are stated and in the
7 notes of the staff for a couple different reasons.

8 One, if you reference actually the gentleman who was
9 speaking on behalf of the solar glare, he noted that the, the
10 density of the forest line, it's sort of the middle of those
11 two views, is, was sufficient for glare. It's also sufficient,
12 as you can see just plain as day on the photo, that it's
13 actually screening a portion of the farm, that lower portion.

14 If you look at that on a map that's on the satellite
15 image, that forest line is somewhere around a hundred to two
16 hundred feet dense and that's (inaudible) forest line that has
17 the density of that kind of planting, you're going to find
18 trees quite close to one another.

19 Whereas, if you analyze the proposed landscape plan,
20 you're going to find a couple different things. You have trees
21 are spaced ten to twenty, or even some areas thirty feet apart
22 from one another. And even if a tree is going to grow to, say,
23 a height of thirty feet tall, if they're separated twenty feet
24 apart from one another, let's say that they are an evergreen
25 and if you, best image to put together would be two pyramids

1 touching. If you have two pyramids touching at the base, that
2 doesn't give you much screening in terms of what's actually up
3 above. So, even if they do grow to a mature size and they
4 might have, the very tip of the evergreen screen portion of it,
5 they're still going to be plenty of windows through that
6 screening, if you use that term, to be able to see what's
7 beyond it. And so, to really be able to achieve the screening
8 that is being called out in both the guidelines and things like
9 the landscape manual and the, certainly the goals of the, the,
10 the corridor study, is that you need to have a planting plan
11 that would be much denser in its planting, probably like more
12 on the evergreen and start with much larger plant material.

13 MR. NELSON: All right. Let me direct your attention
14 to --

15 CHAIR: But, wait a minute, does that, does mean
16 you're saying you should plant them closer together?

17 MR. CARTER: Yes.

18 CHAIR: So, if they're ten to twelve feet apart, what
19 is your, what is your opinion about how close they should be
20 going to?

21 MR. CARTER: Well, this is where we get into
22 semantics and, and I, if we don't want to argue the species of,
23 of, it's going to be based entirely on the characteristics of
24 each individual tree, so it's a little hard to say
25 specifically. As a very general design guideline, dense, the

1 depth of the screening is important as well and what this
2 landscape plan is relying upon is predominantly just sort of a
3 single line. It may be staggered but there's not a lot of sort
4 of layering in the screening. So, when you look around the
5 perimeter, there's a few areas where there might be two layers
6 of screening, but very often, especially in areas such as Frye
7 Road, or excuse me, Not Frye Road, that you really is only
8 depending upon one line of deciduous trees and stagger that in
9 with a few shrubs underneath of it, which may have some in a
10 long period of time maturity, some screening, but it is
11 certainly going to take quite a while for it to get to the size
12 that I think would be sufficient.

13 CHAIR: So, you're suggesting then what?

14 MR. CARTER: Well, then what I would suggest is
15 having a much deeper buffer.

16 CHAIR: All right. But when you say that, what
17 specifically do you mean? You're saying there's, right now the
18 plan says one line of trees with some shrubs. Are you saying
19 it should be two, three, four lines of trees, and not, like
20 give us something in terms of what it is, what, how do you
21 suggest they fix that?

22 MR. CARTER: Sure. I think you're at least three
23 lines of trees.

24 CHAIR: Three lines, okay.

25 MR. CARTER: Yeah.

1 CHAIR: And then you're talking about three lines of
2 mature trees? In other words, plant trees that have already
3 matured?

4 MR. CARTER: Yes.

5 CHAIR: Okay.

6 MR. CARTER: And are fast growing.

7 CHAIR: Fast growing, okay. What you said was the
8 white pine, is that or you said --

9 MR. CARTER: That is not what I would necessarily
10 recommend for long, longevity. That was just, that would be
11 what is the fastest tree there.

12 CHAIR: Okay. Well, what, which one did you say was?

13 MR. CARTER: I would recommend sycamore preferably.

14 CHAIR: Sycamore.

15 MR. CARTER: Or (inaudible) poplar are two very fast
16 growing trees.

17 CHAIR: And do you know whether your recommendations
18 comply with the landscape manual, since you said you're
19 familiar with it?

20 MR. CARTER: They certainly comply in terms of use of
21 using native (inaudible), yes.

22 CHAIR: And how about the three lines of trees?

23 MR. CARTER: That is more of what I've seen in
24 personal practice. Having a double row is certainly more
25 effective. One of the problems that I find in terms of

1 maintaining landscapes such as this, is that what is not taking
2 into account is depth of plant material. And very often, I was
3 actually, I was just overhearing some of the residents talk
4 about a storm that came through and damage on the trees, that
5 you need to have some sort of a backup line to be able to have
6 a little bit more density to ensure that if a tree is lost
7 there is still some screening involved.

8 CHAIR: Okay.

9 BOARD: And how close together should, do you
10 recommend trees are planted?

11 MR. CARTER: Again, this, this is where an engineer
12 or a sort of a blanket, excuse me, a blanket regulation gets to
13 be a little tricky. There are certain species, based upon
14 their physical characteristics that could be tighter, others
15 actually prefer to be further apart and without getting into
16 sort of the nuances of individual species and the sight
17 conditions and sun and soil, it's a bit arbitrary to give a
18 hard number. Unfortunately, what very often happens is we say
19 in, in many municipalities, that things should be ten feet
20 apart from one another and, or twenty, whatever the distance
21 might be and we perceive that without really taking into
22 account sort of the full conditions of the site and the
23 material that we're using. And that's usually what can
24 actually cause some of the failure that we see in planting
25 (inaudible) like this.

1 CHAIR: Go ahead. I'm sorry, Mr. Nelson.

2 MR. NELSON: All right. Mr. Carter, let me direct
3 your attention to the staff report comment, November 22. Do
4 you have a copy of that in front of you? If not, we'll get you
5 one.

6 MR. CARTER: I do, give me one moment.

7 MR. NELSON: November 22.

8 MR. CARTER: Okay.

9 MR. NELSON: And I want to direct your attention to
10 the bullet points in the sen, bottom, the middle of the page.
11 You see those bullet points generally?

12 MR. CARTER: Yes.

13 MR. NELSON: And I want to direct --

14 MR. SCHMIDT: Which, I'm sorry, Mr. Nelson, which,
15 which ZAC, from what agency?

16 MR. NELSON: It is Baltimore County Interoffice
17 Memorandum dated November 22, 2016 from Andrea VanArsdale to
18 Mr. Jablon.

19 MR. SCHMIDT: Okay. Thank you, I found it, thank
20 you.

21 MR. NELSON: Got it? All right.

22 MR. SCHMIDT: I just didn't --

23 MR. NELSON: And Mr. Carter, I want to direct your
24 attention to the fifth bullet point.

25 MR. CARTER: Um hm.

1 MR. NELSON: Does this, the Board has a copy of the
2 report, the comments?

3 CHAIR: Sure do.

4 MR. NELSON: Let me just read, protect the Hanover
5 Pike scenic route by A, planting a vegetative screening
6 consisting of mixed indigenous hardwood and evergood tree,
7 evergreen trees and shrubs along Hanover Pike to a depth that
8 fully screens the solar panels. And it goes on, we'll talk
9 about sub B in a moment. But in your opinion, based on your
10 training and experience, does this proposed landscape plan
11 fully screen the solar panels from Hanover Pike at the location
12 depicted on Exhibit 8?

13 MR. CARTER: It does not.

14 MR. NELSON: Okay and what area does it not fully
15 screen?

16 MR. CARTER: The north east corner and the south west
17 corner, I'm sorry, the north west corner.

18 MR. NELSON: Um hm. Now, let me ask you a question
19 about the comprehensive manual development policies and let me
20 direct your attention to page 182.

21 MR. CARTER: I'm sorry, which manual?

22 MR. NELSON: This is the comprehensive manual, page
23 182. You there?

24 MR. CARTER: Um hm.

25 MR. NELSON: My question to you, sir, is whether, and

1 I'm focusing on this view from Hanover Pike to the north east
2 corner of the subject property and from Hanover Pike to the
3 north west corner of the subject property. You with me?

4 MR. CARTER: Yes.

5 MR. NELSON: And my question to you is whether the
6 proposed plan satisfies what page 182 states in the
7 comprehensive design manual?

8 MR. CARTER: Notably it states site development in
9 relation to the natural, site development in relation to
10 natural contours, avoid placing structures on the top of
11 prominent ridges. I certainly think that that is something
12 that it fails to do.

13 MR. NELSON: In what way?

14 MR. CARTER: It is citing the solar field all the way
15 up to the top of the, the con, or the topography of the site
16 and it's not necessarily using the natural screening of the
17 forest line down below and isolating that development there.
18 It certainly could use some berms and vegetation buffers in a
19 little bit more strategic manner. I think that's actually
20 noted in some of the staff comments as well.

21 MR. NELSON: Okay. Well, let's talk about the staff
22 comments. Let me direct your attention, your attention back to
23 the staff comment, November 22, 2016, and the paragraph below
24 the five bullet points. Is that where staff comments on the
25 requirements we just discussed?

1 MR. CARTER: That is, yes, that's (inaudible).

2 MR. NELSON: Okay and what's the theme of that
3 comment, in your view as a landscape expert?

4 MR. CARTER: The theme of it is to avoid creating
5 development in such a way that is visible for, from the
6 public's perspective. In such a way that it maintains a, the
7 rural aesthetics that define the, the, the area. What they're
8 not doing is taking the, they're citing the development up the
9 hill. It's making it much more prominent from a public view.
10 The design that they have currently as a, at least shown on the
11 landscape plan, doesn't fully screen that area, so it
12 definitely creates what, I think in the comprehensive manual,
13 as, forgive me but let me get the terminology right, high
14 visual impact and low integrity. I think is how you would
15 define that. They, they, in the manual it describes integrity
16 as the absence of visual distracting elements and I think a
17 solar field in the middle of an agricultural field is certainly
18 something that is not keeping in the, the element of visual
19 distracting.

20 MR. NELSON: All right. Before I move on to the next
21 viewer, is there any other comment you wanted to make about
22 this view looking from Hanover Pike looking north of the
23 subject property?

24 MR. CARTER: No.

25 MR. NELSON: Okay. Counsel, I'm going to show the,

1 we're, I'm turning to the Mirabile property. The, the exhibits
2 at issue here are five, six and seven.

3 MR. SCHMIDT: The exhibits you previously offered?

4 MR. NELSON: Yes. (inaudible) you're ready. Do you
5 have those? Five, six and seven.

6 MR. SCHMIDT: Five, six, yes, sir, I do. Thank you,
7 Mr. Nelson.

8 MR. NELSON: All right, okay. And then I have two
9 other photographs for the Mirabile property. Of course, I
10 think it'd be most efficient just to mark now. Ms. Jolivet,
11 we're at, at what number, I'm sorry?

12 BOARD: You're at twelve.

13 MR. NELSON: All right.

14 MR. SCHMIDT: Okay. This is going to be twelve?
15 Thirteen?

16 MR. NELSON: My goal, counsel, is just to get in the
17 record, into evidence, all the relevant photographs for this
18 property. So, let me show you what I've marked for
19 identification as Exhibit 12. This is not the, you see that
20 photograph, sir?

21 MR. CARTER: Um hm. Yes.

22 MR. NELSON: And do you recognize that view?

23 MR. CARTER: Yes, I do.

24 MR. NELSON: Okay and, and we can agree, that's a
25 picture from the Mirabile property south of Not Frye Road

1 looking in a generally northerly direction?

2 MR. CARTER: Correct.

3 MR. NELSON: Okay and Exhibit, I'd like to move into
4 evidence Exhibit 12.

5 MR. SCHMIDT: No objection.

6 MR. NELSON: And Exhibit 13 is the Google Earth,
7 right?

8 MR. CARTER: Um hm.

9 MR. NELSON: Line of sight looking to the north west.
10 Is that photograph generally representative of, of what that
11 aerial view looks like?

12 MR. CARTER: Yes, it is.

13 MR. NELSON: And you've been to the site, have you
14 not?

15 MR. CARTER: Yes.

16 MR. NELSON: So, you're comfortable with the
17 elevation profiles on the bottom?

18 MR. CARTER: Yes.

19 MR. NELSON: All right. I'd like to move into
20 evidence Exhibit 13.

21 CHAIR: Any objection?

22 MR. SCHMIDT: No objection. Mr. Nelson?

23 MR. NELSON: Yes?

24 MR. SCHMIDT: Just, I want to make sure I understand
25 and so, so twelve is a picture of basically the red line that's

1 shown on thirteen, is, is that right? I'm sorry, I just want
2 to make sure I understand.

3 MR. NELSON: Yeah, so, --

4 MR. SCHMIDT: So, --

5 MR. NELSON: -- can I look over your shoulder?

6 MR. SCHMIDT: Yeah.

7 MR. NELSON: All right.

8 MR. SCHMIDT: So, this is the picture of, from here
9 to there?

10 MR. NELSON: (inaudible) twelve and the first one,
11 and that's the trailer, that's the new house site, so, yeah.
12 Twelve is there.

13 MR. SCHMIDT: Right.

14 MR. NELSON: And the one that's on the, that I'm,
15 that he has there, --

16 MR. SCHMIDT: Okay, I got it. Thank you. I just
17 wanted, thank you, Ms. Murphy, I just wanted to make sure I
18 understood what I was looking at.

19 MR. NELSON: All right. All right. So, the exhibits
20 that are at issue, I'm going to put on the board if that's
21 okay.

22 VOICE: (inaudible).

23 MR. NELSON: All right. Here was my goal. I'm
24 trying to get a view working from the east going to the west,
25 all the way on the right I have Exhibit 13, which is the Google

1 Earth elevation profile looking to the north west, do you see
2 that? Then to its left, I have Exhibit 12, which is the
3 photograph taken from the site at ground level, at, at
4 generally the location of the, the new house, do you see that
5 and you recognize that?

6 MR. CARTER: Yes.

7 MR. NELSON: That's Exhibit 12. Then Exhibit 5 is
8 the photograph from the, what I think was the, where the
9 trailer is further down the road looking to the north, do you
10 see that?

11 MR. CARTER: Um hm, yes.

12 MR. NELSON: And then to the left of that is Exhibit
13 7, which is the Google Earth Pro image looking roughly to the
14 north west, do you see that?

15 MR. CARTER: Yes.

16 MR. NELSON: All right. Now, as a landscape
17 architect, what do these photographs tell you about the
18 difficulties with screening a proposed solar facility on that
19 hill that rises to the north?

20 MR. CARTER: Well, the, the van that is in both of
21 those photographs is a great reference. That van, though I'm
22 not a mechanic, I would estimate to be about seven feet tall.
23 So, it gives you a good visual in terms of what would start to
24 become the screening along Not Frye Road.

25 Just to take the first photo that we have here, you

1 can actually see that there's a little bit of a dip from the
2 hillside where --

3 MR. NELSON: Which photograph is that?

4 MR. CARTER: I'm sorry, this is number twelve.

5 MR. NELSON: All right, so that would be Exhibit 12?

6 MR. CARTER: Yes. There's a, a significant dip from
7 the elevation of the road to the, where the, I'm sorry there,
8 sorry, there's a little bit of a dip coming down off the road
9 where the van is. If that's seven feet tall and what's
10 proposed, some of that plant material is going to be say twelve
11 feet tall, even still, it's not getting to the height of say
12 the electrical pole that is behind it. A good bit of that,
13 excuse me, a large amount of that field would still be visible
14 after planting, even actually with a double layer, or a triple
15 layer. The, that, sort of the density of that is not going to
16 necessarily be helped by the fact that it's just, we're looking
17 upward, uphill on a high rising slope. So, it is a very tough
18 call to screen that without very large material certainly.

19 MR. NELSON: All right. So, let's take year one. If
20 you look at the proposed landscaping plan, will it obscure that
21 view?

22 MR. CARTER: I would say at a minimum two-thirds of
23 that view is still very much visible.

24 MR. NELSON: Okay. Would it fully screen that view,
25 do you know?

1 MR. CARTER: Oh, no.

2 MR. NELSON: No, um hm. What steps would you
3 recommend, of course, my clients oppose the, the application
4 for special exception, that's their fundamental position, of
5 course. But if the Board were inclined to approve the special
6 exception, what type of screen would be required to fully
7 screen the view of the solar facility?

8 MR. CARTER: That would be material that if you look
9 at sort of the height of the telephone, or the electrical pole
10 that is in photo twelve, it would have to be taller than that
11 and I assume that would need to be, I'm estimating that would
12 have to be nearly twenty-five feet tall at a minimum to be able
13 to achieve that effect.

14 MR. NELSON: Okay and --

15 MR. CARTER: And a rather dense planting even at that
16 point.

17 MR. NELSON: How many, how dense? When you say dense
18 planting, what is --

19 MR. CARTER: Again, if we were doing a triple row
20 like that, that would, you're looking at a density of roughly
21 ten feet on center to make sure that you can't see anything
22 through it if you're going to fully screen the view.

23 MR. NELSON: Um hm. All right. In your opinion,
24 does the proposed landscaping plan give respect to and comply
25 with the themes of the landscape manual, the comprehensive

1 manual and the Hanover Pike corridor study?

2 MR. SCHMIDT: Objection. No foundation.

3 CHAIR: Well, I think he talked about the
4 comprehensive manual development policies, the Hanover Pike
5 corridor plan and the landscape manual as well, so. We'll let
6 him answer. Overruled.

7 MR. CARTER: No, I do not.

8 MR. NELSON: Okay. Why not?

9 MR. CARTER: For some of the same reasons I've just
10 stated in terms of the lack of density and the, the full effect
11 of screening. It's still a very visible development even with
12 an initial planting that is going to occur and that it would
13 require at least a decade for the plants to mature to a size
14 that would really make it disappear. But that's specifically
15 from this viewpoint. That doesn't necessarily address the
16 Hanover Pike.

17 MR. NELSON: Right, okay. We'll get back to Hanover
18 Pike but I've been focusing my questions on the view from what
19 I think was the Mirabile property, south of the Not Frye Road
20 private road.

21 MR. CARTER: Um hm.

22 MR. NELSON: And, and I think you've told us your
23 views on that subject, right?

24 MR. CARTER: Um hm.

25 MR. NELSON: You have to say yes or no. to say yes or

1 no. MR. CARTER: Yes.

2 MR. NELSON: Let me take a slight different view.
3 Now we're in a car driving west bound on Not Frye Road, towards
4 the solar, we're coming from west of Not Frye and now we're
5 driving generally west bound on Not Frye towards Hanover Pike,
6 all right?

7 MR. CARTER: Okay.

8 MR. NELSON: What's your view, what, what would the
9 view be from that vantage point?

10 MR. CARTER: Based again on what the total, excuse
11 me, the landscape compliance plan (inaudible).

12 MR. NELSON: What would you, what would one see,
13 let's start there. What would one see?

14 MR. CARTER: Oh, one would see a series of, of trees
15 running along the edge of the line with some shrubbery planted
16 underneath of it. They're spaced somewhere around ten to
17 twenty-five feet apart from one another. It would be
18 predominantly shade trees, so it depends a little bit upon when
19 you're thinking of screening, it's important to think about
20 what time of year you're looking at. So, if (inaudible) in the
21 wintertime from about November to, oh, gosh it could be April,
22 depending upon the, the species, having leaves on the plant, on
23 the trees so the screening itself will actually be relatively
24 limited. So, it would still be very visible to see what's on
25 the hillside.

1 MR. NELSON: All right. Now, let me go back to the
2 comment dated June 25, let me find it. I misspoke, to July
3 12th, 2018. Counsel, this is the memo from (inaudible) to Mr.
4 Jablon July 12th, 2018 in the ZAC comments, you there?

5 MR. SCHMIDT: Yes, sir. Thank you.

6 MR. NELSON: All right. Do you have your copy there,
7 sir?

8 MR. CARTER: I do.

9 MR. NELSON: All right and I want to go back with you
10 from the Mirabile property, just south of Not Frye Road and I
11 want to focus on paragraph five. Let me just read it.
12 Additional landscape buffers, including contour strip buffers,
13 may be required to address existing topography changes, scenic
14 views, scenic routes, etcetera and it goes on. I want to focus
15 on the phrase contour strip buffers. If we're looking, if
16 we're, if you and I are standing on the Mirabile property south
17 of Not Frye Road, looking generally to the north, so one of
18 these views here.

19 MR. CARTER: Um hm.

20 MR. NELSON: We know from the plan that there are
21 lines of solar arrays. What do you, as a landscape expert,
22 understand the phrase contour strip buffer to mean?

23 MR. CARTER: So, in lieu of just planting around the
24 perimeter of the site, that intermittently there would be
25 planting running parallel to the contour lines possibly

1 including some grading as well, that would run through the site
2 to be able to create screen so that we're trying to push the
3 screening not just out along the periphery but also closer to
4 the, the object that is trying to be screened. It would
5 probably create a much more effective way of screening portions
6 of the view.

7 MR. NELSON: All right. So, I have in this, in my
8 mind's eye, an image of a, of a terraced side of a hill or a
9 mountain with a vineyard on it with, with vines growing.

10 MR. CARTER: Um hm.

11 MR. NELSON: Is that, is that evocative of this
12 notion of contour strip buffering or are they, they, they, they
13 regrade it and plant something between the solar arrays?

14 MR. CARTER: The, the grading isn't necessarily
15 required, that's more site specific, but yes, the idea is that
16 you would have intermittently sort of tiers of planting through
17 the, the site, therefore, that we're creating, especially in a
18 topography such as this where the grade is rising, that you're
19 able to create screening running up the side, hill side,
20 therefore, it screens much more effectively.

21 MR. NELSON: All right.

22 MR. CARTER: You're not trying to ask one plant to
23 grow to be forty feet tall before it's effective. You're
24 putting something that would be already a lot closer to screen
25 say seven foot tall solar panel.

1 MR. NELSON: All right. I want to show you
2 Petitioner's Exhibit 10. This is my copy, Mr. Schmidt, but.

3 MR. SCHMIDT: Okay. Why don't you, you want to put
4 the one on the board?

5 MR. NELSON: Do we have a big one of it?

6 MR. SCHMIDT: I'm sure Ms. Jolivet does.

7 MR. NELSON: Can we have a big copy?

8 BOARD: Number ten?

9 MR. NELSON: Yes, please. For the record, I've put
10 on the easel the Board's copy of Petitioner's Exhibit 10, which
11 is the landscape plan with the suggested plant material in the
12 upper left hand corner and we were talking about the strip,
13 contour strip buffering. And tell us, in your experience as a
14 landscape expert, what were they, what were, what does that
15 phrase contemplate? Where would that buffering go? Yeah,
16 sure.

17 MR. CARTER: I would think what would occur is,
18 again, rather than sort of around the perimeter, that there'd
19 be a sort of series of, of screening lines running up through
20 the, the hillside, that way, with a sort of line of panels
21 going through it. Now, I realize that some of this might, I'm
22 not an expert to solar facilities, I'm certain of their energy
23 efficiency, but as far as a, a screening plan would go that the
24 idea would be that you would have sort of a series of lines
25 running along the hillside so intermittently say every fifty

1 feet or so to sort of create a little bit of a screening
2 effect.

3 MR. NELSON: All right. So, that would, I guess,
4 would require moving some of the solar arrays further apart?

5 MR. CARTER: Oh, I would imagine, yes.

6 MR. NELSON: All right. All right. Now, let me
7 direct, stay up at the, the easel there and I see in this
8 access here that goes to the north east to the south west, this
9 area where there aren't solar arrays, but I see some evidence
10 of some proposed plantings in that area.

11 MR. CARTER: Um hm.

12 MR. NELSON: Do you see that?

13 MR. CARTER: Yes.

14 MR. NELSON: And, and what do those, and of course we
15 have a legend up here, what do those notations depict?

16 MR. CARTER: Proposed shrubbery and looks to be
17 proposed, I'm not quite tell, certain because of the, the key
18 and (inaudible) I'm not sure if this is supposed to be a larger
19 evergreen or if it's supposed to be a minor deciduous tree.

20 MR. SCHMIDT: Objection. If he, if he can't read the
21 plan, then how can he testify?

22 CHAIR: Well, you can cross examine him.

23 MR. SCHMIDT: Okay.

24 CHAIR: Okay.

25 MR. CARTER: But it appears to be sort of a series of

1 shrubs and then two trios of trees.

2 MR. NELSON: Okay. Now, let's assume that every tree
3 and shrub depicted in that plan is planted just where that plan
4 says they want to plant it.

5 MR. CARTER: Um hm.

6 MR. NELSON: Will those plantings achieve an
7 effective contour strip buffer to, to obscure the view of the
8 overall solar facility?

9 MR. CARTER: It all depends upon where we're looking
10 from, the views. But let's say from Hanover Pike, certainly
11 no.

12 MR. NELSON: Okay.

13 MR. CARTER: I think from the Mirabile property, no.

14 MR. NELSON: Okay. All right. Okay. I want to,
15 before I turn to Hanover Pike looking to the east, are, are
16 there any other comments you want to make, if any, about the
17 view from the Mirabile property the, or the property to the
18 south of the site?

19 MR. CARTER: The only thing I'd clarify is that if
20 you're to do sort of a contour such as that, so you're
21 achieving the effect of all the varying views that are, that go
22 towards that properties, you really would have to have contour
23 screening that would be running all the way east to west to
24 achieve the desired effects. If you're only doing it on one
25 location, then it's only, you're only helping one person out,

1 especially when it comes to something like the view that's
2 expansive from Hanover Pike, it really needs to run the full
3 length of, of the property.

4 MR. NELSON: All right. We're at what exhibit, Ms.
5 Jolivet?

6 BOARD: Number fourteen. Thank you.

7 MR. SCHMIDT: And this is exhibit number?

8 BOARD: Fourteen.

9 MR. NELSON: Fourteen. Mr. Carter, let me show you
10 what's been marked for identification as Exhibit 14. Do you
11 recognize this photograph?

12 MR. CARTER: Yes, that's a view from Hanover Pike
13 looking east bound from the property.

14 MR. NELSON: Okay and I know it's black and white,
15 but does it depict reasonably accurately the landscape from
16 that perspective?

17 MR. CARTER: I believe so.

18 MR. NELSON: I'd like to move into evidence Exhibit
19 14, please.

20 CHAIR: Any objection?

21 MR. SCHMIDT: No.

22 MR. NELSON: All right. Now, I was interested in
23 this photograph for a couple of reasons and one reason that,
24 that a witness for the applicant describe Hanover Pike at this
25 location as being much lower elevation than the bluff on the

1 edge of, of the solar facility. Do you see that in this
2 picture?

3 MR. CARTER: No, it does rise above and you do see
4 the solar facility, what is to be the solar facility well.

5 MR. NELSON: All right. All right. Now, what does
6 the proposed landscaping plan propose to plant along this area?

7 MR. CARTER: We have a series of, of evergreen
8 deciduous trees and looks to be some shrubbery as it rises
9 along the hill, parallels that one private driveway.

10 MR. NELSON: All right and let's, we can see the
11 private driveway in the left part of this photograph, can we
12 not?

13 MR. CARTER: Yes.

14 MR. NELSON: So, that private driveway is going to be
15 right here, is that right?

16 MR. CARTER: Correct.

17 MR. NELSON: All right. Now, do you have an opinion,
18 based on your training and experience, as to whether the
19 proposed landscaping plan satisfies the theme, the landscape
20 manual, the comprehensive manual and the Hanover Pike corridor
21 study at this location?

22 MR. CARTER: I don't believe it does.

23 MR. NELSON: Okay. Why not?

24 MR. CARTER: For the same reason as the other
25 locations, that the density of the planting is still inadequate

1 to be able to achieve the desired result. In this particular
2 location, there's also (inaudible) shrubbery, which really is
3 being proposed here is not necessarily the best use to create a
4 better screening. Not to get too much into the weeds, but some
5 of the species that they're specifying really are not going to
6 create the density that you're looking for.

7 BOARD: But didn't you say that you needed, the
8 density would, (inaudible) between the evergreens (inaudible)
9 help with that density that you mentioned earlier?

10 MR. CARTER: Good question. To an extent, yes. But
11 it's, what's really going to get the vast majority of what you
12 want is a denser tree planting.

13 BOARD: Okay.

14 MR. CARTER: Um hm.

15 MR. NELSON: Now, let me direct your attention back
16 to the comments of November 22, 2016. This is the comment that
17 uses the phrase to a depth that fully screens the solar panels,
18 do you see that?

19 MR. CARTER: Yes.

20 MR. NELSON: All right. In your opinion, does the
21 proposed landscaping plan fully screen the solar panels at this
22 location?

23 MR. CARTER: No, I don't believe it would.

24 MR. NELSON: Okay. (inaudible) may I just have a
25 minute to speak with my client?

1 CHAIR: Sure.

2 MR. NELSON: May I just have one moment, Your Honor.
3 So much paper here.

4 CHAIR: Sure.

5 (RECORDING PAUSED - 02:34:04 PM)

6 (ON RECORD - 02:35:09 PM)

7 MR. NELSON: -- leave these on the easel?

8 MR. SCHMIDT: No, you don't need to leave them, leave
9 those. Thank you, Mr. Nelson.

10 MR. NELSON: Can I just (inaudible).

11 BOARD: Yeah, just (inaudible) originals for the
12 Board, so I have them.

13 MR. SCHMIDT: Yeah, the, the small, smaller pictures
14 I don't need.

15 BOARD: Okay.

16 MR. SCHMIDT: And while, while, right before cross
17 examination can I have exhibit number four, Petitioner's
18 exhibit number four? I want to make sure what that is.

19 BOARD: Okay. Doesn't he have that?

20 MR. SCHMIDT: He's got number ten and number one up
21 there.

22 BOARD: Yeah, he has number four too.

23 MR. SCHMIDT: Oh, he has number four as well?

24 MR. NELSON: I'll check, one second.

25 MR. SCHMIDT: I think that, that, I think that, maybe

1 I've got the wrong number. I think it's, I think it's that,
2 yes, three.

3 BOARD: Um hm.

4 MR. SCHMIDT: Maybe that, okay. Maybe I gave you the
5 wrong number. Thank you.

6 BOARD: Um hm.

7 MR. SCHMIDT: That's it. Okay, sorry.

8 MR. NELSON: Do you want these too?

9 MR. SCHMIDT: Yeah, keep, yeah, I want those.

10 MR. NELSON: You want this?

11 MR. SCHMIDT: No, I don't need that. I don't need
12 that one and I don't need the (inaudible). Can we go off the
13 record for a second? We'll just sort out what we --

14 (RECORDING PAUSED - 02:36:18 PM)

15 (ON RECORD - 02:37:02 PM)

16 BOARD: -- back on the record?

17 MR. SCHMIDT: Yeah, let's go back on the record.
18 Thank you.

19 BOARD: Give me one sec.

20 MR. SCHMIDT: Sure.

21 BOARD: There you go.

22 CHAIR: All right. Cross, Mr. Schmidt?

23 MR. SCHMIDT: Thank you. Mr. Carter, let me ask you,
24 if I can, about the view from Hanover Pike, if I, if I can.
25 First of all, do you know the speed limit on Hanover Pike?

1 MR. CARTER: I do not.

2 MR. SCHMIDT: Okay. Well, would, I don't, I don't
3 know that you have to be an expert in landscaping, but would
4 the, would the speed of the vehicles travelling, travelling up
5 and down Hanover Pike impact the ability of people in those
6 vehicles to see the property or how long they would see the
7 property at the very least?

8 MR. CARTER: This, with the speed of the (inaudible).

9 BOARD: Can you speak in the microphone there? It's
10 not picking you up.

11 MR. CARTER: I think it would.

12 MR. SCHMIDT: Okay.

13 CHAIR: Okay. Just, yeah, be careful, we need to,
14 because we can't hear anything you're saying.

15 MR. SCHMIDT: Okay. So, this is a rural two lane
16 highway, is it not?

17 MR. CARTER: Correct.

18 MR. SCHMIDT: Okay and you don't know the speed
19 limit, I think you indicated, but it's Maryland Route 30,
20 correct?

21 MR. CARTER: Yes.

22 MR. SCHMIDT: So, it's not a residential street?

23 MR. CARTER: Correct.

24 MR. SCHMIDT: So, we can assume, well, we'll make no
25 assumptions, we'll get to that later. Okay. Let me ask you,

1 from, if I'm driving on Hanover Pike, let's start from the
2 north, which would be at the top of Petitioner's exhibit number
3 three and to the south. As I'm driving down Hanover Pike and
4 approaching the site, the top portion of the property is fairly
5 heavily wooded, which I think a, a pine, predominantly a pine
6 forest, is it not?

7 MR. CARTER: Correct, yep.

8 MR. SCHMIDT: Okay. Would that serve to screen the
9 property as one would be traveling from the north, as I'm
10 indicating, towards Hanover, towards the property from Hanover
11 Pike, correct?

12 MR. CARTER: I have not seen the property or looked
13 at the vantage point from where you're, you're pointing.

14 MR. SCHMIDT: Okay.

15 MR. CARTER: But I would assume yes.

16 MR. SCHMIDT: Okay.

17 MR. CARTER: (inaudible) the density of that pine
18 screen, yes.

19 MR. SCHMIDT: That's pretty dense?

20 MR. CARTER: Um hm.

21 MR. SCHMIDT: Okay. But you haven't done any
22 examination for traffic to the north, correct?

23 MR. CARTER: That's correct.

24 MR. SCHMIDT: Okay and just for your reference,
25 additionally, the property that's adjacent to the pine on the,

1 on the, on the area that's between Hanover Pike and the pine
2 forest on the subject property, also has some screening, does
3 it not, some existing vegetation?

4 MR. CARTER: Yes. I've been to that property, yes.

5 MR. SCHMIDT: Okay and that would also, would it not,
6 understanding that that's not part of the subject property,
7 provide screening as one is coming from the north, correct?

8 MR. CARTER: Certainly not those evergreens, no.

9 MR. SCHMIDT: These trees, when I say these trees, --

10 MR. CARTER: Um hm.

11 MR. SCHMIDT: -- but the trees that appear on the
12 adjacent property would not screen the subject property?

13 MR. CARTER: Well, let's just get into a little
14 nuance. Those are white pines that you're pointing to, the
15 evergreen screen.

16 MR. SCHMIDT: Uh huh.

17 MR. CARTER: They're probably twenty to thirty years
18 old. They're self-elevated and they're actually while, from a
19 satellite image, they look like they might be dense, they're
20 actually very thin. To use the Jones terminology, he was
21 referencing the wetlands, there's a lot of damage of leaf fall.
22 I can't quite recall the right term, but --

23 MR. SCHMIDT: Okay.

24 MR. CARTER: -- they actually become a very open and
25 sort of shallow tree as they get older.

1 MR. SCHMIDT: Okay. Well, it looks like, I'm
2 assuming, that, that the individual who owns the subject house
3 planted those on the side of his house to screen his house from
4 Hanover Pike. Doesn't that appear to be what the situation
5 was?

6 MR. CARTER: I believe that was the intent.

7 MR. SCHMIDT: Okay and that's not an effective
8 screen, in your opinion?

9 MR. CARTER: No, not those trees, no.

10 MR. SCHMIDT: Okay. Okay. So, coming from the
11 south, let's go back to the south, we're coming from the south
12 going north, there is a fairly substantial treed area, forest,
13 whatever we want to call it, on the Mirabile property to the
14 south, is there not?

15 MR. CARTER: Correct.

16 MR. SCHMIDT: And that serves, does it not, to buffer
17 much of the view for traffic coming south, I'm sorry, for
18 traffic coming from the south to the north and their ability to
19 see the subject property?

20 MR. CARTER: Again, all based upon where you're
21 looking, yeah.

22 MR. SCHMIDT: Um hm and in the one photograph that
23 you submitted, I think number seven, indicated you could see
24 what I'm describing as the top right hand corner, or the
25 extreme north eastern corner of the site, correct?

1 MR. CARTER: I think it's a little bit more than just
2 the extreme north east corner, but.

3 MR. SCHMIDT: Well, --

4 MR. CARTER: Where you're pointing is the general
5 area, yes.

6 MR. SCHMIDT: Okay. Let's take a look at it. The
7 photograph that you submitted, which is, I had the wrong
8 number, Protestant's exhibit number nine, excuse me, is a photo
9 taken from the south coming up Hanover Pike, correct?

10 MR. CARTER: Um hm.

11 MR. SCHMIDT: And this appears it was taken in the
12 winter, does it not?

13 MR. CARTER: Um hm.

14 MR. SCHMIDT: So, the deciduous trees, which are in
15 the foreground before the pine forest, which I believe is on
16 the subject property up here, correct?

17 MR. CARTER: Yes.

18 MR. SCHMIDT: Okay. But even in the wintertime when
19 the leaves are off the deciduous trees on the Mirabile
20 property, it still, nonetheless, screens a large part of the
21 property, does it not?

22 MR. CARTER: Correct, um hm.

23 MR. SCHMIDT: As a matter of fact, the only area you
24 can see is to the extreme right and to the extreme left,
25 correct?

1 MR. CARTER: I wouldn't use the term extreme.

2 MR. SCHMIDT: Okay. Well, it speaks for itself. You
3 have any idea what percentage of the overall area of the
4 special exception one can see in terms of the grass that's not
5 screened?

6 MR. CARTER: I did not have an exact percentage.

7 MR. SCHMIDT: Okay, you don't, you don't know that,
8 okay. Okay. So, you have screening as you're coming from the
9 north, correct? And you do have screening as you're coming
10 from the south, correct?

11 MR. CARTER: A portion, yes.

12 MR. SCHMIDT: A portion, okay. And so, do you have
13 any idea how, the, the width of the subject property and its
14 frontage, how wide that is, how long that is, along Hanover
15 Pike?

16 MR. CARTER: I don't, but I assume we could probably
17 look at it at the conceptual landscape plan.

18 MR. SCHMIDT: Okay, okay. And so, as one would be
19 driving by there, whatever speed, they would be looking, absent
20 any additional landscaping, they'd, they'd have to look,
21 instead of at the road, to their right to see into the subject
22 property, correct?

23 MR. CARTER: Assuming there are no passengers.

24 MR. SCHMIDT: Well, if they can see past the
25 passenger in their driving seat, in the passenger seat,

1 correct?

2 MR. CARTER: Drivers aren't the only people who view
3 a landscape.

4 MR. SCHMIDT: Okay. But drivers and passengers would
5 be the only one who would view it from Hanover Pike unless
6 somebody is walking up Hanover Pike?

7 MR. CARTER: Or bicycling.

8 MR. SCHMIDT: Or bicycling, okay. All right. Do you
9 have any idea how long it would take, you don't know the speed
10 limit so you don't know how long it takes to drive by there,
11 okay. Speaking of the, let's, (inaudible). Now, the Mirabile
12 property I think is several different parcels, is it not, if
13 you know?

14 MR. CARTER: I, I don't know the composition of that
15 (inaudible).

16 MR. SCHMIDT: You don't know, okay. Let me restrict
17 my inquiry. If we would extend this far easterly property line
18 of the subject property and down through the Mirabile property,
19 is there any existing home or dwelling on the Mirabile property
20 in the area that I'm indicating, which is from basically
21 Hanover Pike back to the end of our property?

22 MR. CARTER: I don't know if it would be described as
23 a tenant house, but there was a property exactly where your
24 finger is being pointed.

25 MR. SCHMIDT: This is a trailer, is it not?

1 MR. CARTER: I can't recall exactly, but (inaudible).

2 MR. SCHMIDT: Okay. Do you know if anybody lives
3 there currently?

4 MR. CARTER: I do not know.

5 MR. SCHMIDT: Okay. Other than that trailer, we've
6 got some, we got a photo of it, is there any dwelling on the
7 property, any kind of house, stick built house?

8 MR. CARTER: I'm not aware.

9 MR. SCHMIDT: Okay. You're not aware, you don't
10 know?

11 MR. CARTER: I do not know.

12 MR. SCHMIDT: You don't know?

13 MR. CARTER: No.

14 MR. SCHMIDT: You've been out here?

15 MR. CARTER: Yes, I have. Excuse me, I cannot, I
16 cannot recall.

17 MR. SCHMIDT: You can't remember, okay.
18 Unfortunately, I only have one copy of this but I'll show it to
19 the witness. If I show you that photograph, will it you're
20 your recollection as to what's on the Mirabile portion in this
21 portion?

22 MR. CARTER: Um hm.

23 MR. SCHMIDT: Is that the trailer?

24 MR. CARTER: Yes.

25 MR. SCHMIDT: Okay.

1 MR. CARTER: (inaudible).

2 MR. SCHMIDT: You don't know if that's occupied?

3 MR. CARTER: I don't.

4 MR. SCHMIDT: Is that screened at all? Is there any
5 screening on the Mirabile property, which buffers the view of,
6 of this building?

7 MR. CARTER: I don't believe so.

8 MR. SCHMIDT: Okay. I would offer this as the next
9 Petitioner's exhibit, I think we're on eighteen.

10 (PHONE SINGING)

11 MR. SCHMIDT: I don't think that's me.

12 VOICE: (inaudible).

13 MR. SCHMIDT: Okay. Mr. Carter, you used a couple
14 times in your testimony the word obscure or obstruct, I wrote
15 that down, which to me means that if something is obscured or
16 obstructed, it would not be visible, is that the context that
17 you intended to use that word? Am I understanding what you
18 were saying when you said where the screening obscures or
19 obstructs, do you mean that it would prevent any visibility
20 because it would be obstructed or obscured?

21 MR. CARTER: I wouldn't say any visibility but I
22 think the idea of making something a little bit obstructed as
23 to block a portion of the view, yes.

24 MR. SCHMIDT: Okay. So, in your opinion then, well,
25 let me ask it this way. Is there a requirement that the solar

1 facility be invisible or not visible from any, from any and all
2 of the adjacent properties and the public road? In other
3 words, is my client, in your opinion, required to make it so no
4 one from the Mirabile property or Not Frye Road or Hanover Pike
5 or properties to the east or properties to the north or
6 properties to the west on the other side of Hanover Pike would
7 not be able to see any part of the solar facility?

8 MR. CARTER: I believe the specific terminology that
9 was directed was to fully screen the solar panels.

10 MR. SCHMIDT: Okay.

11 MR. CARTER: Through the staff notes.

12 MR. SCHMIDT: Okay and, okay, that's in the staff
13 notes.

14 MR. CARTER: Yes.

15 MR. SCHMIDT: Okay and your opinion, your opinion is
16 that means there is a requirement under the County law that you
17 would not be able to see any of these solar panels at all from
18 any location off site?

19 MR. CARTER: I believe that's why they use the term
20 fully.

21 MR. SCHMIDT: Okay. Now, that's in where? Your
22 basis for that opinion --

23 MR. CARTER: That is the fifth paragraph, or the
24 fifth bullet point of the notes dated November 22nd, 2016.

25 MR. SCHMIDT: Okay. Okay. Okay. If you know, is

1 that, is this, is this a, well, let me ask it this way. You,
2 you have cited a number of documents and sources that you
3 reviewed. We talked about the staff note of November the 22nd,
4 and we can argue about what that means, but let me ask you
5 this. Is there any language or section in the County landscape
6 manual that requires this solar facility to be fully screened
7 or obstructed or obscured? In the landscape manual, let's
8 start there.

9 MR. CARTER: That uses that specific language?

10 MR. SCHMIDT: Yes, or any language, and I'm defining
11 that as meaning you can't see anything, which is what, I think,
12 you said. I'm using your definition. Fully means fully, I
13 think you said. So, my question is, let's start with the
14 landscape manual, which you've indicated you're familiar with.

15 MR. CARTER: Um hm.

16 MR. SCHMIDT: Is there anything, any section of the
17 landscape manual that you can point to where it says a solar
18 facility shall be fully screened so it's not visible or
19 obstructed or obscured or whatever terminology you want to use
20 that translates into a requirement that one would not be able
21 to see this facility from adjacent properties or adjacent
22 public roads?

23 MR. CARTER: I think the best answer to that would be
24 the (inaudible) new development behind existing vegetation and
25 beyond primary views or (inaudible) --

1 MR. SCHMIDT: Okay, now hold on a second. Where are
2 you?

3 MR. CARTER: I'm sorry, this is page sixty-six of the
4 landscape manual.

5 MR. SCHMIDT: Okay. Hold on. Page sixty-six of the
6 landscape manual. Okay, go ahead.

7 MR. CARTER: Sighting new development behind existing
8 vegetation and beyond primary views or at the edges of
9 hedgerows and woodlands, minimizes visual impact.

10 MR. SCHMIDT: Okay. Well, that says minimizes visual
11 impact, does it? It doesn't say eliminate visual impact.

12 MR. CARTER: That's correct.

13 MR. SCHMIDT: Okay. Does minimize mean the same
14 thing as eliminate?

15 MR. CARTER: No.

16 MR. SCHMIDT: Okay and it also then says berms and
17 vegetative buffers screen views of new development, correct?

18 MR. CARTER: Yes.

19 MR. SCHMIDT: Okay. Is there, is there anything else
20 in the landscape manual that we should look at for this
21 requirement that you believe exists?

22 MR. CARTER: Preserve and enhance the scenic
23 resources identified in Baltimore County master plan, including
24 scenic views.

25 MR. SCHMIDT: Okay. Well, that's preserve and

1 enhance. Again, that doesn't use the word fully screen,
2 obscure the view, obstruct the view, does it?

3 MR. CARTER: It does not.

4 MR. SCHMIDT: Okay. As a matter of fact, the section
5 of the landscape plan that you're referring to, us to then
6 specifically directs the reader, does it not, to other require,
7 to other sections of the landscape manual, correct?

8 MR. CARTER: Correct.

9 BOARD: May I ask, what page are you referring to in
10 the landscape manual?

11 MR. CARTER: Sixty-five, sixty-six.

12 BOARD: Sixty-five?

13 MR. CARTER: Um hm.

14 MR. SCHMIDT: Specifically, on page sixty-six, it
15 refers you to section two, general standards, right? And
16 section three, requirements for project conditions, does it
17 not?

18 MR. CARTER: That's correct.

19 MR. SCHMIDT: Okay. Well, let's go, let's go there.
20 Section two, general standards, begins on page five of the
21 landscape manual, does it not?

22 MR. CARTER: Let me see. Correct.

23 MR. SCHMIDT: Okay and page of the, six of the
24 landscape manual, does it set any, set forth any standard or
25 criteria as to how wide the landscape buffer should be? You

1 indicated that it should be three or more plants deep, I
2 believe, correct?

3 MR. CARTER: It does not specify that.

4 MR. SCHMIDT: Well, doesn't it say a minimum ten foot
5 wide landscape strip is required to accommodate screen planting
6 unless otherwise stated in this manual?

7 MR. CARTER: To accommodate it, yes.

8 MR. SCHMIDT: Okay. So, according to the landscape
9 manual, your landscape strip has to be ten feet wide?

10 MR. NELSON: At a minimum.

11 MR. SCHMIDT: At a minimum, right?

12 MR. CARTER: At a minimum, yes.

13 MR. SCHMIDT: Okay.

14 MR. CARTER: To accommodate, that doesn't --

15 MR. SCHMIDT: The minimum --

16 MR. CARTER: -- accommodate does not necessarily
17 speak to the effectiveness of the screen.

18 MR. SCHMIDT: Okay, okay. Let me ask you, that
19 section then goes on, does it not, to identify screen types,
20 correct?

21 MR. CARTER: Um hm.

22 MR. SCHMIDT: What type of screening is required here
23 under the manual?

24 MR. CARTER: I don't see --

25 MR. SCHMIDT: Do you know?

1 MR. CARTER: I don't.

2 MR. SCHMIDT: Okay. Do you know what type of
3 screening is provided under the landscape manual on or, or I'm
4 sorry, on, on the plan?

5 MR. CARTER: On this plan?

6 MR. SCHMIDT: Yeah, what type of screening that is?

7 MR. CARTER: I, I don't know which class that would
8 be classified as.

9 MR. SCHMIDT: Okay. So, you don't know what class is
10 required and you don't know what class is actually proposed,
11 okay. All right. I've asked you about the landscape manual.
12 Let me go on to the CMDP, which is another one of your sources.
13 What section of the CMDP can you point to us, or direct us to,
14 for the proposition that this solar facility is to obscured or
15 fully screened, i.e., invisible from other properties, adjacent
16 properties, and, and public roads, or private roads? Where's,
17 where's that in the CMDP?

18 MR. CARTER: Specifically, it speaks of creating the
19 least visible impact.

20 MR. SCHMIDT: I'm sorry, where are you?

21 MR. CARTER: On, on page one seventy-eight.

22 MR. SCHMIDT: Okay. So, one seventy-eight says,
23 under development guidelines.

24 MR. CARTER: Um hm.

25 MR. SCHMIDT: Where are you reading from?

1 MR. CARTER: Number five, design and located utility,
2 (inaudible) structures, bridges, lighting, signage, fence,
3 fences, walls, street furniture to harmonize with the
4 surroundings and create the least visual impact.

5 MR. SCHMIDT: Okay. Is this a drainage structure?

6 MR. CARTER: Excuse me?

7 MR. SCHMIDT: Is this proposed, is this sub, is this
8 special exception proposing a drainage structure?

9 MR. CARTER: I think the best qualification, or
10 description of it might be utility more than anything else.

11 MR. SCHMIDT: Okay. Is this a public utility or is,
12 is this a utility?

13 MR. CARTER: I don't know properly how to define
14 that.

15 MR. SCHMIDT: Okay. So, you don't know whether it is
16 or not?

17 MR. CARTER: No, I do not.

18 MR. SCHMIDT: Okay. It's clearly not a bridge, right?

19 MR. CARTER: Thank you.

20 MR. SCHMIDT: It's not, it's not lights, right?

21 MR. CARTER: That's correct.

22 MR. SCHMIDT: It's not signage, right?

23 MR. CARTER: Correct.

24 MR. SCHMIDT: It's not fences, right?

25 MR. CARTER: Correct.

1 MR. SCHMIDT: It's not walls?

2 MR. CARTER: Um hm.

3 MR. SCHMIDT: Okay. Okay and that indicates to
4 create the least visual impact.

5 MR. CARTER: Um hm.

6 MR. SCHMIDT: Does that indicate to you that that
7 means no visual impact? Is that what you're saying that says?

8 MR. CARTER: No.

9 MR. SCHMIDT: No?

10 MR. CARTER: No.

11 MR. SCHMIDT: Okay. Anywhere else in the CMDP that
12 has language supporting your contention that this has to be
13 obstructed or fully screened or invisible?

14 MR. CARTER: It does state on page one eighty, number
15 one, that a buffer should be wide enough to maintain the roads
16 and visual character with a minimum width of thirty feet from
17 the right of way.

18 MR. SCHMIDT: Okay. Do you know how wide, do you
19 know if there's any required setback under the County's zoning
20 regulations, that how far the proposed solar facility has to be
21 from a property line?

22 MR. CARTER: Not off the top of my head.

23 MR. SCHMIDT: Okay. Is there such a requirement? Do
24 you even now that, if there's even a requirement for a setback
25 from a property line to a, a solar facility?

1 MR. CARTER: I do not know specifically for a solar
2 facility, no.

3 MR. SCHMIDT: Okay. Do you know if that's in Section
4 4-F of the County zoning regulations?

5 MR. CARTER: I'll certainly take a look.

6 MR. SCHMIDT: Well, do you know? Before you go, do
7 you know if there's a requirement in there?

8 MR. CARTER: I do not know.

9 MR. SCHMIDT: You don't know?

10 MR. CARTER: Nope.

11 MR. SCHMIDT: Okay. Okay. Okay. How about the
12 Hanover Pike study? You referenced that. Is there anything in
13 there that you can direct us again for the proposition that
14 this has to be fully screened?

15 MR. CARTER: To use the terminology fully screened, I
16 don't believe you'll find that in the Hanover Pike corridor
17 study.

18 MR. SCHMIDT: Okay. Have, okay. Will you find any
19 language that the screening has to provide an obstructed or
20 obscure the, the land use, obscure the solar facility?

21 MR. CARTER: The, I'm sorry, say that one more time.

22 MR. SCHMIDT: Is there any language in the Hanover
23 study, which sets forth a requirement that the solar facility
24 has to be ob, fully obstructed, fully screened or obscured, any
25 language of that nature?

1 MR. CARTER: The language that I'm drawing from is
2 from the staff notes, or staff comments, excuse me.

3 MR. SCHMIDT: Okay. So, the language, to cut to the
4 chase, the language that you're relying on is, essentially, the
5 November 22nd, 2018, I believe it is, staff comment and it
6 doesn't --

7 CHAIR: Twenty sixteen.

8 MR. SCHMIDT: I'm sorry, 2016. Thank you,
9 Chairwoman.

10 MR. NELSON: And also it appears in 2018, it appears
11 twice.

12 MR. SCHMIDT: Okay. But the, where you're coming
13 from is from the staff comments as opposed to the
14 documentation, which you indicated, the other documentation
15 that you were referring to, which is the Hanover study the
16 zoning regulations, the landscape manual and the comprehensive
17 manual, it's not in any of those documents?

18 MR. CARTER: It being the term fully?

19 MR. SCHMIDT: It being language that there is a
20 requirement that this solar facility be obstructed, obscured,
21 fully screened or whatever terminology you can interpret or you
22 utilized to form a conclusion that one should not be able to
23 see any parts of this solar facility from adjacent properties
24 or any adjacent roads?

25 MR. CARTER: Not a requirement, just best practice

1 guidelines.

2 MR. SCHMIDT: Okay and that's coming from the staff
3 comment?

4 MR. CARTER: The guidelines?

5 MR. SCHMIDT: Yes.

6 MR. CARTER: No.

7 MR. SCHMIDT: Okay. Where is that coming from?

8 MR. CARTER: Forgive me, it might take me a minute.

9 MR. SCHMIDT: Sure, take your time.

10 MR. CARTER: But it does direct in a couple different
11 areas, sighting, construction developments and to things such
12 as behind existing vegetation to minimize sight lines or
13 visibility of (inaudible).

14 MR. SCHMIDT: Right, to, to minimize sight lines.

15 MR. CARTER: Yes.

16 MR. SCHMIDT: Not eliminate sight lines, right?

17 MR. CARTER: Correct.

18 MR. SCHMIDT: Okay. Okay. Let me ask you if you can
19 look at your exhibit, Protestant's exhibit number eight, which
20 is your Google Earth. How tall are the solar facilities?
21 Yeah, that's it.

22 MR. CARTER: Approximately eight feet tall.

23 MR. SCHMIDT: Okay. At least as this is measured, is
24 it not, the distance between the two pinpoints on Exhibit A and
25 B is what, how far is that? From A to B?

1 MR. CARTER: The distance?

2 MR. SCHMIDT: Yes, sir.

3 MR. CARTER: I don't have a reference and it seems to
4 be cut off at the bottom of the screen.

5 MR. SCHMIDT: Okay. Well, it looks like next to the
6 red arrow --

7 MR. CARTER: Oh, I'm sorry, there is sort of a scale
8 there.

9 MR. SCHMIDT: It says nineteen hundred and fifty-nine
10 feet. Is that the distance between A and B, if you know? I
11 don't know, it's your exhibit.

12 MR. CARTER: I'm sorry, it says here, I have a one
13 thousand six hundred and sixteen feet. I'm reading off of this
14 right here.

15 BOARD: All right. I'm sorry, I want to, I'll be, I
16 need to be right back.

17 MR. SCHMIDT: Okay.

18 MR. NELSON: Can we just take a minute?

19 MR. SCHMIDT: Yeah, we'll take a minute.

20 CHAIR: Sure.

21 (RECORDING PAUSED - 03:02:15 PM)

22 (ON RECORD - 03:11:05 PM)

23 CHAIR: All right. Back on the record.

24 MR. SCHMIDT: Okay. Just a couple more questions,

25 Mr. Carter. Mr. Carter, I didn't hear any testimony about the

1 landscape calculations, which are shown on Petitioner's exhibit
2 number ten. Do you have any objection or have you reviewed
3 the, the landscape planning tabulation, for example, that shows
4 how many trees at least this plan believes and how many
5 planting units are required?

6 MR. CARTER: No, I do not have any objection, if
7 that's what you're asking.

8 MR. SCHMIDT: Okay. So, you're not objecting that we
9 don't meet the requirements of the landscape manual as they
10 relate to the landscape planning tabulation?

11 MR. CARTER: No.

12 MR. SCHMIDT: Okay and you also understand, and I
13 think it says it on here three or four different places, that a
14 final landscape plan will be required to be approved by
15 Baltimore County before any permits are issued for this
16 project, do you understand that as well?

17 MR. CARTER: Yes, correct.

18 MR. SCHMIDT: Okay and as this indicates, that the,
19 the, that final plan might be enhanced or revised according to
20 the requirements of the County so, it may show more landscaping
21 even than what's on this plan at the end of the day?

22 MR. CARTER: Yes.

23 MR. SCHMIDT: Okay. Now, just a couple more things.
24 This plan does show landscaping, and I understand you may not
25 agree to the extent of it, but it does show planting around the

1 perimeter of the site, does it not?

2 MR. CARTER: Yes, it does.

3 MR. SCHMIDT: And that's where most of the planting
4 is required, correct? I mean, not required, that's where most
5 of the planting is proposed, is it not, around the perimeter of
6 the property?

7 MR. CARTER: Correct.

8 MR. SCHMIDT: Okay and I know you questioned the
9 depth of it, notwithstanding the indication in the manual that
10 it, the ten feet is, is the minimum amount, but there are some
11 areas, are there not, where the planning is, well, for example,
12 here are three feet, three tree deep, correct?

13 MR. CARTER: Yes, it is.

14 MR. SCHMIDT: So, at least, for example, in the south
15 east, south west corner, there are a number, and there are a
16 number of areas along Frye Road where there, it is showing the
17 trees would be planted with, then other trees behind them as it
18 goes into the site, that is, indeed, shown, correct?

19 MR. CARTER: Yes, although I would arg, I would just
20 point out that it all depends upon where your perspective is.

21 MR. SCHMIDT: Well, in terms of where you're looking
22 from, is that what you mean, in perspective?

23 MR. CARTER: When, when, when discussing screening,
24 we need to have a starting point and an end point. So, looking
25 at a plan may be deceiving as far as how effective a screening

1 may be.

2 MR. SCHMIDT: Oh, okay. But in, indeed, it shows
3 what it shows and, for example, in the area, one area of the
4 wetlands in sort of the center of the property, not down by
5 Frye Road and not up in the north east corner, the, the
6 screening, indeed, goes back a substantial distance into the
7 property as shown on the plan, correct?

8 MR. CARTER: It does.

9 MR. SCHMIDT: Okay and likewise, along the area of
10 the swale that we've heard testimony about from Mr. Leskinen
11 and there's also planting proposed in that area, is there not?

12 MR. CARTER: There is planting proposed in that area.

13 MR. SCHMIDT: Okay. Now, you, I think you opined that
14 there should be additional screening kind of among the panels,
15 correct? That you think that's what is a good idea?

16 MR. CARTER: That may be one effective way of doing
17 it.

18 MR. SCHMIDT: Okay. Do you know how low the panels
19 are to the ground, the bottom of the part of the panel that
20 absorbs energy?

21 MR. CARTER: I believe this references about two
22 feet.

23 MR. SCHMIDT: Okay and any planting that you would
24 put in there, I assume, would grow depending on the species, to
25 some height, correct?

1 MR. CARTER: That's correct.

2 MR. SCHMIDT: Okay. Now, you do understand that the
3 object of the exercise here is to capture the energy of the
4 sun, right?

5 MR. CARTER: Yes, that's correct.

6 MR. SCHMIDT: Okay and if trees grow real tall or
7 even minimally tall, they cast a shadow, do they not, as they
8 grow?

9 MR. CARTER: They do.

10 MR. SCHMIDT: Okay and would that shadow, if it is on
11 top of the panels, impact the very purpose of this plan?

12 MR. CARTER: I believe so.

13 MR. SCHMIDT: Okay. So, obviously, any interior
14 screening would have to, I, I guess, be designed so it wouldn't
15 cast a shadow above two feet off the ground?

16 MR. CARTER: That or you pick a different site.

17 MR. SCHMIDT: Okay. You pick a different site,
18 that's right. That's, that's another possibility. Okay. With
19 that, I have no other questions.

20 CHAIR: Any re-direct?

21 MR. NELSON: Very briefly, if I may. Mr. Carter, I
22 want to follow up on this phrase fully screened and this
23 concept of minimization that Mr. Schmidt was exploring with
24 you, do you recall that portion?

25 MR. CARTER: Yes.

1 MR. NELSON: All right and I want to direct your
2 attention to Exhibit 9. This is the view from Hanover Pike
3 looking to the north.

4 MR. CARTER: Um hm.

5 MR. NELSON: You're familiar with that view?

6 MR. CARTER: Yes.

7 MR. NELSON: And during your direct, we talked about
8 the north east corner and the north west corner, do you recall
9 that?

10 MR. CARTER: Um hm.

11 MR. NELSON: And I explored with you the difference
12 in the elevation of the, the southern edge of the subject
13 property versus the elevation of the north east corner, which
14 was, I think, thirty-six feet. We talked about the fact that a
15 solar panel has a low edge of two feet, a high edge of just shy
16 of eight feet. So, we rounded that all down to seven to get
17 (inaudible) so we're at forty-three feet, thirty-six plus seven
18 and I presented you the question, well, if they planted the
19 biggest tree on day one, I think you said it was ten or twelve
20 feet, I'm doing this from memory, you made the point that that
21 would not have any effect on the view of the solar array above
22 that, or some twenty or thirty feet above that tree, right?

23 MR. CARTER: That's correct.

24 MR. NELSON: All right and then you took us through
25 the arithmetic, how much, how, how quickly the tree would grow

1 over time and so on. My question is, for the decade or so
2 where there's that twenty odd feet of unobstructed view above
3 the tree, you with me there?

4 MR. CARTER: Um hm.

5 MR. NELSON: And let's use the argument of the
6 attorney for the applicant, which is they're only required to
7 minimize the view. Is there any minimization of the view of
8 the solar facility above the top of the tree?

9 MR. CARTER: No, there's not.

10 MR. NELSON: None at all, right. That's all I have,
11 thank you.

12 CHAIR: Anything further?

13 MR. SCHMIDT: Just one other question. Have you
14 reviewed, in the course of your analysis, any other, any
15 landscape plan for any solar facility in Baltimore County that
16 has been approved?

17 MR. NELSON: Object.

18 MR. SCHMIDT: By the County?

19 MR. NELSON: Object. Beyond the scope.

20 CHAIR: Yeah, I think that goes beyond his little --

21 MR. SCHMIDT: Okay, fair enough.

22 CHAIR: But I think it was actually covered in voir
23 dire anyway.

24 MR. SCHMIDT: I think he said no.

25 BOARD: I have two questions.

1 CHAIR: Oh.

2 BOARD: Did I cut you off?

3 CHAIR: No.

4 BOARD: Okay. Just, Mr. Carter, just from, can you
5 tell, because I, I was just looking at this picture and I was
6 trying to, is that Frye Road there or is that the swale?

7 MR. CARTER: That's the swale, I believe.

8 BOARD: That's the swale?

9 MR. CARTER: Yeah.

10 BOARD: So, so when I look at this picture and I look
11 at like the, the layout of the things, I'm only seeing like the
12 upper half of that, is that, is that --

13 MR. CARTER: Correct.

14 MR. SCHMIDT: Mr. McComas, that's actually above the
15 swale, I think, or maybe at the very bottom --

16 BOARD: Well, that's what I was trying to figure out,
17 because I can't --

18 MR. CARTER: That's the line that cuts through and--

19 BOARD: Yeah, there's like, you can see a little, it
20 looks somewhat like a, it looks --

21 MR. CARTER: I don't have that right --

22 BOARD: And I was just wondering, just from a
23 perspective of what I was saying --

24 MR. SCHMIDT: Oh, I see what you're saying, I think
25 that's --

1 MR. CARTER: I don't have that right in front of me
2 but, yeah, I believe that's the swale.

3 BOARD: You believe it's the swale? So, (inaudible)
4 and the other piece, the other question I had is on this one
5 here, where would the, where do you think, and because I don't
6 have the context of distance here too well, is, where do you
7 think in this picture the, the special exception lies? Is it
8 like down here on this hill here or is it up top here, is it,
9 because this is the, I, I think this is point A, right? When I
10 look at this?

11 MR. CARTER: No, I think --

12 BOARD: Oh.

13 MR. CARTER: -- where your finger is is Not Frye
14 Road, which is where the, the mark, the red mark is on the map.

15 BOARD: Oh, see, I thought that was A here.

16 MR. CARTER: As I understand it, the contour line
17 starts and stops with the yellow line. So, once you see that
18 section (inaudible) referenced by the yellow line and then that
19 mark where your finger is right now, I believe is the red mark,
20 that's sort of a, not a midpoint but in, in between the two.

21 BOARD: I see. That's that point here?

22 MR. CARTER: I believe that's the reference point and
23 I think there's an elevation marked on that.

24 BOARD: Okay and so where, where, where, and so A is
25 here?

1 MR. CARTER: Yes.

2 BOARD: Okay.

3 MR. CARTER: And B is on the, the right side and I
4 think it gives you an elevation, does it not, where the, the
5 red mark is? Forgive me, I don't have that one in front of me.

6 CHAIR: It's Protestant's exhibit number eight.

7 BOARD: Yeah.

8 CHAIR: Would you have (inaudible).

9 BOARD: I was just trying to get the, I, I thought
10 this was what I'm seeing from A to B.

11 MR. NELSON: (inaudible).

12 CHAIR: Okay, one second, Mr. Nelson.

13 BOARD: Yeah, here you go.

14 MR. NELSON: Because I don't --

15 CHAIR: I know, but don't testify. So, let me just,
16 let's give the witness Protestant's number eight.

17 MR. CARTER: If I can, forgive me, I don't think I
18 have a copy of that one.

19 BOARD: Oh, sorry.

20 CHAIR: Yeah, yeah, we're getting it for you, one
21 second.

22 MR. CARTER: Thank you.

23 BOARD: You got the same one as me, Mr. Carter?
24 Yeah.

25 MR. CARTER: Yes, I believe so.

1 BOARD: And if you can just kind of give me context,
2 like if I'm standing --

3 MR. CARTER: Yes.

4 BOARD: -- at A, where, and looking up to B, where
5 would I be standing (inaudible)?

6 MR. CARTER: So, A is referenced in this elevation at
7 this point, which is about six hundred and thirty-eight feet.

8 BOARD: Okay.

9 MR. CARTER: And as we come down the yellow line,
10 which we're traveling down here to the base of the stream,
11 (inaudible) back up to where that elevation, that arrow is, on
12 Not Frye Road, is referenced, it's actually drawn both, there's
13 a five ninety-four elevation marked at the, at the red arrow.

14 BOARD: Okay.

15 MR. CARTER: As well as a box on the el, the section
16 referencing five ninety-four.

17 BOARD: All right. So, now where's B on this?

18 MR. CARTER: B would be at the, the end.

19 BOARD: At the very tip of it?

20 MR. CARTER: Yes.

21 BOARD: Okay.

22 MR. CARTER: So, A, A is to the left side, B to the
23 right side of this whole elevation.

24 BOARD: And so, if, if I'm looking at B here, I see
25 how it rolls off, would the screen, if, if you put screening

1 between, do you see an opportunity to put screening around
2 where the swale is and, and, and to cover, you see how it sort
3 of fades, it's not a, it's kind of a dip that rolls back. Do
4 you see an opportunity in your, if you were to landscape it,
5 because I can't see here where the landscape plan --

6 MR. CARTER: I'm sorry, are you, are you referencing
7 up here or down in here?

8 BOARD: No, up a little higher. It looks like when,
9 for me, from just what you described, it looks like the bot,
10 the top right hand corner, the top right hand corner of those
11 panels are the ones that you see from the view at A.

12 MR. CARTER: Um hm. Well, I, I would probably think
13 you're probably seeing about --

14 BOARD: That's what you think there?

15 MR. CARTER: Roughly speaking, yes.

16 BOARD: No, if I don't, I don't have the landscape
17 piece in front of me, but does the landscape go up above the,
18 above the, the swale where they indicated before that there's
19 a, you, I, is it, is it, does the landscape planning go up and
20 the, up around this, the, what, I guess what's called, I, I
21 don't want to call it wetlands, but up, up higher, Mr. Schmidt.

22 MR. SCHMIDT: The landscaping goes through the swale
23 --

24 CHAIR: Mr. Schmidt, don't, Mr. Schmidt, Mr. Schmidt,
25 Mr. Schmidt, wait, don't, --

1 MR. SCHMIDT: I'm sorry.

2 CHAIR: Don't testify, please. Let him testify.

3 MR. SCHMIDT: Oh, okay. I thought Mr. McComas was
4 looking at me, I'm sorry.

5 CHAIR: Yeah, I just, because we want the record --

6 BOARD: I may have confused him on it.

7 CHAIR: I know, I know you want to test, I know you
8 want --

9 BOARD: Yeah, Mr. Carter, --

10 CHAIR: Let, let Mr. Carter testify.

11 BOARD: Yeah.

12 MR. CARTER: There's, there's planting above the
13 swale where I believe it was designated as a wetland up in this
14 area. And there is also a little bit of planting along sort of
15 the very north --

16 BOARD: What I was wondering whether is the part that
17 goes between the panels up top in the swale, would that, do you
18 think that would be screening the view of A? Up higher, move
19 your finger up higher, keep going up to the left now, there
20 there, --

21 MR. CARTER: This, this area here?

22 BOARD: Up higher, above there, I think is --

23 MR. CARTER: Oh, here?

24 BOARD: No, no, go back to the swale where the line
25 that's coming down between the swale and the panels. Is there,

1 go to your left there, when I, go to your, keep going up, no,
2 no, no, I'm sorry. Go up, I should just come over, and go,
3 keep going up, along the, no, no, to your right.

4 MR. CARTER: Right.

5 BOARD: There you go, now follow that little line
6 that goes diagonally, yeah. Is there landscaping planned right
7 there?

8 MR. CARTER: No, you've got some landscaping right
9 here, then this, I believe, is the security fence.

10 CHAIR: We can't answer for you, you have to know or
11 not know, --

12 BOARD: All right.

13 MR. CARTER: No, there's no, there's no landscaping
14 right here.

15 BOARD: Okay.

16 MR. CARTER: Where my finger is.

17 BOARD: All right. That, all right, thanks.

18 MR. CARTER: If that answers your question.

19 CHAIR: Okay. All right. Anything else?

20 BOARD: Nope.

21 CHAIR: Nope, that was it.

22 MR. SCHMIDT: Ms. Murphy, can I just tell you what, I
23 don't know if he can see it.

24 CHAIR: Let's just let, --

25 MR. SCHMIDT: Okay.

1 CHAIR: -- I know, you can tell us in your closing,
2 just to make the record clear, (inaudible).

3 MR. SCHMIDT: (inaudible).

4 CHAIR: Okay. Where were we? Finished?

5 MR. SCHMIDT: Yes.

6 CHAIR: Finished with the witness. Thank you, sir.
7 Make sure you don't have any exhibits and we're handing you,
8 you gave those exhibits back, right?

9 MR. CARTER: (inaudible).

10 CHAIR: As long as they're copies, as long as they're
11 yours.

12 MR. CARTER: I think this is an exhibit.

13 CHAIR: Okay. We have until 4:00, so you have
14 another witness?

15 MR. NELSON: I'd like to call Jim Wolfe. He has a
16 doctor's appointment on Thursday, so this is the goal to get
17 him on.

18 CHAIR: Sure, it makes sense. Sure, absolutely.

19 MR. NELSON: If I could have the large blow-up,
20 that'll accelerate the process, the aerial photograph.

21 CHAIR: Come on up, sir. We'll get you sworn in.

22 BOARD: I'll get you sworn in while he's doing that.
23 Do you swear and affirm under the penalties of perjury, that
24 the testimony you're about to give is true and correct to the
25 best of your knowledge and belief?

1 MR. WOLF: Yes.

2 BOARD: Please state your name, your address, your
3 business for the record and spell your last name.

4 MR. WOLF: James J. Wolf, 5133 Frye Road, Upperco
5 21155.

6 BOARD: Sit down. Just adjust the microphone there
7 so the machine picks you up, if you don't mind.

8 CHAIR: Go ahead, sir.

9 MR. NELSON: Mr. Wolf, I have on the easel
10 Protestant's Exhibit 10, the aerial photograph of Hanover Pike
11 running roughly north/south and we see what we know as Not Frye
12 Road here. Will you just, before we get into your testimony,
13 just identify for the Board your residence, please?

14 MR. WOLF: Sure. We live in this house right here.

15 MR. NELSON: All right, so --

16 BOARD: You have, you have to, yeah, you have to
17 speak up.

18 CHAIR: So, we have one, --

19 BOARD: Let's make sure we got it (inaudible).

20 CHAIR: We can't hear or see.

21 MR. WOLF: Sorry, here we go.

22 MR. NELSON: I was going to describe the location
23 where you, when you drive east on Not Frye Road from Hanover
24 Pike, we're going to turn right at the terminus?

25 MR. WOLF: Yes.

1 MR. NELSON: We're going to draw it down to what we
2 now know is the site of the new Mirabile house.

3 MR. WOLF: Yes.

4 MR. NELSON: The road is going to bend to the left,
5 go into the wood stand, turn right and there's two houses back
6 there?

7 MR. WOLF: Correct.

8 MR. NELSON: And your house is on the left or the
9 right of those two?

10 MR. WOLF: I'm on the left.

11 MR. NELSON: Okay and who's on the right?

12 MR. WOLF: The Brown residence.

13 MR. NELSON: Okay. What's the address of your house?

14 MR. WOLF: I'm 5133 Frye Road.

15 MR. NELSON: And with whom do you reside at 5133 Frye
16 Road?

17 MR. WOLF: With my wife, Juli.

18 MR. NELSON: Okay and she's here today?

19 MR. WOLF: She is.

20 MR. NELSON: All right. How long have you owned that
21 property? Tell us a little bit about that.

22 MR. WOLF: I purchased the land in 1992, I believe,
23 and subdivided it into two lots. Originally, all those
24 properties back there were known as the Campbell Well Drilling
25 property and there were, I believe, about eleven or twelve

1 parcels that went up for auc, public auction. I purchased an
2 approximate ten acre piece and, with a friend of mine and we
3 subdivided it and created two lots back there and built a home
4 and have been living there ever since.

5 MR. NELSON: All right and what year, you bought it
6 in, in what year, sir?

7 MR. WOLF: I bought it in, I believe I bought the
8 property in '92.

9 MR. NELSON: And built a house when?

10 MR. WOLF: In '94.

11 MR. NELSON: All right. Times passing, isn't it?

12 MR. WOLF: It sure has.

13 MR. NELSON: All right. Let me just ask some basic
14 questions.

15 MR. WOLF: Um hm.

16 MR. NELSON: How do you get from Hanover Pike to your
17 house?

18 MR. WOLF: Well, the, probably the easiest way is to
19 make a right on the private driveway, which is now known as Not
20 Frye Road, but it's actually a private right of way and
21 driveway that serves the, all, all of us that live back there,
22 and then I follow the path that you just demonstrated on the
23 map.

24 MR. NELSON: All right. Now, what is this, there was
25 a discussion this morning, you'll recall from Mr. Barrett from

1 Concord, Massachusetts, who described the surface of Not Frye
2 Road. I think he said it was a gravel road. What, how would
3 you, you drive that road daily, do you not?

4 MR. WOLF: It's not a gravel road, it's a paved road.
5 In fact, it at one time was a gravel road when we first moved
6 in but I can show you the, the bill that we all paid to, to
7 pave it, which has been paved for at least oh, at least, I can
8 tell you exactly when it was paved, it was paved in 2006.

9 MR. NELSON: All right.

10 MR. WOLF: Fully paved. It was, there was all,
11 always partial pavement in front of where the proposed solar
12 facility is going, that was always a paved access. It just got
13 a little gravelly when you went up a little bit further and
14 about where you make the right to go to, to, to my property and
15 we paved all that.

16 MR. NELSON: All right. How many, how many houses
17 does that private road serve?

18 MR. WOLF: It serves a total of eight homes and nine
19 home sites.

20 MR. NELSON: All right. Can you just identify on
21 this aerial photograph, Exhibit 10, the eight homes and then
22 I'll ask you about the (inaudible).

23 MR. WOLF: Sure.

24 MR. NELSON: And, and stand to the side so the Board
25 can see where you're pointing --

1 MR. WOLF: So, right off of --

2 MR. NELSON: Mr. Wolf, you're, you're obstructing the
3 view.

4 MR. WOLF: Oh, I'm sorry. This way?

5 MR. NELSON: Yeah.

6 MR. WOLF: Okay. Right off of, of Route 30, it, it's
7 Not Frye Road, but it's, it's also a private driveway and that
8 goes up to the two Fales brothers own these two homes. The
9 solar farm is proposed right here. You come up Frye, Not Frye
10 Road and the Littles live here and then there's another fellow
11 whose name is Gary lives here, Paul and Melissa live here.

12 MR. NELSON: Can we have the last name, just so --

13 MR. WOLF: The Merritts, I'm sorry. And, and then
14 there was, the Mirabiles owned a home that was located right
15 here but they just in the last probably four or five months
16 razed that home --

17 MR. NELSON: Razed, R-A-Z-E-D?

18 MR. WOLF: R-A-Z-E-D, tore it down and immediately
19 starting building their dream home on the site of that old
20 existing home. That, that's going on right now. They just dug
21 the foundation. Then you come down and, again, I live here and
22 the Browns live here. The Mirabiles also, they actually bought
23 two parcels, so they have a home site right, and, and I
24 believe, they'll have to speak for themselves, but I believe
25 their plans are as soon as their home is finished they're going

1 to remove these trailers and create another home site right
2 here where the trailers are located currently.

3 MR. NELSON: All right. You can have a seat. Now,
4 what is your line of work?

5 MR. WOLF: I am actually a real estate developer.

6 MR. NELSON: Okay. I want to ask you a factual
7 question, not, I'm not asking expert opinions.

8 MR. WOLF: Okay.

9 MR. NELSON: You understand the distinction? I'm
10 just asking, on your experience, --

11 MR. WOLF: Sure.

12 MR. NELSON: -- just events in your life, have you
13 done developments where there have been landscape plans?

14 MR. WOLF: Yes.

15 MR. NELSON: And in your experience, what are,
16 requirements have there been to make sure the landscape plan
17 stays intact and, and continues, that, that doesn't die off and
18 it continues to serve a purpose for which it was initially
19 designed and installed?

20 MR. SCHMIDT: Objection. That's, I mean, the County
21 has a requirement where you bond it and you have to pay money,
22 replace it after, if the plants, I mean, this, this witness,
23 with all due respect to Mr. Wolf, he's not a landscape
24 architect. I mean, this is an expert witness question about
25 what the County requires, landscape plans.

1 CHAIR: I have to, I have to agree with this one. I,
2 I don't really know where we're going with it. I mean, he was
3 not designated as an expert and we've already heard from the
4 landscape architect and so, I'm not sure I understand that one.

5 MR. NELSON: Very well.

6 CHAIR: So, we'll sustain the objection.

7 MR. NELSON: All right. Mr. Wolf, do, do, do you
8 support or are you opposed to this application for a special
9 exception?

10 MR. WOLF: I'm opposed to the application.

11 MR. NELSON: All right. This is your opportunity to
12 communicate to the Board the reasons why you are opposed to the
13 application, so feel free to address the Board and tell them
14 why.

15 MR. WOLF: Well, I'd like, if I may, I'd like to give
16 you a little history of my involvement with this application.
17 So, we first heard about this a few years ago and my neighbors
18 and I were very concerned because we were even, we were
19 concerned that Baltimore County was even entertaining the idea
20 of allowing these type of developments on, on our side of the
21 URDL. Mainly because when we all bought our properties, which,
22 you know, look, I recognize how special it is to be able to
23 live where I do live. We're, we were, the only, you know, we
24 bargained for one house per fifty acres, that's what the zoning
25 allowed. We, you know, it's, it's not a case of nimbyism, I'm

1 very familiar with nimbyism in my line of work, believe me.
2 This is not that.

3 This is something where the County, in my opinion,
4 has erred greatly in allowing another use in the RC zones that
5 was not allowed when me and my neighbor, and my neighbors first
6 decided to live out, again, in, in, in, in an RC zone. In
7 fact, you can tell just by all the, the opposition to, to the
8 concept that it's not just our neighborhood but a lot of other
9 people are concerned as well.

10 So, when we first heard that there was a plan to put
11 a solar facility in the middle of a neighborhood of eight homes,
12 eight existing homes, we were very concerned. We spoke to our
13 council people, we spoke to Wade Koch and then we, we spoke to
14 Vicki Almon. They were the two council people who actually had
15 a part in drafting the, the legislation. They each did their
16 own iterations of the legislation, it evolved, they came out to
17 our property, they sat in one of my neighbor's living rooms,
18 they saw the impact it would create to our neighborhood. As a
19 result of that meeting, another iteration of the plan was
20 drawn, which included a provision for allowing the ALJ and the
21 Board of Appeals to impose certain requirements for buffering
22 and for, to, for buffering adjacent, to the adjacent neighbors
23 and to the scenic road. It doesn't say shall, but it says may.

24 In my opinion, the ALJ was, should have imposed
25 restrictions. I believe that our neighborhood is probably a

1 poster child for where you shouldn't put one of the ten allowed
2 facilities in district three. It literally is right at the
3 entrance to our community and, you know, while a little bit of
4 glare may not be such a big deal for, you know, the general
5 public. Well, you know, you have eight people that are going
6 to have to deal with that as we drive down to, to go to work or
7 come home every day.

8 And there's deer that run across that road, that's
9 enough to contend with. We happily contend with that, but to
10 also have to worry about the glare from solar panels combined
11 with that, I think that's ridiculous. I just don't think it's
12 the right location for one of the ten allowed facilities in, in
13 our district. And that's, that's basically one of the reasons,
14 I, I do believe it's going to have a negative impact on our
15 property values.

16 You know, am I a real estate appraisal, appraiser?
17 No. Am I a real estate agent? Well, I am, but I don't think
18 you have to be an expert. I think common sense would dictate
19 that, you know, you have, you're, you're coming into your,
20 approaching your neighborhood and there's a farm field or a, a
21 solar farm, you know, what's going to have the, what's going to
22 be more appealing? It's pretty obvious to me. So, I do think
23 it's going to effect the value of the, of the, the property
24 values.

25 MR. NELSON: Increase or decrease?

1 MR. WOLF: I think it's going to decrease it.

2 MR. NELSON: Um hm.

3 MR. WOLF: And I do believe that that legislation
4 gives the Board of Appeals and the ALJ the right to impose
5 certain restrictions regarding buffering and whether it's
6 tiered buffering or strips, contour strips, which, you know,
7 I'm sorry, it might not, it might block the sun but maybe you
8 put less panels up or maybe you pick a different location.

9 And I can tell you that to, to allow a landscape plan
10 to be approved after the fact, after granting the, the, the
11 exception and, and, and making it a condition of building
12 permit, makes no sense to me.

13 I know, as a developer, if I got a project, any
14 project I've done where landscaping was such an integral part
15 of the project and, and the protection of, of, of the view shed
16 from neighbors that I don't know any jurisdiction that would,
17 including Baltimore County, that would allow me to get a
18 special exception or a zoning variance bef, before having a
19 plan that was approvable.

20 And Mr. Schmidt, with all due respect, you went to
21 the ALJ meeting, you said that the plan was submitted, you said
22 you paid the fee, you, and, and then you came in the next, two
23 weeks later and said, oh, the fee wasn't paid but it's being
24 paid today, guess what? That fee has still not been paid.

25 MR. SCHMIDT: Been paid.

1 MR. WOLF: When?

2 CHAIR: Okay, wait, wait, wait. We don't, sir, you
3 can't ask questions of Mr. Schmidt.

4 MR. WOLF: Well, I, I can testify that as of two
5 weeks ago when I spoke to Mr. Herman, he had still not rec, he,
6 he had claimed that he had still not received the, the, the fee
7 and, and was not reviewing the plan. So, the tactic is
8 obviously a stall tactic, which I find very distasteful and
9 it's just the whole, I, I really think the whole way this,
10 this, both the legislation and the way it's being enacted are,
11 are not fair to the people that live and are affected by, in,
12 in the areas where these facilities are planned.

13 MR. NELSON: Let me ask you a very narrow question.
14 Is one of the reasons that you object to this is that you have
15 not yet, in the process, in the, in the context of a special
16 exception hearing, to address the landscape plan because they
17 haven't yet submitted and received approval for it?

18 MR. SCHMIDT: Objection. Leading. Geez, come on, Mr.
19 Nelson. Don't testify.

20 CHAIR: Okay. Well, why don't we just, I'll sustain.
21 Just rephrase the question, would you, please?

22 MR. NELSON: All right. I'm, I'm trying to wrap this
23 up by 4:00.

24 CHAIR: So, that --

25 MR. NELSON: That was a little leading and, but I was

1 just trying to synthesize it. With respect to the landscape
2 plan.

3 MR. WOLF: Yes.

4 MR. NELSON: Do you think that it's appropriate to
5 require that we have it now or is it appropriate to allow them
6 down the road, after they get the special exception, to get
7 approval of the landscape plan?

8 MR. SCHMIDT: Asked and answered. He's already said
9 it should be approved now.

10 CHAIR: He, he just indicated in --

11 MR. SCHMIDT: He just said that.

12 CHAIR: -- his line of work that he believed
13 landscape plans should be approved well in advance, well in
14 advance of getting zoning.

15 MR. NELSON: All right. I just wanted to make sure
16 that was --

17 MR. WOLF: If, if I may, I also believe in light of
18 the legislation, the enacting legislation for solar facilities,
19 where it grants this body, as well as the ALJ, authority to
20 require buffering as part of its approval of the special
21 exception. That it would be appropriate to at least have a
22 landscape plan that you guys can see that's been approved.

23 CHAIR: Understood.

24 MR. NELSON: All right.

25 MR. WOLF: That's all.

1 MR. NELSON: I'll move on to the next topic. This
2 case also concerns a development review committee waiver.

3 MR. WOLF: Yes.

4 MR. NELSON: All right. What observations, if any,
5 do you have about the fact, why did you appeal that waiver?
6 What, what, why did that, why did you appeal that waiver?

7 MR. WOLF: Because I felt that our opportunity as a
8 community for input into things such as a landscape plan that's
9 obviously not going to be approved before the special exception
10 is granted, and the storm water management plan, and the, the
11 environmental plan and all the other plans that are going to be
12 required, that we lost, we are losing our opportunity to weigh
13 in on those plans. So, simply, you know, we're either going to
14 have, we're, we're just going to have to live with whatever is
15 granted and whatever is permitted without adequate input.

16 MR. NELSON: What characteristics, if any, are there
17 in your view, that makes this site different from other sites
18 where solar arrays have been approved?

19 MR. WOLF: Well, it, it, it's mainly the topography.
20 It's a bowl shaped site, it's virtually impossible to buffer
21 the views, especially from the Mirabiles, from portions of
22 Route 30, and in fact, I find it extremely distasteful that the
23 applicant is using as a major buffer to the site, the trees
24 that are located on other neighbors' properties, particularly
25 the Mirabiles. So, they lose their rights to use that

1 property, in other words, they may want to harvest those trees.
2 I, I just, I don't understand that. I don't understand how
3 they can use other people's property rights to try to buffer
4 something that they're planning on, on installing. You know,
5 it has, that issue hasn't been raised until now but it's the
6 truth.

7 MR. NELSON: Is there any other objection you want to
8 articulate now or do you believe you've covered it? This is
9 your opportunity.

10 MR. WOLF: I'm sure there's a thousand more, but
11 that's all I can think of right now.

12 MR. NELSON: All right. That's all I have. Thank
13 you.

14 MR. WOLF: Okay.

15 CHAIR: Any cross?

16 MR. SCHMIDT: Mr. Wolf, you don't like the law? You
17 don't like the current law?

18 MR. WOLF: No, I think it's fine if it's implemented
19 the way it's written and it was intended to be implemented.

20 MR. SCHMIDT: Okay. How many acres did you
21 originally acquire?

22 MR. WOLF: About ten and, well, myself, about four
23 and a half, almost five.

24 MR. SCHMIDT: So, the original, when you said you
25 acquired acreage and then you did a subdivision, how many acres

1 did you have, that you subdivided?

2 MR. WOLF: Like I said, I purchased ten acres with a
3 friend of mine, as co-owners, and then we subdivided it into
4 two parcels of about, approximately five acres each.

5 MR. SCHMIDT: Okay. I thought you said the zoning
6 was appropriate to have one house every fifty acres?

7 MR. WOLF: Except there was an exception made in that
8 area for, there were separate lots and it was, it was
9 subdivided before by, it was 1978, you probably know better
10 than me, you know the zoning laws.

11 MR. SCHMIDT: Okay. So, your lot is four and a half
12 acres?

13 MR. WOLF: Correct.

14 MR. SCHMIDT: Okay. Can you see the Mirabile new
15 house under construction from your property?

16 MR. WOLF: Yes.

17 MR. SCHMIDT: Is there any landscaping or woods
18 between your house, any landscaping or line of trees or
19 anything between your house and the Mirabiles?

20 MR. WOLF: Yes.

21 MR. SCHMIDT: Okay. But you can see through that?

22 MR. WOLF: Yes, I can actually.

23 MR. SCHMIDT: Okay. So, you can see through the
24 trees to the Mirabile property?

25 MR. WOLF: Yes.

1 MR. SCHMIDT: Okay. You're lower than the subject,
2 than the subject property?

3 MR. WOLF: Which is the subject property?

4 MR. SCHMIDT: The subject property where the solar
5 facility is proposed? You're at a lower elevation?

6 MR. WOLF: I am, probably, yes.

7 MR. SCHMIDT: Probably, okay. No other questions.

8 CHAIR: All right. Anything else?

9 MR. NELSON: I have nothing further.

10 CHAIR: Thank you, sir.

11 MR. WOLF: Thank you.

12 CHAIR: You probably have the rest of the witnesses
13 for Thursday, I would think?

14 MR. NELSON: (inaudible) direct and cross. There's
15 some lay people whose, who, (inaudible).

16 CHAIR: Right.

17 MR. NELSON: I don't know whether, I haven't spoke, I
18 don't know whether they want to testify now, but I'm, I'm, I
19 prefer to have my witnesses testify Thursday morning, just so
20 it's not --

21 CHAIR: We, we have to go Thursday anyway because we
22 have more people, so we need to do it anyway.

23 MR. SCHMIDT: I just want to make sure we finish
24 Thursday. How many, how many witnesses do we have?

25 MR. NELSON: Well, I have my clients, you know, and

1 my clients, I think Mr. Wolf will be probably the longest one
2 that I --

3 CHAIR: Mr. Wolf, Mr. Wolf just testified

4 BOARD: He's done.

5 BOARD: That's right, he's just using as a, said he
6 had four or five more times ten, twenty minutes.

7 CHAIR: Oh.

8 BOARD: So, you don't expect the others to be long,
9 that's what you're saying?

10 MR. NELSON: Right.

11 MR. SCHMIDT: So, we'll be, we'll be done by lunch
12 time or so, you think, Mr. Nelson?

13 MR. NELSON: I thought we would be done today but
14 the, yeah, my point is, I have my lay, my clients, I think I
15 have four households, I think.

16 CHAIR: So, four more people?

17 MR. NELSON: Well, you know, there's a husband and
18 wife, you know, so I got to work through all that. But my
19 point is, I think Mr. Wolf is the longest one of the bunch. We
20 did a lot of the, the aerial photographs with the, the experts,
21 you know. The Mirabiles will probably, of the, of the
22 remaining witnesses, are the longest, they're south. But there
23 are some lay people here who, who aren't my clients. I don't
24 know what their schedules are.

25 CHAIR: Okay, all right. Well, we'll have to go,

1 we'll certainly have to go Thursday morning then.

2 MR. NELSON: (inaudible).

3 CHAIR: Yeah, that's right. And then, so they
4 wouldn't be coming back Thursday. Yes, anyone else who wanted
5 to testify, at least has an interest in the case, have to have
6 an interest in the case.

7 MR. NELSON: (inaudible).

8 CHAIR: It's supposed to, I think it's set for 10:00.
9 We can start earlier. Do you want to start earlier, 9:00?

10 MR. SCHMIDT: I can start 9:00, sure.

11 MR. NELSON: As long as I ask, I thought we started
12 at 9:00 today, whatever it is, 9:00 is fine. If you say 9:00,
13 we'll be here at 9:00.

14 CHAIR: Were we supposed to start at 9:00?

15 BOARD: No, not today.

16 BOARD: No.

17 MR. SCHMIDT: No, it was on the docket for 10:00.

18 CHAIR: For 10:00.

19 MR. SCHMIDT: Because you had a deliberation today.

20 BOARD: I started at 9:00, you guys started at 10:00.

21 MR. SCHMIDT: Yeah.

22 CHAIR: There was a deliberation for some other case,
23 but -

24 MR. SCHMIDT: Is there, I don't know, is there a
25 deliberation Thursday?

1 CHAIR: I don't think so.

2 MR. SCHMIDT: We can start, let's go off the record.
3 Start at 9:00, done by twelve.

4 BOARD: I need some exhibits --

5 MR. SCHMIDT: Mr. Brown is --

6 (RECORDING PAUSED - 03:48:45 PM)

7 (ON RECORD - 03:49:10 PM)

8 CHAIR: Go back on there, just for a second. Okay.
9 So, we're back on the record just real quick.

10 MR. SCHMIDT: I'm sorry.

11 CHAIR: That's okay, no problem. We just, we can
12 start at 9:00 there's no deliberation on Thursday.

13 MR. SCHMIDT: Okay.

14 CHAIR: So, if you want to start at 9:00, we
15 certainly can, that way we'll get out, we'll get out earlier.

16 MR. SCHMIDT: Yeah. All right. See you at 9:00 on
17 Thursday.

18 CHAIR: Sounds good.

19 MR. SCHMIDT: Thank you, all.

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25 (OFF THE RECORD - 03:49:35 PM)

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2
3
4 CERTIFICATE OF TRANSCRIBER

5 I hereby certify that the hearing in the matter of
6 Woodensburg Land and Cattle Company, LLC, Legal Owner and
7 Chesapeake Energy One, LLC, Lessee, case numbers 17-107-X and
8 CBA-19-018, heard before the Board of Appeals of Baltimore
9 County, July 23, 2019 were recorded by means of audiotape.

10 I further certify that, to the best of my knowledge and
11 belief, page numbers 1 through 236 constitute a complete and
12 accurate transcript of the proceedings as transcribed by me.

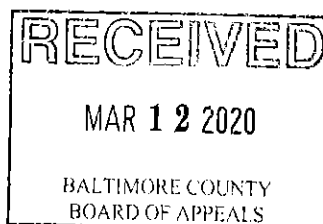
13 I further certify that I am neither a relative to nor an
14 employee of any attorney or party herein, and that I have no
15 interest in the outcome of this case.

16 In witness thereof, I have affixed my signature this 5th
17 day of March, 2020.
18
19
20

21 *Christine R. Leary*

22 Christine R. Leary

23 Transcriber
24
25



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3 **IN THE MATTER OF:**

4
5 **WOODENSBURG LAND AND CATTLE COMPANY, LLC, LEGAL OWNER**
6 **CHESAPEAKE ENERGY ONE, LLC - LESSEE**
7 **CASE NUMBERS: CBA-19-018/17-107-X**
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10
11 Hearing Date: July 25, 2019

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13 Pursuant to Notice, the above-entitled hearing was held before the Board of Appeals for Baltimore
14
15 County at the Jefferson Building, Second Floor, Suite 203, 105 West Chesapeake Avenue, Towson,
16
17 Maryland 21204.

18
19 **PANEL PRESIDING:**

20
21 **MAUREEN E. MURPHY, CHAIR**

22
23 **KENDRA RANDALL JOLIVET, BOARD**

24
25 **WILLIAM A. MCCOMAS, BOARD**
26

27
28 **PRESENT ON BEHALF OF THE PARTIES:**

29
30 **LAWRENCE E. SCHMIDT, ESQUIRE**

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32 **G. MACY NELSON, ESQUIRE**
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1 (ON RECORD - 09:02:20 AM)

2 CHAIR: Good morning. We're on the record, case
3 number 17-107-X, Woodensburg Land and Cattle Company, SGC
4 Power, LLC, this is day three. Can we have the attorneys for
5 the record?

6 MR. SCHMIDT: Sure. Good morning, Chairwoman Murphy
7 and members of the panel. I'm Lawrence E. Schmidt, with Smith,
8 Gildea & Schmidt, with offices in Towson at 600 Washington
9 Avenue on behalf of the applicants in the underlying Petition
10 and the DRC action. Thank you.

11 CHAIR: Great.

12 MR. NELSON: Good morning. Macy Nelson on behalf of
13 the citizen, Protestants.

14 CHAIR: Great, Mr. Nelson. Okay and we were in the
15 Protestant's case, so I understand you have witnesses today for
16 us.

17 MR. NELSON: That's correct.

18 CHAIR: All right. We're ready whenever you are.

19 MR. NELSON: I'm ready. I have a few exhibits that
20 I'd like to move into evidence. Let me just identify them
21 first. They'd be first is a copy of the Planning Board
22 recommendations. And I'm sorry, the copy that was supplied to
23 me had some handwritten notes that were crossed out. I'm not
24 sure whose notes they were, but these are a copy of the
25 Planning Board recommendations. I'd like to move those into

1 evidence, please.

2 CHAIR: Any objection?

3 MR. SCHMIDT: Well, they're, they're County documents
4 so I don't object to the fact that it's a County document. I
5 guess you can give it the weight that it, it is. But these are
6 simply recommendations that are not about this case and they're
7 certainly not the law of Baltimore County.

8 CHAIR: Understood.

9 MR. SCHMIDT: So, to the extent that they've got any
10 value, I guess I can address that in closing, to that extent
11 too.

12 CHAIR: Sounds like a plan. Okay. What number are
13 we on?

14 MR. SCHMIDT: I believe we're --

15 MR. NELSON: That should be fourteen, I think.

16 BOARD: Nineteen.

17 MR. SCHMIDT: Nineteen?

18 BOARD: I'm sorry, it's fifteen. My apologies, it's
19 fifteen.

20 MR. SCHMIDT: No, it's, --

21 BOARD: (inaudible) it's fifteen for the
22 Protestant's. So, I had, number fourteen was the picture that,
23 Hanover Pike, a picture that you presented, Mr. Nelson. Number
24 fourteen?

25 MR. NELSON: Yeah, I'll have to look at that.

1 MR. SCHMIDT: That's what I have, Ms. Jolivet. I
2 have --

3 BOARD: Do you have number fourteen as well?

4 MR. SCHMIDT: -- picture of Hanover Pike east bound.

5 BOARD: East bound, yeah. That's what I have.

6 MR. SCHMIDT: And then I have nine, I'm sorry,
7 eighteen for the Petitioner.

8 MR. NELSON: Oh, yeah, (inaudible), I'm sorry.

9 BOARD: So, it should be fifteen.

10 MR. SCHMIDT: Yeah, and you have eighteen for the
11 Petitioner?

12 BOARD: I have, yeah, I had eighteen for you.

13 MR. SCHMIDT: Okay. Just, go ahead, I'm just trying
14 to make sure I'm squared away.

15 BOARD: Yeah, we're on the same page.

16 MR. SCHMIDT: Good, thank you.

17 MR. NELSON: All right.

18 CHAIR: All right. We'll accept Protestant's
19 fifteen.

20 MR. NELSON: Thank you then. This is an e-mail, this
21 is not my client, at the end of the hearing, after the Board
22 recessed, I was packing up my materials and a woman whom I've
23 never met before, who I later learned was Abby Kealy, said Mr.
24 Nelson, I want to submit written comments, how do I do that by
25 e-mail? And I was scurrying around packing up and, and

1 honestly, I don't know, I don't know what the practice is. I
2 said, if you forward it to me, I will mention it to the Board.
3 So, I'm not advocating for this, I'm simply communicating that
4 she asked me to do that.

5 CHAIR: Understood. Do you want to look at those?

6 MR. SCHMIDT: I have a suspicion I know what it says,
7 but I'd like to look at it anyway.

8 BOARD: Thank you.

9 CHAIR: But Ms., what did you say her name was, Abby?

10 MR. NELSON: Keeley, K-E-A-L-Y.

11 CHAIR: But she's not here? Not here to testify, no?

12 MR. NELSON: No.

13 CHAIR: Okay.

14 MR. NELSON: And to be honest, I didn't ask, I just,
15 I was tired --

16 CHAIR: Understood.

17 MR. NELSON: -- I was packing up.

18 CHAIR: No, no, sure, not your, not, and this is not
19 your client.

20 MR. NELSON: Not my client.

21 CHAIR: Not your client, so you're actually helping
22 her, doing a favor for her, we understand that.

23 MR. NELSON: Well, that's what I was trying to do.

24 CHAIR: We appreciate that, yep, understood.

25 MR. SCHMIDT: What's the Board's policy? You, I, I

1 know you, you all get letters and e-mails about, about cases.

2 CHAIR: Yeah.

3 MR. SCHMIDT: You just put them in the file and give
4 them the weight that you deem appropriate? I mean, I --

5 CHAIR: My, my position over the years has been, if
6 you're not here to testify, this doesn't come in.

7 MR. SCHMIDT: Okay. I mean, --

8 CHAIR: And I know that in past years, they just sort
9 of take anything anybody hands them and put it in the file. I,
10 I tend not to do that because the person is not here and can't
11 be cross examined and not that you would have questions, but
12 you might have questions and --

13 MR. SCHMIDT: Right.

14 CHAIR: -- you know, these other people had to take
15 their time to come in here today and they're here today and,
16 and they're, they want to testify and they will testify and they
17 can be cross examined and --

18 MR. SCHMIDT: Right.

19 CHAIR: -- you know, so --

20 MR. SCHMIDT: Mark it for identification only?

21 CHAIR: That, that's what I would do, mark it for
22 i.d. only, okay? We'll mark it for i.d. only.

23 MR. SCHMIDT: So, Protestant's sixteen.

24 CHAIR: That's right, Protestant's --

25 MR. SCHMIDT: That's fine.

1 MR. NELSON: One other document. I have a copy of a
2 government document from the Anne Arundel County Office of
3 Planning and Zoning and this is a, in essence, a staff report
4 that addressed the Anne Arundel County zoning regulations in
5 the context of a solar facility next to a historic site. But
6 there, the, I want to offer this as an exhibit because it's an
7 indicator of how another administrative agency has evaluated
8 issues in the spector of viewshed caused by the solar facility.
9 I'm not saying it's precisely on point, I'm saying it's a piece
10 of information, it's, it's a perspective from other people who
11 have given careful analysis to this question. So, I'd like to
12 mark that as Exhibit 17, please. And I, Mr. Schmidt,
13 (inaudible), I'm sorry.

14 MR. SCHMIDT: Yeah, I, I am going to object to this,
15 as it relates to another jurisdiction and I, just say in
16 passing, I participated recently in a presentation that the
17 State Bar did on zoning and I think I saw Mr. Nelson there
18 about solar. And the regulations that the various counties
19 have throughout the State of Maryland are markedly different.
20 There are counties that have been post moratoriums, there are
21 some that embrace solar and then there are some that are kind
22 in the middle. So, I mean, the County Council has, the
23 Baltimore County Council has spoken as to what the standards
24 are in Baltimore County as to what the applicant has to show
25 under the 502.1 and 4-F of the zoning regulations. What's

1 going on in Anne Arundel County, frankly, just doesn't have
2 anything to do with it. So, I would object.

3 CHAIR: Okay. Yeah, it appears to be a document
4 that's numerous pages on Anne Arundel County letterhead,
5 presumably, the Office of Planning and Zoning. I mean, it is,
6 this is, you know, this case has to do with Baltimore County
7 regulations, really not Anne Arundel County, you know, it,
8 it's, I understand it's a government document, it, it appears
9 to be, anyway. There's obviously no one here to authenticate
10 it but appears to be a government document. For Baltimore
11 County, a document is just easy for us to look at the
12 letterhead, we're used to those documents and, you know, Mr.
13 Nelson hands them in, Mr., Mr. Schmidt hands them in all the
14 time, you know, this is not something that, in this particular
15 case, I think would be relevant to our hearing. So, I think
16 this is something that we would not admit into evidence. We
17 can certainly mark it for i.d. only.

18 MR. NELSON: All right.

19 CHAIR: So, this is Protestant's seventeen for i.d.
20 only.

21 MR. NELSON: All right.

22 CHAIR: All right.

23 MR. NELSON: There are two citizens here who are not
24 my clients, who wish to address the Board. The first is
25 Patricia Fallon, so I propose that she address the Board now

1 and if no one objects while she's testifying, I'll speak very
2 briefly with my colleague Grant (inaudible) about an issue,
3 very quiet right here while she's testifying to get this moving
4 along.

5 CHAIR: All right.

6 BOARD: Mr. Nelson, there are a couple of extra
7 copies here.

8 MR. NELSON: Thank you.

9 BOARD: Thank you, I appreciate it.

10 MR. NELSON: All right.

11 CHAIR: That's all right, it's not your client.
12 You're doing the best you can, we appreciate your assistance in
13 helping out.

14 BOARD: Is there another person who can testify?

15 MR. NELSON: Hm?

16 BOARD: Is there another person that can testify?

17 MR. NELSON: Yeah, just that, --

18 CHAIR: She might be in the restroom or something.
19 What are you going to do? We can wait.

20 MR. NELSON: She was here, I'd like to wait just one
21 minute.

22 CHAIR: Sure, sure. No problem, no problem, and
23 right.

24 (RECORDING PAUSED - 09:12:57 AM)

25 (ON RECORD - 09:13:31 AM)

1 CHAIR: Just right up here, if you want, just, let's
2 go up here first and swear you in.

3 MS. FALLON: Okay.

4 CHAIR: Yeah, you got to do that first.

5 BOARD: Give me one second. There we go. All right,
6 go ahead. All right. Do you swear and affirm under the
7 penalties of perjury, that the testimony you're about to give
8 is true and correct to the best of your knowledge and belief?

9 MS. FALLON: I do.

10 BOARD: Please state your name, your business, your
11 address for the record and spell your last name.

12 MS. FALLON: My name is Patricia Fallon, I was a
13 manufacturing manager at Westinghouse, (inaudible) business and
14 manufacturing for fifteen years, and I live at 14823 Hanover
15 Pike, which is exactly one-half mile north of this site and
16 one-half mile south of the other site on the same road.

17 BOARD: You can sit and just adjust that microphone
18 so the, the computer picks you up.

19 MS. FALLON: Okay.

20 BOARD: There you go.

21 CHAIR: Okay, ma'am. You're not represented by Mr.
22 Nelson but we understand you want to address the Board and tell
23 us what your, what you want to tell us.

24 MS. FALLON: Well, as I understand it, as a
25 community, we were going to come and just share our thoughts on

1 the case, if that was okay with the Court?

2 CHAIR: Well, you're a half mile from the property,
3 so we want to hear from you, so you know, tell us what you want
4 to tell us.

5 MS. FALLON: Okay. So, and I had some other
6 information, I didn't, my printer ran out of color last night
7 so I have first, most of the presentation so. I don't have
8 three copies for each of you, (inaudible) have two.

9 CHAIR: That's all right. We can share.

10 MS. FALLON: Does the lawyer need one too?

11 MR. SCHMIDT: Sure, thank you.

12 CHAIR: And you might want to see it, Mr. Schmidt,
13 first.

14 MR. SCHMIDT: Thank you.

15 MS. FALLON: Sandy, did I give you a copy? Can you
16 give me a copy to give to the Judges. Linda, did I give you a
17 copy? This is the same one, all right.

18 MR. SCHMIDT: Yes, I believe --

19 MS. FALLON: Just give it to one of the, any Judge.

20 BOARD: Make sure she has one, make sure she has one
21 over there.

22 BOARD: Okay, thank you.

23 MS. FALLON: I'm sorry, sir.

24 CHAIR: Hey, Mr. Nelson, can I ask her a quick
25 question real quick?

1 MS. FALLON: Oh, here's another one.

2 CHAIR: One second. Can we mark this as a
3 Protestant's exhibit or do you not want, or are we just --

4 MR. NELSON: Whatever, I'll defer to the Board. We
5 have no objection.

6 CHAIR: That's okay?

7 MR. NELSON: Yeah.

8 CHAIR: All right, sure. Thank you. Okay. Number
9 eighteen, Protestant's eighteen. Okay. Go ahead, ma'am.

10 MS. FALLON: Like I was saying, I came because our
11 community just wanted to be able to express our thoughts on
12 the, on the different, on the case. I live exactly one-half
13 mile north on Hanover Pike and one-half mile south of the other
14 site that's called the show piece solar farm.

15 The first page here, well, you all have seen this.
16 This is from the Department of Environment. We, as a
17 community, a couple of us just went to the Department of
18 Environment to see if we could understand exactly what was
19 going on. We have all, (inaudible), we have all witnessed the
20 stream that goes down through the property and, of course,
21 yesterday riding by, we looked right up the hill and we saw the
22 solar farm that's going to be there, or we, may be there. So,
23 that, that, that stream and that land, that property, I just
24 had a document there that shows that from the Department of
25 Environment.

1 The next page is a picture then we took before the
2 big storm this week. It hadn't even rained for a couple of
3 days and this is at the bottom of the stream and it's actually,
4 I mean, a fair size body of water that's on the bottom of that,
5 that, that goes through that stream and then continues and it
6 actually is, was flowing, flows under that street into another
7 body of water and so what I did is I went into the, well, let
8 me back up a little bit. No, I'll continue this and then I'll
9 go back.

10 So, I went into the Natural Resources Assessment data
11 base, it's run by the Federal government, it's Federal wetlands
12 inventory, and actually, and I'll show you this in a little
13 bit, but my, the front of my property is the one hundred year
14 flood plain and I have my drawing to show you that. My
15 property, the property to my left, my neighbors and to my, my
16 south and the north, we all are the one hundred year flood
17 plain and we are directly south of the first proposed solar
18 farm and then we are directly north of the other one. And the
19 water just flows. I mean, it's like a river that goes through
20 and I have a, I have a drawing of that with me, my actual
21 drawing from Baltimore County.

22 There's piping and everything and the State stops by
23 and makes sure the piping is clear and all of that. So, we are
24 major water flow and the, it comes right down from the top of
25 Hanover Pike. It starts at Route 91 and I mean flows like a

1 river on a major storm and even on larger storms than that.

2 So, from the Natural Resources Assessment group, and
3 I know you all had a wetland expert come in, but what, what
4 I've got here is, this is, you can see their land right here.
5 Of course, the drawing isn't up there but it's that, you know,
6 triangular shape. You can see it on the next, next page.

7 BOARD: Which page are you on now?

8 MS. FALLON: Okay. I am on, I went, okay, you see
9 the major stream, excuse me, the picture, the large picture of
10 the stream at the bottom.

11 BOARD: Okay.

12 MS. FALLON: The next page is the beginning of the,
13 the shots I took last week of, from the Natural Resources
14 Assessment Group, which shows the major, Hanover Pike is a
15 major waterflow gateway, Baltimore County.

16 MR. SCHMIDT: I'm still not following where, where
17 she is.

18 BOARD: Me either.

19 BOARD: Yeah.

20 MS. FALLON: Okay.

21 BOARD: So, if we can go, I have (inaudible).

22 BOARD: Can you show us the page that you're on?

23 MS. FALLON: Yeah, let's call that page one.

24 BOARD: And then I have this as page two.

25 MS. FALLON: Page two and I'm on page three.

1 BOARD: Page three.

2 MS. FALLON: I'm sorry, I'll tell you when I'm going,
3 and I apologize, I didn't put the (inaudible) pages.

4 BOARD: No worries.

5 MS. FALLON: Okay. So, I'm on page three, okay? And
6 so, this is where I had gone back, knowing that I was the one
7 hundred year flood plain, knowing my, our properties are right
8 in between, I wanted to see, you know, I actually wanted to see
9 what else was going on there. I knew we were a major water way
10 and darn if the Natural Resources Assessment Group identified
11 us as a major water way and I'll show you that.

12 So, the first picture I snapped and I'll put it
13 together for you, is the, the piece of property that is the SGC
14 proposed solar, and you can see it right there, it's that
15 triangular piece and just to the south of that is a large area
16 that I've then blew up right below that and it is called the
17 piece, PSSIEMIA, the fresh water forest is shrubland, wetland.

18 So, that stream that is on the drawing, that was up
19 here on the board, the stream feeds that other larger stream at
20 the bottom that is in the previous picture, but that stream
21 then feeds the PSSIEMIA wetland and it continues to flow south
22 down Hanover Pike. And it is noted as a 1.88 acre fresh water
23 forested shrub wetland. So, as I saw that, and then I just put
24 the definitions there and I'm not going to say that I'm, here's
25 the definition, it came right out of the wetland data base.

1 So, I turn the page and you can see the definition, okay.

2 The next page shows my sources, which is, says source
3 for Natural Wetlands, it says UMAS, Natural Resources
4 Assessment Group. It shows who did it, the contractor. It
5 identifies Maryland Route 30 as the Maryland (inaudible) turtle
6 habitat and it, it says the classification is we are in the
7 Cowerton system of waterflow. It is a major waterflow coming
8 down through Hanover Pike. I'm going to go later on I'm going
9 to go back and show you how it links from the first solar farm
10 that is proposed, which is a half mile directly north of me and
11 then that links the waterflow coming down 30, links directly
12 into this second solar farm through our hundred year flood
13 plain, and also in the front and the back, and you'll see some
14 of that. I'll show you how it links together.

15 I probably should have, you know, in terms of my flow
16 of data here, I could have put that all together, but I jumped
17 right away into the fact that I was in manufacturing, I was a
18 manufacturing systems manager down at Westinghouse. We built
19 the (inaudible) radar, the S-16 radar, we worked with semi-
20 conductors, (inaudible) circuit boards and all those kinds of
21 materials. And as I heard, when I saw this, well, first of
22 all, you know, we live in RC-2 obviously, right? I'm going to
23 back up just a second.

24 When I signed my mortgage, I remember the title
25 officer saying you, remember, you're in RC-2 and you're a

1 steward of that land. I said, I absolutely am a steward of
2 that land. And we believe in that, we the people, we, we
3 believe we are stewards of that land. So, I just wanted to
4 share that.

5 So, as I looked at this waterflow, the main waterway
6 gateway, I thought, wait a minute. How come we're putting
7 solar farms, I mean, I get that Baltimore County said we could
8 have ten, okay? I mean, that they want to put ten, okay, in
9 district three. I'm not happy about that but wait a minute.
10 How come we're putting it in the main waterway of Hanover Pike?
11 The main cowerton system. And I thought, wait a minute, okay.

12 So, I went back to my manufacturing background, I've
13 worked in that for thirty-four years, like I said, we, I also
14 was in manufacturing, built manufacturing systems for satellite
15 communications for the government and I'm very well aware of a
16 lot of these materials. So anyway, went back through the solar
17 panel, I wanted to just see what it's made of. I knew there
18 were issues, but I wanted to see so I did my research and I
19 said okay, yeah, here we go.

20 We've got chemicals that are used in the semi-
21 conductor industry. I mean, each one of the solar cells has
22 its own semi-conductor. So, we are dealing with electronics
23 manufacturer, or electronic components actually, I'll call it
24 that and the general semi-conductor industry, I mean, we're
25 using a lot of different acids, which are, are in here. The

1 particular, some of the solar panels use the thin film PV and
2 that's where a lot of the issues are. You have (inaudible)
3 which is in the conductor itself, copper idium, (inaudible),
4 which is a major, it's one of the top thirty-three toxic
5 materials in the, in the world, and lead.

6 These components, when we were manufacturing these
7 components, we had, we had a book full of OSHA requirements.
8 We had EPA in there, we had to be very careful about any, not
9 only during the manufacturing process, but even afterwards, we
10 were very careful with any waste management at all. We had
11 very strict guidelines and I'll show you, I can show you some
12 of this later on. But we had very strict guidelines in terms
13 of how to handle it, how to manage it, and anything, and even
14 after it got deployed, we call it deployment, we would look, if
15 there was ever any damage, we had to be out there with it, we
16 had to be twenty-four hours get rid of, remove the damaged
17 device that contained these materials because of the hazard
18 concern.

19 We always had a, we had a whole division that was
20 used, that was always twenty-four/seven, that if there was any
21 damage to any of this equipment, they had to inspect it, remove
22 it if they found an issue, and then we had a whole division to
23 repair or replace. We had to make an evaluation of repair or
24 replace. It was then tested and then replaced.

25 The other thing that became as time went on, a

1 requirement of the industry was to have twenty-four/seven
2 remove monitoring. So, what we did is we, we had put in the
3 ability to, now I ran a hundred and fif, I had a hundred and
4 fifty sites around the world, we actually deployed a hundred
5 and fifty sites, plus we had the (inaudible), we had the F-16
6 and we were monitoring the equipment online. I mean, we had a
7 hundred and fifty sites with different kinds of, you know,
8 radar and things, but with, you know, these, these electronic
9 components. And we created a, well, what you would call it,
10 what was a center command of control center. And we could see
11 every site and then every site had, well, signals.

12 We had diagnostics and we were running the
13 diagnostics, polling, polling, polling. And based on these
14 diagnostics, we could tell if any site had a problem. Okay, so
15 we'd say, oh, that site over there in Saudi Arabia had a
16 problem, this site in West Virginia had a problem. We could
17 see the problem.

18 Then we had the ability, these new, these monitor
19 control systems that are now out there for all electronic
20 devices can then drill down. You can say okay, let me see
21 what's really going on here. We could see which device was
22 having a problem, then you could drill down into those
23 diagnostics. And the diagnostics would tell you, based on a
24 number of different things, what was really going wrong with
25 that facility or those devices. You could, and there are

1 different ways to tell that there's a problem. Sometimes it
2 would just alarm the device, then give you the diagnostic,
3 there were other ways that you're degrading.

4 Degradation was a big deal. You could see if you
5 were degrading in the performance of that device and as soon as
6 we saw degrading, you could tell by the different pole,
7 sometimes the polling would stop, it wasn't getting your
8 messages back as frequent as it should. And you say, well,
9 there's a little problem there. Different times it would,
10 well, give you different diagnostics, for instance, well, there
11 were different warning signals, there were actual messages that
12 say hey, you have a, a particular problem with this device.

13 We also could monitor the actual elec, the, the
14 electrical flow. We could see if there's a problem with that
15 device, and because we knew about the materials, we could, you
16 were supposed to disable the device, that's industry, you
17 disable the device, especially if there's any kind of hazard
18 materials available. So, you disable the device, you send out
19 a team, you remove that device and that is industry practice
20 and that is what --

21 BOARD: So, do you think that should be used here?

22 MS. FALLON: Absolutely.

23 BOARD: Okay.

24 MS. FALLON: Absolutely. I think they need, now I
25 looked on their website, they have, they just said they could

1 do monitoring. I have no idea what level that means. But I
2 know that when you're dealing with electronics and you're
3 dealing with hazardous materials, it has to be, like we had a
4 big division that just did that. We were onsite, you took care
5 of it right away or you got to the site right away or we
6 deployed somebody right away, I mean, you take care of it.

7 And what it meant was sometimes we had to remove the
8 device, and even if it took another week or two to get the
9 device back in, at least we removed it and shut down the, the,
10 the feeding electricity and, and all those things. So, it's
11 very important, especially since we're dealing with the
12 environment and our main waterway. I mean, I just really feel
13 strongly about that and I appreciate you listening to that.

14 BOARD: Of course.

15 MS. FALLON: Okay. So, I've kind of been through
16 that. Then the next part of it is just all the different
17 things that can cause damage to these solar panels. Here's a
18 picture of, for instance, one from a hailstorm, I just got that
19 off, you know, the internet actually.

20 But, for instance, the storm we had last week and
21 those folks here will testify to that, we had a storm of
22 storms. I mean, it, it was a, there was a small tornado that
23 came up 30, it literally went right across the property we are
24 talking about. It literally went, did it not?

25 VOICE: (inaudible).

1 MS. FALLON: Went right up that property --

2 CHAIR: No, no, no, no, no, no, no.

3 MS. FALLON: Okay, sorry.

4 CHAIR: Sir, you can't testify.

5 MS. FALLON: Okay.

6 CHAIR: She's the only one that's allowed to talk.

7 MS. FALLON: Okay, sorry.

8 CHAIR: And she's under oath. Understood, it looks--

9 MS. FALLON: But we, we had a lot of damage, the road
10 was closed, the lines were down, trees were down, limbs were
11 blown across the properties. So, based on, now I just was
12 looking up different solar panel damaging. I mean, I know what
13 can cause damage to the devices we were working with, but solar
14 panels can receive the same kind of damage. From water,
15 shattered glass, debris, flying branches, even lightening can
16 cause damage to these solar panels. So, hailstorms, tornados,
17 things like that.

18 One of the things that I had noted, and we knew this,
19 I mean, when you're dealing with electric voltage, when you
20 have a, if you have any damage, that, that can cause, there are
21 electrical issues, obviously. That's one of the reasons you
22 need to be disable it, be able to disable it remotely and if
23 you do not disable it remotely there is a, a real concern of
24 the electric voltage getting out into the environment, it might
25 get into the water, it can spread, it can, there are other

1 things and it actually can cause hazards to both people,
2 animals and the, the, the area of shrubbery and things like
3 that. So, you have to be very capable about that.

4 MR. SCHMIDT: Just object, Ms. Murphy, with all due
5 respect to this witness, she knows nothing about the practice
6 that my client employs and I can have a witness testify that
7 these things, the solar facilities are remotely monitored, they
8 have a system in place where they will be monitored, but this
9 witness doesn't know anything about the practice that we use
10 and to testify about her experience on other electrical non-
11 solar panels, I just don't know what the relevance of any of
12 that is.

13 CHAIR: Understood. Understood. Overruled. We're
14 going to allow, allow Ms. Fallon to talk to that, go ahead.

15 MS. FALLON: Okay. Well, thank you. All right.
16 Okay. So, you know, we talked about, I, I really believe in
17 the need and I'm glad to hear that they, they say that they
18 have something. I just, I, it would be really good to be able
19 to see that that would be something that would be absolute
20 required.

21 And also, the, when you have a system like that,
22 because you're dealing with hazardous materials and things like
23 that, there are different requirements about that and I'm sure
24 that, you know, they, they prob, they may be able to testify to
25 it, you know, I don't know, but they probably, they may be able

1 to. You usually have a backup system. We usually ran two
2 systems, because when we're monitoring something, you, if that
3 goes down, you better be able to switch over to something else
4 and be able to continue your monitoring. So, there is,
5 there's, there's all those things that go on.

6 You have to have a lot of security in there. You
7 don't want anybody to be able to get in there and then mess
8 with, you know, the, the, the, the solar farms and things like
9 that or any other type of electronic equipment. Okay.

10 I have something in here about disposal of damaged
11 solar panels, but I'll, I'll, I'll skip that.

12 BOARD: Tell me what page.

13 CHAIR: Which page, which page?

14 MS. FALLON: That would be the page after lightening
15 damage. I had gone through all the damages. I've got a lot of
16 references in here.

17 BOARD: On page (inaudible).

18 MS. FALLON: There is a, I'll just raise this and I
19 don't --

20 BOARD: Is this (inaudible).

21 MS. FALLON: Yes, yes, I'm sorry.

22 BOARD: Page nine?

23 MS. FALLON: So, it's the disposal of damaged solar
24 panels. The only concern I'm raising here, and I don't know
25 what your contract says, I mean, I admit, I don't know what

1 your contract says with your client, but, but I will say that
2 there is a number of cases, it looks like there are a number of
3 cases where when you had a damaged solar panel, there seems to
4 be a question on who is paying for the damages, not, this is no
5 the removal after the life time, but. So, anyway, I'm just
6 bringing that up. I don't know if because damaging is so
7 important now based on what I'm talking about, at least our
8 concern, I think it needs to be clear who is going to take the
9 responsibility to immediately remove it upon damage so.

10 CHAIR: Were, were you here for Mr. Copus' testimony?

11 MS. FALLON: I was not, I apologize.

12 CHAIR: Okay, understood. That, that may be --

13 MS. FALLON: And if he's answered these questions,
14 I'd be --

15 CHAIR: -- that may be some of it, that some of your
16 concerns may have been addressed with Mr. Copus.

17 MS. FALLON: I, and, and that would actually be nice
18 to know.

19 CHAIR: Well, we appreciate your bringing these up
20 so, go, go ahead.

21 MS. FALLON: Okay. So, my, the next page then shows
22 that a half mile north of me is the other solar farm. I don't,
23 I don't know if the case came in front of you or not, I was
24 unable to attend and I don't know if any of the other folks
25 were, but it's a concern because it's all part of that waterway

1 and this is called the Shoppy (phonetic) Farm. I think it was
2 called Hanover Solar. But it shows clearly these panels right
3 in the middle of the wetlands.

4 Now, what I'm going to go to on the next page is, the
5 next page shows the, again, at the National Wetlands, it shows
6 that particular solar farm as completely, is adjacent and in
7 the, a huge freshwater forested shrub wetland called PSS1B,
8 which --

9 CHAIR: Well, wait a minute, is this a different
10 case?

11 MS. FALLON: Yes, but I'm, what I'm, --

12 CHAIR: Okay, okay.

13 MS. FALLON: -- just, just bear with me one second.

14 CHAIR: Okay, I'm sorry. I, --

15 MS. FALLON: What I'm showing is that this is
16 connected, it comes down, then the next, the picture below that
17 is my property right in the middle, it's the one hundred year
18 flood --

19 CHAIR: Tell us which page again.

20 MS. FALLON: Okay. I'm on this guy right here, which
21 is after --

22 BOARD: Page eleven.

23 CHAIR: Got that, Mr. Schmidt?

24 MR. SCHMIDT: Yes, yes.

25 MS. FALLON: That, it's after this, the other solar

1 farm but I'll, you'll, I'll, you'll see why I'm, I'm pointing
2 this out. This is a waterway that's completely totally
3 connected and this, the bottom picture, middle piece of
4 property is my property and I have my drawing here that shows
5 the one hundred year flood plain, okay? And the, the one, the
6 water flows down through there and then behind it, which is
7 then, the following page shows it connects again into the water
8 feed that goes right into that stream, that I showed at the
9 beginning of my presentation and it is right on their property.
10 So, it's a total connected waterways. You've got two of them
11 now, I'm talking about two solar farms, that hazardous material
12 --

13 MR. SCHMIDT: Objection. This witness has absolutely
14 no expertise in environmental science or waterways or the
15 connectivity of wetlands or any of those things. (inaudible)
16 ask Mr. Leskinen about this, he's an expert, for example, and
17 there's, I mean, this is total rank speculation that somehow
18 these systems are connected and what the connection means and
19 so on and so forth. I mean, it's just, it's just --

20 MS. FALLON: Well, --

21 CHAIR: Wait a minute, one second, ma'am.

22 MS. FALLON: Okay.

23 MR. SCHMIDT: It's testimony that just doesn't have
24 any probative value and I think it's just prejudicial.

25 MS. FALLON: Okay. But I --

1 CHAIR: Wait one second, ma'am. I have to rule on
2 it, one second. Okay, we're going to let you cross examine on
3 those, those points.

4 MR. SCHMIDT: Okay.

5 CHAIR: I appreciate that, Mr. Schmidt. Go ahead.
6 Go ahead, ma'am. Overruled. Go ahead.

7 MS. FALLON: Okay. Well, the reason I'm bringing
8 this up is because it has, it appears to me, and I, and it
9 happened when we went to see the Department of Envir, spent
10 four hours with them and they were kind of walking through how
11 they review this stuff.

12 And I said, you know what? It appears to me, and I
13 told the guy, I told him, it was Tom Panzarella, I said you,
14 you look at what's on the drawing, you see that, you know, you
15 see the stream but you don't look at the whole system and the
16 reason the whole system is important here is because we got one
17 right to the north.

18 So, we have this double effect now of potential
19 hazardous material flowing through the waterways. That's why
20 I'm bringing it up because I never saw, not here, not listening
21 to you all, which you guys did a great job, not Department of
22 Environment, I never saw anybody talk about how the, things are
23 connected and the effect that can have. And I'm just, that's
24 one of the reasons I'm again bringing up, and believe, and if I
25 had a chance, I'd be saying the same thing at the other meet,

1 if, if I had gone to the other one. They need to be monitored,
2 let, that's really where I'm going with this and see.

3 There are protection laws. You all know them, I
4 don't need to even go through them.

5 Now, there, I'll hand this in and I, my printer ran
6 out of paper, out of ink last night, and I will show you.
7 California has, has rated the solar panels as hazardous waste,
8 okay? Other states are rating them as hazardous waste. So,
9 now we're dealing with a whole set of regulations, all right?

10 One of the, again, you had, the different hazardous
11 materials are, are managed by, you have OSHA requirements, and
12 this is, this is a page, I'll hand this in. You have OSHA,
13 which is the National Institution of Occupational Safety and
14 Health, and I was quite familiar with that, working with that.
15 We have FDA requirements, we have requirements of disease, that
16 it's called, it's called the Disease and, I have the name of
17 it, ATSDR, which was the, a, anyway, a group that, that lists
18 diseases and what the causes are. We had the EPA, World Health
19 Organization, is all got regulations on these materials that
20 are used in these, in these solar panels. We've got toxicity
21 levels and then there's, I got on the back here, all these
22 different laws that have to now be dealt with if we are really
23 going to put these in the farmlands and the wetlands and I'll
24 hand this in to you.

25 BOARD: Thank you.

1 MS. FALLON: So, that's --

2 BOARD: Is this the only copy you have, just one?

3 MS. FALLON: You can see my ink was running out of
4 paper, so I mean, I, I mean, ink. My paper was running out.

5 BOARD: This too?

6 MS. FALLON: Oh, let me, can I have that back for a
7 second? I'm sorry.

8 BOARD: (inaudible).

9 MS. FALLON: The, my last point, again, is the
10 monitor and control system, just needs to be very good and
11 maybe it is. That would be of help.

12 I also want to say that I totally support Mr. Ted
13 Carter in his recommendation that we have three to four layers
14 at least of buffer to help these, our, our community, our, our,
15 our friends over there with what they have to deal with, so
16 anyway, I guess, that's (inaudible).

17 BOARD: (inaudible).

18 MS. FALLON: Here you go, you can look at this.

19 BOARD: Thank you.

20 MS. FALLON: Here you go. That was my notes.

21 MR. SCHMIDT: You got this off the internet, ma'am?

22 MS. FALLON: Yes. And I have my sources in there, I
23 just (inaudible).

24 MR. SCHMIDT: We all know how accurate the internet
25 is. There, there is nothing that's not true on the internet.

1 I'm going to object, I don't see the relevance --

2 MS. FALLON: That's California (inaudible) --

3 MR. SCHMIDT: -- and as the witness says, it's about
4 California.

5 MS. FALLON: Well, I was just giving an example.

6 CHAIR: Well, okay, wait a minute, one second. Let's
7 see. So, we have Protestant's eighteen, which is the summary
8 compiled by Ms. Fallon, is there any objection to those, those,
9 that information?

10 MR. SCHMIDT: This?

11 CHAIR: Protestant's eighteen, yes, which is special
12 exception hearing, it's got the Hanover Solar Farm.

13 MR. SCHMIDT: Yes, I, --

14 CHAIR: (inaudible) by her.

15 MR. SCHMIDT: -- yes, I would, well, there are
16 definitely parts of this which I find objectionable, so yes.

17 CHAIR: Understood. Understand your objection.

18 MR. SCHMIDT: I mean, the parts about the other,
19 about the other case, because there's a copy of a plan, I
20 think, from another case for example.

21 CHAIR: Right.

22 MR. SCHMIDT: And, and among other things, so I'm
23 going to object.

24 CHAIR: I understand, right. Well, and, and witnesses
25 are permitted to provide summaries of their testimony and it

1 could be by power point presentation or slide show. It could
2 be, you know, a summary on the board, you could draw an example
3 of what it is you're trying to convey and I think this is just
4 another way to convey what she was trying to say. She could
5 have done it just through testimony but she had both. So, I
6 don't have any problem with Protestant's eighteen. I know
7 there is another case in there, which, of course, I was asking
8 questions about, but she clarified. It's not necessarily,
9 she's not talking about the case in terms of protesting that,
10 when necessarily it's, it was really just the, the whole, whole
11 global picture, I think, of the area is what she was trying to
12 convey, which we understand, you know, I guess it effects, as
13 in her, in her view, the stream and, and the hazardous
14 materials as she's researched in the solar panels that, you
15 know, in her, in her view, contaminate the stream and that's
16 part of the, the ecosystem in that area. So, we'll accept
17 Protestant's eighteen.

18 Nineteen is, it appears to be information, there's a,
19 there's a note on here as well, that's stapled, that's your
20 handwriting. This happens, this is from, I understand you were
21 talking about health standards, environmental standards and
22 things in, it appears to be from California, was that right,
23 ma'am? Is --

24 MS. FALLON: Well, the, the first page is but the
25 other pages are from EPA, the EPA's list of regulations that

1 deal with hazardous materials and there is a boatload of those.
2 I couldn't --

3 CHAIR: Isn't this repetitive of what you put in
4 Protestant's eighteen?

5 MS. FALLON: No.

6 CHAIR: No?

7 MS. FALLON: The EPA list of regulations was not in
8 the first one. The first one did list, though, the materials,
9 so.

10 CHAIR: Okay. So, the first page has to do with
11 California?

12 MS. FALLON: I was just making, I was looking through
13 to see, I had found information that they were being considered
14 hazardous waste and I wanted to go see information on, more
15 information on it so I just printed off what I found, that was
16 about 1:00 last night (inaudible).

17 CHAIR: Understand. Well, you've actually testified
18 I think sufficiently in regard to this and I don't think it's
19 necessary for the Board necessarily to have the information
20 outlined. I think that you were very clear in your testimony.
21 This would be something that, because it was printed from the
22 internet, it comes from another source and I think that because
23 it wasn't prepared by you, whereas this was, other document,
24 Protestant's eighteen --

25 MS. FALLON: They were both prepared by me, I just

1 did that one haphazard (inaudible).

2 CHAIR: Well, I'm, no, I'm just saying, you were, but
3 you prepared this in the sense that this is your work --

4 MS. FALLON: Yes, I did.

5 CHAIR: -- this was your research --

6 MS. FALLON: Yes.

7 CHAIR: -- this was your, your effort. This, on the
8 other hand, Protestant's nineteen, has to do with things that
9 are printed from the internet, which, you know, we don't have
10 necessarily, a source or a person here to verify that. So, I
11 think we can mark this for identification only.

12 MS. FALLON: Okay.

13 CHAIR: But we did hear from you and we heard, you
14 know, you basically, you've said the same thing as what was in
15 the document, so we'll mark that for Protestant's nineteen for
16 i.d. only. And was there anything else that you wanted to add?

17 MS. FALLON: No, that's it.

18 CHAIR: No? Okay.

19 MS. FALLON: I do want to say one other thing.

20 CHAIR: All right, go ahead.

21 MS. FALLON: I've known Glen a long time, when --

22 CHAIR: When you say Glen, who's Glen? Oh, I'm
23 sorry, go ahead and say his whole name.

24 MS. FALLON: Glen Elseroad.

25 CHAIR: Okay. He was the farmer who testified.

1 MS. FALLON: He, he was a good neighbor and I knew
2 him, and I'm sorry that our community has been split.

3 CHAIR: Understand, appreciate that. Under,
4 understand, appreciate that very much. Okay and I'm sure he
5 does as well. Understood. Okay? Well, thank you, ma'am. Oh,
6 I'm sorry. We need questions. Cross exam, Mr. Nelson?

7 MR. NELSON: I have no questions.

8 CHAIR: No questions. Okay, Mr. Schmidt?

9 MR. SCHMIDT: Just a couple.

10 CHAIR: Okay.

11 MR. SCHMIDT: Ms. Fallon, so you live a half a mile
12 or so north of the subject property, where this is proposed.
13 Can you see this property from your property?

14 MS. FALLON: Only when I drive and I drive that road
15 several times a day.

16 MR. SCHMIDT: Okay. But if you're on your property,
17 you, you cannot see it?

18 MS. FALLON: No.

19 MR. SCHMIDT: Okay.

20 CHAIR: You have to say yes or no.

21 MS. FALLON: Yes, I mean, no.

22 MR. SCHMIDT: Okay. I'm going to --

23 CHAIR: Was it yes, you mean no, what? Go ahead
24 again.

25 MS. FALLON: No, I cannot see the property.

1 CHAIR: No, she cannot see the property.

2 MR. SCHMIDT: Okay. I'll mark, I think my next
3 exhibit is, mine as well put this in now, Petitioner's exhibit,
4 we just talked about this.

5 BOARD: Nineteen.

6 MR. SCHMIDT: Nineteen.

7 BOARD: Yes. Thank you.

8 MR. SCHMIDT: Ma'am, I'm going, I'm going to show you
9 a document, apparently you did some research and just to help
10 you out, this is a document from the Maryland Environmental
11 Resources and Land Information Network. Again, it's something
12 that you can go on the internet, through the Department of
13 Natural Resources of the State of Maryland and, and, and pull
14 this down. And as indicated, this has certain information
15 about the streams and the wetlands.

16 MS. FALLON: That looks exactly like, (inaudible)
17 behind my house, then it goes right over here and it
18 (inaudible).

19 MR. SCHMIDT: Okay.

20 CHAIR: Okay. Why don't you, ma'am, the record is
21 not going to be able to pick up this, that and --

22 MR. SCHMIDT: Yeah, the, the record is not going to
23 be able to understand. So, first of all, --

24 CHAIR: So, let, let Mr. Schmidt ask a question first
25 of all.

1 MR. SCHMIDT: Yeah, let me ask you --

2 MS. FALLON: Okay.

3 MR. SCHMIDT: -- this.

4 MS. FALLON: Yes.

5 MR. SCHMIDT: Can you identify on this, on this
6 exhibit, where the proposed solar facility is going to be?

7 MS. FALLON: Right here, right here.

8 MR. SCHMIDT: Okay and I'm going to ask you, I might
9 take one of the Board's exhibits maybe, because I'm going to
10 have her write on it.

11 CHAIR: That's the original exhibit.

12 MR. SCHMIDT: It's the original? You all have one to
13 look at. Do you want to put maybe a, a, an X where the subject
14 property is?

15 MS. FALLON: Um hm. Well, here's the stream that's
16 going down here, so it's right here.

17 MR. SCHMIDT: Okay. So, the witness marked with an
18 X. Now, the dark green on this exhibit is identified in the
19 key as a fresh water emerging wetland, correct?

20 MS. FALLON: Right, exactly. Yes.

21 MR. SCHMIDT: So, according to this exhibit, there
22 are actually no exhibit, no wetland on the subject property?

23 MS. FALLON: Well, then the, actually, in this
24 document I showed you I didn't see --

25 MR. SCHMIDT: If I can, let me, let me, here's, with

1 all due respect, I'm going to ask you questions and you can
2 answer them.

3 MS. FALLON: Okay.

4 MR. SCHMIDT: So, let's just start simple. Is there
5 any dark green showing a wetland on the subject property?

6 MS. FALLON: Only this line right there.

7 MR. SCHMIDT: Okay. Now, this would be to the south,
8 or to the bottom --

9 MS. FALLON: Right.

10 MR. SCHMIDT: -- is the Mirabile property, correct?

11 MS. FALLON: Yes.

12 MR. SCHMIDT: Okay and there's a wetland right across
13 Not Frye Road that covers a fairly large portion of the
14 Mirabile property --

15 MS. FALLON: Yes.

16 MR. SCHMIDT: -- is that right?

17 MS. FALLON: Yes.

18 MR. SCHMIDT: Okay. Is your property shown on this
19 exhibit?

20 MS. FALLON: Up here. Right, it's right in front of
21 this area right here.

22 MR. SCHMIDT: At the very top?

23 MS. FALLON: Yes.

24 MR. SCHMIDT: Why don't you put a circle on, where
25 your property is?

1 MS. FALLON: I mean, I'm going to, it's kind of, you
2 know, I'll just go ahead and sit here.

3 MR. SCHMIDT: Okay.

4 CHAIR: Because the Board can't see any of this.

5 MR. SCHMIDT: I'm getting --

6 CHAIR: We don't --

7 MR. SCHMIDT: -- I'm going to give it to you. X is
8 the subject property and the zero is her property and as she's
9 indicated, there's no wetlands shown on that map on the subject
10 property. There are wetlands on the --

11 MS. FALLON: Can I readdress?

12 MR. SCHMIDT: Hang, hang on a second. I'm going to
13 ask you, just ask you some questions if I can. And there are
14 some wetlands on the Mirabile property immediately to the south
15 of Frye Road. Okay. Now, the water, the drainage pattern, I
16 think that you've described, is it fair to say that it flows
17 from the north to the south?

18 MS. FALLON: Yes.

19 MR. SCHMIDT: Okay. So, anything that --

20 MS. FALLON: (inaudible) a little but, yes.

21 MR. SCHMIDT: -- okay, but any, so anything flowing
22 off of this property, the subject property, Mr. Elseroad's
23 property, would not flow to your property?

24 MS. FALLON: No, it would flow to the Mirabiles.

25 MR. SCHMIDT: Flow to the Mirabiles.

1 MS. FALLON: Right.

2 MR. SCHMIDT: Okay. So, it wouldn't, there wouldn't
3 be anything flowing towards you?

4 MS. FALLON: No.

5 MR. SCHMIDT: From the subject property. Okay. The,
6 just for clarity, the other case, or the other, other solar
7 facility case, is that shown on that exhibit that I gave you,
8 where that's located?

9 MS. FALLON: I, it didn't appear. I mean, I, it's
10 kind of without --

11 MR. SCHMIDT: If you don't know --

12 MS. FALLON: I think it's further north.

13 MR. SCHMIDT: It's further north?

14 MS. FALLON: Yeah, I think it's right above, see this
15 is a wetland and then, then this is a very large, long wetland,
16 so I think it's right up here.

17 MR. SCHMIDT: So, it's off the page?

18 MS. FALLON: Right on the top, yeah.

19 MR. SCHMIDT: Okay, off the page. Okay and did you
20 participate in that case, come to testify?

21 MS. FALLON: Unfortunately, no. My mother was with
22 me and sick and I did, could not and I wished I did.

23 MR. SCHMIDT: Okay. Do you know if that solar
24 facility has been approved?

25 MS. FALLON: Yes, unfortunately.

1 MR. SCHMIDT: Has it been appealed?

2 MS. FALLON: Yes.

3 MR. SCHMIDT: So, it's under appeal right now?

4 MS. FALLON: Apparently.

5 MR. SCHMIDT: If, if you know.

6 MS. FALLON: Apparently we didn't do the appeal or
7 something happened.

8 MR. SCHMIDT: Okay.

9 MS. FALLON: (inaudible) organization.

10 MR. NELSON: I wasn't the lawyer.

11 MR. SCHMIDT: Okay. If you, if you don't know, I
12 don't know is an acceptable answer.

13 MS. FALLON: I, I, I, I think we did not do the
14 appeal.

15 MR. SCHMIDT: Okay. Now, --

16 MS. FALLON: Unfortunately.

17 MR. SCHMIDT: -- you worked for Westinghouse --

18 MS. FALLON: Yes.

19 MR. SCHMIDT: -- in the manufacturing section?

20 MS. FALLON: Yes.

21 MR. SCHMIDT: Did, are you an engineer?

22 MS. FALLON: I was a --

23 MR. SCHMIDT: A P.E.?

24 MS. FALLON: -- I was a, well, I was a, I have my
25 Master's in Business Production. And I was a software engineer

1 and, but ran manufacturing systems for the shop floor.

2 MR. SCHMIDT: Okay.

3 MS. FALLON: Which was the manufacturing of the
4 components that went into all the different products.

5 MR. SCHMIDT: Okay. But you're not a professional
6 engineer with a license from the State of Maryland?

7 MS. FALLON: Not a licensed engineer, no.

8 MR. SCHMIDT: Okay. Did you work as part of your job
9 with solar panels?

10 MS. FALLON: No, but other electronics I did.

11 MR. SCHMIDT: Okay. You worked with other
12 electronics, but not solar panels.

13 MS. FALLON: Right.

14 MR. SCHMIDT: Okay. Have, do you know, or have you
15 ever heard of thin film solar panels?

16 MS. FALLON: Yes.

17 MR. SCHMIDT: What are they?

18 MS. FALLON: Well, they're, that's where a lot of the
19 cadmium is used. There, they're an emerging technology but,
20 and they provide better, actually, absorption of the light.
21 They're made of some different materials but that is where the
22 cadmium comes in.

23 MR. SCHMIDT: Okay. Have you ever heard of mono-
24 silicone panels, solar panels?

25 MS. FALLON: They are the joining of the different

1 solar cells if I understand. That is the material that
2 actually is joining the, the different solar cells together
3 into the, and the semi-conductor voltage.

4 MR. SCHMIDT: Okay. Do you know which solar panels
5 are proposed here?

6 MS. FALLON: I do not.

7 MR. SCHMIDT: Would that make a difference in terms
8 of potential environmental impact?

9 MS. FALLON: Well, if it didn't have any of these
10 hazardous materials, it would make a big difference. If it has
11 even any than that, my concern is still there.

12 MR. SCHMIDT: Do, do you know in the mono-silicone if
13 they have cad, cadmium and the other materials that you
14 described?

15 MS. FALLON: Well, what, what they have is --

16 MR. SCHMIDT: If you know?

17 MS. FALLON: -- well, I know that the semi-conductors
18 are in the solar cells. And the semi-conductors have the
19 (inaudible) arsenide and they have, the semi-conductors
20 themselves are considered a, a type of, what we call e-waste.
21 And if they have the (inaudible) arsenide then it can be
22 hazardous waste. It depends on what is exactly run in the
23 semi-conductor which are in, again, each solar cell in the
24 solar panel that is made of multiple solar cells.

25 MR. SCHMIDT: Okay. Were you here for Mr. Copus'

1 testimony?

2 MS. FALLON: It, it wasn't Tuesday?

3 MR. SCHMIDT: This gentleman?

4 MS. FALLON: No, I don't --

5 MR. SCHMIDT: He didn't testify on Tuesday.

6 MS. FALLON: Okay. Then I did not hear him.

7 MR. SCHMIDT: Okay. He testified extensively about
8 the monitoring that is done in the system and that how from not
9 only a safety standpoint, but from an economic standpoint it's
10 important that they know that the system is working and working
11 properly because if it's not, then it's not producing energy.
12 If there is a monitoring system in place, does that alleviate
13 any of your concerns?

14 MS. FALLON: Well, mon, there's called monitoring and
15 control. Control is where if you find a problem and you think
16 there's a problem with any type of leakage or --

17 MR. SCHMIDT: Right.

18 MS. FALLON: -- you need to be able to disable it
19 remotely or at least get right out there and disable it, but we
20 call it remote monitor control, where you can disable it
21 remotely and then you know at least you create some type of
22 level of safety and then somebody goes out.

23 MR. SCHMIDT: Okay and if I told you that that's
24 exactly what was proposed here that they have the ability to
25 remotely monitor and control and they would come, send people,

1 obviously also, out to the site, and this is what Mr. Copus
2 testified to would that alleviate any of your concerns? That
3 they're actually going to do that?

4 MS. FALLON: Well, that particular concern would
5 definitely help the alleviation. Am I happy that any of those
6 types of materials are in the waterway? No. But that does
7 help.

8 MR. SCHMIDT: Well, there's no ev, there's no
9 evidence that, that these things leech any of that material in
10 the waterway, is there? Only if --

11 MS. FALLON: If they're damaged.

12 MR. SCHMIDT: Okay.

13 MS. FALLON: And then there is degradation. So, I
14 think three percent a year.

15 MR. SCHMIDT: Okay.

16 MS. FALLON: Okay.

17 MR. SCHMIDT: Do you know anything about the design
18 of these and, for example, whether they can absorb pale,
19 impacts and things and whether they're rated up to a certain
20 safety design?

21 MS. FALLON: I don't know what the exact rating is
22 but I do know that there are cases where the hailstorms are
23 definitely, are damaging solar panels and debris can damage it,
24 depending on the type of impact.

25 MR. SCHMIDT: Okay. If we get a hurricane or --

1 MS. FALLON: Right.

2 MR. SCHMIDT: -- a, a tornado, it's going to damage
3 the solar panels.

4 MS. FALLON: Right, like we had last Tuesday.

5 MR. SCHMIDT: But that could damage somebody's house.

6 MS. FALLON: That's right.

7 MR. SCHMIDT: Could damage somebody's car.

8 MS. FALLON: I had two trees down, so right, exactly.

9 MR. SCHMIDT: There you go, right. So, it doesn't,
10 tornados just don't strike solar facilities.

11 MS. FALLON: Right.

12 MR. SCHMIDT: They strike anything in their path.

13 MS. FALLON: Right.

14 MR. SCHMIDT: Okay, fair enough. Are you aware that
15 the County has regulations related to what's called a
16 requirement of a de, decommissioning agreement for any solar
17 facility?

18 MS. FALLON: I knew that they had that, yes.

19 MR. SCHMIDT: Do you know what that is?

20 MS. FALLON: As I understand it, it has to do with at
21 the end of the life of the panels, which is, they think is
22 twenty-five years and I, Power Solar Online has an article by
23 the editor, Kelly, I had it in the document --

24 MR. SCHMIDT: If, if, if I can just ask you, I'm not,
25 I'm not asking you about what you read online. I'm just asking

1 you if you know that the County has a --

2 MS. FALLON: Yes.

3 MR. SCHMIDT: -- system in place called a de, which
4 requires what's called a decommissioning agreement.

5 MS. FALLON: Right, after twenty (inaudible) --

6 MR. SCHMIDT: Okay and that requires certain steps be
7 taken and the panels be disposed of --

8 MS. FALLON: Yes.

9 MR. SCHMIDT: -- properly and safely?

10 MS. FALLON: Yes.

11 MR. SCHMIDT: Okay.

12 MS. FALLON: The concern though that the editor of
13 Solar Online was saying is these Chinese panels that are coming
14 in are turning out not to give you that twenty, twenty-five
15 year life.

16 MR. SCHMIDT: Well, do you know if these are Chinese
17 panels?

18 MS. FALLON: No, I don't.

19 MR. SCHMIDT: Okay.

20 MS. FALLON: But they say eighty percent of the
21 market is, I don't know what --

22 MR. SCHMIDT: Okay. Is there, is there any
23 prohibition on a solar, in, in Baltimore County, in two solar
24 facilities, the proximity of one to the other?

25 MS. FALLON: No.

1 MR. SCHMIDT: Is there anything in the County law?

2 MS. FALLON: No.

3 MR. SCHMIDT: Okay.

4 MS. FALLON: They, it's very unrestrictive, they can
5 pretty much put the anywhere they want.

6 MR. SCHMIDT: Okay.

7 MS. FALLON: It's a shame.

8 MR. SCHMIDT: Thank you, ma'am.

9 CHAIR: All right. No questions, Mr. Nelson? All
10 right. Thank you, ma'am.

11 MR. NELSON: Madam Chair, Linda Barker is here, she's
12 not one of my clients, but she's a, a resident in the vicinity,
13 I'm not exactly sure where. So, Ms. Barker, you're free to.

14 BOARD: Raise your right hand. Do you swear and
15 affirm under the penalties of perjury, that the testimony
16 you're about to give is true and correct to the best of your
17 knowledge and belief?

18 MS. BARKER: I do.

19 BOARD: Please state your name, your business, your
20 address for the record and spell your last name.

21 MS. BARKER: Linda Barker, B-A-R-K-E-R, (inaudible)
22 Old Hanover Road, and that's in Upperco, right in Boring, and
23 I'm retired, I was a landscape contractor.

24 BOARD: Can you repeat that, but say it in the
25 microphone, because I'm not sure I can pick it up, and I'm

1 suspect the computer didn't.

2 MS. BARKER: Okay. How much, the whole thing?

3 BOARD: Just move, raise it, you can raise it, just
4 raise it up, just give your name and do, just do your address
5 and your name again.

6 MS. BARKER: Okay. Linda Barker, B-A-R-K-E-R, can
7 you hear me now? Okay. 14813 Old Hanover Road in Upperco, and
8 I'm right in Boring and I was a landscape contractor and I'm
9 retired now.

10 BOARD: You can sit down and then adjust that
11 microphone, if you don't mind, moving it closer to you.

12 MS. BARKER: Is that good? Okay.

13 CHAIR: (inaudible) so how far is your house from the
14 property?

15 MS. BARKER: I don't know. I guess, I guess as the
16 crow flies, as the crow flies, maybe a few miles. I cannot see
17 the property, so you know, it's not like I'm here because the
18 property is going to be in my view, unless I'm driving on, on
19 Route 30.

20 MR. SCHMIDT: In view of that, I understand that the,
21 the requirements to testify here. I don't know what this
22 witness is going to say, but if she's a few miles away, I,
23 well, I guess we'll see what she says but.

24 CHAIR: It's hard to know, it's hard to know. So,
25 and then driving by, that, is that a route that you take?

1 MS. BARKER: Yes.

2 CHAIR: When you go to and from your property past
3 this site?

4 MS. BARKER: Yes, it is.

5 CHAIR: Okay. Well, in view of that, we'll, we'll
6 see, you know, where the testimony goes.

7 MS. BARKER: Okay.

8 CHAIR: But you can't see the property, I think you
9 said, from your house?

10 MS. BARKER: No, I can't.

11 CHAIR: Okay, all right.

12 MS. BARKER: No, I can't.

13 CHAIR: Well, let's know --

14 MR. NELSON: May I be heard?

15 BOARD: Can, can you speak up or move that microphone
16 closer to you?

17 CHAIR: Mr. Nelson, you need to say something?

18 MR. NELSON: I'm just trying to help. We have a
19 large aerial photograph of the neighborhood that maybe if we
20 put on the board --

21 CHAIR: That would be helpful actually.

22 MR. NELSON: I think it's Exhibit 10, Protestant's,
23 it's a blowup.

24 MR. NELSON: Sorry.

25 BOARD: No worries, thank you.

1 MS. BARKER: Should I go locate myself on --

2 CHAIR: That would be great. Hopefully your property
3 is on there.

4 MR. NELSON: Ms. Barker, may, may I just identify the
5 map for Ms., the --

6 CHAIR: That'd be great.

7 MR. NELSON: All right. Ms. Barker, Route 30.

8 MS. BARKER: Um hm.

9 MR. NELSON: Hanover Pike, Frye Road, this is what
10 we've been calling Not Frye Road, this is the subject property.

11 MS. BARKER: Um hm.

12 MR. NELSON: This is the wetland area that Ms. Fallon
13 was talking about. You can see here, there's a reference to
14 Boring and Old Hanover Road, so it might be helpful if, if your
15 property is on this map to.

16 MS. BARKER: I'm right here.

17 MR. NELSON: All right. So, the witness is, is, if
18 we look at Exhibit 10, there's a reference to Boring, there's a
19 fork there, Pleasant Grove and Old Hanover Pike to the north
20 west and there are a cluster of homes here in Boring and you're
21 on Old Hanover Pike just north --

22 MS. BARKER: Old Hanover Road.

23 MR. NELSON: Old Hanover Road, just north of the fork
24 with Pleasant Grove Road, is that a fair statement?

25 MS. BARKER: Right.

1 MR. NELSON: Can you, can you locate your house
2 there?

3 MS. BARKER: I think it, it's --

4 MR. NELSON: Is it on the east side or the west, the
5 right side or --

6 MS. BARKER: It's on this side.

7 MR. NELSON: Okay, on the right side of Old Hanover
8 Road..

9 MS. BARKER: (inaudible) probably this one right
10 here.

11 MR. NELSON: Okay. So, I think she's identifying
12 what appears to be (inaudible) about the fifth house north of
13 the fork. This is me, that, to me that looks (inaudible).

14 BOARD: And east of Old Hanover Road.

15 MR. NELSON: Yes, it doesn't look like several miles
16 but we can check the scale.

17 CHAIR: Okay, understood. All right. Well, that,
18 thank you, ma'am. That, that makes, you know, a little clearer
19 for the Board so, why don't you tell us what you (inaudible)?

20 MS. BARKER: Okay. I, I guess the reason why I'm
21 interested in it is because I think it's a very bad idea to
22 have solar facilities located on a farmland. And I don't think
23 that you need to be, I don't think you need to be facing the
24 solar field in order to feel that way. So, that's, that's my
25 opinion.

1 But the, but the thing is about this particular
2 property it occurs to me, because it's on a slope, that there
3 is going to be erosion from the field because it's not going to
4 be under cultivation at any point anymore, it's just going to
5 have the solar arrays, which are, essentially, impervious
6 surfaces. When they're hit by rain, then it's going to roll
7 off as though it's a parking lot and that's going to cause
8 erosion.

9 So, unless it's mitigated in some way, all of the,
10 all of the erosion will go into the stream that is, is flowing
11 parallel to Hanover Pike.

12 So, one of the, apparently one of the reasons that
13 the, the land was taken out of farming was because of erosion.
14 It is not really conducive to, to row crops unless you're
15 going, you know, parallel to the topography, the topographic
16 lines.

17 So, if, for instance, and you know, the other side
18 has said it wouldn't be a concern, if the panels are emitting
19 anything plus if, in order to control any growth on the
20 property that (inaudible) wanted, herbicides need to be
21 sprayed. That means that there's a possibility of those
22 materials ending up in the stream because of erosion. And
23 we're getting more and more heavy rains now which means that
24 erosion could happen much faster than normal.

25 CHAIR: Okay. Were you, were you --

1 MS. BARKER: So, that, that's --

2 CHAIR: -- okay, I'm sorry. Were you here for the
3 testimony where the Petitioner's indicated there would be grass
4 underneath of the solar panels to such that if the rain falls,
5 fell it would just go into the grass underneath the solar
6 panels?

7 MS. BARKER: What kind of grass?

8 CHAIR: I don't know, I don't think there was a
9 specific type of grass, would it matter?

10 MR. SCHMIDT: It's --

11 CHAIR: No, you can't ask them. But I just, did,
12 were you here for that testimony?

13 MS. BARKER: No.

14 CHAIR: Okay.

15 MS. BARKER: But I can tell you that grass doesn't
16 stop things from being eroded.

17 CHAIR: Okay.

18 MS. BARKER: It doesn't stop, it, well, erosion is
19 stopped more by, let's say, woody plants or plants that are
20 specifically designed, you know, some grasses have a bigger
21 root mass, but if it's just grass, you know, like lawn grass or
22 something like that, it's not going to stop erosion.

23 CHAIR: Is there a certain type of grass you would
24 recommend be planted underneath the solar panels?

25 MS. BARKER: I don't know.

1 CHAIR: Okay.

2 MS. BARKER: Because, you know, it would, I would
3 need to see how much light is there, what soil, you know, what
4 the, what the aspect is so I can't give you a recommendation on
5 that.

6 CHAIR: Okay and then as far as the herbicides, if,
7 if there was a condition that they were not allowed to use
8 those, would that satisfy that concern of yours?

9 MS. BARKER: Well, then how would they control
10 growth? How, what would they do? In other words, would they
11 have to come in with mowers, they probably couldn't get under
12 the panels for some mowers.

13 MR. SCHMIDT: Right, absolutely.

14 CHAIR: That was the testimony, I understood the
15 testimony as that there would --

16 MS. BARKER: Yeah.

17 CHAIR: -- be maintenance people actually mowing the
18 grass.

19 MS. BARKER: Uh huh.

20 CHAIR: Yes.

21 MS. BARKER: Uh huh.

22 CHAIR: But I think it was several times a year.

23 MS. BARKER: Yeah. Well, I, I guess my, my big
24 concern was the erosion. So, if they, if they have a way to
25 stop that, if there's a mitigation to that, you know, --

1 CHAIR: Okay.

2 MS. BARKER: -- that would work.

3 CHAIR: That's (inaudible) to ask what your, you
4 know, about your concern.

5 MS. BARKER: Yeah.

6 CHAIR: Okay.

7 MS. BARKER: Yeah.

8 CHAIR: Go ahead, so there's something else that you
9 need to tell us?

10 MS. BARKER: So, so that was, that was my main thing,
11 was the erosion. And the other thing, because of the stream at
12 the bottom and it does, it's, it's very swift flowing stream
13 when there's a rainstorm and it does tend to go over the road
14 also. So, you know, going in and out, if that's the only
15 access to the property, that could be a problem with that small
16 road, it's not a very big road coming over a, a culvert with --

17 CHAIR: You're talking about Frye, Frye Not?

18 BOARD: Not Frye Road?

19 MS. BARKER: No, I'm sorry, Not Frye Road.

20 CHAIR: Is that what the road, --

21 MS. BARKER: Yeah.

22 CHAIR: Okay.

23 MS. BARKER: Not, yeah. So, I, I guess that's my, my
24 chief, you know, objection is just the erosion possibility.

25 CHAIR: Understood, okay. Okay, understood. Mr.

1 Nelson, anything?

2 MR. NELSON: Nothing. Nothing.

3 CHAIR: Nothing?

4 MR. SCHMIDT: Ms. Barker, do you understand that
5 these solar facilities and these solar panels are mounted on a
6 post that goes on the ground and then the bottom of the solar
7 facility is about two feet off the ground.

8 MS. BARKER: Right.

9 MR. SCHMIDT: Do you understand that?

10 MS. BARKER: Oh, yeah.

11 MR. SCHMIDT: So, these aren't laying on the ground
12 to create like a parking lot or impervious surface, they're
13 actually raised up under the ground and except for the post
14 that goes in the ground there's nothing else covering the
15 ground, do you understand that?

16 MS. BARKER: Sure.

17 MR. SCHMIDT: Okay. So, do you understand that when
18 it rains on these, the water drips off the panels --

19 MS. BARKER: Right.

20 MR. SCHMIDT: -- and drips into the ground.

21 MS. BARKER: Right.

22 MR. SCHMIDT: It doesn't flow off, doesn't create
23 erosion, but actually drips off the panels into the ground and
24 is absorbed into the ground, just as if it would rain on the
25 ground you, do you appreciate that? Do you understand that?

1 MS. BARKER: May I, may I reply other than to your
2 question?

3 MR. SCHMIDT: Well, I'm just, I'm just asking, do, do
4 you understand that?

5 MS. BARKER: Of course.

6 MR. SCHMIDT: Okay and you understand also, or do you
7 not, that the County has, and the State have, what are called
8 storm water management regulations?

9 MS. BARKER: Um hm.

10 MR. SCHMIDT: For solar facilities, which require the
11 applicant in this case to have a storm water management plan
12 approved so there won't be erosion and there won't be runoff at
13 inappropriate levels from the site?

14 MS. BARKER: Okay, I'm not aware of that.

15 MR. SCHMIDT: Okay. So, so when they design these
16 things, and I'm just trying to, because I'm not sure that you
17 understand, maybe you understand how this works, we've got to
18 plant the site with gra, a certain type of grasses that will
19 absorb, help absorb and control the rate of runoff so there's
20 not inappropriate erosion and actually you get more erosion
21 from a farm when it's, when it's in cultivation, when there's
22 no, when it's just dirt and there's nothing to control the
23 runoff, than you do in a situation like this.

24 MR. NELSON: I don't know if that's a statement or a
25 question or what that is.

1 MR. SCHMIDT: I'm just trying to get to see if the
2 witness understands this.

3 CHAIR: Did you, were you aware, were you aware --

4 MS. BARKER: That, that was my concern.

5 MR. SCHMIDT: Okay. Well, if they have a storm water
6 management plan that's required and in place, would that
7 alleviate some of your concerns?

8 MS. BARKER: I think so.

9 MR. SCHMIDT: Okay and also, when you farm a
10 property, you use all kinds of herbicides and pesticides, don't
11 most farmers, correct?

12 MS. BARKER: Um hm.

13 MR. SCHMIDT: And when it rains, they can get --

14 BOARD: Did you say yes or no? Say yes or no,
15 instead of nodding your head.

16 MS. BARKER: Oh, yes. Yes.

17 MR. SCHMIDT: Okay and, and they can be, they can
18 wash off the field and go into a stream, couldn't they?

19 MS. BARKER: And they do.

20 MR. SCHMIDT: Right and do you know if they use any
21 kind of pesticides and herbicides here do you, with a solar
22 facility comparing that to a farm?

23 MS. BARKER: I would guess that they would.

24 MR. SCHMIDT: Okay. Okay. Okay. Okay. Thank you,
25 ma'am. I don't have any other questions.

1 CHAIR: Anything else, Mr. Nelson? Thank you, ma'am.
2 Thanks very much for coming. All right.

3 MR. NELSON: May I have just a two minute break to
4 talk to my clients and figure out what the schedule we're going
5 to call them?

6 CHAIR: Sure.

7 MR. NELSON: And I might use the restroom too, if
8 that's all right?

9 CHAIR: Absolutely.

10 MR. NELSON: Thank you.

11 CHAIR: Okay, about ten minutes, how about that?

12 Sound --

13 (RECORDING PAUSED - 10:08:18 AM)

14 (ON RECORD - 10:25:32 AM)

15 CHAIR: Back on the record. Mr. Nelson, you had your
16 clients to call as witnesses?

17 MR. NELSON: Yeah, I have one more exhibit, I'd like
18 to move it in now. I think I'm at eighteen?

19 BOARD: Twenty.

20 MR. NELSON: Twenty. This, mark this as twenty,
21 these are documents related to prime and productive soil issue.
22 Includes the Code, it defines prime and productive as classes
23 one and two and it includes the soils map showing this
24 location. This is a fact that's in the staff comments, you
25 know, agriculture, agricultural preservation district. This is

1 just the documents that, backup for that. These are all County
2 documents, so I'd like to move into evidence Petitioner's,
3 Protestant's twenty.

4 CHAIR: Any objection to twenty?

5 MR. SCHMIDT: My, my only objection to this is that
6 when we heard this in a bunch of these cases is that the folks
7 who object to solar facilities in the RC-2 zone would like the
8 law to state that solar facilities cannot be on prime, prime
9 and productive soils and there's been discussion of that and at
10 the end of the day when the Council adapted Bill 3717, they did
11 not put that in. A determination was made that that's not part
12 of the criteria. So, to the extent that this is prime and
13 productive or not prime and productive or whatever, it doesn't
14 matter, it's not part of the criteria in terms of what the
15 Board has to evaluate but, I mean, it is authenticated in this
16 County documents to the extent I don't have a foundational
17 problem with it, but.

18 MR. NELSON: (inaudible).

19 CHAIR: Sure.

20 MR. NELSON: The, that's the nature of the legal
21 argument which, of course, I understand and appreciate and
22 respect because it's, but there's another legal argument on the
23 other side. I think, the point is, there's no dispute, these
24 are what the County calls prime and productive soils and we can
25 debate when we do our post hearing memoranda as to whether

1 that's relevant under 502.1 and I think it is, my adversary
2 thinks it's not and, and you will decide.

3 CHAIR: Understood. Understood. That's the argument
4 that's made typically, right, under the special exception
5 finder. So, we'll, for that, that purpose, we'll certainly
6 allow it.

7 MR. SCHMIDT: I understand.

8 CHAIR: Protestant's exhibit number twenty.

9 MR. SCHMIDT: Okay.

10 CHAIR: Thank you, Mr. Nelson.

11 MR. NELSON: Thank you. So, that's twenty,
12 appreciate that. All right. At this time, I'm going to call
13 Santo Mirabile. Can I just say what I put on the board,
14 because these are my copies of the exhibits. I just want to
15 make sure, Mr. Schmidt, there's no objection. I have on the
16 board, Protestant's ten, which is the board's copy.

17 MR. SCHMIDT: Yes.

18 MR. NELSON: I have my file copies with a number,
19 exhibit numbers on them.

20 MR. SCHMIDT: Yes, I remember those, that they're in,
21 yeah.

22 MR. NELSON: Yeah. I'm, I'm confident I have numbers
23 written correctly, but if there's a mistake it was inadvertent,
24 but those are copies of what's in evidence. I think that will
25 be more efficient.

1 MR. SCHMIDT: That's fine, that's fine. Thank you.

2 MR. NELSON: Call Santo Mirabile, please.

3 BOARD: Raise your right hand. Do you swear and
4 affirm under the penalties of perjury, that the testimony
5 you're about to give is true and correct to the best of your
6 knowledge and belief?

7 MR. MIRABILE: I do.

8 BOARD: Please state your name and business and your
9 address for the record, spell your last name.

10 MR. MIRABILE: Santo Mirabile, neighbor to the
11 property, address is 14525 Hanover Pike.

12 BOARD: Thank you. And you can sit down and just
13 probably adjust that microphone there for you.

14 BOARD: May I (inaudible) spell his name?

15 CHAIR: Yes, please, go ahead.

16 MR. MIRABILE: M-I-R-A-B as in boy-I-L-E.

17 CHAIR: I-L-E.

18 BOARD: What about your first name?

19 MR. MIRABILE: First name is S as in Sam-A-N-T-O.

20 BOARD: Thank you.

21 MR. NELSON: Mr. Mirabile, good morning. Let me show
22 you what we have on the board here. We have what's marked and
23 is in, an exhibit, Protestant's exhibit number ten, it's an
24 aerial photograph. Could you just identify for the Board the
25 property you and your wife own, if it appears on this Exhibit

1 10, please?

2 MR. MIRABILE: Sure. It's on the south side of the
3 roadway being referred to as Not Frye Road.

4 MR. NELSON: All right. You can come to the easel
5 and point to it.

6 MR. MIRABILE: Sure. So, there's actually two
7 properties that we own, one here and one here.

8 MR. NELSON: All right. Now, the one on the right,
9 there, on the aerial photograph, it looks to me like a cluster
10 of a house and a barn, is that where, where there's been
11 testimony the house was razed and a new house is being
12 constructed, is that the location for that new house?

13 MR. MIRABILE: It is, yes.

14 MR. NELSON: Okay and the site to the left, there's
15 been photographs of a, of a trailer and a field. I, is that
16 the, the first parcel you mentioned on the left?

17 MR. MIRABILE: It is.

18 MR. NELSON: Okay. Now, you can have a seat. With
19 whom do you reside, I mean, let me back up, with whom do you
20 own that land?

21 MR. MIRABILE: My wife.

22 MR. NELSON: Okay and what is her name?

23 MR. MIRABILE: Debra.

24 MR. NELSON: All right and she's here today?

25 MR. MIRABILE: Yes.

1 MR. NELSON: All right and do, do you actually yet
2 live at that property?

3 MR. MIRABILE: Not at this time.

4 MR. NELSON: All right and what, where, and feel free
5 to, I know it's awkward, I'm asking the questions, but where do
6 you reside?

7 MR. MIRABILE: We are in Randallstown, 4312 Windy
8 Hill Road.

9 MR. NELSON: Okay and the plan is, I'm leading here a
10 little bit, Mr. Schmidt, if you object, let me know. That when
11 the house is built, you'll move in?

12 MR. MIRABILE: Absolutely.

13 MR. NELSON: Okay and what's the, what's the
14 projected timeline?

15 MR. MIRABILE: We're hoping to be completed in twelve
16 months.

17 MR. NELSON: Um hm.

18 MR. MIRABILE: Just pending weather and whatever
19 other delays.

20 MR. NELSON: Okay. How long have you and your wife
21 Debra owned this land?

22 MR. MIRABILE: Over ten years.

23 MR. NELSON: Okay and how many acres do the two
24 parcels together total?

25 MR. MIRABILE: Seventy-seven.

1 MR. NELSON: Seventy-seven acres. All right. Now, I
2 want to just talk about, just kind of the nature of the land
3 and, and I, and there's been testimony about Hanover Pike and
4 the Not Frye Road. Is that a private or public road, Not Frye
5 Road?

6 MR. MIRABILE: Private.

7 MR. NELSON: All right. Do you use that road to get
8 access to your property?

9 MR. MIRABILE: Primarily, yes.

10 MR. NELSON: Okay. Now, as we, if you and I were at
11 the intersection of Hanover Pike and Not Frye Road, there's a
12 stand of trees that the applicant has spoken about, the
13 Petitioner has spoken about, in terms of, of creating a buffer
14 of the solar facility, which is to erect on the road, on the
15 land north of Not Frye Road. Do you know the stand of trees to
16 which I refer?

17 MR. MIRABILE: Yes.

18 MR. NELSON: All right. Are those trees on your
19 property?

20 MR. MIRABILE: Yes.

21 MR. NELSON: All right. Would you be kind enough to
22 approach the easel and point, you're in the way so the Board
23 can see, what, the trees that we're talking about?

24 MR. MIRABILE: Sure. It's this darkened brown area.

25 MR. NELSON: Okay. The Board saw that, didn't it?

1 All right. Now, were you here for the testimony of Ms. Fallon?
2 The first woman, talking about the stream channel coming down
3 Hanover Pike?

4 MR. MIRABILE: The latter half, yes.

5 MR. NELSON: Okay. Well, let me withdraw that
6 question. Have there been occasions or not when there's been
7 enough rain that the Not Frye Road is flooded so you can't
8 drive through it?

9 MR. MIRABILE: Multiple occasions.

10 MR. NELSON: All right. So, how often, describe
11 those events to the Board, please.

12 MR. MIRABILE: Sure. So, since we have owned the
13 property, whenever there's a, a heavy to torrential downpour,
14 it seems like a lot of the surface runoff goes down and through
15 or over or around this private culvert that was there.

16 A number of years ago, we had a hurricane, I can't
17 remember the name of it, but the, the rainfall and the
18 waterflow was so heavy that the, the culvert actually had to
19 be, was actually displaced and, and washed away and we had a
20 gaping hole which prevented access through the primary route
21 for some time.

22 Several neighbor, neighbors and us joined together,
23 both with plans and, and, and, and, sorry, I'm blanking out.
24 Band together with both, you know, monies and plans to repair
25 the culvert at our own expense, we had to repair the culvert.

1 It seems that as the years go on, the rain flow has
2 increased and I'm noticing that several times a year that that
3 area becomes flooded to the point that you cannot drive through
4 it, it becomes unsafe. Water is overflowing the culvert, going
5 over top of it. Of course, it's private, there's no
6 guardrails. If somebody were to drive over it, their car would
7 be swept away into probably a fifteen foot ravine. It's just a
8 bad, bad area that, when it rains, and it has the potential to
9 become even worse.

10 And, quite frankly, every time that it does rain and
11 we get a hard storm, I kind of cross my fingers that our
12 investment is still there the next day and that we don't have
13 to bear the burden of, of replacing it again.

14 MR. NELSON: Now, when you, when the neighbors banded
15 together to fund to repair the road, did Mr. Elseroad
16 contribute?

17 MR. MIRABILE: He did not, to my recollection.

18 MR. NELSON: Okay. Now, if, if, in the instances
19 where Not Frye Road is flooded so you can't drive through it,
20 in those rain events that you've described, how would the, the,
21 the, how would you get to your property if you wanted to get to
22 it or how would say the Merritts get to their property, you
23 know, how, how do you do that, how do you get there?

24 MR. MIRABILE: So, there is another access easement,
25 I believe it's on the Merritts property, which I have right to

1 through one of my parcels to be able to gain access to my
2 property and that's the only other alternative route.

3 MR. NELSON: All right, could you show that on this
4 map?

5 MR. MIRABILE: Sure. It's right here.

6 MR. NELSON: So, you drive up?

7 MR. MIRABILE: Yeah, you would have to, actually, you
8 would have to drive up Old Hanover and bring Old Hanover in or
9 go up to Emory Road and come down and off Old Hanover, you'd
10 turn on to the actual Frye Road and then when Frye Road ends,
11 there is a driveway, stone driveway, that leads to the
12 Merritts, that we take that will bring us out to the top of Not
13 Frye, our easement, which we can bring into our location.

14 MR. NELSON: I see, okay. All right.

15 MR. MIRABILE: I have had to use that in times past,
16 especially when the bridge was out and, as I mentioned, the
17 bridge was out for probably a good month or so and that was the
18 only way that, that any of the neighbors could get in or out.

19 MR. NELSON: All right.

20 BOARD: So, there's an easement, a formal easement
21 (inaudible) between you and the Merritts?

22 MR. MIRABILE: No, --

23 BOARD: Or was it done before (inaudible).

24 MR. MIRABILE: -- I think it was done before when
25 the, they were initially separated.

1 BOARD: Okay.

2 MR. NELSON: All right. Mr. Mirabile, I want to
3 direct your attention now to some exhibits that are already in
4 evidence and I first want to show you Exhibits 12 and 13, which
5 I understand and represent to be photographs of the new
6 building site along, that's Exhibit 12. And Exhibit 13 is the
7 U.S., the Google Earth Pro elevation profile, which we talked
8 about a lot. You recognize these photographs, do you not?

9 MR. MIRABILE: Yes.

10 MR. NELSON: All right. Would you be kind enough to
11 come to the easel and just link these photographs to the open,
12 the aerial image, just so the Board understands exactly where
13 they are, please.

14 MR. MIRABILE: Sure. So, this is a satellite view,
15 it shows our permitted home site at a vantage point leading
16 over on to the, the subject property. And this is at ground
17 level looking at that property along the same vantage point and
18 for scale purposes, in the photos, since this is just a, a cell
19 phone photo, there was a motor vehicle eight and a half feet in
20 height that was parked in the, in the photograph to kind of get
21 some matter of scale to understand how the height is impacting.
22 So, we see this as like, as a concerning photo because eight
23 and a half feet, which is, you know, standard for a, a new tree
24 to be planted --

25 MR. NELSON: May I stop --

1 MR. MIRABILE: Sure.

2 MR. NELSON: The, the, let me, I'll ask an obvious
3 question. This eight and a half foot van, whose van was that?

4 MR. MIRABILE: I believe that was Mr. --

5 MR. NELSON: Was it one of the Fales?

6 MR. MIRABILE: Yes, Fales, Fales, excuse me.

7 MR. NELSON: Okay. Okay and that van was parked on
8 Not Frye Road?

9 MR. MIRABILE: Yes.

10 MR. NELSON: And could you just show, on the aerial
11 image, where it was, would have been generally?

12 MR. MIRABILE: Right about here.

13 MR. NELSON: Well, that's Hanover Pike, you're --

14 MR. MIRABILE: I'm sorry, I'm sorry, you're right
15 (inaudible).

16 MR. NELSON: Here's Not Frye.

17 MR. MIRABILE: Yeah, Not Frye, so it would be right
18 here.

19 MR. NELSON: Okay, all right. All right. So, the
20 photographer is on the south side of Not Fry looking in a
21 roughly north north westerly direction, over Not Frye Road, up
22 the embankment of the subject property, is that right?

23 MR. MIRABILE: Right.

24 MR. NELSON: And there's a van eight and a half feet
25 high on the road and is that, you have to say yes or no.

1 MR. MIRABILE: Yes.

2 MR. NELSON: All right and that road is on the
3 southern edge, is it not, of the solar, proposed solar
4 facility?

5 MR. MIRABILE: It is.

6 MR. NELSON: All right. So, if the --

7 CHAIR: And the photo, the photograph you're talking
8 about is Protestant's twelve, just for the record.

9 MR. NELSON: That's right, thank you. So, what, if
10 you have a van that's eight and a half feet in the vicinity of
11 where the applicant is proposed to do some landscaping, and if
12 those trees are eight and a half or nine feet tall, what
13 concerns, if any, does this photograph.

14 MR. MIRABILE: We don't see the potential or a
15 possibility of any effective screening. We see that there, the
16 majority of our view, overwhelming majority of our view, is
17 unobstructed and in plain sight and, and I'll note that the
18 elevation that this photo was taken is not as accurate as it
19 could be because our house will have a second floor and so,
20 this, this view will actually be exacerbated because the angle
21 of the lens will be another ten to fifteen feet higher, looking
22 out the second floor window when it is.

23 MR. NELSON: Okay. So, for the record, the
24 photographer was standing on the ground when the photographer
25 took this photograph?

1 MR. MIRABILE: Yeah.

2 MR. NELSON: Right, okay.

3 MR. MIRABILE: Yes.

4 MR. NELSON: All right. Let me direct your attention
5 now to Exhibits 5 and 6. Five is another photograph of the
6 site, six is the Google Earth Pro topal elevation from, from
7 what I think of as the trailer site. Do you recognize these
8 photographs?

9 MR. MIRABILE: I do.

10 MR. NELSON: All right. Could, could you id, locate
11 these photographs on the, the map, of course, this is Not Frye
12 Road here.

13 MR. MIRABILE: Sure. So, this photograph here.

14 MR. NELSON: In Exhibit 6, that is the air, right.

15 MR. MIRABILE: Exhibit 6, is being shot from,
16 essentially, where the mobile home is located now.

17 MR. NELSON: And so, for the record, if we look
18 closely at Exhibit 10, we can see a driveway leading to what
19 you call the mobile home, the white mark there?

20 MR. MIRABILE: Correct.

21 MR. NELSON: Okay.

22 MR. MIRABILE: And then Exhibit 5 was a picture
23 looking north west, just slightly in front of the mobile home
24 on the driveway looking across Not Frye Road into the field.

25 MR. NELSON: Okay. Now, what vehicle, if any, is up

1 here as an Exhibit 5?

2 MR. MIRABILE: That's Mr. Fales' van again.

3 MR. NELSON: All right. That's the same van?

4 MR. MIRABILE: Van, yep.

5 MR. NELSON: All right. So, it's the same van, same
6 height?

7 MR. MIRABILE: Correct.

8 MR. NELSON: And what significance, if any, do you
9 give to this photograph in terms of the view from this
10 location?

11 MR. MIRABILE: It still provides a scale that shows
12 us that the majority of this landscape, the topography, the way
13 that it's laid out, would be unobstructed by any reasonable or,
14 from what we understand, proposed buffering that goes along Not
15 Frye Road. Again, because the, the subject property has such a
16 topographical differentiation between ground level and its
17 highest peak, where the proposed panels are going, that, and
18 our property being adjacent at the same or greater elevation
19 here, any type of, of, you know, any type of screening is going
20 to be eff, ineffective.

21 MR. NELSON: All right. Now, let me ask you a few
22 questions about the view from Hanover Pike itself, all right?
23 Let me direct your attention to Exhibit 9 and Exhibit 8, do you
24 recognize these photographs?

25 MR. MIRABILE: Yes.

1 MR. NELSON: All right and what are they?

2 MR. MIRABILE: So, they are pictures, standing on the
3 shoulder of Route 30, on the north bound shoulder, viewing the
4 subject property, seemingly through our wooded area.

5 MR. NELSON: Okay. Now, this is the wooded area that
6 we opened this discussion with, that you identified just on the
7 southern edge of the entrance to Not Frye Road, is that right?

8 MR. MIRABILE: Correct.

9 MR. NELSON: All right. Now, you've driven up
10 Hanover Pike hundreds of times, have you not?

11 MR. MIRABILE: Yes.

12 MR. NELSON: You've seen this view before?

13 MR. MIRABILE: Yes.

14 MR. NELSON: All right and if you, if you're driving
15 north bound on Hanover Pike and you're near the crest of the
16 hill in the vicinity of Mt. Gilead Road, and you're looking
17 north east, what do you see on the north east corner of the
18 subject property?

19 MR. MIRABILE: All the fields.

20 MR. NELSON: Right.

21 MR. MIRABILE: Yeah.

22 MR. NELSON: All right.

23 MR. MIRABILE: And, --

24 MR. NELSON: Do your trees obstruct that view?

25 MR. MIRABILE: To a certain degree, yes.

1 MR. NELSON: On the north east corner?

2 MR. MIRABILE: No, yes, no, they do not.

3 MR. NELSON: Okay.

4 MR. MIRABILE: They do not obstruct that view.

5 MR. NELSON: Okay. Now, let me direct your attention
6 to Exhibit 14, do you recognize this? This is the Fales
7 driveway?

8 MR. MIRABILE: Oh, yeah, yeah.

9 MR. NELSON: Okay. Now, Hanover Pike, what is,
10 what's, what's the traffic like on Hanover Pike at rush hour in
11 the morning and night?

12 MR. MIRABILE: It's very heavy.

13 MR. NELSON: Okay. So, there was the suggestion
14 yesterday, or I lose track of time, two days ago, that traffic
15 is flying by on Hanover Pike and no one has time to take their
16 eyes off the road and look at the scenic view to the east.
17 People driving, it's, you know, highway speeds. Is that an
18 accurate description of what it's like at rush hour morning?

19 MR. MIRABILE: No.

20 MR. NELSON: Is that an accurate description of what
21 it's like at rush hour in the evening?

22 MR. MIRABILE: No.

23 MR. NELSON: Are you able to describe for the Board
24 in layman's terms, based on your observations, how quickly
25 people are, or at the speed at which people are driving in the

1 rush hour morning, rush hour at night?

2 MR. MIRABILE: The speed, I would say prevailing
3 speed during heavy rush hour, because of the number of cars and
4 the congestion and because it's only one lane in each
5 direction, I would say the prevailing speed is probably only
6 twenty-five to thirty-five miles an hour. Often times there's
7 backups both going to and coming from work. Thirty (inaudible)
8 is kind of a backup to 140, so overflow traffic goes on to 30.
9 Oftentimes, we'll find people are trying to avoid the backup on
10 30 by going up our private roadway which, again, is a concern
11 to us because it puts more wear and tear that we're responsible
12 for on our private road. So, it's a common, common slow
13 flowing, congested area during rush hour times.

14 BOARD: What's the posted speed?

15 MR. MIRABILE: Fifty.

16 BOARD: Fifty.

17 MR. MIRABILE: In some areas. So, it does slowdown
18 in some other areas.

19 MR. NELSON: Mr. Mirabile, this is your opportunity
20 to, to testify to the Board whether you support or oppose the
21 application of the special exception and for the DRC waiver.
22 And why, you, do you support or do you oppose the applications?

23 MR. MIRABILE: I oppose this application.

24 MR. NELSON: All right. This is your opportunity in
25 your own words to tell the Board why you oppose it.

1 MR. MIRABILE: So, as my wife and I have spoken in
2 previous hearings, we purchased this property with one sole
3 intent and that intent was to eventually build our permanent
4 home here, trying to do so in the most expeditious manner in
5 our lives to give our children the most amount of time to enjoy
6 it and then, of course, to have it when our grandchildren come
7 back.

8 We've put all our, entire focus for our lives and our
9 investment and our, our retirement here. And so, we are
10 immensely concerned with how this will impact our greatest
11 investment in our lives and not only investment monetarily but
12 from an emotional and from a personal sense because we look
13 forward to having our children and their children come back to
14 enjoy it. We sought out this property because of its rural
15 nature and all that we can do to enjoy that rural nature with
16 them.

17 Our concern is that, and it's been validated in this
18 testimony of the last couple days, that this development is
19 going to not only affect our enjoyment of our property by
20 modifying the rural aesthetics and views, but it's going to
21 affect our enjoyment of the property by some unintended
22 consequences by, for example, glare.

23 It's very concerning to us that during the glare
24 report that our property was not, one of our properties was not
25 considered and that the property that was considered, does note

1 that there will be some glare that will be coming on to our
2 side. And as we all are aware, in today's times that reports
3 aren't always a hundred percent accurate, so our concern is
4 that maybe this report might not be as complete and thorough.

5 And throughout this process, we've been questioned
6 numerous times and we've heard other buyers, potential buyers,
7 friends looking in the area and current neighbors, that this
8 will change their impact and their desire to want to stay or
9 buy in this area. As we all know, the desire, a desirable
10 property means value. So, the significant investment that
11 we've made and are planning on making in the future for a house
12 and everything else that will go along with that, we're
13 concerned that that's going to be have a, this, this
14 development will have a detriment to our investment.

15 MR. NELSON: All right. That's, anything else that
16 you want to say? I have no further questions.

17 CHAIR: Cross, Mr. Schmidt?

18 MR. SCHMIDT: Thank you. Mr. Mirabile, you've owned
19 this, you've owned your two properties for ten years?

20 MR. MIRABILE: Approximately.

21 MR. SCHMIDT: Approximately. You've never lived on
22 the property?

23 MR. MIRABILE: No.

24 MR. SCHMIDT: Okay. The house that was, that's been
25 razed, who lived there? Did anybody live there?

1 MR. MIRABILE: Yes.

2 MR. SCHMIDT: Who, was it a tenant?

3 MR. MIRABILE: Yes.

4 MR. SCHMIDT: Okay. But they're gone and you're
5 rebuilding a new house there?

6 MR. MIRABILE: In the same location, yes.

7 MR. SCHMIDT: In the same location. I thought you
8 had testified below before Judge Beverungen that you were going
9 to move into the property right to the south, the one that's
10 closest to Hanover Pike, no? Did you always intend on living
11 where the house is?

12 MR. MIRABILE: Yes.

13 MR. SCHMIDT: Okay. So, the house sits really
14 immediately to the south of the property that you own with the
15 trailer on it, does anybody live in the trailer?

16 MR. MIRABILE: Not at this time.

17 MR. SCHMIDT: Is that, is that a building that can be
18 residentially occupied?

19 MR. MIRABILE: The trailer?

20 MR. SCHMIDT: Trailer.

21 MR. MIRABILE: Yes.

22 MR. SCHMIDT: Okay. Has any, when's the last time
23 somebody lived there?

24 MR. MIRABILE: I'd have to go back and, and see my, I
25 don't usually handle that.

1 MR. SCHMIDT: Has anybody lived on that trailer since
2 you've owned the property?

3 MR. MIRABILE: Oh, absolutely.

4 MR. SCHMIDT: Okay. Has it been within the past five
5 years?

6 MR. MIRABILE: I believe so, yes.

7 MR. SCHMIDT: You think so? Okay. So this is a
8 rural locale, you would say?

9 MR. MIRABILE: Yes.

10 MR. SCHMIDT: Okay. But in saying that, it sounds
11 like Hanover Pike is a comm, pretty much a commuter road, is
12 that right?

13 MR. MIRABILE: It's a (inaudible).

14 MR. SCHMIDT: Thoroughfare?

15 MR. MIRABILE: Right.

16 MR. SCHMIDT: Heavy traffic?

17 MR. MIRABILE: During, during rush hour times, yes.

18 MR. SCHMIDT: Seven to 9:00 in the morning, is the
19 traditional peak hour, it's busy then, people coming down?

20 MR. MIRABILE: I'd say so.

21 MR. SCHMIDT: Okay. Six to, 4:00 to 6:00 in the
22 afternoon, it's heavy?

23 MR. MIRABILE: Um hm.

24 MR. SCHMIDT: Okay. Not a country road from that
25 standpoint, that it's a commuter road?

1 MR. MIRABILE: I, I believe it to be, I believe it to
2 be a country road because it is a scenic byway.

3 MR. SCHMIDT: Well, the classification is a scenic
4 byway, you have any idea the volume of traffic that goes up and
5 down that road?

6 MR. MIRABILE: No.

7 MR. SCHMIDT: Pretty heavy though.

8 MR. MIRABILE: During peak traffic times. Now, middle
9 of the night it's dead.

10 MR. SCHMIDT: Middle of the night the beltway is not
11 too crowded.

12 MR. MIRABILE: True.

13 MR. SCHMIDT: Okay, all right. In, insofar as your
14 views, and you talked about them, let me go up to the, let's
15 talk about, okay. So, if I'm coming up Hanover Road, very
16 substantial wooded area that's shown on this photograph,
17 Protestant's number nine, which is on your property, correct?

18 MR. MIRABILE: Correct.

19 MR. SCHMIDT: Okay. I think there's a stream in
20 there, is there not, as well?

21 MR. MIRABILE: Yes.

22 MR. SCHMIDT: Okay. So, those trees, if you know,
23 are protected, are they not, under the County's forest buffer
24 regulations because they're, of the proximity of the stream?
25 Were you here for, for Mr. Leskinen's testimony on Tuesday?

1 MR. MIRABILE: Yes.

2 MR. SCHMIDT: Okay and it was the ex, the
3 environmental expert?

4 MR. MIRABILE: Yes.

5 MR. SCHMIDT: I'm sorry, you have to say yes or no so
6 the tape will pick up. And he testified, I think, in answer to
7 Mr. Nelson's testimony that there are substantial buffers that
8 require, that are required in areas of non-disturbance around
9 wetlands and streams, correct?

10 MR. MIRABILE: What I recall is he wasn't sure of the
11 exact buffering, so I couldn't draw any kind of --

12 MR. SCHMIDT: Okay.

13 MR. MIRABILE: -- exact answers out of it.

14 MR. SCHMIDT: All right. Well, it's fair to say
15 though, the, this area on your property where these trees are,
16 is in the proximity of the stream and the wetlands, that are
17 you on your property, not, not on the subject property,
18 correct?

19 MR. MIRABILE: Yes.

20 MR. SCHMIDT: Okay. Okay. So, okay, so that line,
21 there's a, there's that area there and, as you've indicated,
22 the part of the site that you can see --

23 BOARD: I'm sorry, Mr. Schmidt, your question, I
24 don't think he answered your one question about whether he
25 knows whether his property is protected by the buffer or not,

1 do you know?

2 MR. MIRABILE: I do not.

3 BOARD: Okay.

4 MR. SCHMIDT: Okay. Well, I don't know that his --

5 MR. MIRABILE: I, I don't know what portion or any, I
6 don't know of what or of any portion of those trees that is
7 protected by a buffer. Maybe some of it, maybe none of it,
8 maybe all of it, maybe fifty percent of it, I'm not really
9 sure.

10 MR. SCHMIDT: All right. Well, insofar as the
11 properties you own, you own two different properties. One is a
12 tract that's large, that is immediately adjacent to Hanover
13 Pike, correct?

14 MR. MIRABILE: Correct.

15 MR. SCHMIDT: And other than the trailers, that's
16 undeveloped, correct? Other than the trailer there, there's no
17 home there?

18 MR. MIRABILE: No.

19 MR. SCHMIDT: Okay and you haven't proposed any
20 development there, in terms of building, at this point in time
21 --

22 MR. MIRABILE: At this point, no.

23 MR. SCHMIDT: -- you haven't proposed any
24 development. So, because of that, you haven't made any
25 application to the County for any kind of approval for a

1 development plan or a subdivision plan or even a permit for
2 that property, correct?

3 MR. MIRABILE: No, but we know that it's buildable
4 because the previous owner did have a, a permit on that site.

5 MR. SCHMIDT: Okay. But typically, it's during the
6 development process or permitting process that the County would
7 require, as they did here, the applicant or the property owner
8 to go out and to establish where wetlands are.

9 MR. MIRABILE: Right.

10 MR. SCHMIDT: And, and establish the required
11 buffers, correct?

12 MR. MIRABILE: Correct.

13 MR. SCHMIDT: So, that's never been done for your
14 property, at least, during your ownership of the property
15 because you've never proposed to develop that property?

16 MR. MIRABILE: Correct.

17 MR. SCHMIDT: Okay. So, we, we do know that there
18 are streams and there are wetlands on your property in this
19 wooded area, correct?

20 MR. MIRABILE: Correct.

21 MR. SCHMIDT: But they've never been delineated by
22 somebody like Mr. Leskinen to establish a buffer?

23 MR. MIRABILE: Not to my knowledge.

24 MR. SCHMIDT: Okay. But we know that the County
25 would require, if you decided to develop this property at some

1 time in the future, you'll have to do that and there will be a
2 buffer established.

3 MR. MIRABILE: I couldn't necessarily say that and
4 the reason being is that the property that we are developing
5 right now, --

6 MR. SCHMIDT: Um hm.

7 MR. MIRABILE: -- has a stream through it and there
8 was no requirements for that for the development of that
9 property.

10 MR. SCHMIDT: And could that be because you're
11 building over top an existing dwelling that's already there?

12 MR. MIRABILE: I couldn't tell you.

13 MR. SCHMIDT: Okay. That's possible though, isn't
14 it?

15 MR. MIRABILE: I guess anything is, yeah.

16 MR. SCHMIDT: Okay, all right. So, in any event,
17 will you agree with me that this area of woods in here does
18 have a stream in it and wetlands associated with it?

19 MR. MIRABILE: I can't say they're wetlands, because
20 it's rural now, you know, greatly educated on what it requires,
21 all kinds of studies, but it's a flowing water.

22 MR. SCHMIDT: Flowing water through --

23 MR. MIRABILE: And I can't say that it's a stream
24 either. Maybe it's just a dry swale, I don't know.

25 MR. SCHMIDT: Okay.

1 MR. MIRABILE: Intermittent stream, (inaudible).

2 MR. SCHMIDT: Okay, you don't know, fair enough.

3 Okay. Now, your house is over at this location, correct? The,
4 the house that you're building?

5 MR. MIRABILE: Proposed, yes.

6 MR. SCHMIDT: The proposed house that you're
7 building. Okay and I noticed in this photograph there's some
8 trees on the edge here. Whoever did this photograph was very
9 strategic, they didn't show any of the trees that are here on,
10 I guess this is the, is the Fales property here?

11 MR. MIRABILE: No.

12 MR. SCHMIDT: Who owns this?

13 MR. MIRABILE: I'm not sure what his last name is.
14 First name would be Gary and then also the Littles.

15 MR. SCHMIDT: Okay, all right. And you heard Mr.
16 Leskinen talk about some area of wetlands and streams up near
17 this property. Do you know if there's anything on this
18 property?

19 MR. MIRABILE: I have no idea.

20 MR. SCHMIDT: You don't have an idea. Okay and
21 you're familiar with, are you familiar with, are you not, of
22 the swale that runs through the subject property, that Mr.
23 Elseroad and Mr. Leskinen have talked about, correct?

24 MR. MIRABILE: I'm avail to (inaudible) pass of
25 water.

1 MR. SCHMIDT: Okay.

2 MR. MIRABILE: I can't give you the correct
3 terminology.

4 MR. SCHMIDT: And, and you can, you can kind of see
5 this on this aerial photograph, it's a, sort of a dark line,
6 correct?

7 MR. MIRABILE: Sure.

8 MR. SCHMIDT: And you're aware that there's going to
9 be landscaping in that area as well, shown on the landscape
10 plan?

11 MR. MIRABILE: Some, yeah.

12 MR. SCHMIDT: Okay and that will actually be at a
13 higher elevation than Frye Road, will it not? That
14 landscaping?

15 MR. MIRABILE: It depends on what point, because
16 that's going to be the lowest point of the property.

17 MR. SCHMIDT: Well, I thought you said the property
18 rises from Frye Road?

19 MR. MIRABILE: Correct, the property, the, the --

20 MR. SCHMIDT: The subject property, (inaudible).

21 MR. MIRABILE: -- it rises, no.

22 MR. SCHMIDT: Oh, it doesn't?

23 MR. MIRABILE: When, when you say rises, so --

24 MR. SCHMIDT: The, the, the subject property, the
25 Frye Road that the subject property where the solar facilities

1 are --

2 MR. MIRABILE: Sure.

3 MR. SCHMIDT: -- is higher than Frye Road, correct?

4 MR. MIRABILE: Sure, yeah. So, initially this is Not
5 Frye Road, so initially, we're at ground level and we go down
6 to this, this water passing area, this is the lowest point.

7 MR. SCHMIDT: Okay.

8 MR. MIRABILE: And then it rises, and then at some
9 point on this back hill, it'll exceed the height of Frye Road.

10 MR. SCHMIDT: Okay. So, it falls away first, so --

11 MR. MIRABILE: For a short distance, it will fall
12 away.

13 MR. SCHMIDT: It falls away.

14 MR. MIRABILE: (inaudible) swale and then it'll rise
15 back up and then exceed the, the maximum elevation of Frye
16 Road.

17 MR. SCHMIDT: Okay. So, when it falls away, the
18 panels that are closest to you will be actually lower than the
19 road?

20 MR. MIRABILE: Yes. So, in other words, in that
21 picture right there.

22 MR. SCHMIDT: This one, number twelve?

23 MR. MIRABILE: Yeah, so this picture right here, as
24 that, as it falls away, that's why this van is lower. And
25 there is, you can't even see the waterway here, but then

1 immediately after the waterway, it starts to rise, you get to
2 have a stadium kind of seating of the panels in the background.

3 MR. SCHMIDT: Okay. Do you have any idea the
4 distance between Not Frye Road and the swale? Because that's
5 all lower, right?

6 MR. MIRABILE: I would, I would speculate and say
7 it's probably a hundred feet.

8 MR. SCHMIDT: Okay.

9 MR. MIRABILE: A hundred and fifty at the most at the
10 top (inaudible) --

11 MR. SCHMIDT: So a hundred, a hundred to a hundred
12 and fifty feet of the property actually falling down from Not
13 Frye Road.

14 MR. MIRABILE: Um hm.

15 MR. SCHMIDT: And then the swale and then it goes
16 back up, okay, fair enough. You, you talked about the glare
17 study. Did you, have you had anybody with any expertise in
18 glare review the study that's been submitted in this case?

19 MR. MIRABILE: Haven't had an opportunity, just --

20 MR. SCHMIDT: Okay. Do you have any reason to
21 believe that it's inaccurate or faulty or somebody is being
22 tricky with it or something? That was sort of the inference in
23 your comments that you don't believe that what Mr. Barrett did
24 was really on the up and up.

25 MR. MIRABILE: Sure, sure.

1 MR. SCHMIDT: Other than you got reaction, somebody
2 told you or looked at it and said no, this doesn't make any
3 sense?

4 MR. MIRABILE: Sure. As, as age catches up to me, I
5 realize that you can't always believe everything that you read,
6 whether it's on the internet or not. So, what I like to do,
7 especially when it has a, a large impact on myself and my
8 family, is to see what is written and validate it for myself.

9 MR. SCHMIDT: You haven't done that in this case?

10 MR. MIRABILE: Well, I definitely need to because it
11 did, the report, from what I understand, did say there's going
12 to be twelve thousand minutes of glare a year.

13 MR. SCHMIDT: Right.

14 MR. MIRABILE: Onto my property.

15 MR. SCHMIDT: But that, that's before any landscaping
16 or topography is considered.

17 MR. MIRABILE: Well, there's a lot considered because
18 the topograph, the, the glare, there was no, well, as I
19 understand it, there was no consideration of any topography or
20 screening that may or may not be in there and there's a lot
21 more to it, because it depends on where the glare is emanating
22 from. Is it emanating from a high point of the property, from
23 a low point of the property.

24 MR. SCHMIDT: Right.

25 MR. MIRABILE: You know, what kind of buffer, what,

1 what's the final landscape plan. So, it's really a hard part,
2 a hard, it, it's, I would say that I can't fully review the
3 plan and have a good understanding --

4 MR. SCHMIDT: Well, you're not an expert.

5 MR. MIRABILE: -- because, well, no, because, and
6 even if I gave it, paid an expert, because as you just
7 mentioned, how does the landscape plan incorporate into it and
8 the answer is, we don't know.

9 MR. SCHMIDT: Okay.

10 MR. MIRABILE: Because we're being, we're being told
11 that the landscape plan will happen down the road.

12 MR. SCHMIDT: Okay. You know Mr. Elseroad who is the
13 principal of the LLC that owns this property?

14 MR. MIRABILE: Yes.

15 MR. SCHMIDT: You know Mr. Wolf who testified?

16 MR. MIRABILE: Yes.

17 MR. SCHMIDT: My understanding is, Mr. Elseroad
18 offered this property for sale to Mr. Wolf and that, obviously,
19 didn't happen. Have you ever inquired about buying the subject
20 property from Mr. Elseroad?

21 MR. MIRABILE: I was, I never inquired about buying
22 from Mr. Elseroad. I inquired from the, his seller.

23 MR. SCHMIDT: Okay. But needless to say, you never
24 bought the property?

25 MR. MIRABILE: I never bought the property.

1 MR. SCHMIDT: Okay. I think that's all the questions
2 that I have, thank you, Ms. Murphy.

3 CHAIR: Any re-direct?

4 MR. NELSON: Very, very briefly. Mr. Mirabile, I
5 want to just follow-up very briefly on the topography on the
6 north side of Not Frye Road looking in a northerly direction.
7 You, you were describing how, that the low point of the subject
8 property is, is the area that Mr. Leskinen described as the
9 swale, so that's the low point of the property and that swale
10 runs roughly from the north east to the south west, does it
11 not?

12 MR. MIRABILE: Yes.

13 MR. NELSON: And counsel explored with you the
14 distance, the estimated difference in feet from Not Frye Road
15 to this low point and you said it was in the range of a
16 hundred, maybe a hundred and fifty feet, do you recall that?

17 MR. MIRABILE: Yes.

18 MR. NELSON: Now, you were describing the distance on
19 the eastern edge of the subject property, were you not?
20 Because the swale, it gets closer to the Not Frye Road as you
21 go further to the west?

22 MR. MIRABILE: That's right.

23 MR. NELSON: All right. Could you just clarify that
24 point?

25 MR. MIRABILE: Sure.

1 MR. NELSON: So, the narrow question is, is the, is
2 the low point of the property parallel to Not Frye Road and
3 always a hundred to a hundred and fifty feet away or does it,
4 tell us about that.

5 MR. MIRABILE: I, I believe that probably at its
6 median to maximum, it's about a hundred and fifty feet away but
7 that low point encounters Not Frye Road down here. So, at this
8 point, it may only be ten, twenty, thirty, forty, fifty feet
9 and so, this incline becomes larger and larger the closer you
10 get to Hanover Pike.

11 MR. NELSON: All right. We clarified that, I think.
12 That's all I have, thank you.

13 MR. SCHMIDT: Of course, Mr. Mirabile, that gets
14 further and further away from your house, as that, as, as that
15 swale running east to west gets closer to Frye Road, it's
16 getting closer to Hanover Pike and further away from your
17 house, right?

18 MR. MIRABILE: Yeah, so, it would be right here.

19 MR. SCHMIDT: Yeah.

20 MR. MIRABILE: Which is, is Hanover Pike and right
21 here would be this north west --

22 MR. SCHMIDT: Yeah, you can see it on the aerial.

23 MR. MIRABILE: Sure.

24 MR. SCHMIDT: It's a dark, sort of a dark line and it
25 runs sort of diagonally.

1 MR. MIRABILE: Yep. This, --

2 MR. SCHMIDT: Sure.

3 MR. MIRABILE: -- this line right here shown in this
4 picture is where, it's the shortest, this, this, this piece
5 here is the shortest.

6 MR. SCHMIDT: Right, and that's getting further away
7 from your house, or that, from where that photographer would
8 be?

9 MR. MIRABILE: Yeah.

10 MR. SCHMIDT: Okay.

11 CHAIR: Understood.

12 MR. SCHMIDT: Thank you.

13 CHAIR: Okay. Thank you, sir.

14 MR. MIRABILE: Okay. Thank you.

15 CHAIR: Thank you very much.

16 MR. NELSON: I'd like to call Debra Mirabile, please?

17 BOARD: Raise your right hand. Do you swear and
18 affirm under the penalties of perjury, that the testimony
19 you're about to give is true and correct to the best of your
20 knowledge and belief?

21 MS. MIRABILE: I do.

22 BOARD: Please state your name, your business, your
23 address for the record and spell your last name.

24 MS. MIRABILE: Sure. Debra Mirabile. Last name is
25 M-I-R-A-B-I-L-E, owner of DSM Contracting and the properties we

1 own are 14525 and 14517 Hanover Pike, currently residing at
2 4312 Windy Hill Road, Randallstown, Maryland until construction
3 is complete.

4 BOARD: Thanks. And if you can sit down and just
5 adjust the microphone, ma'am.

6 MS. MIRABILE: Sure.

7 CHAIR: Your first name, are you D-E-B-O-R-A-H or D-
8 E-B-R-A?

9 MS. MIRABILE: D-E-B-R-A. Thank you for asking.

10 CHAIR: Okay, easier, D-E-B-R-A. Thank you. Okay.
11 Go ahead, Mr. Nelson.

12 MR. NELSON: All right. Ms. Mirabile, we've heard,
13 of course, from Santo Mirabile and he's your husband?

14 MS. MIRABILE: Correct.

15 MR. NELSON: All right. Let's, feel free to use
16 these exhibits, but could you in your own words describe the
17 subject property and the neighborhood around it, vicinity
18 around it? How, from your perspective as, as an owner of that
19 property would you describe that vicinity?

20 MS. MIRABILE: Sure.

21 MR. NELSON: And direct your comments to the Board,
22 please.

23 MS. MIRABILE: I, I would describe the area as rural,
24 rolling countryside. It is beautiful, we fell in love with it,
25 that's why we purchased the two parcels of property because of

1 that, that rural scenic view that we really love it. It is the
2 entrance to a community where several neighbors live. We keep
3 calling Not Frye Road, Not Frye Road, but in actuality, it's
4 not a road at all, it's not even designated as a private road,
5 it's actually a private driveway that is shared between the
6 neighbors on the road. And it's also very much a fishbowl, so
7 we have this area where there are residential houses all around
8 and sort of higher around this property and then the subject
9 property is sort of at a low point in the middle, so lots of
10 different residents view into the property.

11 MR. NELSON: All right and, so those residents in the
12 community, the people who are overlooking, they include your
13 property?

14 MS. MIRABILE: Correct.

15 MR. NELSON: The Fales houses, plural.

16 MS. MIRABILE: Correct.

17 MR. NELSON: The Littles.

18 MS. MIRABILE: Correct.

19 MR. NELSON: The Merritts.

20 MS. MIRABILE: Correct.

21 MR. NELSON: Any others overlook it?

22 MS. MIRABILE: That directly overlook it, no.

23 MR. NELSON: All right.

24 MS. MIRABILE: Well, on, on the opposite side of the
25 street, there, there's a house, but I don't know to what degree

1 they have visibility.

2 MR. NELSON: Okay. All right, okay. And then, of
3 course, there are people a little further east, Ms. Brown and,
4 and the Wolfs who, who use this private driveway?

5 MS. MIRABILE: Correct.

6 MR. NELSON: All right. All right. So, is there
7 anything else you wanted to say about the nature, the
8 characteristics of this neighborhood around the subject
9 property?

10 MS. MIRABILE: I would say, we specifically made this
11 investment due to the rural aesthetic. That is what we were
12 looking for. We had previously lived in Catonsville in some
13 little rowhouses where you have postage stamp yards, and then
14 we were fortunate in the house that we're currently living in,
15 to get a couple of acres, to start a family and, and have some
16 room for children to run around or (inaudible). And then we
17 have the amazing opportunity to purchase this forty-seven acre
18 farm, which was amazing and it just, all of the factors lined
19 up and this is where we wanted to move our, our family and
20 raise our kids. And we also then had the opportunity
21 immediately next door to buy the thirty acre parcel, which is
22 where we're, we're currently building the house and this is
23 our, our life's dream and we've worked for the last ten years,
24 I was actually pregnant with my daughter when we got the first
25 parcel, worked for the last ten years to be developing and

1 moving into this house and several things have happened that
2 had to come and kick the can down the road a little bit, but
3 we're really excited now to be building this house and, and
4 getting ready to move in but it is one hundred percent that
5 rural aesthetic that brought us to the area.

6 Not only that, the Hanover Road Association is so
7 adamantly charged itself with protecting that rural aesthetic,
8 which is another reason we felt very secure moving in the area
9 and we had our first taste with that when we first purchased
10 the, the first parcel. Because the previous owner had lots of
11 trash and, and used it as a dump site and it was very overrun,
12 you couldn't actually see any of the, the field, it was
13 completely overrun with building debris and construction
14 dumpage and there was all sorts of, you know, vehicles,
15 appliances, I mean, that and the association involved us very
16 early and was very stern about making sure that we got it
17 cleaned up, which was, of course, our intent at the time of
18 purchase and we saw how protective they were of the area and
19 that gave us a lot of confidence in that protection
20 (inaudible).

21 MR. NELSON: How long did it take you to clean, so
22 we're talking about the parcel that's closer to Hanover Pike,
23 not where you're actually building the house?

24 MS. MIRABILE: Correct, that was the first parcel.

25 MR. NELSON: Okay. How long did it take you to clean

1 that?

2 MS. MIRABILE: It was about six months, it took about
3 six months.

4 MR. NELSON: All right.

5 MS. MIRABILE: Yeah. Having a construction company,
6 we were a little bit better suited, which is part of the reason
7 that we, we took that charge on. We have some of the equipment
8 and, and a little more capabilities that made it more
9 (inaudible) feasible for us than maybe the average homeowner.

10 MR. NELSON: Um hm.

11 MS. MIRABILE: Yeah. And right now, so we have these
12 two home sites and I do call them home sites because the, the
13 trailer site, it does have active water and active electric and
14 we very much intend that to be a home site for our children.
15 This is meant to be a family compound. The house we're
16 building, in fact, is being built with the intent to age in
17 place. So, I've put a lot of thought into that. We have a
18 first floor master bedroom, so that we have three bedrooms
19 upstairs, but we, we understand that we may not be able to use
20 upstairs as we age. We don't intend on leaving this house, we
21 intend on having this be a place for our children to
22 potentially be able to build, there are other home sites. We
23 have the ability to divide our parcel, so we could put a house
24 there and then another house on the other parcel, where the
25 trailer is residing currently.

1 MR. NELSON: Let's talk about Hanover Pike. There
2 was a discussion earlier with your husband about the traffic on
3 Hanover Pike and, and he was talking about the rush, how would
4 you describe that rush hour?

5 MS. MIRABILE: Rush hour is very difficult. I'm
6 always trying to figure out if, if there are any alternate
7 routes that, that we can get in. It regularly, it, it does
8 slow down to twenty-five, thirty miles an hour. But it also
9 regularly stops at a standstill and it's just waiting. It's,
10 it's not a highway because there are traffic lights along this
11 road. So I, I would call it a country road because there are
12 traffic lights and the traffic lights do backup traffic. It
13 just happens to be one of the few roads to get certain places
14 and so it's more heavily used. But it is a, you know, single
15 lane in either direction.

16 MR. NELSON: Now, your husband testified about the
17 photographs that are on the board, the different views from the
18 different locations on your property. Do you have anything to
19 add to his testimony about the views?

20 MS. MIRABILE: I have several. One is, one of which
21 is the house faces, as, as did the previous house before we
22 razed it, but the house faces that direction. So, the, the
23 picture --

24 MR. NELSON: Why don't you approach the easel and,
25 and, and try to describe, using the photographs, what you're

1 saying.

2 MS. MIRABILE: Yeah, so this is the view from the
3 front house. It directly faces in that direction.

4 MR. NELSON: All right. So, for the record, she's
5 looking at Protestant's Exhibit 12.

6 MS. MIRABILE: So, and again, there will be a second
7 story and the, the panels will be raised as well, so a bit of a
8 difference in topography.

9 MR. NELSON: All right. Is there any other points
10 you wanted to make about those photographs?

11 MS. MIRABILE: I have significant concerns about
12 glare as well.

13 MR. NELSON: All right. I, I know that from our
14 property it, it will be seen. I'm concerned about how that's
15 going to, I mean, however many minutes a year, but those are
16 bedrooms, you know, facing the front of the property directly,
17 in that direction.

18 There's been a lot of discussion about whether the
19 views, the primary views must be minimized versus fully
20 obscured and if they're minimized, which means clearly from,
21 from this perspective, I, I have a hard time seeing how there's
22 going to be any effective screening to, to keep the light from
23 coming directly.

24 I, myself, am, am also a bit suspicious of, of the
25 glare studies only because I have the very ironic experience,

1 individually, of having been driving on 695 near Falls Road, I
2 can't remember the exact area, where there are some solar
3 panels that are mounted on top of street lights that are lining
4 the road, it might have been at one of the cross intersections
5 and it caused an accident about two years ago and it happened
6 to be the time of day and the season and all of those factors
7 that align. But the glare was so sharp on that one panel from
8 the road, that it caused an accident.

9 And I am sure that there are studies that have been
10 done to show that it, it wouldn't happen but sometimes there
11 are unintended consequences and we have to keep that in mind.
12 That's, that's what I'm very concerned about.

13 MR. NELSON: All right. Do you support or oppose the
14 application for the solar facility?

15 MS. MIRABILE: I oppose the application.

16 MR. NELSON: All right. So, this is your opportunity
17 to use your own words, describe directly to the Board why you
18 oppose the application.

19 MS. MIRABILE: I oppose the application because when
20 we purchased the property it was very clear the master plan in
21 the area, we didn't foresee any industrial use of the, the
22 property directly next to us for a power generation purposes
23 that would completely dominate the field of visibility from our
24 property.

25 That, combined with the fact that the topography in

1 this case, we think is so unique with this fishbowl environment
2 that there, I don't see a way to effectively screen. You, you
3 can say minimize, but to me that's a subjective term. Does
4 minimize mean one degree less than you would see otherwise, or
5 ninety degrees less than you would see otherwise? I don't
6 know. But clearly from, from my home and from the, the home
7 site next door, there's significant concern that we would have
8 direct visibility as well as passersby on the scenic route.
9 It's just different than the character.

10 There are other properties, I think, that are maybe
11 better suited from a topological perspective, but I'm also
12 concerned from a property standpoint. I, I am an entrepreneur
13 and I am a businessperson and when I'm investing in a house,
14 I'm not investing in a house to lose money and I am concerned
15 about view.

16 There's been a lot of discussion, I'm aware, in these
17 cases about property values and how they are or are not
18 effected by solar and whether or not we can say that there have
19 been specific studies about solar impact, they're so new, it's
20 hard to say but I, I can tell you that real estate certainly
21 considers view as a perspective. So, view into a scenic
22 environment, versus view into a non-scenic environment, we are
23 changing what the view is here. It is not a rural environment
24 anymore, it is now overlooking solar panels that are going to
25 be seen.

1 And if a buyer were to be looking at this property,
2 and this is a substantial investment, this is a substantial
3 investment for us and for the community, it is, it is not a
4 typical house in this community, if one were looking to
5 purchase say our house versus another house that was similar
6 and view was the discriminating factor, the, the value of my
7 house would be reduced in favor of the house with a view, a
8 scenic view.

9 MR. NELSON: All right.

10 MS. MIRABILE: I will say that when council members
11 did come out and visit the site prior to the passage of Bill
12 37-17, they did introduce additional language and what was
13 represented to us was that it was based on the visit that they
14 made to our property.

15 MR. SCHMIDT: Objection. That's just hearsay and
16 it's not part of the law.

17 MS. MIRABILE: It was directly told to me by --

18 CHAIR: Wait a minute.

19 MR. NELSON: Well, let, let the Chairwoman rule on
20 the objection.

21 CHAIR: Okay. So, they came, you said the council
22 members came to your house before the Bill 3717 was enacted?

23 MS. MIRABILE: Correct.

24 CHAIR: Is that, is that what you were going to say
25 about it, just --

1 MS. MIRABILE: Yes.

2 CHAIR: -- and so, okay.

3 MS. MIRABILE: Yes.

4 CHAIR: So, they, --

5 MS. MIRABILE: And said that they were going to make
6 changes to the bill directly based on that visit.

7 CHAIR: Okay. Well, those, that, that, saying that
8 additional sentence is hearsay.

9 MS. MIRABILE: Okay.

10 CHAIR: Whatever they said to you, they're not here
11 to testify so, understood though that they came and discussed
12 it with you.

13 MS. MIRABILE: Fair enough.

14 CHAIR: Okay.

15 MS. MIRABILE: But were there were introductions made
16 to the bill that allowed for some, for some discretion on the
17 part of the Judges reviewing cases to take that into
18 consideration. So, there is both the technical requirement of
19 does this meet the bill, but there's also some discretion and I
20 believe the intent was for situations --

21 MR. SCHMIDT: Objection.

22 CHAIR: Okay.

23 MR. SCHMIDT: She can't testify as to the intent of
24 the County Council in enacting the bill. The bill speaks for
25 itself.

1 CHAIR: Okay, understood. That, I mean, that you
2 can't, you won't testify about the intent of the County Council
3 but, but what is your understanding, or what do you believe,
4 what, what is your understanding , --

5 MS. MIRABILE: I believe the intent is for situations
6 such as this, where there may be unique topographies that there
7 are, the full spectrum of the situation taken into
8 consideration, rather than just the plan.

9 CHAIR: Okay. So, you believe that either an ALJ or
10 the Board here should take into consideration the uniqueness of
11 the property that's being proposed and how it affects your view
12 or, as you've testified?

13 MS. MIRABILE: How it directly impacts residents,
14 correct, and, and neighboring properties.

15 CHAIR: Okay.

16 BOARD: And you mentioned discretion. What
17 discretion would you want, I think you refer to Judges, I
18 guess, assuming you mean the panel here.

19 MS. MIRABILE: I think whether or not it is
20 appropriate for development for this particular site, as well
21 as buffering consideration.

22 BOARD: Are there any buffering specific ones?

23 MS. MIRABILE: I believe, while I am not a proponent
24 of this passing whatsoever, I believe generally that there's a
25 responsibility to make sure that while we're helping one party,

1 that we're not harming all, all of the others. So, in that
2 sense, you know, the plan as it stands allows for, I think the
3 greatest amount of impact to the residents and I have, I don't,
4 I don't see how the plan in its current form is going to not
5 impact them without additional re, impositions to reduce
6 elevations on the hill so that it's not so visible from other
7 parties or from other passersby or neighbors and residents or
8 having glare into residents' windows by keeping children up at
9 night, you know, so they go to bed when it's pretty early out
10 in the summer time.

11 Also, tiered buffering is, is not something that was
12 discussed. But again, we don't know what the landscape plan is
13 going to be because it's not something that is a requirement at
14 this point. It's just something that's coming later. So,
15 we're very concerned about how that's going to impact us. So,
16 that's --

17 BOARD: (inaudible) in the landscape plan?

18 MS. MIRABILE: I, I believe that the, that, that it
19 shouldn't be passed, --

20 BOARD: No, I understand that, but if it (inaudible).

21 MS. MIRABILE: But if it were, I, I believe that the
22 panels should not be on the highest portions of the property
23 because all, the highest swales of the property are where
24 they're all directly visible from the neighboring homes and
25 from the street.

1 I also believe that having tiered buffering regularly
2 throughout the property will help soften and minimize that
3 view. What that does is it makes it, it doesn't maximize the
4 financial, you know, revenue from the panels because it's
5 reducing the amount of, of space the panels can have, but there
6 may be, you know, some sort of better impact for the community.

7 BOARD: Thank you.

8 MS. MIRABILE: I also have concerns about some sort
9 of perceived responsibility that we would have to maintain
10 trees on our property that are used for visual screening
11 currently. Because the trees that are there, whether we would
12 elect to clear some of those trees at some point or whether
13 there are storms like the tornado or, or very strong storms
14 that came two days ago that were taking trees out different
15 places or blight or whatever foul things could happen to trees.
16 There's no responsibility on our part and if there are portions
17 of trees that we can clear, my concern would be that the County
18 would say, well, now you can't clear them because they are
19 screening for this solar field.

20 MR. NELSON: Do you have any other concerns?

21 MS. MIRABILE: I, I would just say that we purchased
22 this with, the property, both of them, with, with the best
23 intent, with the intent to, to live there. The subject
24 property was purchased as an investment. There are many, many,
25 Mr. Elseroad is a developer and does a lot of different

1 development in the area. This is one of his projects, but this
2 is our everything. This is everything that we've saved for our
3 entire life.

4 MR. NELSON: That's all I have of this witness.

5 CHAIR: All right. Cross?

6 MS. MIRABILE: Thank you.

7 MR. SCHMIDT: Ms. Mirabile, Mr. Elseroad is a farmer,
8 do you now that?

9 MS. MIRABILE: He is a farmer and a developer.

10 MR. SCHMIDT: Okay. What other sites has he
11 developed?

12 MS. MIRABILE: There's a neighborhood across the
13 street and there's regular, regular development. I believe he
14 had (inaudible) developing houses on this parcel prior to solar
15 --

16 MR. SCHMIDT: Has he developed this parcel?

17 MS. MIRABILE: No, I think there were some issues
18 with getting access rights to be able to build two different
19 houses and so he ended up farming it for some time and was
20 stating that it wasn't profitable enough and he was now looking
21 at solar.

22 MR. SCHMIDT: Okay. Does Mr. Elseroad own the
23 property on the other side of the street, that you're referring
24 to?

25 MS. MIRABILE: On what other side of the street?

1 MR. SCHMIDT: I thought you said he developed
2 property on the other side of the street.

3 MS. MIRABILE: Elsewhere in the area.

4 MR. SCHMIDT: Okay.

5 MS. MIRABILE: I mean, I don't, I think it's regular
6 community --

7 MR. SCHMIDT: Okay.

8 MS. MIRABILE: -- knowledge that Mr. Elseroad is a
9 farmer and, a tenant farmer and a developer.

10 MR. SCHMIDT: Okay. I think he would beg to differ
11 and say he's a farmer but okay.

12 MS. MIRABILE: I believe currently right now he's in
13 the process of putting two or three (inaudible) development
14 property.

15 MR. SCHMIDT: Okay. Where?

16 MS. MIRABILE: On Frye Road.

17 MR. SCHMIDT: Where on Frye Road?

18 MS. MIRABILE: I'm not sure.

19 MR. SCHMIDT: Okay.

20 MS. MIRABILE: It's, the, the, we happen, at the well
21 driving company that I hired to come out was trying to schedule
22 it best to drill the well at the same time as his wells.

23 MR. SCHMIDT: Okay. Obviously you don't live on the
24 site now, correct?

25 MS. MIRABILE: No, it, it's under construction.

1 MR. SCHMIDT: You don't live, you don't live on your
2 property now?

3 MS. MIRABILE: It's under construction.

4 MR. SCHMIDT: Okay. Did you give any consideration
5 to the orientation of your house that you're building on this
6 subject property? The potential --

7 MS. MIRABILE: No, I, I, we, --

8 MR. SCHMIDT: -- the potential use of the subject,
9 how long is this application for a solar facility on this
10 property been under consideration, do you know?

11 MS. MIRABILE: Two or three years, to the best of my
12 knowledge.

13 MR. SCHMIDT: Before you started building your house?

14 MS. MIRABILE: Yeah, so, it's in the similar
15 orientation to the existing house that was there.

16 MR. SCHMIDT: Okay.

17 MS. MIRABILE: And it, and it was built that way to
18 take advantage of the, the sunlight, where the sun rises and
19 sets.

20 MR. SCHMIDT: Okay. So, you built that, your house
21 based on the pattern of where the sun would rise and set?

22 MS. MIRABILE: Yes.

23 MR. SCHMIDT: Okay. Okay. You indicated that the
24 County Council came out to your property?

25 MS. MIRABILE: Several council members.

1 MR. SCHMIDT: Okay.

2 MS. MIRABILE: Not, not in its entirety.

3 MR. SCHMIDT: Is there anything in the law that
4 you're aware of that would prohibit specifically earmark this
5 property, the subject property, that it can't be developed with
6 a solar facility?

7 MS. MIRABILE: I believe there are some discretionary
8 areas.

9 MR. SCHMIDT: Well, that applies to any solar
10 facility anywhere in Baltimore County, correct?

11 MS. MIRABILE: Correct.

12 MR. SCHMIDT: There's nothing that's about the, after
13 coming here, there's nothing that the Council said oh, and by
14 the way, we're going to put a provision in this law that you
15 can't develop the property next to the Not Frye, Not Frye Road,

16 MS. MIRABILE: Correct. There was, there was no
17 specific.

18 MR. SCHMIDT: The language in the bill applies to
19 every potential --

20 MS. MIRABILE: Correct.

21 MR. SCHMIDT: -- solar facility in Baltimore County,
22 okay. Who's building your home, just to ask?

23 MS. MIRABILE: We are working with a builder.

24 MR. SCHMIDT: Okay. You have a builder, you're not,
25 your construction company is not building it?

1 MS. MIRABILE: It's a partnership, no.

2 MR. SCHMIDT: Okay. Okay. Are you, are you going to
3 use the property for your business when you move in out here?

4 MS. MIRABILE: No.

5 MR. SCHMIDT: Okay. Where's your business located?

6 MS. MIRABILE: Falls Road.

7 MR. SCHMIDT: Okay. The accident on Falls Road, I
8 think you said on Falls Road, or about there?

9 MS. MIRABILE: It was on 695.

10 MR. SCHMIDT: Okay. Were you involved in that
11 accident?

12 MS. MIRABILE: I was.

13 MR. SCHMIDT: Okay and, and were you the cause of
14 that accident?

15 MS. MIRABILE: I was.

16 MR. SCHMIDT: And, --

17 MS. MIRABILE: Yeah.

18 MR. SCHMIDT: -- the accident was because you were
19 blinded by a solar facil, a solar panel?

20 MS. MIRABILE: Under oath, yes.

21 MR. SCHMIDT: Okay.

22 MS. MIRABILE: Yes.

23 MR. SCHMIDT: Okay, all right. I just --

24 MS. MIRABILE: Yeah, as I said, very ironic.

25 MR. SCHMIDT: All right. Just, I was looking at that

1 aerial up there, and that doesn't show Reisterstown, which is
2 where sort of Maryland Route 30 starts, right?

3 MS. MIRABILE: Yeah, right, that intersection.

4 MR. SCHMIDT: Just to kind of give the general
5 flavor. And how far is, would you say is Reisterstown from the
6 subject property?

7 MS. MIRABILE: So, this property is roughly three
8 miles from the intersection of Butler, Route 30, and 140, where
9 795 starts.

10 MR. SCHMIDT: Okay and then as you go north on Route
11 30, you get into this more rural area you've described it as
12 sort of rolling hills and topography of that nature in this, as
13 you go up 30?

14 MS. MIRABILE: Um hm.

15 MR. SCHMIDT: Okay.

16 MS. MIRABILE: And then it maintains the (inaudible)
17 all the way out through Hampstead.

18 MR. SCHMIDT: Until you get to Hampstead and up into
19 Carroll County, at least insofar as Baltimore County, okay.
20 Okay. I don't have any other questions. Thank you.

21 MS. MIRABILE: Thank you.

22 MR. NELSON: Nothing further.

23 CHAIR: Any questions? Just one question. When
24 you're, when you're constructing your, your new home, do you
25 have any plans to put solar panels on your roof?

1 MS. MIRABILE: I'm not opposed to, to solar. I don't
2 know that it's cost effective.

3 CHAIR: Okay.

4 MS. MIRABILE: I think solar is a very efficient
5 technology, I don't have problems with it for people's homes or
6 for accessory use.

7 CHAIR: All right.

8 MS. MIRABILE: It's more the, the full encompassing
9 complete use on prime and productive soil where it's a hundred
10 percent and the actual, it's not being used by that property
11 for any reason.

12 CHAIR: No, I understand. But in, in the house
13 you're building, are you putting solar panels on the roof of
14 the house?

15 MS. MIRABILE: We don't have any plans.

16 CHAIR: No plans too? Do you know if any of the
17 neighbors, (inaudible) Mr. Wolf, does he have solar panels on
18 his roof, do you know?

19 MS. MIRABILE: I don't know.

20 CHAIR: None of the other neighbors have any? Just
21 curious. Some of the people in the cases have testified that
22 they have solar panels, just interested.

23 MS. MIRABILE: No.

24 CHAIR: Okay. Since you're in the construction --

25 MS. MIRABILE: I don't have an issue with, yeah, I

1 don't have an issue with them.

2 CHAIR: Understood.

3 MS. MIRABILE: With them in general.

4 CHAIR: And you're in the construction business, so I
5 thought I would ask. Okay. Perfect.

6 MR. SCHMIDT: Following up on that, I know sometimes
7 there's a question of load and whether you can put solar panels
8 on top of houses.

9 MS. MIRABILE: Um hm.

10 MR. SCHMIDT: Is your, if you know, is your house
11 being built so that it could, if you wanted to do solar, you
12 know, the house would be constructed to handle the load, is
13 that something that you've looked at?

14 MS. MIRABILE: No, it, it, just because of the, the
15 nature of solar panels and based on the, the cost effectiveness
16 and different tax credits, were not confident that it would be
17 cost effective to do so, so there hasn't been any reason
18 (inaudible) roof was strong enough or anything.

19 MR. SCHMIDT: Okay. So, it's a, it's a cost benefit
20 analysis that's kind of driven your decision?

21 MS. MIRABILE: Yeah.

22 MR. SCHMIDT: Yeah.

23 MS. MIRABILE: Yeah, I, I don't have issues with
24 solar in general and if it made sense, it would make sense.

25 CHAIR: Okay. Thank you, ma'am.

1 MS. MIRABILE: You're welcome.

2 CHAIR: Okay. Thank you very much.

3 MS. MIRABILE: Thank you.

4 CHAIR: All right. Mr. Nelson?

5 MR. NELSON: All right. Thank you, Ms. Mirabile. I
6 would call Timothy Fales, please.

7 BOARD: Raise your right hand. Do you swear and
8 affirm under the penalties of perjury, that testimony you're
9 about to give is true and correct to the best of your knowledge
10 and belief?

11 MR. FALES: I do.

12 BOARD: Please state your name, your business, your
13 address for the record and spell your last name.

14 MR. FALES: My name is Timothy Fales, I'm a
15 facilities manager. Last name is spelled F like Frank-A-L-E-S,
16 and I live at 14619 Hanover Pike, Upperco, Maryland.

17 BOARD: You can sit down and just adjust the
18 microphone so we can pick you up.

19 MR. NELSON: Mr. Fales, let me just direct your
20 attention to Protestant's Exhibit 10, the aerial photograph.
21 You'll see Hanover Pike running north/south, you'll see what we
22 call the private driveway, or Not Frye Road, and then we see
23 another little driveway that juts off Hanover Pike. You see
24 all that?

25 MR. FALES: Yes, I do.

1 MR. NELSON: Would you be kind enough to approach the
2 easel and point to the Board in a way that doesn't obstruct
3 their view where your residence is with.

4 MR. FALES: This is my house right here. Right here.

5 MR. NELSON: Okay.

6 MR. FALES: This is my house right there.

7 MR. NELSON: So, for the record, if we, if we're --

8 MR. FALES: That's my driveway right there.

9 MR. NELSON: -- yeah, so if we're driving north on
10 Hanover Pike, get to the intersection with Not Frye Road, go a
11 little bit further, there's a little driveway that juts off to
12 the right that leads to your house, is that correct?

13 MR. FALES: Um hm, that's correct.

14 MR. NELSON: Okay and with whom do you reside there?

15 MR. FALES: I live with my wife and my daughter, my
16 wife Elizabeth and my daughter Madeline.

17 MR. NELSON: Okay and how long have you been there?

18 MR. FALES: Since 2007, June.

19 MR. NELSON: All right. Now, Debra Mirabile did a
20 very nice job of describing sort of the topography of the
21 neighborhood and I don't want to be overly redundant because
22 people are trying to move this along.

23 MR. FALES: Sure.

24 MR. NELSON: But could you describe the topography
25 from the perspective of your house as you're overlooking the

1 subject property, which is the property where the, they propose
2 to construct the solar facility?

3 MR. FALES: Sure. I first became aware of the
4 property that I currently live in right now when I was visiting
5 a friend of mine who lives off of Not Frye Road. He has an
6 annual get, gathering of people. A lot of people that we've
7 known since like junior high school. So, it's, it's been going
8 on for over twenty years now. And I saw that property and I
9 said that's kind of a cool place to live. One day, after one
10 of those parties, I was actually, they had a for sale sign out,
11 and I was with my brother, Patrick, and he said, you know, give
12 them a call, so I gave them a call.

13 The whole idea, what attracted me to it is the fact
14 that it is in a rural environment and something that was
15 attractive to me because I was living in a more urban/suburban
16 environment at the time and I always wanted to move some place
17 more rural.

18 So, long story short, I sold my condo in town, bought
19 that place and because of the beautiful nature of it. Where I
20 sit is, is at a high point and it gives me a view out over the
21 valley.

22 My concern with what's going on right now is that
23 with the screening, they're going to obstruct that view, you
24 know, all its good intentions of screening me off from the
25 facility is also going to screen off my view. So, it's going

1 to ruin one of the primary factors, the reason why I bought the
2 property.

3 MR. NELSON: All right. Let me stop you there for a
4 moment.

5 MR. FALES: Sure.

6 MR. NELSON: Mr. Jolivet, we're at what number now?

7 BOARD: You're at number twenty-one.

8 MR. NELSON: So, let me show you what will be marked
9 for identification as Exhibit 21. Do you recognize that image?

10 MR. FALES: I do.

11 MR. NELSON: All right and what does this depict?

12 MR. FALES: It, point A is actually my property
13 leading down to point B, which is the bottom of the subject
14 property.

15 MR. NELSON: All right. So, Mr. Schmidt, I'm going
16 to lead the witness a little bit, if you object let me know.
17 But can we see in Exhibit 21 the little driveway that also
18 appears on Exhibit 10?

19 MR. FALES: Yes.

20 MR. NELSON: All right and that's the driveway that
21 leads to your house?

22 MR. FALES: That's correct.

23 MR. NELSON: All right and point A on, on Exhibit 21
24 is, we can, is the same, is the house that located on
25 Protestant's Exhibit 10?

1 MR. FALES: Yes.

2 MR. NELSON: Okay and point B is, is it fair to say
3 it's, it's, it's near the south west quadrant of the
4 intersection of Hanover Pike, correction, it's, it's the south
5 west corner of the subject property?

6 MR. FALES: Yes.

7 MR. NELSON: All right. And if, if, if you were
8 standing at your, in your backyard looking towards the private
9 road or Not Frye Road, you can see that today?

10 MR. FALES: Yes.

11 MR. NELSON: All right and what's the relative
12 elevation, vis-à-vis, from your house to the road? Is it high
13 or low or the same level it --

14 MR. FALES: Oh, it's, my house is higher.

15 MR. NELSON: All right. So, you're looking down on
16 it?

17 MR. FALES: That is correct.

18 MR. NELSON: Okay. Now, let me show you, I'd like to
19 move into evidence Exhibit 21, please.

20 CHAIR: Any objection?

21 MR. SCHMIDT: No. No objection.

22 MR. NELSON: And I'm going to show you what we're
23 going to mark as Exhibit 22 for identification. Do you
24 recognize that?

25 MR. FALES: I do.

1 MR. NELSON: Okay and what does that photograph
2 depict?

3 MR. FALES: Point A is the front yard of my house and
4 point B is the south east corner of the subject property.

5 MR. NELSON: Okay and this, in terms of reference, is
6 that the Mirabile trailer on the other side of Not Frye --

7 MR. FALES: On the bottom right hand corner, yes.

8 MR. NELSON: Now, so this is the photograph that
9 depicts the landscape as you're looking from your house over to
10 the east, the south east corner of the subject property?

11 MR. FALES: Yes.

12 MR. SCHMIDT: Objection. That's not what he said.

13 MR. NELSON: (inaudible).

14 MR. SCHMIDT: No, he said from his house, he said
15 from his yard. It's not from his house. His house he can't see
16 that because of all the trees behind his house. You got the
17 lawn, it's not his house.

18 MR. NELSON: I'm sorry, I didn't mean to put such
19 weight on that part but from your property.

20 CHAIR: Okay. So, then I'll sustain the objection.

21 MR. FALES: From my property.

22 CHAIR: But, but go ahead, clarify, sir.

23 MR. SCHMIDT: From your property.

24 CHAIR: Sir?

25 MR. FALES: From my property to the south east

1 corner.

2 MR. NELSON: I'm sorry if I --

3 MR. SCHMIDT: Fair enough.

4 MR. NELSON: -- all right, I didn't mean to, that was
5 --

6 CHAIR: I think it's clear now.

7 MR. SCHMIDT: Yeah. It shows what it shows.

8 MR. NELSON: All right. So, describe in laymen's
9 terms what this, what's the topography you see as you're, as
10 you're standing from your property looking out to the south
11 east. Does the topography go down and then up, or what does it
12 do?

13 MR. FALES: It's just what you said, it goes down and
14 it rises again at the, at the south east, from the depression
15 there, whatever we're calling it today.

16 MR. NELSON: Um hm, okay. All right. Does Exhibit
17 22 accurately depict this topography that you just described?

18 MR. FALES: Yes.

19 MR. NELSON: All right. I move into evidence Exhibit
20 22.

21 MR. SCHMIDT: No objection.

22 CHAIR: Thank you.

23 MR. NELSON: Mr. Fales, do you support or oppose the
24 application for the solar?

25 MR. FALES: I oppose it.

1 MR. NELSON: Okay. This is your opportunity to tell
2 the Board why, in your own words, you oppose it.

3 MR. FALES: I oppose this, I've been actually engaged
4 in this the whole solar facilities and rural conservation areas
5 from its inception, only because one of the initial projects,
6 which I think this may have been one of them, was brought to my
7 attention because it's effectively in, in my front yard.

8 Unfortunately, it hasn't gotten much play out in the
9 media and I really wish more people were more aware of what's
10 going on.

11 Beyond the fact that it personally affects me, when
12 you look back at the character of Baltimore County, especially
13 north Baltimore County, and the whole idea of the URDL, this is
14 a straight up slap in the face violation of everything they
15 tried to accomplish over the last forty, forty-five years.
16 They tried to maintain the rural nature of this, maintain
17 agricultural for the benefit of a, a, of a community, not only
18 just for the food that it produces but also for the tourism
19 and, etcetera. So, I don't get why this has gotten such a
20 seemingly smooth path to acceptance.

21 If you look at the, the, the legislation, which I was
22 intimately involved with, met with, every time there was open
23 hearings for the Council, I was present. I made as many
24 comments as I was allowed to, which you're only allowed two
25 minutes in those particular environments. I expressed my

1 concerns.

2 And frankly, it was the whole lot, and I don't want
3 to relitigate the litigation, but I think it's good for
4 background. There was so much opposition to this.
5 Unfortunately, it was only coming from one district, the
6 district that's affected by this particular piece of
7 legislation affecting RC, which is north Baltimore County.

8 So, the other districts really had no interest in
9 opposing it. So, unfortunately, and our council person was
10 kind of like the lone voice. And obviously outnumbered.

11 However, that being said, in February 6th there was an
12 initial bill that was introduced that lacked certain legis,
13 certain language that was incorporated in the final version and
14 we had a meeting on February 13th with Councilman Almon, who was
15 the author of that final legislation and the final legislation
16 did incorporate some, some, you can, you can infer what you
17 will.

18 I'm going to give you the timeline and I'm going to
19 let commonsense dictate how you interpret this, okay? On
20 February 6th, the language wasn't present. We met February 13th
21 and in the following and subsequent bill that was passed, the
22 language is included. And the language, and I'll read directly
23 from the bill. Let me find it here. Bear with me a second
24 here.

25 VOICE: I have copies of the bill right here if all

1 of you want it.

2 CHAIR: No, sir, ma'am, ma'am, you can't, you can't
3 testify or help. You have to let the gentleman under oath
4 testify.

5 MR. FALES: All right. Here it is. This is on 3717,
6 under 4-E, 4-E-103, I believe. Yes.

7 MR. SCHMIDT: I, I'm just going to object to the
8 extent that the bill is the bill, Chairwoman Murphy.

9 CHAIR: I understand, I know.

10 MR. SCHMIDT: And I guess we can argue about it but
11 it is what it is.

12 CHAIR: I understand.

13 MR. SCHMIDT: And so, for this witness to, to be
14 suggesting that he can testify about the intent of the County
15 Council, this might be something that Mr. Nelson wants to argue
16 in his memo but it's, it's not fact testimony from a witness.
17 I don't believe it to be appropriate.

18 MR. NELSON: May I be heard briefly? The, we will
19 argue in the memo. I think the witness was simply, although
20 unofficially, was going to read to the Board the language that
21 was added to the (inaudible).

22 MR. FALES: I'm not, I'm --

23 CHAIR: So, wait a minute, sir. (inaudible).

24 MR. NELSON: He said he wasn't going to describe what
25 they intended to do, he was going to give the timeline, that's

1 what the witness was doing.

2 CHAIR: What I was going to say, we don't whether
3 he's going to testify as to the intent of the County Council.
4 We're not sure what he's going to testify to, he was just, as
5 Mr. Nelson pointed out, just highlighting the new language that
6 was going to be incorporated, that was incorporated into the
7 final bill by Councilwoman Almon, who was at the time, so go
8 ahead, sir. Overruled.

9 MR. FALES: Thank you.

10 MR. SCHMIDT: Okay. Thank you.

11 MR. FALES: All right. 4-E of 37-41-04-37-17, part
12 ten, in granting a special exception, the Administrative Law
13 Judge or Board of Appeals on appeal, may impose conditions or
14 restrictions on the solar facility use as necessary to protect
15 the environment and scenic views and to lessen the impact of
16 the facility on the health, safety and general welfare of the
17 surrounding residential properties and communities. Taking
18 into, into account such factors as the topography of adjacent
19 land, the presence of natural forest buffers and proximity of
20 streams and wetlands.

21 Now, you can infer what you want from that, I'm just
22 reading what it says and I think sometimes stating the obvious
23 is helpful because it just brings into specific relief what
24 somebody was trying to convey when they wrote this, all right?

25 CHAIR: Okay and that's now 4, 4-F-104-A-10, so they

1 changed the numbering.

2 MR. FALES: Oh, it's 4-F, yeah, they changed --

3 CHAIR: And we do have the statute --

4 MR. FALES: It was 41-03 in the original.

5 CHAIR: That's correct and now it's, it's
6 incorporated this way and we certainly do have, the Board has
7 that.

8 MR. FALES: I apologize.

9 CHAIR: Because the bill, we have the capability of
10 actually putting in conditions and restrictions which, as you
11 see, some of the questions have been directed it's, have been
12 asking those, towards that type of inquiry. So, go ahead.

13 MR. FALES: Well, what I would just ask is, is that
14 the Board of Appeals take this particular section seriously.
15 It's in there for a reason. If it was a flat piece of land,
16 topog, topography wouldn't be an issue. I don't think it would
17 be something to be considered. The fact that this is not a
18 level piece of land on the subject property I think is one of
19 the reasons, my opinion, as to whether or not, you know, this,
20 this particular section was even incorporated. Again, my
21 opinion.

22 CHAIR: And so, do you have specific conditions that
23 you would want imposed in regard to that section?

24 MR. FALES: Absolutely.

25 CHAIR: Okay and what would those be?

1 MR. FALES: Okay. Since the language there says it's
2 for, not only just for the general welfare but for the scenic
3 views. I mean, it specifically talks about scenic views, okay?

4 Anybody that moves into this area is clearly trying
5 to not be in an urban environment or an industrial environment.
6 This is clearly an industrial pro, project, okay? Being
7 inserted into a rural environment. So, it, protecting scenic
8 views, the whole idea of screening, if you, I've looked at
9 several different plans for these solar companies and for the
10 first few paragraphs they start, they, they start talking about
11 screening. There's a reason for that. They know that it's an
12 eyesore to people that are living near it. So, there's a
13 reason for, they're putting the screening in in the first
14 place.

15 And if the screening doesn't effectively screen, what
16 is the function and here, in this particular case, may I
17 approach the board?

18 CHAIR: Please.

19 MR. FALES: Okay. I mean, you look at this. How
20 tall does a tree have to be before it actually screens this?
21 And if you look at the, the staff comments when it says fully
22 screened, well, how deep does that screening have to be?

23 These are some of the, I don't have to be an expert,
24 I don't think, to just look at stuff and have some common sense
25 or thoughts about it.

1 CHAIR: And the photo you identified was Protestant's
2 exhibit number?

3 MR. SCHMIDT: Twelve.

4 MR. FALES: That's twelve.

5 BOARD: Twelve.

6 CHAIR: Twelve, just for the record. Thank you.

7 MR. FALES: Uh huh.

8 CHAIR: Go ahead.

9 MR. FALES: In addition to that, one of the things
10 that's been said here, solar panels are, are not impervious,
11 it's just like rain falling on a natural field defies common
12 sense, all right? Anybody that had their gutter clogged and
13 water is running off the roof, you see what happens to the
14 ground beneath it, all right? It rains and it, and it collects
15 and it, it, it concentrates that water.

16 Now, granted, a solar panel is smaller surface area
17 than a roof, but that concentration of water is still going to
18 take place and then when water is concentrated, it's going to
19 run towards, it's, the next lowest level and I think what you
20 could possibly have, again, I'm not an expert and I don't
21 pretend to be an expert, it just seems like common sense that
22 water is going to run, find, is going to evol, it's going to
23 come, come together. There's going to be a confluence of that
24 water at some point, which increases the possibility for, you
25 know, runoff or erosion or something like that. So, it's not

1 like falling on a natural field. That's just crazy.

2 BOARD: So, do you have any conditions that you
3 believe should be imposed?

4 MR. FALES: Absolutely.

5 BOARD: Can you tell --

6 MR. FALES: We should, we should definitely have
7 screening, I, lower, you're not going to be able to effectively
8 screen the top of that, that, that, this, this facility, okay?
9 This solar production, this electric production plant. So,
10 lower it, you have to, you just have to move it down on the, so
11 that you can effectively screen it, if you're going to do it at
12 all.

13 BOARD: Move the panels down, is that what you're
14 saying?

15 MR. FALES: Yeah.

16 BOARD: Okay.

17 MR. FALES: I don't see any other way of doing it. I
18 mean, because if you look at these, where is it, see these
19 telephone, this is eighteen feet right here, okay? And look
20 where the eighteen foot wire is right here. How tall is that
21 tree going to have to be at this point to block that view? You
22 know, and how long will it take to get there and how much,
23 what, what's the density at the top of those trees, you know,
24 all these, all these things need to be considered.

25 And plus with, and again, I'm not a, I don't have a

1 degree in fluid dynamics or anything but it just seems to, just
2 seems common sense to me that what the water in a concentrated
3 nature running down across this field, that water becomes
4 underneath that road that joins this stream over here, is going
5 to have a, you're going to have a problem at some point. Who's
6 going to take care of that road when, if that road erodes, Not
7 Frye Road erodes away? Who's responsible at that point?

8 CHAIR: Okay and you're identifying Protestant's
9 Exhibit 21, just for the record.

10 MR. FALES: Yes, ma'am.

11 CHAIR: Thank you.

12 BOARD: Mr. Fales, (inaudible) I think what her
13 question is, specifically you for a condition, for example, is,
14 is your position, from a screening perspective, just looking at
15 your property, are, are you asking us to maybe move the panels
16 away so the screen doesn't block your scenic view down? Is
17 that, specifically to you, because some of the things --

18 MR. FALES: Well, specific to me, I don't think you
19 can't have the facility there. It's just going to, it's going
20 to block my view, I mean, there's just no way of getting around
21 it.

22 BOARD: You, so it's, so it's all or nothing? There
23 is no, there is no --

24 MR. FALES: For me specifically, yes.

25 BOARD: -- move the, if they move it over a little

1 bit, you'll have a better view?

2 MR. FALES: Well, no, I take your point, I understand
3 what you're saying. If you move this over this, if you, if you
4 move the whole facility this way, then yeah. It would, it
5 would actually --

6 BOARD: How far is that?

7 MR. FALES: -- it would, I would be better, better
8 off.

9 BOARD: How, how far is that, you think?

10 MR. FALES: Basically to this tree line.

11 BOARD: Give me and I, I, I don't have the, I'm, I'm
12 over fifty, I can't see anyway.

13 MR. FALES: I'm almost sixty, so I have (inaudible)
14 problem.

15 BOARD: All right. So, if you can just give me, is
16 that a hundred yards, twenty-five feet, five feet, what do you
17 think? Just roughly?

18 MR. FALES: Oh, oh, I see, okay. If you move it
19 another, if you move it a hundred fifty yards off that edge.

20 BOARD: All right.

21 MR. SCHMIDT: A hundred and fifty yards?

22 MR. FALES: A hundred and fifty feet. Relax.

23 CHAIR: Feet.

24 MR. FALES: A hundred and fifty feet, yeah.

25 CHAIR: Off the edge of Hanover Pike?

1 MR. FALES: Off, yeah.

2 CHAIR: Towards, towards --

3 MR. FALES: Away from Hanover Pike.

4 BOARD: A hundred and fifty off the Hanover Pike, not
5 from where they're asking for the special exception?

6 MR. FALES: No, it would have to be a hundred and
7 fifty feet from the current property line --

8 BOARD: So, if the special exception was a hundred
9 feet from there, it would only be twenty-five feet?

10 MR. FALES: Yes, there you go.

11 BOARD: All right.

12 MR. FALES: Thank you.

13 BOARD: A hundred and five, fifty feet off Hanover.

14 MR. FALES: That's correct.

15 MR. SCHMIDT: My turn? Or are you done?

16 MR. NELSON: Any other comments you wanted to make,
17 Mr. Fales?

18 MR. FALES: No, that's, that's it.

19 MR. SCHMIDT: Can, can I see, I think it's Exhibit 2,
20 the aerial that has the landscaping on it?

21 CHAIR: All right. Cross, Mr. Schmidt? Just for the
22 record.

23 MR. SCHMIDT: Oh, I'm sorry.

24 CHAIR: We're good.

25 MR. SCHMIDT: It's either two or three, I'm not sure,

1 I can --

2 BOARD: Is this it?

3 MR. SCHMIDT: I believe that's it, let me take a
4 look. It's either two or three, I'm just not sure which one.
5 Yeah, they're both aerals. Thank you. Thank you. Mr. Fales,
6 you're aware of the swale that goes down the property now,
7 right?

8 MR. FALES: Yeah.

9 MR. SCHMIDT: And you're aware, obviously, the
10 property doesn't have any kind of storm water management plan
11 or control at the present time, it's just a farm field?

12 MR. FALES: I disagree, I disagree.

13 MR. SCHMIDT: Okay. Well, what is the storm, has
14 there been an approved storm water management plan for this?

15 MR. FALES: No, but Glen does a great job of keeping
16 it planted so that there, there is erosion control actively on
17 that property year round.

18 MR. SCHMIDT: Okay. There will be, you're aware,
19 there will be a storm water management plan that the County has
20 to approve for this proposal?

21 MR. FALES: Why would I be aware of that?

22 MR. SCHMIDT: You don't know that?

23 MR. FALES: Why would I?

24 MR. SCHMIDT: Well, you said you've been working
25 with, ever since these solar facilities have been involved.

1 MR. FALES: But I don't, I don't know what their
2 conversations are with, with --

3 MR. SCHMIDT: Are you aware of the fact that the
4 County has a requirement for every storm water, for every solar
5 facility that there has to be a storm water management plan?

6 MR. FALES: Yes.

7 MR. SCHMIDT: And are you aware of the fact that the
8 State, indeed, has come out with criteria as to storm water
9 management plans for solar facilities, you know that?

10 MR. FALES: Yes.

11 MR. SCHMIDT: Okay. So, there will be a storm water
12 management facility that will be required to be applied to for
13 this site, correct? And the design of that will be --

14 MR. FALES: I hope so.

15 MR. SCHMIDT: It will be required under the law, I
16 mean, you talked about how you've been so involved in all this
17 law and regulation, I assume if you're involved, you know that,
18 in fact, that's what the County and the State are requiring.

19 MR. FALES: I, I, they're requiring it, I don't know
20 enough about, I don't know --

21 MR. SCHMIDT: So, we're not going to comply with --

22 CHAIR: Well, wait a minute, well, let, let him, one
23 second, let him answer the question. Go ahead. Go ahead, sir.
24 You were answering.

25 MR. FALES: What, what I'm driving at is we have a

1 plan that's up for approval, we have no idea even what the,
2 what the screening requirements are, what the --

3 MR. SCHMIDT: I'm not talking about screening, --

4 MR. FALES: I understand.

5 MR. SCHMIDT: -- I'm talking about storm water
6 management.

7 MR. FALES: But there, how much more do I not know?

8 MR. SCHMIDT: Okay.

9 MR. FALES: You know?

10 MR. SCHMIDT: Well, storm, storm, will you, will you
11 grant me that storm water management --

12 MR. FALES: I will grant you, yes.

13 MR. SCHMIDT: -- will be required for this site?

14 MR. FALES: Yes, that is correct.

15 MR. SCHMIDT: Do you have any reason to believe that
16 the County is going to say ahh, you don't have to do a storm
17 water management plan here?

18 MR. FALES: I hope not.

19 MR. SCHMIDT: Okay. Does the County do that? Have
20 you ever seen that done on any of these?

21 MR. FALES: I, no.

22 MR. SCHMIDT: Okay. Since the storm water management
23 requirements are worded in such a way that you can't increase
24 runoff and you can't create erosion, is there any reason that
25 you believe, you said you're not a fluid dynamic engineer.

1 MR. FALES: Um hm.

2 MR. SCHMIDT: Any reason that you have other than a
3 fear that for some reason the County is not going to do what
4 it's supposed to do or for some reason, there's going to be
5 some erosion here? Is that based on anything?

6 MR. FALES: The fact that the government has failed
7 to effectively effect plans in the past, sure.

8 MR. SCHMIDT: Okay. So, it's, okay. All right, fair
9 enough. All right. Now, your property, let's take a look at
10 your property because I think it's a little more visible on, on
11 this plan.

12 MR. FALES: Um hm.

13 MR. SCHMIDT: First of all, this is your house, is it
14 not?

15 MR. FALES: Yes.

16 MR. SCHMIDT: Okay. Which direction does the front
17 of your house face?

18 MR. FALES: South.

19 MR. SCHMIDT: South, so the front of your house faces
20 towards the bottom of the page?

21 MR. FALES: That is correct.

22 MR. SCHMIDT: Okay. To the north of your house,
23 obviously, is some wooded area and then the next property on
24 Hanover Road to the north, correct? Up in here?

25 MR. FALES: That property, what is it?

1 MR. SCHMIDT: It's a, looks like a farm field across
2 the street, across the driveway?

3 MR. FALES: No, it's not a farm, it's just a, it's
4 just a yard.

5 MR. SCHMIDT: A yard, okay. To the east of your
6 property, is the northern part of the subject property,
7 correct?

8 MR. FALES: That's correct, um hm.

9 MR. SCHMIDT: Which is fairly heavily wooded?

10 MR. FALES: Yeah, white pine mostly.

11 MR. SCHMIDT: Okay and you understand that that's not
12 going to be disturbed and will continue to exist, they're not
13 going to do any clearing?

14 MR. FALES: That is correct.

15 MR. SCHMIDT: And would you say that from your house,
16 when we look at this photograph, at least as I'm indicating,
17 all of this portion of the solar facility, will be screened by
18 the exist, this existing woods?

19 MR. FALES: And has never been a concern of mine.

20 MR. SCHMIDT: Okay. So, all this back in this area
21 is a --

22 MR. FALES: As far as my view shed is concerned.

23 MR. SCHMIDT: As far as your view, okay. All right.
24 You've also planted some trees over here?

25 MR. FALES: No.

1 MR. SCHMIDT: Or some, well, there's a line of trees
2 on the west side --

3 MR. FALES: There is a line of trees that pre-existed
4 my (inaudible).

5 MR. SCHMIDT: Pre-existed when you bought the house?

6 MR. FALES: Um hm.

7 MR. SCHMIDT: That screens Hanover Pike?

8 MR. FALES: Yes.

9 MR. SCHMIDT: Okay. Hanover Pike is the scenic view,
10 is it not?

11 MR. FALES: That is.

12 MR. SCHMIDT: Okay. So, when we use the word scenic
13 view, it's the view from Hanover Pike, correct?

14 MR. FALES: That would be my assumption.

15 MR. SCHMIDT: Okay. It's not the view from the
16 Mirabiles property or your property? When we use the word
17 scenic view, that means --

18 MR. FALES: Scenic by, scenic byway.

19 MR. SCHMIDT: -- that means what you can see from
20 Hanover Pike?

21 MR. FALES: Correct.

22 MR. SCHMIDT: Not from some person's indiv, private
23 citizen's individual house?

24 MR. FALES: I would make that assumption.

25 MR. SCHMIDT: Okay. Now, you said that the

1 topography falls away so that the subject property is lower
2 than your house, correct?

3 MR. FALES: That's correct.

4 MR. SCHMIDT: Okay. I think you said at the
5 beginning that you want to be looking out to the south and --

6 MR. FALES: Correct.

7 MR. SCHMIDT: Correct. Is, does that mean you do not
8 want landscaping as shown on this plan?

9 MR. FALES: No, it means I don't want the solar farm
10 there.

11 MR. SCHMIDT: Okay. Let me ask it this way, because
12 I think the panel has tried to ask you about specifics in terms
13 of restrictions.

14 MR. FALES: Um hm.

15 MR. SCHMIDT: Let's just assume that the solar
16 facility is here.

17 MR. FALES: Um hm.

18 MR. SCHMIDT: If it is here, and, and I would also
19 say to you, you understand that the Public Service Commission
20 requires a certain energy generation for, for this facility?

21 MR. FALES: Um hm.

22 MR. SCHMIDT: Is that fair, are you aware of that? I
23 know you've done a lot of research into the law.

24 MR. FALES: Sure.

25 MR. SCHMIDT: So, we just don't decide how big this

1 is, we have a certain parameter --

2 MR. FALES: (inaudible) to be met, yes.

3 MR. SCHMIDT: -- parameter as to how much power we're
4 supposed to provide.

5 MR. FALES: Um hm.

6 MR. SCHMIDT: Okay. So, if, if the solar facility
7 is, would be approved by the Board for this area, my question
8 would be, there's landscaping that's proposed on the subject
9 property.

10 MR. FALES: Um hm.

11 MR. SCHMIDT: Which is immediately to the south of
12 your property, correct? And that would be high, unlike the
13 things that we heard from the Mirabiles, that would actually be
14 this portion of the property, would be higher when compared to
15 the subject property, would it not?

16 MR. FALES: Yes.

17 MR. SCHMIDT: Okay. So, landscape is going to be
18 higher?

19 MR. FALES: Sure.

20 MR. SCHMIDT: Okay.

21 MR. FALES: To block, obscure my view.

22 MR. SCHMIDT: Yeah, yes.

23 MR. FALES: Yeah.

24 MR. SCHMIDT: So, so, the question is, do you, would
25 you prefer that this landscaping be removed and not have

1 landscaping so it wouldn't block your view?

2 MR. FALES: No, I, I would prefer that the solar
3 panels be shifted that way --

4 MR. SCHMIDT: I, I got it.

5 MR. FALES: -- so that there is no need for that.

6 MR. SCHMIDT: Okay.

7 MR. FALES: If this, in fact, if this is there, we
8 have to have that, but then it's going to block my view.

9 MR. SCHMIDT: Okay.

10 MR. FALES: That's my thing.

11 MR. SCHMIDT: Okay. So, if the solar facilities are,
12 in fact, existing here, you do want this landscaping retained?

13 MR. FALES: I see no choice. It's either --

14 MR. SCHMIDT: Well, you have a choice. You can ask
15 the Board to say --

16 MR. FALES: No, no, I, no, sir, I don't.

17 MR. SCHMIDT: -- remove the landscaping, or impose a
18 condition that I don't want any landscaping next to my
19 property. I'd rather see --

20 MR. FALES: No, sir, I don't.

21 MR. SCHMIDT: -- rather look out over the panels, the
22 panels are eight feet tall.

23 MR. FALES: I think you misunderstand the dynamic
24 here. What these people decide is what I have to live with, I
25 don't have a choice. I can only ask to influence, that's all I

1 can do here.

2 MR. SCHMIDT: Okay. I'm going to try one more time.
3 If these panels, if panels are located where I'm indicating, to
4 the south of your house.

5 MR. FALES: Um hm.

6 MR. SCHMIDT: Okay? And it was up to you, would you
7 prefer that there be screening in between --

8 MR. FALES: Yes.

9 MR. SCHMIDT: -- the panels and your house?

10 MR. FALES: If the panels are there, screening is
11 required, it's necessary, I want it.

12 MR. SCHMIDT: You want it. Fair enough. That's all
13 the Board, I think the Board was trying to get an understanding
14 of the conditions and I didn't know whether, now, obviously,
15 from your house, the panels are, do you know the, do you know
16 the change in grade from your house to where the panels are?

17 MR. FALES: I, I've heard different numbers but.

18 MR. SCHMIDT: If you don't know, you don't know.

19 MR. FALES: I don't remember.

20 MR. SCHMIDT: That's, I don't know is always a fair
21 answer. Okay and do you know how tall the panels are going to
22 be?

23 MR. FALES: Six or eight feet tall.

24 MR. SCHMIDT: Okay. Do you know if, you don't know
25 the height so you don't know what the grade differential will

1 be. Okay, fair enough. Thank you, Mr. Fales. I don't think I
2 have any other questions.

3 CHAIR: Any re-direct?

4 MR. NELSON: That's all I have. Thank you, Mr.
5 Fales.

6 CHAIR: And Mr. Fales, Protestant's nine is up in the
7 corner there on the board, that's just another view. I just
8 want to make sure that this is your home. Can you look at that
9 corner photo? Is that --

10 MR. FALES: Yes, that is my house, right there.

11 CHAIR: Okay.

12 MR. NELSON: That's Exhibit 9.

13 CHAIR: Yeah, that's another view of the --

14 MR. FALES: And that would be, that would be panels
15 in there.

16 CHAIR: The front of your house?

17 MR. FALES: Yes.

18 CHAIR: (inaudible)?

19 MR. FALES: Yes, ma'am.

20 CHAIR: Understood, thank you. Just making sure.

21 MR. NELSON: All right. I think that's all we have
22 for, for the Fales.

23 CHAIR: All right.

24 MR. NELSON: We're ready with a witness, if that'
25 where you want to go.

1 CHAIR: Okay. So, who's the next witness? Is this
2 the last witness or is this?

3 MR. NELSON: No, a few more.

4 CHAIR: You have a few more.

5 MR. NELSON: Yeah. I think that, I try to cue them
6 up in terms of the longer ones earlier.

7 CHAIR: Understood.

8 MR. NELSON: So, we have Patrick Fales, Mr. Merritt
9 and Ms. Brown.

10 CHAIR: Okay, all right. So, should we, do you want
11 to keep going, everyone's okay?

12 BOARD: Yes.

13 CHAIR: Keep going?

14 MR. SCHMIDT: It's up to the, to the panel.

15 BOARD: How long you think those will be, those, what
16 do you have three? There are three witnesses more, is that
17 what you're saying?

18 MR. NELSON: One, two, three. Three.

19 CHAIR: Three witnesses, and how long was the
20 question, do you think? We don't want to rush you, because we,
21 we want the Protestants to, to hear their case.

22 MR. NELSON: Yeah, yeah. I don't think they'll be
23 that long. I'm happy to put them on, I'm happy to break for
24 thirty minutes, whatever you want to do, I'll do.

25 CHAIR: Understood. You're not sure then what, how

1 long exactly it'll be, just probably less than the others?

2 MR. NELSON: I, yeah, that's my best --

3 CHAIR: Understood. You need a break? Do you want a
4 break?

5 BOARD: No, I'm good.

6 CHAIR: Okay, good. Let's get the first witness on
7 and let's do that and then maybe we'll take a ten minute break
8 and then we'll come back.

9 MR. NELSON: Okay. Patrick Fales, please.

10 CHAIR: All right.

11 BOARD: Do you swear and affirm under the penalties
12 of perjury, that the testimony you're about to give is true and
13 correct to the best of your knowledge and belief?

14 MR. FALES: Yes.

15 BOARD: Please state your name, your business, your
16 address for the record and spell your last name.

17 MR. FALES: My name is Patrick Fales, I live at 14533
18 Hanover Pike, I'm self-employed and what was your last request?

19 BOARD: Last name, how to spell your last name.

20 MR. FALES: Oh, it's F as in Frank-A-L-E-S.

21 BOARD: You can sit down.

22 MR. FALES: Thank you.

23 BOARD: And just adjust the microphone, if you don't
24 mind.

25 MR. NELSON: Just give me one second.

1 MR. FALES: Sure.

2 MR. SCHMIDT: Macy, if you don't, if you don't need
3 that, you can give it back to the Board. Leave it up to you.

4 MR. NELSON: Mr. Fales, you've given us your address,
5 but I'd like to you, for you to use Exhibit 10 and point to the
6 Board where your residence is. Of course, this is Hanover
7 Pike, this is Not Frye (inaudible) and the address of that
8 house is?

9 MR. FALES: 14533 Hanover Pike.

10 MR. NELSON: All right. So, if we look at what we
11 all know to be the subject property, if we look at the north
12 east corner of the subject property, there's a residence that
13 you can see in that aerial image and that's your residence?

14 MR. FALES: Yes.

15 MR. NELSON: All right and with whom do you reside
16 there?

17 MR. FALES: My wife.

18 MR. NELSON: And her name is?

19 MR. FALES: Thanikan or Ann Fales.

20 MR. NELSON: Okay and how long, do you own that
21 property?

22 MR. FALES: How long have I owned it?

23 MR. NELSON: No, do you own it, do you and your wife
24 own it?

25 MR. FALES: Yes.

1 MR. NELSON: All right. How long have you owned the
2 property?

3 MR. FALES: Purchased it in February of '18.

4 MR. NELSON: Two thousand eighteen?

5 MR. FALES: Correct.

6 MR. NELSON: All right. So, you're pretty new to the
7 neighborhood?

8 MR. FALES: Yes.

9 MR. NELSON: Okay. Ms. Jolivet, I'm sorry, I'm at
10 twenty-two or twenty?

11 BOARD: You're at twenty-three.

12 MR. SCHMIDT: Thank you.

13 MR. NELSON: Mr. Fales, I'm going to show you what
14 we're going to mark for identification as Exhibit 23. Do you
15 recognize this photograph?

16 MR. FALES: Yes.

17 MR. NELSON: And what does this depict?

18 MR. FALES: It depicts A to be the lowest or, the
19 lower --

20 MR. NELSON: Well, first, just generally. Is it fair
21 to say this is the subject property --

22 MR. FALES: Yes.

23 MR. NELSON: -- and does it show your, your
24 residence?

25 MR. FALES: Yes.

1 MR. NELSON: Okay and your residence is, and is it a
2 reasonably accurate depiction of the air, how it looks from the
3 air, the land?

4 MR. FALES: Yes.

5 MR. NELSON: All right and of course it has the
6 Google Earth Pro topal elevation chart at the bottom but at
7 this time, I move into evidence Exhibit 23.

8 CHAIR: Any objection?

9 MR. SCHMIDT: No objection.

10 MR. NELSON: All right. So, your house is located
11 at, at point A or point B?

12 MR. FALES: B.

13 MR. NELSON: Okay and could you use this photograph
14 and also your personal observations to describe what the view
15 is like? What is the relative elevation of your property is as
16 compared to the south west corner of the subject property down
17 near the intersection of Hanover Pike and the private
18 (inaudible)?

19 MR. FALES: My property sits, the north east, you
20 know, above the buffer (inaudible).

21 (PAPERS RUSTLING NEAR THE MICROPHONE - CANNOT HEAR)

22 MR. NELSON: So, are you higher than or lower than?

23 MR. FALES: Much higher than the subject property.

24 MR. NELSON: All right. So, you're looking down --

25 MR. FALES: Looking down on the proposed solar field.

1 MR. NELSON: Okay. Now, let me show you what we're
2 going to mark for identification, I'm sorry, twenty-three is in
3 evidence, right?

4 BOARD: That's correct.

5 MR. NELSON: Okay.

6 CHAIR: (inaudible).

7 MR. SCHMIDT: No objection.

8 MR. NELSON: Let me show you what we're going to mark
9 for identification as Exhibit 24. All right and I see that
10 we've, we've reversed the letters A and B, so be careful when
11 you use those letters, sorry about that. But let's look
12 together at Exhibit 24. Is this an aerial photograph of the
13 subject property, including your property?

14 MR. FALES: Yes.

15 MR. NELSON: All right and this photograph identifies
16 your residence as point A or point B?

17 MR. FALES: A.

18 MR. NELSON: Okay and so --

19 MR. FALES: Excuse me.

20 MR. NELSON: -- tell us about the relative elevation
21 of your property as compared, looking in a, in an almost due
22 south direction? Are you higher than or lower than or the same
23 as --

24 MR. FALES: Higher.

25 MR. NELSON: -- higher than, all right. So, you're

1 looking down. And if we're looking at Exhibit 24, what's that
2 roadway we see at the bottom of the image there?

3 MR. FALES: It's Not Frye Road.

4 MR. NELSON: Okay and this, this house here to the
5 right of point B, is that the Merritt residence or the Little
6 residence?

7 MR. FALES: That's the Little residence.

8 MR. NELSON: Okay. All right. Now, Mr. Fales, do
9 you support or oppose the application?

10 MR. FALES: I oppose it.

11 MR. NELSON: Okay. This is your opportunity to tell
12 the Board why you oppose it.

13 MR. FALES: For many of the reasons that have already
14 been stated. Purchased the property, look, we're putting a,
15 we're proposing a commercial industrial site in a rural
16 setting. Common sense will tell you that we buy, people
17 purchase in these areas, rural areas, because they want a rural
18 environment. So, now we're going to inject a commercial
19 industrial power facility in the middle of farmland,
20 obstructing, you know, or tainting people's views. It's on a
21 scenic byway. It will affect property values.

22 So, it, the topography, uniquely disqualifies this
23 place as, as a, as a candidate. It cannot be screened
24 effectively, we've already demonstrated that through testimony.
25 It cannot be screened effectively. So, it's on a, you know,

1 it's on a scenic byway, so just to recap.

2 We're on a scenic byway, we're in a rural setting,
3 the topography is, if, if you were, if I was going to have an
4 outdoor concert, I would have my stage up on the high part of
5 this hill so everybody down low could see it. You're driving
6 into a community, you have a solar field that goes up from
7 whatever it is, I don't know, how many, it goes up to six
8 hundred and thirty-two feet to my house down from the road.
9 There's no way to obscure it. You're not going to obscure it,
10 it's just that simple.

11 So, it uniquely disqualifies this property. You
12 cannot effectively, one hundred percent, screen it from the
13 scenic byway. It just cannot be done, we've already
14 demonstrated that.

15 Glare. The studies are not facts, they're
16 suggestions, they're educated, you know, summations of what we
17 can expect, but they're not facts. So, glare is a, is a big
18 problem for the Mirabiles.

19 So, you know, I'm opposed to it. If I had to, if I
20 had, you know, if I have to deal with this density in
21 screening, the height of trees, reduction of the field size
22 would have to be a factor, but I, I'm, I'm very opposed to it.
23 I think it's just, you know, land acquisition, rentals,
24 leasing, that's what's leading to this, that's why you have,
25 they're targeting farmlands. Any developer who develops, they

1 look for farmland, they don't look for productive commercial
2 property because the costs are too high. So, this is a, you
3 know, I understand economics, I'm a businessperson too. But
4 this is Baltimore Count, this is northern Baltimore County,
5 held up nationally as a model of, of preservation. So, we have
6 to really be careful what we're, what we're proposing here.

7 I'm not against solar power, I've actually looked at
8 it for my, for my home. I don't have enough roof area to
9 warrant it. So, I'm not opposed to it.

10 It's going to be and, again, I'm, I've done some
11 rough measuring. The actual, his, Glen's property line is
12 about a hundred feet from my property line so I have to ask
13 you, if I'm not out of line here, would you want solar panels a
14 hundred to two hundred feet in front of your front door?
15 That's, that's what I'm going to be dealing with here. So, I'm
16 vehemently opposed to it from a personal (inaudible). It's not
17 a good site, period. That's it, that's all, that's all I have
18 to say. It's really uniquely (inaudible) in my opinion.

19 MR. NELSON: That's all I have of this witness.

20 CHAIR: Cross?

21 MR. SCHMIDT: Let's put this back up. Mr. Fales,
22 you've owned your house for what, about fifteen months, a
23 little longer?

24 MR. FALES: Something like that, yeah. Yes.

25 MR. SCHMIDT: Why'd you buy your house with a solar

1 facility proposed next door?

2 MR. FALES: I like the setting.

3 MR. SCHMIDT: Were you aware of the solar facility,
4 facility proposed next door?

5 MR. FALES: I heard about it after looking into the
6 property, yes.

7 MR. SCHMIDT: Okay. Now, your property is this one,
8 is it not? And I'm referring to Petitioner's exhibit number
9 two and the house --

10 MR. FALES: I think it's important to note on the
11 first question --

12 MR. SCHMIDT: Hold on, just hold on a second, if you
13 can, if I can ask you a question. Your property is, just so
14 we're oriented on Petitioner's exhibit number two, is the
15 dwelling that's sort of in the middle --

16 MR. FALES: Yes.

17 MR. SCHMIDT: -- of the aerial photograph, correct?

18 MR. FALES: Yes.

19 MR. SCHMIDT: And your brother is, I believe it's
20 your brother, the gentleman that just testified.

21 MR. FALES: Yes.

22 MR. SCHMIDT: He's, essentially, just give us, so the
23 Board understands where everybody is, there's a, the wooded
24 area of the property that is part of the subject property,
25 correct?

1 MR. FALES: Um hm.

2 MR. SCHMIDT: That's being (inaudible), which
3 separates, essentially, a, if you do a straight line from your
4 house to your brother's house?

5 MR. FALES: Yes.

6 MR. SCHMIDT: Okay and that wooded area, is it fair
7 to say, given its location --

8 MR. FALES: Um hm.

9 MR. SCHMIDT: -- to the west of your property
10 provides a certain amount of screening --

11 MR. FALES: Yes.

12 MR. SCHMIDT: -- to a large portion of the solar
13 facility --

14 MR. FALES: Yes.

15 MR. SCHMIDT: -- that is closest to Frye Road? As a
16 matter of fact, from your house, can you see Frye Road or the
17 intersection of Frye Road and Not Frye Road? I'm sorry,
18 Hanover Pike and --

19 MR. FALES: Hanover Pike and Not Frye Road.

20 MR. SCHMIDT: -- Not Frye Road, can you --

21 MR. FALES: No, I cannot.

22 MR. SCHMIDT: You cannot because of the screening?

23 MR. FALES: Right.

24 MR. SCHMIDT: Okay.

25 MR. FALES: Because of the pines there.

1 MR. SCHMIDT: Okay. There also appears and this,
2 this aerial photograph, which is Petitioner's exhibit number
3 two, my understanding is that this is generally white pine type
4 species, correct?

5 MR. FALES: Yes.

6 MR. SCHMIDT: So, its evergreens?

7 MR. FALES: Yes.

8 MR. SCHMIDT: So, they're, they don't lose their
9 leaves, correct?

10 MR. FALES: Correct.

11 MR. SCHMIDT: Okay.

12 MR. FALES: Yes.

13 MR. SCHMIDT: But it appears that there's also a line
14 of deciduous trees separating, or separating where your house
15 is to the solar facility, is that correct?

16 MR. FALES: Yes.

17 MR. SCHMIDT: Are those on your property or are they
18 on Mr. --

19 MR. FALES: I believe they're on Glen's property. ,
20 I've had, I've had three of them blow down in the last storm.

21 MR. SCHMIDT: Okay.

22 MR. FALES: They're on my property now.

23 MR. SCHMIDT: Okay. How many of them, how many trees
24 are in there, do you have any idea?

25 MR. FALES: Twenty-five.

1 MR. SCHMIDT: Okay. And three of them have come down
2 in storms?

3 MR. FALES: Yes.

4 MR. SCHMIDT: Okay. Now, you understand there's no
5 plans to take down any of those deciduous trees?

6 MR. FALES: I understand that.

7 MR. SCHMIDT: Are they mature or are they little
8 seedlings?

9 MR. FALES: It's, no, the vast majority are mature.

10 MR. SCHMIDT: Okay.

11 MR. FALES: But there's a lot of thicket and
12 underbrush.

13 MR. SCHMIDT: Okay. Which, I suppose, is a good
14 thing in terms of screening.

15 MR. FALES: Except for in the winter.

16 MR. SCHMIDT: Okay and then there's additional
17 landscaping proposed on top of the deciduous trees that are
18 proposed along in here, correct?

19 MR. FALES: I don't see it there. I see the --

20 MR. SCHMIDT: See all these circles?

21 MR. FALES: Right.

22 MR. SCHMIDT: That's additional trees. Okay and you
23 are, I guess like your brother, you're higher than the subject
24 site?

25 MR. FALES: Yes.

1 MR. SCHMIDT: Okay. Thank you, sir. I don't have
2 any other questions.

3 CHAIR: Anything on re-direct?

4 MR. NELSON: Nothing.

5 CHAIR: Thank you, sir.

6 MR. FALES: Thank you. Thank you.

7 MR. NELSON: All right. Paul Merritt?

8 BOARD: Raise your right hand. Do you swear and
9 affirm under the penalty of perjury, the testimony you're about
10 to give is true and correct to the best of your knowledge and
11 belief?

12 MR. MERRITT: I do.

13 BOARD: Please state your name, your address, your
14 business for the record and spell your last name.

15 MR. MERRITT: Paul Merritt, my business is I do heavy
16 (inaudible) excavation and my address is 14527 Hanover Pike,
17 Upperco, Maryland 21155.

18 BOARD: Thank you. You can just sit down and adjust
19 the microphone there.

20 MR. NELSON: Mr. Merritt, the, you've given us your
21 address, but let's look together at Protestant's Exhibit 10,
22 this is an aerial photograph and could you locate your house on
23 this image?

24 MR. MERRITT: Yes, my house is at corner of the, of
25 the private driveway, the, the intersection, and the property

1 at the corner.

2 MR. NELSON: All right. So, we drive in the private
3 road, go to the dead end, turn left and your house is on the
4 left side?

5 MR. MERRITT: Yes, correct.

6 MR. NELSON: Okay. How long have you been there?

7 MR. MERRITT: Almost twenty years.

8 MR. NELSON: All right and you live there with whom?

9 MR. MERRITT: My wife, Melissa and my son, Grayson.

10 BOARD: You can sit down.

11 MR. NELSON: Before we talk about the topography, I
12 want to ask you about your line of work. Have you, have you,
13 have you ever done heavy work on the private road?

14 MR. MERRITT: Yes, I have, yes.

15 MR. NELSON: All right. Tell us about that.

16 MR. MERRITT: We had, as Mr. Mirabile talked about,
17 it was, I think it was, it was Tropical Storm Lee and Harvey, I
18 feel, it was back to back and the, it, it rose up and got over
19 the bridge the first day and then went down --

20 MR. NELSON: Okay. What rose up?

21 MR. MERRITT: The creek that goes, across the,
22 beginning of the private driveway off of Hanover Pike. And it
23 rose the first day and was over top of it, and then it subsided
24 and then the next day it came up again, and it flooded, it took
25 the whole road out. It moved the bridge and it was a massive

1 piece of concrete. It moved forty tons of concrete down the
2 river. So, we had to do a repair under the emergency repair
3 for Baltimore County. So, we had to meet that requirement and
4 that's when Mr. Mirabile and I, myself, we actually did the
5 repair on the river, under the recommendations of the County
6 and we repaired it. Then as I've lived there, I've also did
7 pretty much the maintenance on the, the whole road since I've
8 lived there and, a lot of it, and Mr. Wolf pays some of it and
9 stuff but the general maintenance of the gravel part through my
10 piece, that, you know, people who have the right of way too,
11 I've maintained that part and we try to keep up the road,
12 fixing the potholes and things and, you know, it's a, it's
13 quite a task and it's at quite an expense.

14 MR. NELSON: All right. Now, how often, Mr. Mirabile
15 described what happens in rain events in terms of accessibility
16 of the private road. Do you have any experience with that?

17 MR. MERRITT: Oh, yes. It floods, it's, (inaudible),
18 it's been flooding lately, a lot lately. When we first moved
19 in, it didn't. In the last couple of years, I don't know what
20 dynamics have changed, I guess it's the amount of rainfall in
21 the, you know, the ground water, like the ground saturation
22 gets real high and the water just runs off and it floods
23 (inaudible). It's probably, above the regular creek bed, it's
24 probably, probably eight or nine feet above the, the regular
25 flow of water, when it flows.

1 MR. NELSON: So, I'm a little confused as to where
2 the culvert is. The, Ms. Fallon described a stream running
3 down parallel to, to Hanover Pike and then we, we, Mr. Mirabile
4 described the, the, the flowing water that flows through this
5 stand of trees here on the southern edge. But where is this
6 culver you describe?

7 MR. MERRITT: Okay, well, the culvert is at the end
8 of the private driveway road, (inaudible) approximately maybe
9 fifty to sixty feet inside the, just into the, I guess it would
10 be to the east of Route 30.

11 MR. NELSON: All right. So, in other words, if you,
12 if you and I are standing at the intersection of Route 30 and
13 the private road, Not Frye Road, we're going to walk in the
14 road thirty feet or thereabouts?

15 MR. MERRITT: About thirty feet, yes.

16 MR. NELSON: And that, at that point, the, the, the,
17 beneath us is a culvert through which --

18 MR. MERRITT: (inaudible) and it's rocks in there and
19 stuff like that and pretty much, I bear, I bear the burden of
20 all the stone that went in there and everything and it was a
21 very expensive ordeal to do it.

22 Now, the issue that we're having now with the whole
23 thing is, is that the proposed site is here and across this, I
24 guess, you know, the swale or whatever you call it, the flow
25 from that comes out, I would say maybe a hundred feet up the

1 driveway. It comes across the road and there's, they talked
2 about a fifteen inch pipe that crosses the road. Well, the
3 volume from that field and since this rain has developed, is a
4 lot. And what it's doing at the current time is, it comes off
5 of the, the subject property to say and it crosses the private
6 driveway and once it crosses the private driveway, on the, I
7 guess the south side of the private driveway, there's a ditch
8 that's on Mr. Mirabile's property that, that catches that flow
9 and it catches flow from the, the whole length of the driveway,
10 up to where the entrance to where the trailer is up here. But
11 it catches that flow from all that and it's actually eroding
12 that ditch really bad.

13 And my concern is, and we've had a lot of issues with
14 the MDE coming since we've had our issue with our, you know,
15 the pipe and replacement and things, is that there, once this
16 property is developed, the sheet flow and volume of water is
17 actually going to create a problem for us for our driveway and
18 we're going to have an issue with the driveway and we're also
19 going to have an issue with, Mr. Mirabile's going to have a
20 problem with erosion on his property that is, you know, it's,
21 it's subsequent, I guess, of the development being there.

22 Now, in my profession and what I do, we do a lot of
23 heavy civil work and we do a lot of sediment and erosion
24 control maintenance on a lot of State Highway projects in
25 Virginia, Maryland, and you run into a lot of problems where

1 all those controls fail all the time. You run into a lot of it
2 failing and you fix it and that's what you do.

3 But as time goes on, a lot of it, like, especially
4 with the State, they just walk away from it when they run into
5 an issue and until you can fit a school bus on the side of 97
6 in a hole that's eroded away, nobody does anything. And that's
7 what happens to a lot of projects like, (inaudible) highway
8 excavation.

9 MR. NELSON: All right. Ms. Jolivet, we're at
10 twenty-six?

11 BOARD: I have twenty-five.

12 MR. NELSON: Twenty-five, I'm sorry. Let me show
13 you, oh, you have a copy there, I think. Let me just make
14 sure. Yeah, it's the same one. Let me show you what's been
15 marked --

16 MR. MERRITT: Okay.

17 MR. NELSON: -- as, for identification, Exhibit 25.
18 Do you recognize that?

19 MR. MERRITT: Yes, I do.

20 MR. NELSON: What is that?

21 MR. MERRITT: That is the line of sight from my
22 property over the top of the proposed facility.

23 MR. NELSON: All right. So, the, the aerial imagery
24 is reasonably accurate, is it not, on how that land looks?

25 MR. MERRITT: Yes, it is, yes.

1 MR. NELSON: And the bottom of the page includes a
2 Google Earth Pro topal elevation line?

3 MR. MERRITT: Yes, that's correct.

4 MR. NELSON: Move into evidence Exhibit 25.

5 CHAIR: Any objection?

6 MR. SCHMIDT: No objection.

7 MR. NELSON: All right. In laymen's terms, Mr.
8 Merritt, could you describe the topography between your
9 property and the south west corner of the subject property? In
10 the, in the vicinity of the culvert that you described, which
11 would be the --

12 MR. MERRITT: Okay. Well, my house is probably at
13 one of the higher points of, I mean, not higher than the Fales,
14 but as the other properties are along the shared right, right
15 of way, I am one of the highest ones.

16 MR. NELSON: Okay.

17 MR. MERRITT: And it looks down at the, at the
18 culvert (inaudible) across the sight of the property.

19 MR. NELSON: Okay. So, the, the intersection of
20 Hanover Pike and the private driveway is much, is lower than
21 your property?

22 MR. MERRITT: Yes, absolutely.

23 MR. NELSON: So, you can look down?

24 MR. MERRITT: Yes, correct.

25 MR. NELSON: All right and what, if anything, is in

1 between your house and the edge of the subject property?
2 (inaudible)?

3 MR. MERRITT: Trees.

4 MR. NELSON: There are trees?

5 MR. MERRITT: There are trees, yes.

6 MR. NELSON: What sort of trees?

7 MR. MERRITT: (inaudible).

8 MR. NELSON: All right. But they're not, are they
9 evergreen trees?

10 MR. MERRITT: No, they're not, deciduous trees, yes.

11 MR. NELSON: All right. In the winter, can you see
12 through those trees?

13 MR. MERRITT: Yes.

14 MR. NELSON: Now, Mr. Merritt, do you support or
15 oppose the application for the solar facility?

16 MR. MERRITT: I oppose the application.

17 MR. NELSON: This is your opportunity to tell the
18 Board why.

19 MR. MERRITT: Well, there's several reasons. I'm,
20 like I guess my main thing is, it's, part of it is, it's not
21 consistent with the original intent of RC, as everyone said.
22 And we bought into that when we were looking for property, when
23 we were looking to make a home. That was a big selling point
24 of the real estate agent was you're going to be in RC, you
25 know, zoning. So, that's the one part of it.

1 And it's basically to an entrance to our neighborhood
2 and we got a tight group of neighbors and it's not just,
3 doesn't, doesn't fit in where it's at.

4 A little history about my property is that, when we
5 bought the property back in 2000 as a site for a new home, we
6 were, after several visits to the site before we started
7 building, there's, there was a dirt bike track behind the
8 house. So, me and my wife, being on a budget to build a home
9 and having a, you know, you know, a short amount to work with,
10 I wasn't going to address a dirt bike track till after the
11 fact, you know, after we started building the house.

12 We ran into the problem with impact review came, and
13 they looked at the property and they found a dirt bike track.
14 So they said, well, your, they stopped their permitting and
15 they said we can't get a permit until we remove the track. So,
16 we had to go through, impact review said that we had to repair
17 and you know, correct the condition and reforest the forest.

18 In all of that, it came to the fact is that on the
19 property, behind here, it's all like a big bowl shape, this
20 whole piece back in here, that goes, the drive that goes back,
21 because Frye Road comes in like this and this is, technically
22 Frye Road is a County road, but I think the County kind of
23 abandoned that, they don't even like do any maintenance or
24 anything, it's all the residents do it now.

25 But, because Frye Road used to come through here and

1 actually used to come straight down the hill and this wasn't,
2 piece wasn't even here. But, anyway, this is all shaped like a
3 bowl and all this water runs down through here. Well, this,
4 corner of this property right here is where all that flow, even
5 the flow along Frye Road actually, it comes from, through the
6 high point at the edge of this field and I think Mr. Elseroad
7 owns this field. From this high point, all this water flows
8 down through here, goes through the woods at the end of Frye
9 Road and it continues when it rains through this property, the
10 subject property, and comes out through here.

11 Now, and, all that, all that water comes through
12 there. Well, they, their issue with correcting it was is
13 because it's direct flow into the Liberty Reservoir so
14 (inaudible) that's like one of the starts of the Liberty
15 Reservoir system and that's why it was important to eliminate
16 this dirt bike track and at my expense, reforest the forest.

17 So, and as for the, (inaudible) the wetlands, I mean,
18 I, I know what I see and, and it's not consistent with what the
19 experts say, to say. I mean, the plant species on that strip
20 right here --

21 MR. SCHMIDT: Objection. If he's going to start
22 talking about what wetlands are, unless he has qualifications--

23 MR. MERRITT: Well, I'm not saying I'm an expert --

24 CHAIR: Wait a minute, one second.

25 MR. SCHMIDT: Unless he's, unless he's qualified to

1 do so and has the expertise to know what a wetland is, as it's
2 defined under the law, I just would object to the witness
3 attempting to offer what seems to be expert testimony beyond
4 the scope of factual testimony.

5 MR. NELSON: Just describe what you saw.

6 MR. MERRITT: Yeah, this is going to be my visual --

7 CHAIR: Okay. One second, one second, one second.

8 Okay. We're going to overrule the objection. Just, we don't
9 know where he's going with it just yet. Go ahead.

10 MR. MERRITT: Okay. Well, just my visual looking at
11 something and it's, you know, you can look at something and we
12 can see, I, they, you can look at this and you can walk through
13 the drive and look at it from one end of the field to the
14 other, where, where the wetland is at the top end, I guess it
15 would be the east side to the west side, that plant material is
16 consistent with, I'm saying, I've been driving there for twenty
17 years, it looks the same. It never changes. And they say,
18 well, the vegetation is different from the wetland.

19 It's all the same and, you know, been living there
20 for twenty years. That drainage field has always been wet and
21 it's always been be (inaudible) by tractors driving when they
22 farm it. It's not, even in the summertime, it will still be
23 wet. It's always wet in there. And that's because all that
24 property behind there actually drains through there. And after
25 it rains, it's still seeking the lowest part of the water table

1 by going through that property. So, that's, you know, that's
2 what I see on that part.

3 And, and the pipe across the road, that fifteen inch
4 pipe, where that is, the road is failing and someone has to fix
5 it. And eventually, it's going to have to be fixed and it'll
6 probably be us residents at our expense at one point in time.

7 CHAIR: You're talking about that cul, the culvert?

8 MR. MERRITT: Not the culvert, there's another pipe
9 further up.

10 CHAIR: Oh.

11 MR. MERRITT: Okay. Their stream head, they, they
12 have a, in their wetland delineation, they have a wet, a
13 wetland that comes through this property and the wetlands,
14 where the wetland starts, that stream head they talk about,
15 which goes from here all the way through the whole property,
16 comes across the road, crosses the road right there and the
17 whole road is actually completely saturated, probably like for
18 forty feet before that pipe, where the, crossing the wetland on
19 the south side of the property.

20 I'd also like to say that the, the developer and the
21 landowner really have not been pretty, too proactive with
22 outreach to the community people about any of this, in the
23 whole process of it all. And in my opinion, I don't think they
24 really care because you're dealing with a developer that's,
25 their, their idea is, they just want to develop the land and

1 they're going to turn it over to someone. We don't know who.
2 Have you, I don't even know if they come up with someone
3 they're going to turn it over to. And who are these people and
4 what are you going to have? Are they from facility company
5 from out of town that has no care about their impact on, on the
6 residents or the, Baltimore County itself? Do they just come
7 in, they're operating a facility, they're turning over dollars
8 and that's what they do and the rest of it just falls apart.

9 I mean, if you go on the Eastern Shore, you can see
10 this, that these facilities that they built over there. They
11 build them up and then they just walk away from it. And then
12 they, getting electric from it but there's zero maintenance.
13 And down there's kind of different because they're not near
14 houses, that's another, you know, that's an issue that you have
15 over there.

16 And that's something that we should be provided with,
17 as who they're going to turn it over to or if not, could it
18 change hands every month? You don't know.

19 Also, we had Wade Katz and Vicki Almon come visit our
20 site, as everyone said. And I just want to reiterate that. I
21 don't have to give you details of it because you already heard
22 that, but they came and saw us and were very interested in what
23 was going on where we were at. And actually took their, Wade
24 Katz came on an evening, in an evening, left his dinner plans
25 to come visit us. So, that was another thing and that was,

1 (inaudible) like everyone said, it was a help to the, to, for
2 the legislation, it helped change that.

3 The other issue is, is that, you know, for a
4 neighborhood effect, we already have a, a, a facility that
5 they're proposing right up the street and I was the only one
6 that went to the, the meeting and I was the, the only person on
7 the opposition. Well, me and George Harmon were the only
8 opposition on the, against that case and we didn't appeal it
9 because I didn't, I don't have the, the time to, to appeal it
10 and, and, in a sense, it's not in a bad place. It's not in a
11 good place, I don't agree with it, but it's in a place where
12 the, from the scenic road of Hanover Pike, it's in the, it's on
13 the negative slope, so when you drive by, you'll never see
14 that, you'll never know it. The person it has the most impact
15 of it is Mr. Elseroad, you can see it from his farm. Because
16 you'll be able to see it from the back, on Route 30.

17 And so, that, I don't think that it should be that
18 they should saturate the area with these things. There's,
19 there's really little or no opposition to this other one. I
20 mean, I spoke with the attorney and Mr. Katroko that they're
21 working, they're going to end up getting their, you know,
22 variance for something.

23 CHAIR: Okay. Well, that's another case though.

24 MR. MERRITT: Well, I'm just saying this is in
25 general, that they're --

1 CHAIR: Understood, under, but, but what Mr. Kotroko
2 said could be considered hearsay, is considered hearsay, so we
3 can't talk about what he said, understood.

4 MR. MERRITT: Right.

5 CHAIR: But, but you're, I think, maybe your point is
6 that that's a different property and so maybe that works. But
7 your view is that the --

8 MR. MERRITT: Right, right, right. And they don't
9 want to hear that it'll saturate us and then further up Route
10 30, across from Camp Frederick, I don't know if it shows it on
11 the map quite yet, but, on that map, but further south, across
12 from Camp Frederick, there's another proposed site that's going
13 to be, start getting proposed also.

14 CHAIR: I see, okay.

15 MR. MERRITT: So, that one is going to come too. So,
16 I mean, how many should be on, you know, should they rely on
17 the same area? Because then it'll be, industrialize the whole
18 area. And the other one is kind of close, to kind of start
19 making that industrialized feeling happen.

20 The other thing I'm concerned about is that, the
21 County like allowing the use of someone's vegetation as a
22 buffer and we just had a tornado up at my house and it tore up
23 a lot of stuff. Now, just per se, the, --

24 MR. SCHMIDT: Objection. The County, the County is
25 not allowing someone else's, I mean, the position of the

1 question --

2 MR. MERRITT: And it --

3 CHAIR: Wait a minute, sir.

4 MR. SCHMIDT: -- is, it's just wrong. It's, the
5 County can't require somebody else's land to be the landscape
6 plan.

7 CHAIR: I didn't hear him say, I didn't, I mean, I
8 didn't hear him say County, I think he said the concern was --

9 BOARD: He said County.

10 MR. SCHMIDT: That the County is allowing --

11 CHAIR: Okay.

12 MR. SCHMIDT: -- a buffer on somebody else's
13 property.

14 CHAIR: Okay. I didn't hear County.

15 MR. MERRITT: (inaudible), I mean, if, if --

16 CHAIR: Okay. All right, one second. We'll, one
17 second, okay. We'll overrule the objection. Go ahead.

18 MR. SCHMIDT: Okay.

19 MR. MERRITT: In all factuality, I mean, this project
20 is relying on the Mirabiles' trees to block the view of the,
21 the, the facility. It doesn't really, it doesn't, it doesn't
22 jive, none of it jives, it doesn't make any sense. And even in
23 that (inaudible) you reference that landscape manual, I'm not
24 expert in that and all that, but I know what I hear and it said
25 that in that, they can use the surrounding area to buffer the

1 view of something, if they put it in the right place, they can
2 hide it with what's already there.

3 Well, okay, well, that, that just doesn't seem right
4 because then, for instance, you have the, the Littles, they're
5 not here. We're a tight community, we like each other and we
6 get along. The Littles with their glare, okay? This tornado
7 came through and tore down trees on my property. Okay? Now,
8 the expert who was up here, I forget his name, forgive me for
9 that, but he said that the, the Littles' trees were blocking
10 their glare, that there was nothing on that plan, on that
11 landscape plan, that was going to block their glare besides the
12 trees on their property. Now, the trees on their property,
13 they'll block the glare. So, tornado comes through and knocks
14 the trees down, well, then they don't have, are they
15 responsible to buffer and create, and get their, I guess, way
16 of life back because they can't go out their backdoor for
17 whatever it was, twelve thousand minutes a year, whatever,
18 something, whatever the (inaudible) number, the number, and
19 they are in that study the, the, the ones, everybody else is
20 subsequent, you know, small amount but they are, they'll suffer
21 and the bearer of that glare that comes off of that facility.

22 And I just don't, for them, and speaking for them, if
23 I can, it's not really, doesn't seem like --

24 MR. SCHMIDT: Objection. Can't speak for them.

25 CHAIR: Well, yeah, you want to just have it from

1 your, just testify from your perspective.

2 MR. MERRITT: Well, my perspective is that that, that
3 that will create a very unfair burden on my neighbors. And
4 also, my other neighbors, the Mirabiles, it would create an
5 unfair condition over them too with, that they have the, the
6 runoff on their property and the erosion and then they have
7 something they have to fix. And we generally, I haven't seen
8 her lately, I think we have someone new but we do have to, the
9 people from the MDE to come out and I've talked to her
10 regularly over time, over the years, about our situation with
11 our creek and our house.

12 (inaudible) talked about like the contamination and
13 stuff and all that, and just like with this hurricane and
14 stuff, I mean, it's on the watershed, that's another, that's,
15 that's another issue that no one takes into consideration is
16 the watershed and that is a, these are feeders into the
17 reservoir system for the, for the County and I don't know about
18 what they use for material and all that, but common sense tells
19 you if you can't eat it, you probably shouldn't be putting it
20 in your drinking water or anywhere near it.

21 So, that's about it for what I have. I'd like to
22 conclude though to say that, you know, when we get through all
23 this information, what all these experts say and all that, and
24 all the exchanges that go back and forth, we got to determine
25 whether or not this application for the property in question

1 should be an exception to the law, because the law, I guess
2 currently as it is, grants them to do what they want to do as
3 long as they meet all the requirements.

4 But common tells us, sense, sense tells us it
5 shouldn't be. I guess the, the first thing is, it's an
6 interest to a group of homes, it's not like a farm field, it's
7 not like off to the side, it's not impacting like one house,
8 it's, it's impacting a whole bunch of people, as everyone has
9 already said.

10 The density of the houses is, is another issue that
11 will affect the real property values of the house quickly. I
12 mean, I'm not a landscape expert and I know Larry is over there
13 thinking, well, he's not an expert, but I am smart enough to
14 know, and most everyone else is, if, if you're going to look
15 for a home and you go look for a house and, you're not going to
16 be looking for one that says oh, next to a solar facility, you
17 know? That's not it. And what, what will happen rather is, is
18 that, you know, it's not really going to affect the value of
19 your home because the value of your home is still what it's
20 going to be valued at in real value. What's going to affect it
21 is the marketability of it and then over time, of course, you
22 have to take less to sell it and that's, you know, where you
23 end up with and that's at issue.

24 The other thing is (inaudible) to the land doesn't
25 allow it to be screened effectively by the developer's

1 landscape plan on its own and as I said, you know, it relies on
2 the natural vegetation of someone else's property to hide it.
3 You know, they said it about the Littles, they said it about
4 the scenic view. The scenic view said, well, the trees that
5 are along all these properties is going to screen that. And
6 Mr. Schmidt got up there and said well, you know, he started
7 talking about buffers and all this stuff. With a buffer on
8 your property, you can't cut the trees down, that means that
9 they're relying on that, the Mirabiles' trees, to buffer their
10 facility. Which, okay, a tornado comes through, guess what?
11 Everybody sees it all or whatever happens, and we've been
12 having these really, you know, catastrophic weather, so they,
13 and it's quite possible. You know, and once again, the common
14 sense tells us that it's a poor site choice for the developer
15 and the County as a whole.

16 I think, I mean, if, if they lowered the panels, you,
17 you might not see it but it's still, it's still, you'd have to
18 shrink it down the hill, you'd have to lower the, you know,
19 the, the height, and that might be an option, but I, I just
20 don't see it feasible to do that.

21 The other issue is, it's on a shared road. And the
22 common sense and all that tells us is that it should be an
23 exception because the complicity of the usage. I mean, you
24 have, like subject property does not have its own access by
25 public right and public right of way. So, who's responsible?

1 The developer, the operator, the landowner? I mean, the
2 landowner, I've lived there for twenty years, when it snows, he
3 drives a tractor through there with all kinds of stuff to push
4 snow and everything else, he just drives, he packs the snow
5 down and our driveway is gravel so we can't plow it because
6 it's in a conservation easement where we have to have a, we
7 can't pave it so it has to be gravel. You can't plow it.
8 Sandy's, Brown's husband tries to plow it and he just tears his
9 truck up.

10 BOARD: So, Not Frye Road is gravel?

11 MR. MERRITT: Well, the portion through my property
12 is. My, there's, see, there's, this is the, the, the private
13 right of way and then my property is this corner and this road
14 that cuts through the, comes up through here that connects the
15 private driveway to Frye Road is not paved and it, it cannot be
16 paved under restrictions from the, because it's in a, the whole
17 corner, actually, of my property, all this whole corner in here
18 is all in a forest conservation easement and it cannot be paved
19 under the regulations of the, I guess, the easement.

20 So, and it's just, it may cause, to lead to us to
21 have more financial strain for us if they put this site in and
22 we have to maintain the road and what's to say to keep, you
23 know, they have, we get people that cut through all the time,
24 so then we'll have to bear the burden of, on both ends of the
25 road, of the, of the facility operator in the end and we have

1 the construction, you have to deal with this construction,
2 which I work construction. They tear everything up, it doesn't
3 matter. They'll tear, they'll tear that whole road up for, for
4 two hundred feet coming in there like nothing. Like nothing.
5 It'll be a mess. And us, as the residents, we'll have to deal
6 with that mess. And there's no, there's no, nothing, there's
7 no plan for restoration of the road, is there? I don't see
8 any. I never heard anything about this. I never heard
9 anything about this road one time that, except for how it's
10 going to cause a burden to me and how I'm going to have an
11 issue with it and how I'm going to have people driving down my
12 road all the time and coming, you know, and, and, and it's not
13 really who's coming and going, and even if they work for these
14 companies, it's still who, who are you dealing with? And so,
15 that's it and that's, you know, I have one more thing.

16 Oh, and then my last thing I'd like to say is it's on
17 prime and productive soil in Baltimore County. Thank you very
18 much.

19 CHAIR: Okay. Cross?

20 MR. SCHMIDT: Just a couple questions. Sir, just so
21 I'm clear, I'm referring to Protestant's exhibit number ten,
22 you, you live where I'm indicating which, for the record, one
23 would, if it, one were on Hanover Pike, they would go all the
24 way back Not Frye Road, sort of a straight shot, and then they
25 would turn to the left or north and come up to your house, is

1 that correct?

2 MR. MERRITT: Correct.

3 MR. SCHMIDT: Okay and so, this Protestant's exhibit
4 number ten, indicates to the west of the, I'm sorry, to the
5 east of the subject property, there's, there's two, two houses
6 and then your house, correct?

7 MR. MERRITT: Yes.

8 MR. SCHMIDT: Do you know who lives in the first
9 house?

10 MR. MERRITT: The Littles.

11 MR. SCHMIDT: The Littles? Are they here today?

12 MR. MERRITT: No, they're not, no, they, they, they,
13 they actually, they can't afford to miss work to come here,
14 (inaudible) do that today.

15 MR. SCHMIDT: Okay. But they're, they're not here.
16 Have they, have they been here for any of the hearings?

17 MR. MERRITT: Yes, they have, yes.

18 MR. SCHMIDT: They have. Have they testified? Don't
19 think so?

20 MR. MERRITT: Pat, I think Pat has, yes.

21 MR. SCHMIDT: Okay. Who lives in the second house?

22 MR. MERRITT: Gary.

23 MR. SCHMIDT: And what's his last name?

24 MR. MERRITT: I'm not sure.

25 MR. SCHMIDT: Okay. Has he been to any of the

1 hearings?

2 MR. MERRITT: No.

3 MR. SCHMIDT: Okay. Do you have any idea, you
4 indicated this forested area, which is between your property
5 and the subject property, is in forest conservation?

6 MR. MERRITT: Yes.

7 MR. SCHMIDT: Okay. So, that would mean that area
8 would be perpetually protected, you can't clear it, is that
9 what that means?

10 MR. MERRITT: No, I think the easement ends in twenty
11 something, 2050, something like that.

12 MR. SCHMIDT: Okay.

13 MR. MERRITT: It only goes to a certain time frame,
14 then it's over.

15 MR. SCHMIDT: Okay. So, thirty-two years from now?

16 MR. MERRITT: Something like that, yes.

17 MR. SCHMIDT: Okay. Do you know how long the lease
18 is for this facility to be here?

19 MR. MERRITT: About twenty-five years, is that
20 correct?

21 MR. SCHMIDT: If, if you know. Okay and from your
22 property, can, can you see Hanover, can you see the
23 intersection of Hanover and Frye?

24 MR. MERRITT: Depends on what time of year it is.

25 MR. SCHMIDT: Okay. If, if I went out there today,

1 would I be able to see --

2 MR. MERRITT: No.

3 MR. SCHMIDT: Okay. Would I, if I went out there
4 today, would I be able to see any of the subject property from
5 your property?

6 MR. MERRITT: No.

7 MR. SCHMIDT: Okay. Okay. All right. Thank you,
8 sir. I don't have any other questions. Oh, one thing. You
9 understand that, that this is not a manned facility? When,
10 when I say that, there's not going to be anybody coming out
11 here every day on this road? The, the solar facility is not a
12 manned facility, in other words, it's not a place of employment
13 --

14 MR. MERRITT: So, so, how often do they come out?
15 How often do they come out, once a week?

16 MR. SCHMIDT: I think the testimony was they come out
17 to do maintenance three, four times a year, maybe.

18 MR. MERRITT: So, they cut the grass four times a
19 year?

20 MR. SCHMIDT: Well, they come out to cut the grass
21 during the summertime as it's needed, based on the species of
22 the grass, but there's nobody that works here on any kind of
23 regular basis, on a daily basis?

24 MR. MERRITT: So, nobody comes out and, nobody comes
25 out and like does like a visual inspection of the site on a

1 regular basis?

2 MR. SCHMIDT: Okay. Thank you, sir. I don't have
3 any other questions. I can't answer, I can't answer questions.

4 CHAIR: All right.

5 MR. MERRITT: Okay. Well, I just wanted to know
6 that, that's all.

7 MR. SCHMIDT: Okay.

8 MR. MERRITT: There's no visual inspection?

9 MR. SCHMIDT: Thank you, sir.

10 CHAIR: You're not allowed to ask questions, you have
11 to answer them. (inaudible).

12 MR. MERRITT: It doesn't seem that, it doesn't seem
13 that, you know, --

14 CHAIR: I understand.

15 MR. SCHMIDT: Thank you, sir.

16 CHAIR: Unless Mr. Nelson wants to ask a question?

17 MR. NELSON: No.

18 CHAIR: No?

19 MR. NELSON: (inaudible).

20 CHAIR: Okay, perfect. Okay. Thank you.

21 MR. MERRITT: Thank you.

22 CHAIR: Thank you, sir. So, we have one more
23 witness? Does anyone want a break real quick?

24 MR. NELSON: May I just chat with Ms. Brown for
25 thirty seconds and just put her on?

1 CHAIR: Sure, sure.

2 MR. NELSON: We'll step over here.

3 CHAIR: All right. Let's take a five minute break.

4 (RECORDING PAUSED - 12:45:40 PM)

5 (ON RECORD - 12:56:39 PM)

6 MR. SCHMIDT: Is this the last one?

7 MR. NELSON: This is the last witness.

8 MR. SCHMIDT: Okay.

9 CHAIR: Okay. What, say it one more time. Who are
10 you bringing as a witness?

11 MR. NELSON: All right. We now call Sandra Brown.

12 CHAIR: Okay.

13 MR. NELSON: I believe Ms. Brown will be our last
14 witness in this proceeding.

15 CHAIR: All right.

16 BOARD: If you'd raise your right hand. Do you swear
17 and affirm under the penalties of perjury, that the testimony
18 you are about to give is true and correct to the best of your
19 knowledge and belief?

20 MS. BROWN: I do.

21 BOARD: Please state your name, your business, your
22 address for the record, and your, spell your last name.

23 MS. BROWN: Sandra Brown, 5135, oh, spell my last
24 name, Brown, B-R-O-W-N, 5135 Frye Road, F-R-Y-E, Upperco,
25 Maryland 21155. And I'm a hairstylist and manager of Fine Line

1 Hair Design in Cockeysville.

2 BOARD: You can just sit down and --

3 MS. BROWN: Okay.

4 BOARD: -- fix the, the microphone there.

5 MR. SCHMIDT: Ms. Brown, I think my wife has paid you
6 a lot of money over the years.

7 MS. BROWN: Yes, his wife attends, comes, is a client
8 of the salon. Absolutely.

9 MR. SCHMIDT: I've paid a lot of money to you.

10 MS. BROWN: Trust me, we won't, we won't harm her
11 after this (inaudible).

12 MR. SCHMIDT: I have no questions of this witness.

13 CHAIR: That's right. That's the way things roll.

14 MR. NELSON: Oh, my.

15 MR. SCHMIDT: You did say you were going to trick me
16 with (inaudible).

17 MR. NELSON: Ms. Brown, the Board has heard a lot
18 about this case, of course.

19 MS. BROWN: Yes.

20 MR. NELSON: So, we don't need to reinvent the wheel,
21 but first, could you just take a moment and tell us where your
22 residence is?

23 MS. BROWN: Yes.

24 MR. NELSON: And you can feel free to use the aerial
25 photographs.

1 MS. BROWN: Okay. So, yes, I, I live back on, well,
2 our address is the original Frye Road, which comes in here. My
3 mailbox is at the end of the dead end, Frye Road. But my home
4 is actually through, past Paul Merritt's home, back in behind
5 the Mirabile property, beside Jim and Julie Wolf, we are on the
6 left here.

7 MR. SCHMIDT: So, you're the other house when Mr.
8 Wolf said there were two houses out there?

9 MS. BROWN: Correct.

10 MR. NELSON: All right and with whom do you reside
11 there?

12 MS. BROWN: My husband, Curtis Brown.

13 MR. NELSON: All right and how long have you been
14 there?

15 MS. BROWN: Twenty years.

16 MR. NELSON: All right. Now, are you involved in the
17 community association?

18 MS. BROWN: I am, I'm on the board of the community
19 association, I'm not speaking on behalf of them today.

20 MR. NELSON: But have you been involved in community
21 issues over the years?

22 MS. BROWN: Oh, yeah, yeah.

23 MR. NELSON: All right. Just give us an overview of
24 your involvement, what your perspective has been, what are your
25 goals have been, what have you tried to achieve in your role

1 there as a member of that community?

2 MS. BROWN: Okay. I'm going to backtrack just a
3 little bit. Previous to where we live now, I lived in
4 Timonium, not far from the fair grounds and we lived in a quiet
5 little neighborhood but not far from York Road. So, I ended up
6 involved in a zoning issue there, met Mr. Schmidt then, and won
7 by the way, with a tiny little community then. But I regress.
8 But that's what got me involved in knowing that there were
9 community associations because our neighborhood is unique in a
10 sense that it doesn't have a community association that allows
11 you to, tells you what color shutters you put on your home, but
12 they still overlook, oversee what goes on in the greater
13 community area.

14 So, anyway, so when I moved out to where I am, I went
15 right next door and I investigated the area completely, to find
16 out what would be allowed in RC-2 land, that was all new to
17 being in RC-2 land, so did a lot of homework. And found out
18 that it was very good, that, found out the master plan for the
19 Hanover Pike corridor and that's when I came across the Hanover
20 Pike Community Association.

21 At the time, Mr. Elseroad was, I believe, vice
22 president and, of the community association, had worked with
23 them over the years and then eventually became on the board of
24 the community association and we worked hand in hand for the
25 last twenty years protecting the farmland out there. Mr.

1 Elseroad owns hundreds of acres out there in preservation. So
2 I was truly shocked when I found out that he was the one that
3 was proposing this in our neighborhood.

4 I, I really didn't believe it at first until I
5 reviewed, I mean, it, I know it's allowed with a special
6 exception in RC-2 land, but I think it was intended originally,
7 and I'm not saying, this is my opinion on why it was intended,
8 it was for farmers to put solar panels on their farms to help
9 out the farmer because the farmers do struggle in this economy.
10 But when it gets away from the farm and it's not being used, at
11 that point, it was, a certain percentage had to be used on the
12 farm for, you know, their production of their fields.

13 Now, this is just a total separate, what I consider,
14 utility, because it is not used for farmland, this is going to
15 be sold as a utility. So, anyways, that's why I got started
16 with it and I've been working with hand in hand for years.

17 We fought things up and down that corridor side by
18 side for years. Even so much as a little beauty salon, they
19 wouldn't let the house on Route 30 because, you know, and that
20 just, that's, so it really amazes me that this was even
21 considered.

22 But, so, yes, that's why I stand firm. I've gone to
23 a lot of these hearings. I can't afford to take the day off
24 work but I do because it's important. It's important for me to
25 stand up with my neighbors. And one point was made that you

1 can't see it from my home. You can see it from my home when
2 there's no trees, leaves on the trees. It's a little bit more
3 screened view because of the actual, you know, trees
4 themselves. But it is visible. So I am effected.

5 And, I'm sorry, I guess I shouldn't, I should for
6 questions first and then I'll make my statement.

7 MR. NELSON: All right. So, Ms. Brown, this is your
8 opportunity to tell the Board whether you support or oppose
9 this application and your reasons for your position.

10 MS. BROWN: I do not support this application. One
11 main reason, reasons, I mean, I've supported, we've considered
12 putting solar on our home, had a preposition put out there and
13 we were on the perfect location, we have no trees close to the
14 house, it would have been ideal. Still haven't jumped on that,
15 but we have considered it. So, we're not against solar.

16 Went to the meeting for the other facility on Route
17 30, met with the other solar company with, Mr. Fales and I did,
18 and listened to their proposal. We did not appeal it after
19 the, I wasn't able to attend that first hearing, but we did not
20 appeal it, mainly, because it wasn't affecting any residents
21 close by, so we didn't, and the community just doesn't have the
22 funds to keep fighting all of these, so we have to pick our
23 battles.

24 So, I mean, in that one, even though we may not like
25 what's going on, it's still something that we aren't as

1 affected by and it isn't affecting residents.

2 What makes this property unique and what I really
3 think you need to consider is this is a community. We are very
4 close. This isn't the first time we have met coming here.
5 When I went to the zoning hearing in Timonium, I had to meet my
6 neighbors before we went. This neighborhood has plenty of
7 activities together and such that we are very close knit
8 community.

9 There's families, as you've seen all this week, young
10 children and it really, truly you're affecting human beings
11 here. We have purchased for the beauty of this land. These
12 pictures don't even give a glimmer of how beautiful it is out
13 there. I did bring a picture from Pat Fales' living room.
14 This was taken when we had that meeting with Vicki Almon and I
15 believe, as Tim Fale does, that this is part of the reason for
16 her changing, I'm sorry, I don't have copies because I didn't,
17 I wasn't in possession of that till this morning again. I had
18 given it over.

19 BOARD: This is for us to, for us?

20 MS. BROWN: Yes.

21 MR. NELSON: Can we mark that then? Let's mark that
22 as --

23 BOARD: Twenty-six. I'm sorry, and tell me where the
24 picture is --

25 MS. BROWN: That is in Mr. Fales, Pat Fales' home and

1 it is up sitting overlooking, this is his home here and even
2 though there are a few trees here, as you can see, they're
3 deciduous trees overlooking this whole valley or field. I
4 mean, because it's definitely, you're looking down on it. And
5 it, that doesn't even do it justice. That was actually before
6 Mr. Fales purchased the home, so another woman was owning the
7 home at the time.

8 BOARD: So, it's overlooking the subject property?

9 MS. BROWN: Correct, it's right here on the corner.

10 BOARD: Thank you.

11 MS. BROWN: Um hm. And I had a picture of Mr. Fales'
12 home view too, because it's unobstructed completely and it sits
13 up high. Unfortunately, we can't find that photo at the time.
14 But another beautiful view that's just, and all they're going
15 to do is put up a wall of trees, that's their solution.

16 MR. NELSON: What number is that, please, I'm sorry?

17 BOARD: Twenty-six.

18 MR. SCHMIDT: Can I just see it?

19 BOARD: Sure.

20 MS. BROWN: And I apologize, I didn't, I would have
21 made copies but I thought Mr. Wolf had it and he didn't, he had
22 turned it over to Mr. Nelson. So, I wasn't able to make copies
23 for you. But I do have copies of the bill and I know you have
24 access to this, but I, since I made them, I'm going to give
25 them out.

1 CHAIR: Wait a minute, one second, let's --

2 MS. BROWN: Oh, sorry.

3 CHAIR: Protestant's twenty-six, any objection?

4 MR. SCHMIDT: I, I'm just, okay, so this is taken
5 from Mr. Fales' house?

6 MS. BROWN: Correct.

7 MR. SCHMIDT: And, and all the trees, well, let me,
8 just so I understand, what, --

9 CHAIR: Are you voir diring on the exhibit? I mean,
10 are we going, you going to ask, --

11 MR. SCHMIDT: Okay.

12 CHAIR: I mean, either --

13 MR. SCHMIDT: Did you take this?

14 MS. BROWN: No, but one of the people in the meeting
15 did. I didn't take it personally.

16 MR. SCHMIDT: Okay and you were there when this was
17 taken?

18 MS. BROWN: I was, I was there when that was taken.

19 MR. SCHMIDT: Okay.

20 CHAIR: No objection?

21 MR. SCHMIDT: I'm just trying to figure out what it
22 is.

23 MS. BROWN: And that was, just to give you a
24 perspective of --

25 CHAIR: Understood.

1 MS. BROWN: -- why Mr., the other Mr., Tim Fales,
2 felt that, why Vicki Almon was influenced by that because, like
3 I said, it doesn't even do it justice how beautiful the view
4 is. But I am going to give you copies of the bill, which you
5 all have, and you probably even have them with you. Give you
6 two. But this was, this bill came about pretty quickly
7 afterwards, after this meeting. She was kind enough to come
8 visit. Lee Koch had been out to the property many times but
9 we, we asked her to come and she obliged us.

10 MR. SCHMIDT: Again, I'm, I don't, I don't have an
11 objection to the bill. I do have any objection to the
12 testimony of the witness trying to, obviously as --

13 MS. BROWN: Oh, I don't know what, I'm not saying
14 what she said or didn't say or thought.

15 MR. SCHMIDT: And ma'am, you can't render an opinion
16 on what she said, thought --

17 MS. BROWN: That's fine.

18 MR. SCHMIDT: -- or the intent of the County Council.

19 MS. BROWN: That's fine.

20 MR. SCHMIDT: The law says what the law says.

21 MS. BROWN: That is fine.

22 MR. SCHMIDT: And so we can leave it at that.

23 CHAIR: Okay. No objection to Protestant's twenty-
24 seven.

25 MR. SCHMIDT: No, no objection.

1 CHAIR: All right.

2 MS. BROWN: So, the only thing I want to point out is
3 the change, after seeing this, because the topography of the
4 land, I believe this is why this was added in here. This is
5 my, my choice --

6 CHAIR: (inaudible) Mr. Schmidt just objected, he
7 said --

8 MR. SCHMIDT: Object.

9 MS. BROWN: Okay.

10 CHAIR: -- and the reason is, he doesn't want you to
11 infer the County Council's intent.

12 MS. BROWN: Okay.

13 MR. SCHMIDT: Right.

14 CHAIR: But we understand, because that was the
15 chronology. I think another gentleman had explained the same
16 thing.

17 MS. BROWN: Okay.

18 CHAIR: Beside, but beside the fact that, you know,
19 now this bill is codified in, you know, in, in the law, so we
20 actually have a statute, which is 4-F and it's all in here.

21 MS. BROWN: Yes, it is.

22 CHAIR: So, this, you know, was before the law and,
23 and it just repeats what we already have anyway.

24 MS. BROWN: Okay.

25 CHAIR: So, we know.

1 MS. BROWN: Just making the point that the reason,
2 that the reason I believe it needs to be, that, that portion of
3 the, the bill has to be considered is because of the topography
4 and it makes it very unique. There's, it really truly is, as
5 Ms. Mirabile says, it, like a fishbowl. It is hard to tell
6 from any of these pictures, but it literally goes down, there's
7 no way to adequately screen it from any of the homes easily or,
8 and I'm not considering completely, I'm just saying even
9 partially from some of them. So, and it makes it very hard for
10 the neighbors to enjoy their homes when they've got a facility
11 like this in the middle of their neighborhood.

12 There's plenty of other applications on the line. I
13 know we are having ten coming up right now, but there's more in
14 line that could be considered and I just think this is one,
15 it's very unique and should be seriously considered one of the
16 ones that does not go through. And I have no problem with
17 other solar coming in, it's just, as long as it doesn't affect
18 the residents quite the way this one has the impact to do.

19 Let's see if I'm getting sidetracked here. I, they
20 haven't had any, I really think this is one of those things
21 that, should be proposed that they have a finished landscape
22 plan approved prior to your decision because I just don't
23 think, that whole thing surrounds on what your decision,
24 because if they're, if they're made to move this boundary or
25 that boundary or to do like tiered buffering, that was

1 suggested in the ALJ hearing, the tiered buffering would have
2 to be, widen the panels so there's be room for this tiered
3 buffering. So, all of that has to be taken into consideration
4 before any, I believe that any decision should be made. So,
5 that's my recommendation.

6 Let's see if there's anything. And if, I definitely
7 think it needs to, they need to bring the panels lower on the
8 hill, the hill because they're so high that there's no way to
9 adequately screen them.

10 We talked about glare. (inaudible) make it real
11 because this is all about the community and that's what my
12 point is. This is not just some piece of land out somewhere.
13 This is people's homes that we're talking about here. We
14 purchased homes, we want to live in and enjoy. Mr., Mrs. Wolf
15 and I walk these roads every morning. We live here, we walk up
16 around Frye Road, down through, we go past Mr. Fales' home and
17 Mr. Fale too, and we come down 30 and we come back up this hill
18 every, not, at least three or four days a week. We try to shoo
19 for five. So, we're coming up here. We're going to be staring
20 at that glare every morning. How much glare do I have to put
21 up with as I'm coming up the hill? I have to, that's quite a
22 hill anyways, by the way, and I don't want to skip it, but
23 there's a lot to be involved. I mean, I've never had to wear
24 sunglasses coming up that hill but somehow I feel like I'm
25 going to be forced to.

1 So, I really just think it is just some, these are
2 people's lives we're, it makes it different because it is the
3 entrance to a community of families that, and young children.
4 I don't even know what's going to happen with the young
5 children as they grow. I mean, as you can tell by Court the
6 last week, these children are very well behaved but, you know,
7 when they're out playing, who knows? So, I don't want them in
8 any danger and that's, and one, that was a good point too.

9 We don't know the true dangers of this. The reason,
10 we talked about the landscape plan that, before. The reason
11 there's not a lot in those landscaping plans, the landscaper
12 didn't know, is this is all new ground. This is all precedent
13 setting right now. There, there's new laws that are being
14 passed and stuff. The passed bills, all the, the legislation
15 was not designed for solar. So, now this is all new ground.
16 So, I really feel like you guys have a chance to, to make a
17 difference in setting some precedent. And putting a stop to
18 this particular project that will affect so many families. And
19 move it on to another, there's going to be another one come
20 that will be able to pass and we'll support it.

21 I mean, I'll still work with the Board, the community
22 association. I'll still support some of the ones, but this one
23 we have to stand our ground on, I feel. And let me just make
24 sure there's nothing that I overlooked. I just think there's
25 just too many unknown variables with this because it is so new.

1 And I know the solar has just not, it's, it just has come along
2 so new and it's, I just think there's so much to be considered.

3 And I really want to reiterate that that landscape
4 plan, I believe, should be approved before, so we know what
5 we're really dealing with before you can possibly make a
6 decision on this. Okay, thank you for your time.

7 CHAIR: Thank you very much. Cross?

8 MR. SCHMIDT: Ms. Brown, again, just to reiterate,
9 you are not here on behalf of the Hanover Road Community
10 Association?

11 MS. BROWN: I am not.

12 MR. SCHMIDT: Okay and no one from that association
13 has testified at this hearing?

14 MS. BROWN: From the association? Not, not, not on
15 behalf of, no, not on behalf --

16 MR. SCHMIDT: On behalf of the association?

17 MS. BROWN: -- of it.

18 MR. SCHMIDT: Okay. Okay. Were you here for the
19 testimony of Mr. Barrett, the, the glare --

20 MS. BROWN: I was.

21 MR. SCHMIDT: Okay and you think you're going to have
22 to wear sunglasses when you take your walk because of the glare
23 from this facility?

24 MS. BROWN: Well, we're going to be about south,
25 southern side, I mean, the south --

1 MR. SCHMIDT: Didn't you hear that he said because of
2 the way the sun rises, that there will not be reflection to the
3 south? That it's not simply a question of your line of sight?

4 MS. BROWN: But we can certainly (inaudible)
5 property. We literally circle that, that little road that goes
6 around, I'm going on all four sides of it when we're walking,
7 so if I'm not getting glare here, I'm probably getting glare
8 here or here.

9 MR. SCHMIDT: Okay.

10 MS. BROWN: It just depends on, but even so, it's, we
11 also travel that road in cars, vehicles too, multiple times a
12 day.

13 MR. SCHMIDT: Okay.

14 MS. BROWN: So, --

15 MR. SCHMIDT: Thank you, ma'am. I don't have any
16 other questions.

17 MS. BROWN: Okay.

18 CHAIR: Anything further?

19 MR. NELSON: I have nothing further.

20 CHAIR: All right. Thank you, ma'am.

21 MS. BROWN: Okay, thank you.

22 CHAIR: Okay. I think --

23 MR. NELSON: I think I'm prepared to rest, could I
24 just speak to my client for thirty seconds --

25 CHAIR: Sure.

1 MR. NELSON: -- to make sure that I have everything?

2 (RECORDING PAUSED - 01:15:00 PM)

3 (ON RECORD - 01:16:38 PM)

4 MR. NELSON: In a moment I'm going to rest, but could
5 I just simply confirm that each exhibit I marked with a number
6 for identification has been moved and admitted into evidence?
7 I think it has.

8 CHAIR: Other than what we said was i.d. only.

9 MR. NELSON: Only, right.

10 CHAIR: And then the rest of them have been admitted
11 and there was no objection.

12 MR. NELSON: All right. So, the Protestants at this
13 point rest their case. We've completed our case.

14 CHAIR: All right.

15 MR. NELSON: Thank you for giving us the opportunity
16 to present our case.

17 CHAIR: Any, is there going to be any rebuttal?

18 MR. SCHMIDT: Yeah, I --

19 BOARD: You want to make sure your numbers of
20 exhibits match first?

21 MR. NELSON: I will.

22 BOARD: Do, do you want to make sure? Okay.

23 CHAIR: There was rebuttal?

24 MR. SCHMIDT: I have, I have one witness who is going
25 to be brief.

1 CHAIR: Oh.

2 MR. SCHMIDT: Fairly brief.

3 CHAIR: Oh, I thought we were, I thought we were all
4 finished, okay.

5 MR. SCHMIDT: Fairly brief. I'd call Adria Webber.

6 MR. NELSON: Could we have a proffer first, just to
7 get a sense of whether, I'm (inaudible) evidence is proper
8 rebuttal.

9 MR. SCHMIDT: Oh, you can object to anything you
10 think isn't proper rebuttal.

11 CHAIR: Right, and the way we do, that's typically
12 the way we do it. I mean, we just have her testify and then
13 object as, as we go along. I, yeah, so.

14 MR. NELSON: I'm not entitled to have a sense of what
15 the outline is? That's been my experience.

16 CHAIR: No, we never, I've never, never had that.

17 MR. NELSON: Well, I'm making that request.

18 CHAIR: Okay. Understand. Well, we're just going to
19 have her testify. It's just --

20 MR. SCHMIDT: Ms. Weber, go on up.

21 BOARD: Raise your right hand. Do you swear and
22 affirm under the penalties of perjury, that they testimony
23 you're about to give is true and correct to the best of your
24 knowledge and belief?

25 MS. WEBER: I do.

1 BOARD: Speak up a little. Please state your name,
2 your business, your address for the record and spell your last
3 name.

4 MS. WEBER: My name is Adria Weber, spelled W-E-B-E-
5 R, I am a senior engineer with SGC Power.

6 BOARD: How do you spell your first name?

7 MS. WEBER: A-D-R-I-A.

8 BOARD: Thank you.

9 MR. SCHMIDT: Okay.

10 BOARD: And if you can sit down and just adjust the
11 microphone there.

12 MS. WEBER: Sure.

13 MR. SCHMIDT: Ms. Weber, you're employed by SGC
14 Power, correct?

15 MS. WEBER: I am, yes.

16 MR. SCHMIDT: And you're not a civil engineer?

17 MS. WEBER: No, I am not.

18 MR. SCHMIDT: And you're not a landscape architect?

19 MS. WEBER: No, sir.

20 MR. SCHMIDT: Okay. You said you're a senior
21 engineer, what, what kind of engineer are you?

22 MS. WEBER: I would say that I'm a solar engineer.

23 MR. SCHMIDT: Okay and what, just briefly for the
24 Board, what's a solar engineer?

25 MS. WEBER: Sure. So, on this, and I've been

1 assigned to this project, so I have been the one most
2 intimately connected with determining, we do the layout of the
3 system, we help decide what type of racking it's going to use,
4 we do all the energy modeling of like how much energy
5 production will these modules get based on site conditions,
6 help with a selection of materials and equipment that's going
7 to be used on the project and, obviously, oversee all of the
8 electrical engineering and connection that goes with it.

9 MR. SCHMIDT: Okay. Do, do you have, how long have
10 you been doing this for SGC?

11 MS. WEBER: For SGC, I started just under a year ago,
12 with --

13 MR. SCHMIDT: How about, have you had other
14 experience in the solar energy?

15 MS. WEBER: Yes, I have over four years' experience
16 in the solar industry.

17 MR. SCHMIDT: Okay. Do you have any kind of training
18 or certification or anything like that?

19 MS. WEBER: Absolutely. So, I have the highest
20 certification that they have right now for solar, it's by the
21 North American Board of Certified Energy Professionals and it's
22 called a solar photovoltaic installation professional.

23 CHAIR: It's called a what?

24 MS. WEBER: Photovoltaic, which is just PV, just for
25 this type of solar modules installation professional.

1 MR. SCHMIDT: Okay. Okay. I would offer the witness
2 as a photovoltaic engineer and I'll be fair to Mr. Nelson.
3 She, there have been some questions about the panels, how
4 they're maintained and some other issues about them that
5 witnesses have talked about and she's just going to address
6 some of those concerns.

7 CHAIR: I mean, is she actually rendering an opinion
8 on anything or just discussing technology?

9 MR. SCHMIDT: She, --

10 CHAIR: I'm not sure she has to be an expert --

11 MR. SCHMIDT: Well, she's going to render her own
12 opinion that when there's shade on the panels, they don't work
13 that well because they're designed to catch the sun, so I guess
14 that's an opinion.

15 CHAIR: Okay.

16 MR. SCHMIDT: But it would be limited to within her
17 expertise, just regarding photovoltaic.

18 CHAIR: Okay. Have you testified as an expert
19 previously?

20 MS. WEBER: No.

21 CHAIR: Okay. In any case, in any tribunal, state,
22 local, county?

23 MS. WEBER: No.

24 CHAIR: Okay. Any voir dire?

25 MR. NELSON: Maybe not. If, if the, we, we have no

1 objection to rebuttal testimony (inaudible) these addresses Ms.
2 Fallon's testimony, seems to me that's the nature of rebuttal.
3 If that's the scope of it, I --

4 MR. SCHMIDT: There's going to be a little bit more
5 but why don't, I mean, if we get into a problem, well, anyway,
6 I'll yield to the chair.

7 MR. NELSON: (inaudible).

8 CHAIR: So, so there's no voir dire?

9 MR. NELSON: Because I'm not sure where we're going.
10 If it's maintenance, we're not going to voir dire because it, I
11 think it's proper rebuttal and she's going to talk about, well,
12 we're going to maintain it.

13 CHAIR: Well, he's offered her as an expert in
14 photovoltaic installation professional engineering.

15 MS. WEBER: Yes.

16 CHAIR: Is that right? Did I say that right?

17 MS. WEBER: Solar, solar, solar engineer.

18 MS. WEBER: Solar engineer, you can make it shorter
19 that way.

20 CHAIR: As a solar engineer. So, if you don't want
21 voir dire --

22 MR. NELSON: But can we have a proffer as to what
23 she's going to say on that?

24 MR. SCHMIDT: She's going to talk about the
25 maintenance of the facility. She's going to talk about the

1 construction of the panel, there was some, there were some
2 concerns about chemicals and danger and things like that.
3 She's going to talk about just how the layout was determined,
4 that she mentioned she does that and how that, the
5 considerations that go into how the site is laid out and I
6 think the composition and the way the panels work to the extent
7 of glare and reflection. Just, but about, she, she assisted
8 with the glare analysis as well. Her name is on that.

9 MR. NELSON: All right. So, no objection to the
10 testimony about the maintenance. I think that's legitimate
11 rebuttal. I do object to the glare, that's not rebuttal. They
12 already had a witness on it. I do object to her testimony
13 about the layout. They've had witnesses on that. That's not
14 proper rebuttal, they're not rebutting new matter that we
15 presented in the body of our defense. I think the maintenance
16 piece and the, and, and the contents of the panels is, is, I
17 don't object to because Ms. Fallon hammered those points home,
18 so I don't object to that but in terms of the layout and the
19 glare, I do object on the grounds it's not legitimate and
20 proper rebuttal. Rebuttal is a response to new matter that was
21 unanticipated, new matter that we presented in our defense.
22 Ms. Fallon's report was new, I hadn't seen it until this
23 morning. But, but the glare is not new, the layout is not new.
24 The maintenance and the contents of the material, Ms. Fallon
25 talked about that so I don't object to those.

1 CHAIR: Okay.

2 MR. SCHMIDT: I don't agree with Mr., Mr. Nelson at
3 all. There was testimony the Protestants offered in this case,
4 photographs, lay opinion testimony, about all types of issues
5 and we're entitled to rebut that, whether it was raised before
6 or not. We're entitled to offer testimony to address things
7 that the Protestants have raised.

8 CHAIR: And that's always been the Board's, I mean, I
9 think you may be operating under a different, I guess,
10 definition of rebuttal but the way we've just conducted it here
11 has just been, you know, rebutting what has been put into, I
12 guess, evidence by the Protestants. So, from that standpoint,
13 we'll, we'll let the expert discuss her areas of expertise and
14 we'll qualify her as an expert solar engineer, okay?

15 MR. SCHMIDT: Very well, thank you. Ms. Weber, I'm
16 going to try to go down these items and we'll try to move this
17 along a little bit but you were, you've been here for all the
18 testimony?

19 MS. WEBER: Correct.

20 MR. SCHMIDT: And you heard, you were here
21 specifically for Ms. Fallon's testimony this morning?

22 MS. WEBER: Correct.

23 MR. SCHMIDT: Can you tell us, and you heard her
24 concerns about maintenance and problems developing and no one
25 there to take care of it and if I'm characterizing her

1 testimony. Can you just explain to the Board how is the
2 maintenance, what's the maintenance program for this type of
3 facility?

4 MS. WEBER: Absolutely and I was kind of explaining
5 this to them over there too, but I want everybody to be able to
6 hear it. So, we use a platform that's run from a manufacturer
7 called (inaudible) Energy, well over, it's twenty-four/seven
8 monitoring. It uploads data every five minutes and you can
9 stop the interval time of how often it feeds data to the
10 (inaudible) but it basic, you know, typically commonly standard
11 the, it's every five minutes, it will upload performance data
12 about how the system is performing.

13 There is an online application that you can view this
14 data from anywhere real time in, as in within the last five
15 minutes. So, we will have access to that data, as will the
16 system owner. I know everybody is worried about who it will be
17 sold to. So, we will have it, they will have it and so, what
18 happens is, if there is any sort of anything that happens to
19 this system, I know there's been some concerns about like
20 electrical, what if there's a ground fault, what if, you know,
21 an (inaudible), you'll get an instantaneous notification
22 through that, it'll send you an e-mail, you can sign up to get
23 other notifications as well. But the, so, both the system
24 owner and we would get notified instantaneously to see that
25 there's a fault.

1 BOARD: So, can I ask you something?

2 MS. WEBER: Absolutely.

3 BOARD: So, if ownership, I'm sorry, so even if the
4 ownership changes, you, you're saying that SGC will still be
5 involved in the project, is that what you're saying?

6 MS. WEBER: We still have monitoring oversight over
7 our, all the systems that we have engineered and installed.

8 BOARD: So, for twenty-five years, is that what
9 you're telling me?

10 CHAIR: You can't, you can't ask --

11 MR. SCHMIDT: You have to answer.

12 CHAIR: -- anybody --

13 MS. WEBER: I, I don't know specifically. I know
14 that we, I mean, I've been into our portal for monitoring and
15 so I can see there's thirty plus projects at least in there
16 that we still have access to that.

17 BOARD: Even though they switched owners?

18 MS. WEBER: Absolutely.

19 BOARD: (inaudible), okay.

20 MS. WEBER: So, and I don't know the business behind
21 all of those projects.

22 MR. SCHMIDT: You're, you're not the businessperson,
23 you're the --

24 MS. WEBER: I am not the businessperson.

25 MR. SCHMIDT: -- you're the solar person.

1 MS. WEBER: Exactly.

2 MR. SCHMIDT: Okay.

3 MS. WEBER: Yep.

4 MR. SCHMIDT: Okay. So, there will be this real time
5 monitoring, if there's a problem, you're notified, the owner is
6 notified.

7 MS. WEBER: Correct.

8 MR. SCHMIDT: And you'll be notified in real time
9 immediately upon some kind of problem?

10 MS. WEBER: Right.

11 MR. SCHMIDT: Is there any type of onsite inspection
12 that occurs that on any kind of regular basis?

13 MS. WEBER: Sure. I also wanted to add, as far as
14 like remote monitoring, two, two other items. The first is, is
15 that it does have remote shut down capability. So, we can shut
16 down either a portion of the array that's not functioning or we
17 can shut down the entire array. And so, we do have that
18 capability so if there is a safety issue, it can be shut down
19 remotely.

20 The other thing, I know there's been some questions
21 about visual inspections. So, typically on our systems, we
22 install what's called a pan tilt zoom camera, just does exactly
23 what it sounds like. It can rotate from side to side, it can
24 zoom in and out so we install at least one of those so that
25 visually the system can be monitored remotely as well so that

1 we can see, you know, like okay why sometimes, you know, like
2 the system is not performing, we'll get an alert, oh, it
3 snowed, you know? Because sometimes that's localized and you
4 don't quite, and so, I mean, it could be little stuff or we can
5 see oh, there's a tree down, it's damaged us, and we can see it
6 remotely. So, just to answer that question.

7 As far as actually going to the site, so typically
8 what has been standard for our, our systems is that we will go
9 on to site to do a visual inspection at least twice a year.
10 So, somebody will actually go out to site, check wire
11 connections, run through the inverter protocols to make sure
12 all of the machines that are converting the energy from DC to
13 AC are operating correctly, that there's no issues.

14 We, we purchase additional modules at the time that
15 we purchase our modules, so in case there is an issue, the same
16 with inverters, in case there is an issue, we don't have to
17 wait for the manufacturer to find a replacement and send it to
18 us, we already have it there so that it can be addressed at
19 that time, without having, I mean, it's financially good for
20 the system for it not to be down for extended periods of time
21 and that's, you know, obviously a safety issue as well. But
22 there's, there's more than just the safety, you know,
23 motivation there, so.

24 MR. SCHMIDT: Okay. So, that covers the maintenance.
25 Okay. There was also some testimony, I think from Ms. Fallon,

1 where she expressed concerns and put in a report about the
2 construction of the panels and chemicals and all kinds of
3 things like that. Can you tell us, tell the Board, about the
4 panels and, you know, their integrity and those kinds of
5 issues? Can you address that?

6 MS. WEBER: Sure, sure. So, a couple of things that
7 I wanted to touch on was the first one was is that, we are
8 required by our financing to use what we call tier one modules.
9 So, these are modules that have been tested in industry over
10 time and found to be what they call bankable, reliable,
11 functioning over the life of the, of the system, which is
12 twenty-five years. So, the investors want to protect their
13 investment and so, we're required to use tier one modules.

14 So, worrying about getting poorly manufactured
15 modules from, you know, lines that are not supervised, we, we
16 have to use the best of what's out there and I, I can't tell
17 you exactly which manufacture because availability goes up and
18 down with politics and markets, just like everything else, and
19 so I don't know specifically which manufacturer, what, you
20 know, will end up being on this project, but it, it will be one
21 that, you know, has been tested and rated and meets all of that
22 requirement.

23 MR. SCHMIDT: And it'll be a tier one, that's a
24 classification in the industry?

25 MS. WEBER: It's a class of, of manufactures that

1 modules have to go through rigorous testing to (inaudible) --

2 MR. SCHMIDT: Ms. Weber, you mentioned to me about
3 some, I thought this was a good example, about submerging these
4 in water and can you, can you explain that to the Board?

5 MS. WEBER: So, you can just pull up a data sheet,
6 you can go out and Google it, tier one manufacturer, find a
7 solar project, you're going to pull up the data sheet. The
8 data sheet will say that the modules are related IP-67, and
9 what IP-67 is a rating, like one number indicates its
10 waterproofness, the other one indicates its dustproofness, in,
11 in essence, and sixty-seven is almost the highest you can get.
12 The six is the highest that, rated that it can be to keep out
13 dust. These are electronics, you want to protect them from
14 dust and water and so, if a six for dust, which means it
15 doesn't allow any dust in, it's a seven for water. The seven
16 means it can be submerged under water up to a meter. Sixty-
17 eight is the only thing, higher rating that you can have and
18 that would mean you could submerge it past twenty meters.

19 So, so solar panels are, are, should not, should not
20 be leeching. They are, they're designed to be air tight and
21 water tight and not to be, so even if something, my point is,
22 that even if something inside the panel isn't functioning
23 correctly, I'm, I was also explaining that these are silicone
24 modules, that they are not, some of the other technologies,
25 like thin foam, so (inaudible) or cadmium (inaudible), which

1 you do see in similar modules. These are silicone based
2 modules.

3 MR. SCHMIDT: Okay. So, these are (inaudible) land
4 modules and are dust tight and watertight.

5 MS. WEBER: Correct.

6 MR. SCHMIDT: So, if it rains or, you don't get
7 infiltration and then a failure or something like that?

8 MS. WEBER: Right. (inaudible) a pretty strong
9 glass, obviously, near the outside and then you have a metal
10 frame that is, you know, treated to prevent, prevent corrosion.

11 MR. SCHMIDT: Okay. Let me move on. You, you, there
12 was, there was some testimony about, about the, the layout of
13 the array and you, you've indicated that you were one of the
14 ones, as the solar engineer, who decided how this would be laid
15 out.

16 MS. WEBER: Yeah.

17 MR. SCHMIDT: I think we put in, an exhibit in
18 previously that showed that the, the, the, the modules at the
19 bottom are going to be fixed, correct?

20 MS. WEBER: Correct, yes.

21 MR. SCHMIDT: As, as opposed to rotating, correct?

22 MS. WEBER: Or, I don't, tilt, yes.

23 MR. SCHMIDT: Tilt.

24 MS. WEBER: The tilt does not change, they are going
25 to have a fixed tilt facing south.

1 MR. SCHMIDT: Okay and they face south. And then
2 the, the module is about eight, eight feet tall, correct?

3 MS. WEBER: At the, at the highest (inaudible) so at
4 the back it's eight feet, at the front it's about two feet off
5 the ground.

6 MR. SCHMIDT: Okay. So, so it's eight feet tall at
7 the back and I know Mr. Copus explained this a long time ago
8 when we were here before, --

9 MS. WEBER: Right.

10 MR. SCHMIDT: -- and, and we put a drawing in two
11 feet at the bottom. In terms of, now, these are solar panels,
12 so they're designed to capture the energy of the sun?

13 MS. WEBER: Correct.

14 MR. SCHMIDT: They're not designed to reflect the
15 energy of the sun?

16 MS. WEBER: Right.

17 MR. SCHMIDT: Okay. In, in terms, because they're
18 two feet at the bottom, can you explain how, how that, if at
19 all, it would impact putting landscaping or something in among
20 the panels?

21 MS. WEBER: Sure.

22 MR. SCHMIDT: How's that work from a, from a
23 functional solar standpoint?

24 MS. WEBER: Absolutely. So, I mean, as you can
25 imagine, right, if you're, let's say these are your solar

1 panels here and you're only two feet off the ground here, and
2 you, let's say your landscaping starts out at six to eight
3 feet, it's, it's a, the same as you think about line of sight
4 for the properties, of being visibility, it's the same for the
5 sun. The sun has to be able to see a solar panel in order to
6 generate the energy. So, in the summertime, your sun is up
7 nice and high in the sky. In the wintertime, the sun is nice,
8 low in the sky and so the shadow cast by, you know, your, your
9 planting or whatever in the wintertime is much longer.

10 And so, I know a lot of people have been talking
11 about putting tiered landscaping throughout the array, but best
12 practice in the solar industry is, you know, obviously we aim
13 to not have any shade on the panels. That's, that's the best
14 case scenario. But best, best practice is to not have any
15 shade on the worst day in winter. So, okay, if we tolerate
16 some shade throughout the rest, rest of the year, on the worst
17 day of winter, we at least seem to have our panels producing,
18 otherwise the, you know, what's the point?

19 And so, the amount of distance, you know, if we put
20 like, if we're only two feet off the ground and you've got a
21 six foot tree only a couple feet from that panel, well, then
22 you're, you're going to get shade, even in the summertime. And
23 so, the amount of distance that you would have to move such a
24 tree back in order to not (inaudible) the lower end of those
25 panels, you know, I'm, I could, I wish we had a little

1 preparation and I could present to you guys a visual.

2 But I know that, for instance, when we often look at
3 fully mature trees at sixty-five feet tall, we are easily
4 offsetting a good sixty-five to seventy feet to not shade, you
5 know, a sixty-five, seventy foot, if it's directly due south.
6 And so, (inaudible) would be extremely --

7 MR. SCHMIDT: And I assume you shared that with the
8 folks who prepared the landscape plan here?

9 MS. WEBER: Yes, they are, we, we work together to
10 try and, you know, develop landscaping that both allows the
11 system to function and produce as a solar array, as well as,
12 you know, provide some screening --

13 MR. SCHMIDT: Okay. Let me ask about, about the,
14 the, the, the, and I'm not going to ask, you, you worked with
15 the glare expert, did you not, in preparing the glare report?

16 MS. WEBER: I did the analysis and wrote the report
17 and he, obviously, went back and redid the analysis and, and
18 the report, yeah.

19 MR. SCHMIDT: Tell, tell me a little bit, from the,
20 from the, in terms of the design of the panels, are these
21 designed to reflect or absorb, how, from the standpoint you've
22 described the tier one panels, but from your expertise as a,
23 with the expertise as a solar facility, can you talk about that
24 issue a little bit? I don't want you to repeat Mr. Barrett's
25 testimony.

1 MS. WEBER: Right.

2 MR. SCHMIDT: But just generally, from a, as a solar
3 engineer and how these are designed to reflect or not reflect
4 or glare, whatever.

5 MS. WEBER: I think, you know, the two main points to
6 bring about it, it would be simply that solar panels have to
7 absorb, as, that's an ongoing goal in our industry is to make
8 these more effective. So, they're trying to take, absorb as
9 much sunlight as possible. And we actually see technologies
10 right now that are looking, they're putting glass on the
11 backside and absorbing the reflection off of the ground and
12 that's something that we are starting to see come into play.

13 So, you know, constantly, constantly looking at those
14 technologies to try and make it more effective so that we do
15 take up, eventually, as little space as needed to produce as
16 much energy as possible.

17 So, there, they're designed, and the other thing is,
18 just they have anti-reflective coating on the glass to help
19 them absorb, and I know that's been stated by both Mr. Copus
20 and the glare expert. But the, so, we're, we're not trying to
21 say that solar panels never produce glare, but they're
22 certainly designed to minimize it.

23 MR. SCHMIDT: Okay.

24 BOARD: You said certainly, what's the last thing you
25 said?

1 MS. WEBER: Designed to minimize.

2 BOARD: Okay.

3 MR. SCHMIDT: Okay.

4 MS. WEBER: So, we're trying to absorb as much light
5 as absolutely possible.

6 MR. SCHMIDT: And not reflect.

7 MS. WEBER: And, yes, which, yes, means that
8 (inaudible) --

9 MR. SCHMIDT: Okay and I guess the final thing is
10 you, you were responsible for the layout of this on the
11 property, or one of the people as a solar engineer?

12 MS. WEBER: Yes.

13 MR. SCHMIDT: And there's been a suggestion about
14 removing portions of that. Is this, Mr. Copus talked about
15 this and I don't repeat all that.

16 MS. WEBER: Right.

17 MR. SCHMIDT: This project was given authorization
18 and approval by the Maryland Public Service Commission, is that
19 correct?

20 MS. WEBER: That is correct.

21 MR. SCHMIDT: And that commission, is it fair to say,
22 fair to say, regulates and has regulatory authority over the
23 community solar program in which you are, have applied to and
24 so on and so forth and gotten authorization to do this project,
25 is that correct?

1 MS. WEBER: That is correct.

2 MR. SCHMIDT: And is, is it fair to say that the, the
3 PSC has input and determination as to how this facility is to
4 produce energy and how much energy it's to produce?

5 MS. WEBER: Yes, and we have a commitment with them
6 for a 1.86 megawatt system.

7 MR. SCHMIDT: Okay. So, it, it's, it, is it just, to
8 cut to the chase, is it fair to say that based on your
9 company's relationship and commitment with the PSC, it's not
10 just as simple as cutting off a, twenty-five percent of this
11 facility because you've got to produce a certain amount of
12 energy under your PC, PSC, Public Ser, PSC commitment and
13 authorization?

14 MS. WEBER: Yeah, absolutely.

15 MR. SCHMIDT: Okay, very well. Okay. I don't have
16 any other questions of the witness.

17 BOARD: I just have one. So, I heard from some of
18 the residents, they were concerned about some of the panels
19 coming from China. Is that a valid concern and if not, why
20 not?

21 MS. WEBER: So, I would say that China does do a lot
22 of solar module manufacturing and obviously there's different
23 levels of quality coming out of that. What I would say is that
24 though the panels that we are required to use, even if they
25 have been manufactured in China, have had to go through

1 extensive testing, like their manufacturing has to meet
2 requirements that allows for the financing company to be
3 willing to make an investment in them. So, they've met all the
4 United States UL accreditations, all, all of that, as well as
5 they have to meet the bank's criteria for manufacturing
6 reliability and --

7 BOARD: So, no concerns about them not being tier one
8 and six, seven and the things that you talked about earlier?

9 MS. WEBER: Absolutely. It's, it's mandatory.

10 BOARD: Okay, thank you.

11 BOARD: I have a follow-up one.

12 MS. WEBER: Yep.

13 BOARD: How long have you been a solar engineer?

14 MS. WEBER: About four and a half years.

15 BOARD: So, four and a half years ago, let's say we
16 take a ten by ten cell.

17 MS. WEBER: Yeah.

18 BOARD: What was its effectiveness four and a half
19 years ago compared, in tier one, compared to today in tier one?

20 MS. WEBER: It was like overall efficiency of the
21 panel, I'd say when I started out in the industry, we were
22 using two hundred and thirty-five watt to two hundred fifty
23 watt panels. In the past four years, like what's currently
24 (inaudible), this is a two hundred eighty-five watt panel,
25 which I know you have nothing to really (inaudible) to and so

1 you don't understand how big of a difference it is. But it's
2 constantly, constantly, constantly improving.

3 BOARD: Where is it projected in two years?

4 MS. WEBER: That's a great question. I, I, I don't
5 know.

6 BOARD: Okay.

7 MS. WEBER: I don't know. And I think the interesting
8 thing is I think that there's other technologies for like
9 trackers to the rotating arrays, is actually starting to gain a
10 whole lot more ground to maximize production and same with the
11 bi, what they call bifacial modules, where they have glass and
12 absorption capabilities on both sides and so we, we've even
13 seen, as a company, those directions being moved.

14 BOARD: Has the size changed in the past four and a
15 half years?

16 MS. WEBER: So, the standard size of a solar module
17 has kind of been standardized.

18 BOARD: Okay.

19 MS. WEBER: So, that the racking manufacturers are
20 not constantly guessing how to do the racking. But the amount
21 of energy production that that size can produce has gone way
22 up, yes.

23 BOARD: Thank you.

24 MS. WEBER: Yep.

25 MR. SCHMIDT: Okay. Okay. I think I'm done, yeah.

1 Yeah, no fur, no other questions.

2 CHAIR: No further. Cross?

3 MR. NELSON: Thank you. Ms. Weber, I just want to
4 ask you a few questions about the maintenance. You described
5 the remote capabilities.

6 MS. WEBER: Um hm.

7 MR. NELSON: The camera, the electronic notice.

8 MS. WEBER: Yep.

9 MR. NELSON: And I think you mentioned that twice a
10 year someone will go to the site physically.

11 MS. WEBER: Um hm.

12 MR. NELSON: What's the purpose of that?

13 MS. WEBER: It is simply to make sure that the,
14 everything is, looks correct, right? We want to, we want to
15 make sure that there's, sometimes, right, like let's say for
16 some reason a wire is loose, right? And it could be rubbing and
17 so, you know, if, if it's rubbing, it hasn't produced a problem
18 yet production wise, but it could eventually. And so, we want
19 to catch things upfront before they become issues.

20 MR. NELSON: And what's the access to this site?

21 MS. WEBER: Not a hundred percent sure what you're
22 asking.

23 MR. NELSON: Well, let's say you and I are driving in
24 a car together.

25 MS. WEBER: Uh huh.

1 MR. NELSON: And I said, let's go to the site. I
2 want to get my car on the site.

3 MS. WEBER: Um hm.

4 MR. NELSON: And you're driving, how would you do it?

5 MS. WEBER: Sure. So, do we have a drawing as a
6 proposed (inaudible).

7 MR. SCHMIDT: Yeah, the plan, I think it might be on
8 one, there's --

9 MS. WEBER: Does it show (inaudible)?

10 MR. SCHMIDT: Yeah. Mr. Nelson, let me see if it's
11 on here or if it's on the plan. There's a, I mean, I, I can
12 just tell you. It shows there's a gravel parking --

13 CHAIR: Well, no, don't testify, don't testify, Mr.
14 Schmidt.

15 MR. SCHMIDT: You want to look at this?

16 MR. NELSON: Mr. Schmidt, I was just asking the
17 witness how to get access to the site.

18 CHAIR: Right.

19 MR. NELSON: That's the question.

20 CHAIR: So, if it's on there, the witness can
21 (inaudible).

22 MR. NELSON: She can look at whatever exhibit she
23 wants to look at.

24 MS. WEBER: Right, (inaudible).

25 MR. SCHMIDT: Sure.

1 (PAPERS MUFFLING MICROPHONE)

2 MS. WEBER: Okay. So, it shows the array is here.
3 Right now, we are showing an access road coming in, it's just
4 going to be gravel, gravel access road coming into the main
5 equipment, that could mean maintenance, and it was going to be
6 right next to the access.

7 MR. NELSON: And how do you get from Hanover Pike,
8 Route 30, to the gravel access road you just described?

9 MS. WEBER: Right Not Frye Road.

10 MR. NELSON: And who owns that road?

11 MS. WEBER: I, I do not know.

12 MR. NELSON: So, you don't know whether that's a
13 public or private road?

14 MS. WEBER: Based off the testimony here previously,
15 I know that it's a private, or not even a private road, they
16 say it's a private driveway.

17 MR. NELSON: Private driveway, okay. Now, all right.
18 So, the access, if you and I were driving, we would get in the
19 car, we'd go up Hanover Pike, we'd turn on to a private
20 driveway, go up the private driveway, then go onto the gravel
21 access road, is that right?

22 MS. WEBER: That's correct.

23 MR. NELSON: Okay. Now, in your four and a half
24 years in the solar industry, there have been at least one
25 instance, has there not, where there's been some problem at the

1 site that you got, your company got remote notice of?

2 MS. WEBER: Sure.

3 MR. NELSON: And the, the system is designed so when
4 you get the remote notice, you can go to the site immediately
5 and address whatever the problem is?

6 MS. WEBER: Yes.

7 MR. NELSON: And that's the, that's the model, isn't
8 it?

9 MS. WEBER: Yes.

10 MR. NELSON: What do you do if, for whatever reason,
11 that road by which you travel to the site, you cannot pass
12 through? You get the call, there's a problem on the site, you
13 send your crew out there but they can't get there, what happens
14 then?

15 MS. WEBER: I mean, I guess you would do the same as
16 you would do for anything else, you would call, you know, if
17 it's like the public road is blocked, right? Would you not
18 call the County and say hey, this is, like Hanover Pike the
19 other day was blocked because the BGE had a line down.

20 MR. NELSON: Um hm.

21 MS. WEBER: And so, you know, I, you know, you would
22 get the assistance that you need in order to get access to the
23 site.

24 MR. NELSON: Okay. But this is a pri, this is,
25 Hanover Pike is a State highway, this is a private driveway.

1 If, if the driveway was blown out in the storm, as described by
2 Mr. Merritt, and he's going to do the construction work to
3 repair it, you're going to call him and say fix the driveway?
4 What are you going to do? No, that's a serious question.

5 MS. WEBER: I, no, I, I, I appreciate that. Obviously
6 that would not be the answer. This site also has access from
7 Hanover Pike.

8 MR. NELSON: All right. How does that access work?

9 MS. WEBER: If there's a case of emergency and you
10 need to get to the site, certainly you could come up here and
11 there's a drive right here that you could get to the site from.

12 MR. NELSON: I'm sorry, which driveway is that?

13 MS. WEBER: Right off of Hanover Pike and there's a
14 drive that goes up the hill.

15 MR. NELSON: Okay and where's that driveway go?

16 MS. WEBER: Based off of looking at this aerial it
17 comes up and around and then --

18 CHAIR: The, the recording is not going to pick up
19 your voice by the way, I'm sorry.

20 MR. SCHMIDT: Just say it again, Adria.

21 CHAIR: You have, you have to say it again, or
22 loudly.

23 MS. WEBER: I, I mean, I'm, I am simply looking at
24 the aerial image here where it winds up around and then from
25 here on the aerial image, it's not clear, but the plans seem to

1 indicate that that road continues back this way.

2 MR. NELSON: So, back to Tim Fales' house?

3 MS. WEBER: Yes.

4 MR. NELSON: So, you'll get access from his front
5 yard?

6 MS. WEBER: You would, you would simply need to go
7 right here and then you would have access.

8 CHAIR: Can you tell us if SGC Power or the owner has
9 been granted an easement or permission by the owners of either
10 the private driveway, which is Frye Road, or Mr. Fales' private
11 driveway to access the site?

12 MS. WEBER: So, I am not a businessperson.

13 CHAIR: Understood.

14 MS. WEBER: I am an engineer.

15 CHAIR: Okay. Didn't you, you, you laid it out
16 though so you were familiar with the layout so.

17 MS. WEBER: Yes. So, our standard practice is we
18 get, we get an easement from the property owner.

19 CHAIR: And if, and if they don't grant it, then how
20 are you going to access the site then from what's been depicted
21 as the access point? No, you --

22 MS. WEBER: I don't feel, right, I, I don't feel like
23 I am the right person to speak to --

24 CHAIR: Understood, okay.

25 MS. WEBER: -- to this and I don't, if they want to

1 call, you know, they might be able to call --

2 CHAIR: No, no, that's okay.

3 MR. SCHMIDT: Ms. Murphy?

4 CHAIR: No, no, no, I don't want to, I know, but we
5 don't want to --

6 MR. SCHMIDT: I just, can I just be heard?

7 CHAIR: -- but we don't --

8 MR. SCHMIDT: I'm not going to answer your question.

9 CHAIR: -- I know, but we don't want you to testify.
10 I just wanted to know if she knew --

11 MR. SCHMIDT: I, I don't want to, I just want to
12 refer you to an exhibit -

13 CHAIR: -- that's okay, I know. That's fine, no, no,
14 no, --

15 MR. SCHMIDT: -- that was introduced the first day.

16 CHAIR: -- you don't have to, you can put it in your
17 closing. That's all right, I just don't want you to testify.

18 MR. SCHMIDT: Yeah, --

19 CHAIR: I appreciate, I appreciate --

20 MR. SCHMIDT: -- we submit a deed.

21 CHAIR: I appreciate it.

22 MR. SCHMIDT: Yes, ma'am.

23 CHAIR: But, put it in your closing, thank you.

24 MR. NELSON: I have a question, if it's acceptable.

25 CHAIR: Okay. Just put it in your closing, thank

1 you.

2 MR. SCHMIDT: Yes.

3 MR. NELSON: Ms. Weber, I understand from your
4 testimony that, that, that you wrote the glare report?

5 MS. WEBER: Yes.

6 MR. NELSON: All right. So, do you have a copy in
7 front of you?

8 MS. WEBER: I do not.

9 MR. NELSON: All right. Can we get, this is going to
10 be Exhibit 17, Petitioner.

11 MS. WEBER: Thank you.

12 MR. NELSON: All right. So, you have before you the
13 glare report that you wrote in November of 2018.

14 MS. WEBER: Correct.

15 MR. NELSON: Is that right?

16 MS. WEBER: That's correct.

17 MR. NELSON: Let's turn to page twenty-three
18 together, if we may.

19 MR. SCHMIDT: Mr. Nelson, I don't have a copy. Can I
20 look over her shoulder? I promise not to say anything. I
21 didn't bring it because I didn't think we were going to be
22 calling, I just want to see what you're looking at. I promise
23 I won't say a word.

24 MR. NELSON: All right. Well, looking at that
25 exhibit, page twenty-three, and let's look at the, the middle

1 of the page and, and you conclude, do you not, that quote, the
2 glare will be most concentrated at the eastern end of Frye Road
3 that runs directly south of the array.

4 MS. WEBER: That is what it says, yes.

5 MR. NELSON: My question is not what it says but
6 whether you concluded that?

7 MS. WEBER: So, can I direct you?

8 MR. NELSON: Yes.

9 MS. WEBER: To the image that is just above it. It's
10 called simplified annual glare on the nations. And so, it has
11 orange here, which shows you where glare is predicted for this
12 span of highway. And so, you can see that the points are to
13 the south east and way over to the south west and, and that's
14 obviously, that's based off the sun in the sky, how it relates
15 to the angle and tilt and position of the panels and how light
16 will reflect, it's just, it's just geometry.

17 MR. NELSON: Did you not conclude that the most
18 concentrated glare will be the east end of Frye Road?

19 MS. WEBER: Right here, yes, as it shows.

20 MR. NELSON: So, the answer is yes, you did conclude
21 that?

22 MS. WEBER: Right, I'm, I simply looked at this and I
23 saw where the concentration line was intersecting the route
24 that we had put into the facility.

25 MR. NELSON: All right and at the bot, bottom of page

1 twenty-three, that you discounted that affect because that road
2 is, is quote, driven by the few residents whose houses are east
3 of the array. As such, there is very minimal traffic for which
4 this glare will be a concern. You said that, did you not?

5 MS. WEBER: Correct.

6 MR. NELSON: So, what you're saying is that for
7 vehicles on that road, the glare will be a concern?

8 MS. WEBER: Except --

9 MR. NELSON: Your words say that, do they not? Yes
10 or no?

11 MR. SCHMIDT: Objection. Objection. Let the witness
12 answer the question.

13 MR. NELSON: No, I'm entitled to conduct cross
14 examination.

15 CHAIR: Okay, wait a minute. You asked a question.

16 MR. NELSON: Do the words say that?

17 CHAIR: You asked it, but you keep asking it so, let,
18 so what was the, so does it say that, is this what you wrote?

19 MS. WEBER: He, it says that it is a private road,
20 that it is driven by the few residents whose houses are east of
21 the array. There is minimal traffic for which this potential
22 glare would be a concern. Yes.

23 MR. NELSON: I'm sorry, excuse me.

24 MS. WEBER: Okay. Yes, it does say --

25 MR. NELSON: Excuse me. Let me stop. You inserted

1 the word potential.

2 MS. WEBER: Sure.

3 MR. NELSON: Does the word potential exist in the
4 text that you wrote on page twenty-three, yes or no?

5 MS. WEBER: No.

6 MR. NELSON: Okay. Thank you. So, we can agree that
7 on page twenty-three, you wrote that the glare will be a
8 concern for --

9 MS. WEBER: I did not.

10 MR. NELSON: Well, let's read it. As such, --

11 MS. WEBER: We did.

12 MR. NELSON: -- there's very minimal traffic for
13 which this glare will be a concern, did you not say that?

14 MS. WEBER: Yes.

15 MR. NELSON: All right.

16 CHAIR: Did you not write it?

17 MS. WEBER: No, I did write it.

18 CHAIR: Oh, you did, okay.

19 MS. WEBER: Absolutely.

20 CHAIR: I thought you were trying to say you didn't
21 write it, okay.

22 MS. WEBER: No.

23 CHAIR: That's fine.

24 MR. NELSON: All right.

25 CHAIR: Okay.

1 MR. NELSON: Now, let's talk about the layout. From
2 an engineering perspective only, only thinking about
3 engineering, not thinking about any other issues, like trying
4 to maximize in the most efficient way an engineer can, the
5 ability to extract the energy from the sun, that's what I want
6 to talk about now, okay?

7 MS. WEBER: Okay.

8 MR. NELSON: It seems to me that what you'd want is a
9 piece of land with a southern exposure.

10 MS. WEBER: Correct.

11 MR. NELSON: You'd like to have no, you'd like to
12 have the absence of anything that could create any shade,
13 right?

14 MS. WEBER: Sure.

15 MR. NELSON: And then, of course, you'd want
16 proximity to the power line to which you need to connect the
17 system?

18 MS. WEBER: That is also important.

19 MR. NELSON: That it, it, from an engineering
20 perspective, if our goal is to maximize the efficiency of the
21 system and have this, have the amount of land use, you want to
22 get the panels as close together as you can so that, but, but
23 not so close that the panels create shade on another panel?

24 MS. WEBER: Sure.

25 MR. NELSON: All right. So, one of the concerns

1 about the contoured strip buffering between the solar arrays is
2 (inaudible), in the wintertime, the sun is low in the sky, the
3 shades then extend for a relatively longer distance?

4 MS. WEBER: Correct.

5 MR. NELSON: Thereby making this system less
6 efficient?

7 MS. WEBER: Or some depending if it is fully shading
8 an entire set of modules making it completely and totally
9 ineffective.

10 MR. NELSON: Okay. Okay. Now, let's just take that
11 concept. So, therefore, what you want to do is, from an
12 engineering perspective, have no, nothing that creates shade in
13 the system?

14 MS. WEBER: Correct.

15 MR. NELSON: But let's say we had the luxury of
16 space. No constraints. We weren't worried about how far out
17 we could move the system. You could design a system that would
18 generate the power that this generates and have strip contour
19 buffering in between if the system were on a bigger piece of
20 land.

21 MS. WEBER: Could you theoretically?

22 MR. NELSON: Yes.

23 MS. WEBER: Yes.

24 MR. NELSON: Right, okay. So, the constraints you
25 feel you, the engineering constraints at this site are we have

1 a clear land of a certain size, right?

2 MS. WEBER: Yes, it is a certain size.

3 MR. NELSON: We know that we want to generate power
4 of 1.86 or thereabouts megawatts (inaudible) is that per year,
5 per week, per day, what is that?

6 MS. WEBER: That is actually the size of the system.

7 MR. NELSON: Okay.

8 MS. WEBER: The amount of power, it has nothing, that
9 is not the energy produced.

10 MR. NELSON: Okay. So, it's a, but you want, you
11 want to have a system 1.86, is that your number?

12 MS. WEBER: That's our number, yes.

13 MR. NELSON: So, but, so the constraints are, we got
14 a real property of a certain size, we want to generate the
15 system of 1.86.

16 MS. WEBER: Um hm.

17 MR. NELSON: Therefore, we need to have our panels
18 within a certain distance of each other, right?

19 MS. WEBER: The distance is always determined by
20 shading, always.

21 MR. NELSON: The reason these, then why not have a
22 solar array every third row here?

23 MS. WEBER: Because you need a certain system size
24 per the commitment with the PSC.

25 MR. NELSON: That's my point. All right. So, you

1 can't make the, you can't make the solar array bigger to get
2 the shade, to get the, the buffering in between because the
3 land is not available to you, right?

4 MS. WEBER: Sure.

5 MR. NELSON: Do you agree?

6 MS. WEBER: I do agree. I also think that it's not
7 financially a viable solution.

8 MR. NELSON: Not financially viable. So, so, really,
9 when we're looking at the landscaping plan, you, you as an
10 engineer, are working with a landscaper and what you're
11 thinking is, our objective is to make a financially viable
12 plan.

13 MS. WEBER: Hold up. Any business that is going to
14 function needs to be financially viable. I am not saying that
15 that is the only consideration because, of course, it isn't.
16 And obviously, we are here to listen to everybody.

17 MR. NELSON: Okay.

18 MS. WEBER: That is not the point.

19 MR. NELSON: All right. So, let me then, fair
20 enough. Let me ask you this. We know we can't make the site
21 bigger.

22 MS. WEBER: Correct.

23 MR. NELSON: Why not just make the solar array less
24 dense?

25 MS. WEBER: Because we have to meet the system size

1 commitment to the Public Service Commission.

2 MR. NELSON: Okay. Then why not get another site
3 where you can have buffering and meet the power commitment?
4 Why is that not an option?

5 MS. WEBER: I, I am not a business development
6 person. I cannot speak to the business decisions behind why
7 this was made. I can speak to why this site is particularly
8 well suited to solar, but I can't, I cannot tell you, you know,
9 that, that is not my role or function or expertise.

10 MR. NELSON: All right. That's all I have of this
11 witness. Thank you.

12 CHAIR: Anything else?

13 MR. SCHMIDT: One question. You were trying to
14 answer, provide an answer to Mr. Nelson's question about page
15 twenty-three of the, of the glare analysis. Can you give your
16 complete answer as opposed to yes or no answer?

17 MS. WEBER: Absolutely. And I, you know, honestly,
18 obviously, I apologize that this has been taken the way that it
19 has been taken because certainly in no way was I trying to
20 minimize that glare with, you know, like, as if somebody didn't
21 matter. Because of course, that's not the case. I'm simply
22 stating that this is not, this is not, you know, a, a busy
23 street, okay? So, when we're looking at safety issues with the
24 community, right? This is not something where lots and lots
25 and lots of people are driving down it.

1 It's not, I also would like to argue that whether or
2 not the screening proposed will fully screen the upper tiers of
3 the field, it will absolutely screen immediately at the road,
4 which is at the same elevation. And so, glare reflecting off
5 the system, will not, it will be screened by the landscaping
6 for the road. And so, I personally, in my professional
7 opinion, do not think that there is a concern for glare for the
8 drivers on Frye Road based on the screening that, and I'm not a
9 landscape expert, I'm simply speaking as a solar engineer and
10 my understanding of the analysis that we completed. I do not
11 think it will be an issue for the drivers.

12 MR. SCHMIDT: Thank you. No other questions.

13 CHAIR: Okay. Thank you, ma'am.

14 MR. SCHMIDT: Whose, whose was that?

15 MS. WEBER: This is theirs (inaudible)

16 CHAIR: All right, Mr. Schmidt. Any other witnesses?

17 MR. SCHMIDT: No.

18 CHAIR: No other witnesses?

19 MR. SCHMIDT: None.

20 CHAIR: Okay. I think we're finished. Everyone
21 should know that they were very well represented by both
22 attorneys. It's always our privilege to have these attorneys
23 conducting themselves well and to have them in front of us.
24 They know what they're doing, as you can see, so good choice
25 for everyone involved. We appreciate everyone's time, we

1 appreciate everyone coming out and giving us really, really
2 interesting, interesting issues and a lot of things for us to
3 go through. We have lots of exhibits, lots of exhibits that
4 were put into evidence, so the last thing we did is closing
5 briefs from the attorneys. When would you like to submit them?
6 It's up to you all, I mean, it's --

7 MR. SCHMIDT: How soon, Mr. Nelson?

8 CHAIR: -- we, we, you know, we, we deal with your
9 calendars and we try to be accommodating.

10 MR. SCHMIDT: Well, I know my clients would say
11 sooner rather than later.

12 CHAIR: Sooner rather than later, right.

13 MR. SCHMIDT: Obviously.

14 CHAIR: That's right.

15 MR. SCHMIDT: So, you know, I can, obviously, I've
16 got other things going on, as, as Mr. Nelson and --

17 MR. NELSON: Two weeks, (inaudible) two weeks?

18 MR. SCHMIDT: Two weeks? Sure, let me look, let me
19 just look because I know I am going to the, a conference --

20 MR. NELSON: Three weeks?

21 MR. SCHMIDT: -- related to zoning so I just want to
22 make sure that I'm not away when it's due.

23 CHAIR: I mean, August 22nd, maybe, does that work?
24 Is that sort of three weeks? I don't know. Throwing it out
25 there.

1 MR. NELSON: That's fine.

2 CHAIR: We could do the last week in August, the 29th.
3 But, you know, you might be on vacation or certainly don't want
4 --

5 MR. SCHMIDT: Yeah, I'm actually away the, part of
6 the week before. So, the, the following week or, well, what
7 were you saying --

8 CHAIR: First week of September?

9 MR. SCHMIDT: -- the 22nd?

10 BOARD: Or the 29th?

11 MR. SCHMIDT: Of, of Aug, what were you saying, Macy?

12 MR. NELSON: I'm just saying that the Chairwoman
13 suggested August 22, I can live with that. The Chairwoman
14 accepted August 29th, I can live with that.

15 MR. SCHMIDT: No, 22nd is fine, or, or, the 22nd is a
16 Thursday. I don't know whether you want to do it Thursday or
17 Friday, but the 22nd, 23rd.

18 CHAIR: Doesn't matter to us, the, the Friday is fine
19 with us. Twenty-third?

20 MR. NELSON: That's fine.

21 MR. SCHMIDT: Okay.

22 CHAIR: Friday, the 23rd.

23 MR. SCHMIDT: Very well.

24 CHAIR: And you know it's 3:00 and that's when they
25 like you guys to hand them in and there's no, you know, there's

1 only one memo submitted, you can't submit counters, and you
2 know, you all know this. Okay. A little longer than we
3 thought, but I think we needed today.

4 MR. SCHMIDT: I'll talk, and I'll talk to Mr. Nelson
5 if we can do it sooner, I'll talk to him and advise Ms.
6 Cannington, if we get the memos in sooner.

7 CHAIR: Oh, okay.

8 MR. SCHMIDT: Okay? But no later than that week.

9 CHAIR: Otherwise, I don't --

10 MR. NELSON: Should be no problems.

11 CHAIR: -- Friday, August 23rd. Okay.

12 MR. SCHMIDT: Okay.

13 CHAIR: Thank you, all.

14

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25 (OFF THE RECORD - 02:03:29 PM)

1
2
3
4 CERTIFICATE OF TRANSCRIBER

5 I hereby certify that the hearing in the matter of
6 Woodensburg Land and Cattle Company, LLC, Legal Owner and
7 Chesapeake Energy One, LLC, Lessee, case numbers 17-107-X and
8 CBA-19-018, heard before the Board of Appeals of Baltimore
9 County, July 25, 2019 were recorded by means of audiotape.

10 I further certify that, to the best of my knowledge and
11 belief, page numbers 1 through 246 constitute a complete and
12 accurate transcript of the proceedings as transcribed by me.

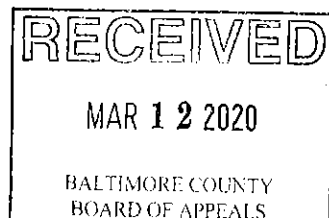
13 I further certify that I am neither a relative to nor an
14 employee of any attorney or party herein, and that I have no
15 interest in the outcome of this case.

16 In witness thereof, I have affixed my signature this 8th
17 day of March, 2020.

18
19
20
21 *Christine R. Leary*

22 Christine R. Leary

23 Transcriber
24
25

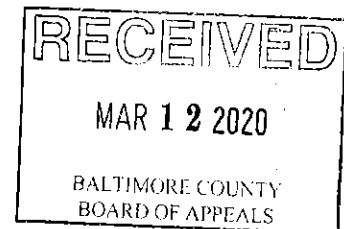


CHRISTINE R. LEARY
LEGAL TRANSCRIPTIONIST
3129 Hiss Avenue
Baltimore, Maryland 21234
(443) 622-4898
Crleary1@comcast.net

INVOICE

March 8, 2020

**TO: G. Macy Nelson, Esquire
401 Washington Avenue, Suite 803
Towson, Maryland 21204**



IN THE

Hearing Dates: 5/2, 7/23, 7/25/2019

MATTER OF

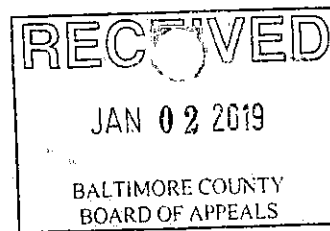
Case Nos.: 17-107-X and CBA-19-018

**WOODENSBURG LAND AND CATTLE
COMPANY, LLC – LEGAL OWNER**

Fee for preparation of transcripts = \$2,628.75

BALANCE DUE \$2,628.75

Payment should be made payable to "Christine R. Leary" and mailed to the above address.



JOHN A. OLSZEWSKI, JR.
County Executive

ADMINISTRATIVE LAW JUDGE
Office of Administrative Hearings

January 2, 2019

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

G. Macy Nelson, Esq.
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204

RE: **APPEAL TO BOARD OF APPEALS** – Petition for Special Exception
Case No. 2017-0107-X
Property: 5298 Frye Road

Dear Counsel:

Please be advised that an appeal of the above-referenced case was filed in this Office on December 28, 2018. 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,


JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

c: Baltimore County Board of Appeals
Peter Max Zimmerman, People's Counsel for Baltimore County

APPEAL

**Petition for Special Exception
(5298 frye Road)
4th Election District – 3rd Councilmanic District
Legal Owners: Woodensburg Land & Cattle Co., LLC.
Lessee: SGC Power, LLC
Case No. 2017-0107-X**

Petition for Special Exception (June 11, 2018)

Zoning Description of Property (June 5, 2018)

Certificate of Posting – 1st Posting (August 19, 2018) Linda O’Keefe
2nd Posting (September 7, 2018) Linda O’Keefe

Newspaper Advertisement – August 22, 2018-The Daily Record

Notice of Zoning Hearing – 1st Notice- July 6, 2018 (August 28, 2018- date) postponed
2nd Notice- August 1, 2018 (September 11, 2018 –date)

People’s Counsel Entry of Appearance – June 19, 2018

Zoning Advisory Committee Comments

Petitioner’s Sign-in Sheets – 1 Sheet for September 11, 2018 date
1 Sheet for November 16, 2018 date

Citizen’s Sign-in Sheets- 1 Sheet for September 11, 2018 date
1 Sheet for November 16, 2018 date

Petitioner(s) Exhibits –

1. McArthur Resume
2. Site Plan (redlined)
3. Aerial Exhibit
4. Schematic Landscape Plan
5. Photo of Agric. Fence
6. County schedule of Fees
7. Photos of Views from Hanover Pike
8. Glare Study
9. May 1, 2017 letter to H. Leskinen
10. Green line plan .
11. ROW agreement

Protestant(s) Exhibits –

1. 7-26-16 Plan to accompany Pet. for SX
2. Google Earth Aerial
3. “Annotated” version of Pet. Ex. 7-new lines of site
4. Photograph-Aerial w/ Topo.
5. Aerial photo w/Topo.
6. Aerial Photo
7. Aerial Photo
8. Aerial Photo
9. Aerial Photo
10. Aerial Photo

Miscellaneous (Not Marked as Exhibits)

Administrative Law Judge Order and Letter (GRANTED with Conditions – December 5, 2018)

Appeal Notice, Letter & Receipt received from G. Macy Nelson- December 28, 2018

CHECKLISTComment
ReceivedDepartmentSupport/Oppose/
Conditions/
Comments/
No Comment

7/12

DEVELOPMENT PLANS REVIEW
(if not received, date e-mail sent _____)

Comment

7/10

DEPS
(if not received, date e-mail sent _____)

Comment

7/24

FIRE DEPARTMENT

PLANNING
(if not received, date e-mail sent _____)No Obj
in conds

6/18

STATE HIGHWAY ADMINISTRATION

TRAFFIC ENGINEERING

No Obj

COMMUNITY ASSOCIATION

ADJACENT PROPERTY OWNERS

ZONING VIOLATION (Case No. _____)

PRIOR ZONING (Case No. _____)

NEWSPAPER ADVERTISEMENT Date: 8/22/18

SIGN POSTING (1st) Date: 8/19/18

by O'Keefe

SIGN POSTING (2nd) Date: 9/17/18

by O'Keefe

PEOPLE'S COUNSEL APPEARANCE Yes ☒ No ☐PEOPLE'S COUNSEL COMMENT LETTER Yes ☐ No ☐

Comments, if any: _____

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map			View GroundRent Redemption				View GroundRent Registration			
Tax Exempt:			Special Tax Recapture:							
Exempt Class:			NONE							
Account Identifier:			District - 04 Account Number - 2200015847							
Owner Information										
Owner Name:			WOODENSBURG LAND AND CATTLE COMPANY LLC				Use:		RESIDENTIAL	
							Principal Residence:		NO	
Mailing Address:			5423 MT GILEAD RD REISTERSTOWN MD 21136-4110				Deed Reference:		/29357/ 00077	
Location & Structure Information										
Premises Address:			FRYE RD UPPERCO 21155-0000				Legal Description:		19.6890 AC SS FRYE RD 300 FT E HANOVER RD	
Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:	
0031	0016	0346		0000				2019	Plat Ref:	
Special Tax Areas:					Town:			NONE		
					Ad Valorem:					
					Tax Class:					
Primary Structure Built		Above Grade Living Area		Finished Basement Area		Property Land Area		County Use		
						19.6900 AC		04		
Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation				
Value Information										
			Base Value		Value		Phase-in Assessments			
					As of		As of		As of	
					01/01/2016		07/01/2018		07/01/2019	
Land:			192,100		192,100					
Improvements			0		0					
Total:			192,100		192,100		192,100			
Preferential Land:			0							
Transfer Information										
Seller: MAMALIS SPYROS/HEATHER ANNA				Date: 04/12/2010				Price: \$275,000		
Type: ARMS LENGTH IMPROVED				Deed1: /29357/ 00077				Deed2:		
Seller: CAMPBELL CHARLES				Date: 03/10/1993				Price: \$157,300		
Type: ARMS LENGTH IMPROVED				Deed1: /09651/ 00091				Deed2:		
Seller:				Date:				Price:		
Type:				Deed1:				Deed2:		
Exemption Information										
Partial Exempt Assessments:		Class		07/01/2018			07/01/2019			
County:		000		0.00						
State:		000		0.00						
Municipal:		000		0.00			0.00			

Tax Exempt:
Exempt Class:

Special Tax Recapture:
NONE

Homestead Application Information

Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE MEMORANDUM

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: July 18, 2018

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 17-107

INFORMATION:

Property Address: 5298 Frye Road
Petitioner: Glen Elseroad, Woodensburg Land and Cattle Company, LLC
Zoning: RC 2
Requested Action: Special Exception

The Department of Planning has reviewed the petition for special exception to use the property for solar panel array field as a public utility use.

A site visit was conducted on November 2, 2016. Hanover Pike is a designated Baltimore County Scenic Route. The subject site is located within an Agricultural Priority Preservation Area and is also subject to the Hanover Pike Corridor Study, adopted by the Baltimore County Council April 19, 1993.

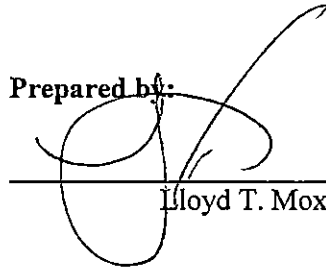
The Department has no objection to granting the petitioned zoning relief conditioned upon the following:

- Pursuant to BCZR §502.1.A, petitioners shall demonstrate to the satisfaction of the Administrative Law Judge that the facility will not be detrimental to the adjacent residential properties as a result of glare emanating from the facility.
- Petitioners shall note on the plan that the proposed solar facility will be subject to BCZR §4F-107.
- Petitioners shall certify by note on the plan that the proposed solar facility will not exceed the maximum permitted number of facilities allowed in its respective councilmanic district. If approved, Petitioners shall submit to this Department at the time of building permit application the final fixed location and area of the facility by coordinate data so that an inventory may be kept.
- Lighting shall be limited to what is required for security purposes only and will be sited in such a way as to have minimal spillage onto neighboring properties.
- Signage shall be limited to that which is necessary for safety and security purposes.
- No deliveries or outdoor maintenance which may generate excessive noise may occur on-site between the hours of 6 P.M. through 6 A.M.
- Indicate on the plan the means and location by which the solar facility connects to the power grid and whether grading or clearing will be involved.

- Protect the Hanover Pike Scenic Route by (a) planting a vegetative screening consisting of mixed indigenous hardwood and evergreen trees and shrubs along Hanover Pike to a depth that fully screens the solar panels and (b) retaining the woods on the top of the northern portion of the property to protect the distant scenic view from Hanover Pike.

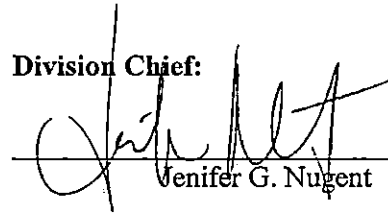
Be advised that the site is within an Agricultural Priority Preservation Area as designated in the Baltimore County Master Plan 2020 (MP2020). Said plan warns that *"incremental development continues to threaten the protection of resources and the viability of the agricultural industry."* (MP2020 pg.92). The Department recommends that the future viability of commercial agriculture in Baltimore County be weighed when considering this special exception proposal within the context of 502.1.G. For further information concerning the matters stated herein, please contact Wally Lippincott at 410-887-3480.

Prepared by:



Lloyd T. Moxley

Division Chief:



Jennifer G. Nugent

AVA/KS/LTM/ka

c: Wally Lippincott

James Hermann, R.L.A., Department of Permits, Approvals and Inspections

David H. Karceski, Esquire

Office of the Administrative Hearings

People's Counsel for Baltimore County

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: July 10, 2018

SUBJECT: DEPS Comment for Zoning Item # 2017-0107-X-**AMENDED**
Address 5298 Frye Road
(Woodensburg Land & Cattle
Company, LLC Property)

Zoning Advisory Committee Meeting of **July 25, 2018**

 X The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

- X Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).
- X Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Additional Comments:

Reviewer: Glenn Shaffer

TO: THE DAILY RECORD
Wednesday, August 22, 2018 Issue

Please forward billing to:
Lawrence Schmidt
Smith, Gildea & Schmidt
600 Washington Avenue
Towson, MD 21204

410-821-0070

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: 2017-0107-X

5298 Frye Road

E/s Hanover Pike, 2687 ft. at the corner of Not Frye Road

4th Election District – 3rd Councilmanic District

Legal Owners: Glenn & Ruth Elseroad

Contract Purchaser/Lessee: Bruce Wilson, Authorized Rep of SGC Power, LLC

Special Exception relief for a solar facility and for such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

Hearing: Tuesday, September 11, 2018 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.

TO: PATUXENT PUBLISHING COMPANY
Tuesday, August 7, 2018 Issue - Jeffersonian

Please forward billing to:
Lawrence Schmidt
Smith, Gildea & Schmidt
600 Washington Avenue
Towson, MD 21204

410-821-0070

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: 2017-0107-X

5298 Frye Road

E/s Hanover Pike, 2687 ft. at the corner of Not Frye Road

4th Election District – 3rd Councilmanic District

Legal Owners: Glenn & Ruth Elseroad

Contract Purchaser/Lessee: Bruce Wilson, Authorized Rep of SGC Power, LLC

Special Exception relief for a solar facility and for such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

Hearing: Tuesday, August 28, 2018 at 1:30 p.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204



Arnold Sablon
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 twenty (20) 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: 2017-0107-X

Property Address: 5298 Frye Road

Property Description: _____

Legal Owners (Petitioners): Woodensburg Land and Cattle Company, LLC

Contract Purchaser/Lessee: SGC Power, LLC

PLEASE FORWARD ADVERTISING BILL TO:

Name: Lawrence E. Schmidt

Company/Firm (if applicable): Smith, Gildea & Schmidt, LLC

Address: 600 Washington Avenue, Suite 200

Towson, MD 21204

Telephone Number: 410-821-0070

Revised 7/9/2015

2017-0107-X

Publication Date: 6/4/2018



Publication Agency: Permits, Approvals & Inspections
Projection/Datum: Maryland State Plane,
FIPS 1900, NAD 1983/91 HARN, US Foot



1 inch = 200 feet



AMENDED

2017-107-X

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 5298 Frye Road which is presently zoned RC2
Deed References: 29357/77 10 Digit Tax Account # 2200015847
Property Owner(s) Printed Name(s) Woodensburg Land and Cattle Company, LLC

(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

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:

Bruce Wilson, Authorized Rep. of SGC Power, LLC

Name- Type or Print

Signature

6865 Deerpath Road Elkridge MD

Mailing Address

City

State

21075

bruce.wilson@sgc-power.com

Zip Code

Telephone #

Email Address

Attorney for Petitioner:

Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC

Name- Type or Print

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): Authorized Rep. of WLC

Glenn S. Elseroad

Ruth L. Elseroad

Name #1 - Type or Print

Name #2 - Type or Print

Signature #1

Signature #2

5423 Mt. Gilead Rd.

Reisterstown MD

Mailing Address

City

State

21136

Zip Code

Telephone #

Email Address

Representative to be contacted:

Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC

Name - Type or Print

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 2017-0107-X Filing Date 6/11/2018 Do Not Schedule Dates: _____ Reviewer th

REV. 10/4/11

Drop off no Review

ATTACHMENT TO PETITION FOR SPECIAL EXCEPTION

5298 Frye Road
3rd Councilmanic District
4th Election District

Special Exception Relief:

1. To grant Special Exception relief for a solar facility pursuant to BCZR § 4F-102 (as established by Bill 37-17); and
2. For such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

June 5, 2018

**ZONING DESCRIPTION
(SGC – HANOVER)**

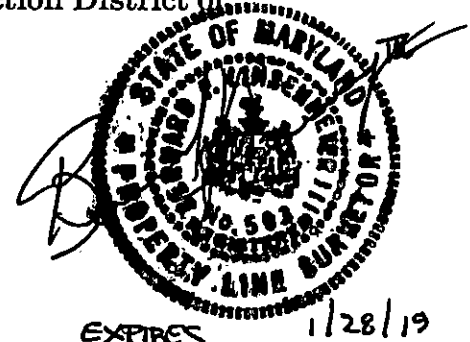
Beginning for the same at the northeast corner of the intersection of Hanover Pike (Route 30) and Not Frye Road, thence running the following fifteen (15) courses and distances:

1. North 57°40'22" West 27.21 feet to a point, thence
2. North 77°49'24" East 19.20 feet to a point, thence
3. North 12°10'36" West 60.00 feet to a point, thence
4. South 77°49'24" West 20.00 feet to a point, thence
5. North 12°10'36" West 249.25 feet to a point, thence
6. Northwesterly 113.40 feet by a curve the left having a radius of 2,824.79 feet and a chord bearing of North 11°01'37" West 113.39 to a point, thence
7. North 78°41'34" East 233.54 feet to a point; thence,
8. North 03°23'03" West 33.25 feet to a point; thence,
9. North 58°27'19" East 682.36 feet to a point; thence,
10. North 17°55'21" East 48.78 feet to a point; thence,
11. North 62°55'21" East 287.29 feet to a point; thence,
12. South 15°55'52" East 441.44 feet to a point; thence,
13. South 03°33'17" West 298.74 feet to a point; thence,
14. South 73°46'24" West 1,033.82 feet to a point; thence,
15. South 69°23'24" West 84.09 feet to the point of beginning.

Containing 15.18 acres of land, more or less.

Located on in the Third Councilmanic District, Fourth Election District of
Baltimore County, Maryland.

2017-0107-X





KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

August 1, 2018

NEW 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: 2017-0107-X

5298 Frye Road

E/s Hanover Pike, 2687 ft. at the corner of Not Frye Road

4th Election District – 3rd Councilmanic District

Legal Owners: Glenn & Ruth Elseroad

Contract Purchaser/Lessee: Bruce Wilson, Authorized Rep of SGC Power, LLC

Special Exception relief for a solar facility and for such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

Hearing: Tuesday, September 11, 2018 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".

Arnold Jablon
Director

AJ:kl

C: Lawrence Schmidt, 600 Washington Avenue, Ste. 200, Towson 21204
Bruce Wilson, 6865 Deerpath Road, Elkridge 21075
Mr. & Mrs. Elseroad, 5423 Mt. Gilead Road, Reisterstown 21136
G. Macy Nelson, 401 Washington Avenue, Ste. 803, Towson 21204

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WEDNESDAY, AUGUST 22, 2018**
- (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.**

Date: 6/11/18

THE EAST INDIA COMPANY

BUSINESS ACTUAL TIME END
5/13/2018 6/12/2018 10:43:14

MS05 MARTIN, LRB
REIPT# 456859 6/12/2018 CTR

5.528 ZUNING VERIFICATION

10-169252

Receipt Total 250.00

#250.00 CS 1 8.00 EA

Baltimore County, Maryland

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150				250 ⁰⁰
							Total:	250 ⁰⁰

Total: 250

Rec: *Smith, Gildea & Schmidt*
From:

For 5298 FIVE Rd

Amend 2017-0107-X

DISTRIBUTION

WHITE - CASHIER

PINK-AGENCY

YELLOW - CUSTOMER

GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

CASHIER'S VALIDATION

CERTIFICATE OF POSTING

2017-0107-X

RE: Case No.: _____

Petitioner/Developer: _____

Woodensburg Land and Cattle Company, LLC.
SoCore SE Development, LLC.

January 19, 2017

Date of Hearing/Closing: _____

Baltimore County Department of
Permits, Approvals and Inspections
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

Attn: Kristen Lewis:

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at: _____

5298 Frye Road

The sign(s) were posted on _____
December 29, 2016
(Month, Day, Year)

Sincerely,

December 29, 2016

(Signature of Sign Poster)

(Date)

SSG Robert Black

(Print Name)

1508 Leslie Road

(Address)

Dundalk, Maryland 21222

(City, State, Zip Code)

(410) 282-7940

(Telephone Number)





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 4677590

Sold To:

VENABLE LLP - CU00174151
210 W Pennsylvania Ave Ste 500
TOWSON, MD 21204-5304

Bill To:

VENABLE LLP - CU00174151
210 W Pennsylvania Ave Ste 500
TOWSON, MD 21204-5304

Was published in "Jeffersonian", "Bi-Weekly", a newspaper printed and published in Baltimore County on the following dates:

Dec 29, 2016

Handwritten signature of S. Wilkinson in blue ink.

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: # 2017-0107-X

5298 Frye Road

E/s Hanover Pike, 2687 ft. North of Mount Gilead Road

4th Election District - 3rd Councilmanic District

Legal Owners: Woodensburg Land and Cattle Company, LLC

Contract Purchaser/Lessee: SoCore SE Development, LLC

Special Exception: to use the herein described property for a solar panel array field as a public utility use.

Hearing: Thursday, January 19, 2017 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.

12/207 December 29

46775



Brian Dietz, Inc.

Professional Land Surveyor #21080

8119 Oakleigh Road, Parkville, MD 21234

Phone 410-661-3160 Fax 410-661-3163

www.dietzsurveying.net

September 8, 2016

19.689 Ac. parcel of land

Brian Dietz
9-8-16

all that piece or parcel of land lying, situate and being
in the 4th Election District of Baltimore County Maryland and
described as follows to wit;

Beginning for the same at the beginning of the parcel of
land, which by a deed dated, April 8, 2010, and recorded among
the land records of Baltimore County, Maryland in Liber S.M. No.
29357, folio 77, was conveyed by Spyros Mamalis, Heather Anna
Mamalis, Michael Mamalis and Katina Mamalis to Woodensburg Land
And Cattle Company LLC, and running thence with and binding on
said parcel of land, as now surveyed, and referring the courses
of this description to the Maryland Coordinate System, NAD 83-
91,

1. South 03 degrees 33 minutes 17 seconds West, passing over a
stone heretofore set at the distance of 259.87 feet, in all,
705.48 feet, to a PK nail heretofore in the center of "Right-
of-Way A", as set forth in a Declaration of Rights of Way,
dated December 14, 1992 and recorded among the land records of
Baltimore County in Liber S.M. No. 9509 folio 139, was
declared by Charles C. Cambell, said "Right-of-Way A" (40'
R/W), also known as Frye Road, thence running with and binding
on the center of said "Right-of-Way A", or Fry Road, the two
following courses and distances viz;
2. South 73 degrees 46 minutes 24 seconds West 1025.86 feet,
and
3. South 69 degrees 23 minutes 24 seconds West 147.28 feet, to
the center of Hanover Pike (MD Route 30), thence running
with and binding on the said center of Hanover Pike

2017-0107-X

2017-0107-X

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

Nº 145716

Date: 10/17/16

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Obj	Dept Obj	BS Acct	Amount
001	806	000		6150				500.00

Total: 500.00

Rec
From:

Venable

For:

5298 Rye Rd.

2017-0107-A

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

PAID RECEIPT

BUSINESS ACTUAL TIME DRN
10/17/2016 10/17/2016 09:18:21 3
REG W903 WALKIN CAM
>>RECEIPT # 701075 10/17/2016 OFLN
Dept 5 528 ZONING VERIFICATION
CR NO. 145716
Recpt Tot \$500.00
\$500.00 CK \$0.00 CA
Baltimore County, Maryland

CASHIER'S
VALIDATION

David H. Karceski

T (410) 494-6285
F 410.821.0147
dhkarceski@venable.com

January 9, 2016

VIA HAND-DELIVERY

Mr. Arnold Jablon, Director
Baltimore County Department of Permits,
Approvals and Inspections
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: 5298 Frye Road
Petitioners: Woodensburg Land and Cattle Company, LLC;
SoCore SE Development, LLC
Case No.: 2017-107-X

Dear Mr. Jablon:

This firm represents SoCore SE Development, LLC, petitioner and contract lessee of the above-referenced property. In Case No. 2017-107-X, a public hearing has been scheduled for Thursday, January 19, 2017. The purpose of this correspondence is to request a postponement of the hearing date.

A postponement is necessary for revisions to the site plan accompanying the petition for special use on filed with the Zoning Office. A postponement will also allow my client the opportunity to continue to meet with neighboring property owners and to discuss the revised site plan. Accordingly, on behalf of my client, I am respectfully requesting a postponement of the January 19, 2017 hearing date in the above-captioned matter.

I will coordinate a future hearing date with Mr. Kristen Lewis in the Zoning Office. Thank you for your time and consideration of this request.

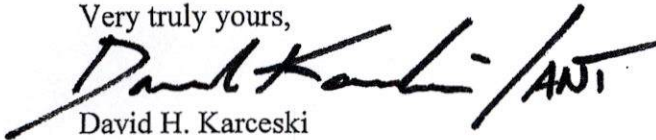
VENABLE[®] LLP

Mr. Arnold Jablon, Director

January 9, 2017

Page 2

Very truly yours,

/ANT

David H. Karceski

DHK:ant

cc: Mr. John E. Beverungen, Administrative Law Judge
Mr. Steve Miriani
Mr. Glenn Elseroad

OLD

EMAILED TO
1/9/2017 AS 3:45

Barbara Kernan

From: Karceski, David H. <DKarceski@Venable.com>
Sent: Monday, January 09, 2017 3:17 PM
To: Barbara Kernan
Subject: FW: SoCore Postponement Request
Attachments: WOODENSBURG POSTPONEMENT LETTER.PDF

Hi Bebe

Here is a copy of the postponement request. The case # is 2017-107-X.

Thank you,

David

From: Thupari, A. Neill
Sent: Monday, January 09, 2017 3:14 PM
To: Karceski, David H. <DKarceski@Venable.com>
Subject: SoCore Postponement Request

Hi David,

Attached is a PDF of the Postponment Request we filed today. Thanks.

Neill

A. Neill Thupari, Esq. | Venable LLP
t 410.494.6358 | f 410.821.0147
210 W. Pennsylvania Avenue, Suite 500, Towson, MD 21204

ANThupari@Venable.com | http://secure-web.cisco.com/1RnCGXdYnBMQo0jeBEFC9HEqmyi2bG5AVUyr7Vufepsqy9mxwDuCnbLDvn2Y73DLKeSJ-N82fsI64bZ4Ye9UftIJqDg3LWEMwFxsxp_irLD7zn7V-O7PLo7doCzmPYToQiDJ5xvWOJzoay7ASniHkttKqikCRtCrurpXEYwdr_Gv7v7VWLrrjR8GyqrDuBfqICquVK6HFIGuPvZ8YhlijvqVIKESgTHfhAhOdeI7qx0G2lr5zhXOQYpGEdyxKvVXILsVsYbArE8O0aDw9gLLdMsne1zjscxD96ln4Oz-gOf0ymZogtFsA1foipcgDHLb0zHrlGJvuZaN5H_C-Eh3QjdAoKS0IG7aF3FaHLnCKKIO2WKNbJ74AbOkZ09whsbfLRjT4N73WOA_od8VVXy2Vxw6tRe448CbZtqkC9iOxYV_Glb8OpH3rL52i-YqGmhZlaqb3Jv8dqUjuSwQHHCw/http%3A%2F%2Fwww.Venable.com

This electronic mail transmission may contain confidential or privileged information. If you believe you have received this message in error, please notify the sender by reply transmission and delete the message without copying or disclosing it.

TO: PATUXENT PUBLISHING COMPANY
Thursday, December 29, 2016 Issue - Jeffersonian

Please forward billing to:

Barbara Lukasevich

410-494-6200

Venable, LLP

210 W. Pennsylvania Avenue, Ste. 500

Towson, MD 21204

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: 2017-0107-X

5298 Frye Road

E/s Hanover Pike, 2687 ft. North of Mount Gilead Road

4th Election District – 3rd Councilmanic District

Legal Owners: Woodensburg Land and Cattle Company, LLC

Contract Purchaser/Lessee: SoCore SE Development, LLC

Special Exception to use the herein described property for a solar panel array field as a public utility use.

Hearing: Thursday, January 19, 2017 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.

Kristen L Lewis

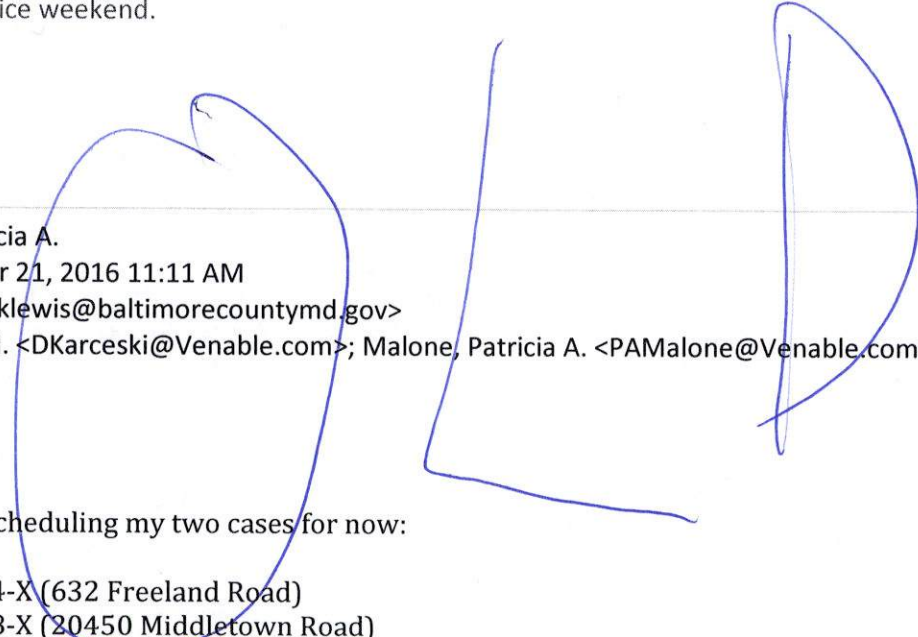
From: Karceski, David H. <DKarceski@Venable.com>
Sent: Friday, October 21, 2016 11:24 AM
To: Malone, Patricia A.; Kristen L Lewis
Subject: RE: Solar Cases

Hi Kristen

My case number is 2017-107-X. The street address is 5298 Frye Road. As we discussed by phone, please do not schedule the case from December 26th through and including January 3rd.

Thanks and have a nice weekend.

David



From: Malone, Patricia A.
Sent: Friday, October 21, 2016 11:11 AM
To: Kristen L Lewis <klewis@baltimorecountymd.gov>
Cc: Karceski, David H. <DKarceski@Venable.com>; Malone, Patricia A. <PAMalone@Venable.com>
Subject: Solar Cases

Kristen:

Please hold off on scheduling my two cases for now:

Case No. 2017-0104-X (632 Freeland Road)
Case No. 2017-0108-X (20450 Middletown Road)

David will respond separately with his schedule for his case, which he does want scheduled.

Patsy

Patricia A. Malone, Esq. | Venable LLP
t 410.494.6206 | f 410.821.0147
210 W. Pennsylvania Avenue, Suite 500, Towson, MD 21204
PAMalone@Venable.com | www.Venable.com

Patricia A. Malone, Esq. | Venable LLP
t 410.494.6206 | f 410.821.0147
210 W. Pennsylvania Avenue, Suite 500, Towson, MD 21204
PAMalone@Venable.com | www.Venable.com

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE MEMORANDUM

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: November 22, 2016

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 17-107

INFORMATION:

Property Address: 5298 Frye Road
Petitioner: Glen Elseroad, Woodensburg Land and Cattle Company, LLC
Zoning: RC 2
Requested Action: Special Exception

The Department of Planning has reviewed the petition for special exception to use the property for solar panel array field as a public utility use.

A site visit was conducted on November 2, 2016. Hanover Pike is a Baltimore County Scenic Route. The subject site is located within an Agricultural Priority Preservation Area and is also subject to the Hanover Pike Corridor Study, adopted by the Baltimore County Council April 19, 1993.

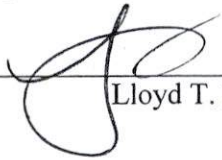
The Department has no objection to granting the petitioned zoning relief conditioned upon the following:

- Proposed signage and lighting to be limited to that necessary for safety and security purposes.
- Retain the existing woods between the location of the proposed solar panels and the residential property located at 14533 Hanover Pike.
- Provide a vegetative screening consisting of mixed indigenous hardwood and evergreen trees and shrubs between the security fence and the residential property located at 14619 Hanover Pike.
- 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.
- Protect the Hanover Pike Scenic Route by (a) planting a vegetative screening consisting of mixed indigenous hardwood and evergreen trees and shrubs along Hanover Pike to a depth that fully screens the solar panels and (b) retaining the woods on the top of the northern portion of the property to protect the distant scenic view from Hanover Pike.

The Hanover Pike Corridor Study identifies the retention of rural character as an issue of concern (Page 4) wherein a stated goal is to "Maintain the rural integrity and character of the Hanover Pike Corridor" (Page 5). The Study further lists specific design guidelines (Pages 34-41) for development along Hanover Pike. The Baltimore County Comprehensive Manual of Design Policies (CMDP) also establishes guidelines for development along Baltimore County Scenic Routes to include "maintain a buffer between the road and the new development" (Page 180) and to "site development in relation to the natural contours. Avoid placing structures on the tops of prominent ridges" (Page 182).

For further information concerning the matters stated herein, please contact Wally Lippincott at 410-887-3480.

Prepared by:



Lloyd T. Moxley

Division Chief:



Kathy Schlabach

AVA/KS/LTM/ka

c: Wally Lippincott

James Hermann, R.L.A., Department of Permits, Approvals and Inspections

David H. Karceski, Esquire

Office of the Administrative Hearings

People's Counsel for Baltimore County

OLD

BALTIMORE COUNTY, MARYLAND

INTER OFFICE CORRESPONDENCE

TO: Arnold Jablon,
Deputy Administrative Officer and
Director, Department of Permits, Approvals and Inspections

ATTN: Kristen Lewis
MS 1105

FROM: Steven A. Walsh, Director *SAW*
Department of Public Works

DATE: November 18, 2016

SUBJECT: Case No: 2017-0107-X
5298 Frye Road, Upperco, Maryland 21155

The subject case is to determine whether or not the Administrative Law Judge should approve a Special Exception to use the herein described property for a solar array field as a public utility use.

During the review of this property the Department of Public Works has found that there is a riverine flood plain on the property that may impact the proposed development.

A flood plain study of the property must be submitted for verification of the flood plain boundary. Once the flood plain boundary has been established, the Building Code requirements for riverine flood plain and the Department of Public Works Design Manual Plate DF-1 requirements should be observed.

SAW/TWC/s

CC: Dennis Kennedy, Chief, Development Plans Review and Building Plan Review
Peter M. Zimmerman, People's Council

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

FROM: ^{DAK}Dennis A. Kennedy, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For October 31, 2016
Item No. 2017-0107

DATE: November 9, 2016

The Bureau of Development Plans Review has reviewed the subject zoning item and we have the following comment.

If granted, a Landscape Plan will be required per requirements of the Landscape Manual and the OMDP.

Specific:

1. Hanover Road is a Baltimore County Scenic Route.
2. Perimeter landscape buffers are required.
3. Additional strip landscape buffers are required to address existing topography changes (70+/- feet of vertical change over approximately 1060 feet).
4. Must minimize tree and vegetation removal. Special consideration should be given to save the 200+/- feet of existing woods along the northern property line.
5. Additional landscape buffers may be required depending on the subject property's topography, Scenic Views, Scenic Routes, etc.
6. Solar panels are considered a utility and should be designed and located to harmonize with the surroundings and to create the least visual impact.
7. More comments may be rendered during review of the Landscape Plan.

* * * * *

DAK:CEN
Cc:file
ZAC-ITEM NO 17-0107-10312016.doc

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor



Pete K. Rahn, Secretary
Gregory C. Johnson, P.E., Administrator

Date: 10/24/16

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. 2017-0107X

Special Exception
Woodbury Land and Cattle Company, LLC
5298 Frye Road

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 dark ink, appearing to read 'Richard Zeller'.

Wendy Wolcott, PLA
Acting Metropolitan District Engineer – District 4
Baltimore & Harford Counties

WW/RAZ

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: October 31, 2016

SUBJECT: DEPS Comment for Zoning Item # 2017-0107-X
Address 5298 Frye Road
(Woodensburg Land & Cattle
Company, LLC Property)

Zoning Advisory Committee Meeting of **October 31, 2016**

X The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

X Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

X Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Additional Comments:

The proposed solar array cannot be built as proposed unless a variance to the Law for the Protection of Water Quality, Streams, Wetlands and Floodplains is granted by the EPS director, as it would impact area that would be Forest Buffer Easement.

Reviewer: Glenn Shaffer

Date: October 27, 2016

RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE OFFICE
5298 Frye Road; E/S Hanover Pike, *
2687' N of Mt. Gildead Road * OF ADMINISTRATIVE
4th Election & 3rd Councilmanic Districts *
Legal Owner(s): Woodenburg Land & * HEARINGS FOR
Cattle Company, LLC *
Petitioner(s) * BALTIMORE COUNTY
* 2017-107-X

* * * * *

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

OCT 25 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 25th day of October, 2016, a copy of the foregoing Entry of Appearance was mailed to David Karceski, Esquire, 210 W. Pennsylvania Avenue, Suite 500, Towson, Maryland 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

December 6, 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: 2017-0107-X

5298 Frye Road
E/s Hanover Pike, 2687 ft. North of Mount Gilead Road
4th Election District – 3rd Councilmanic District
Legal Owners: Woodensburg Land and Cattle Company, LLC
Contract Purchaser/Lessee: SoCore SE Development, LLC

Special Exception to use the herein described property for a solar panel array field as a public utility use.

Hearing: Thursday, January 19, 2017 at 1:30 p.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204


Arnold Jablon
Director

AJ:kl

C: David Karceski, 210 W. Pennsylvania Avenue, Ste. 500, Towson 21204
Eric Luesebrink, 225 W. Hubbard Street, Ste. 200, Chicago IL, 60654
Glenn Elseroad, 5423 Mt. Gilead Road, Reisterstown 21136

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY FRIDAY, DECEMBER 30, 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.

LAW OFFICE OF
G. MACY NELSON, LLC

G. MACY NELSON*
(410) 296-8166 Ext. 290
gmacynelson@gmacynelson.com

401 WASHINGTON AVENUE, SUITE 803
TOWSON, MARYLAND 21204
(410) 296-8166
www.gmacynelson.com

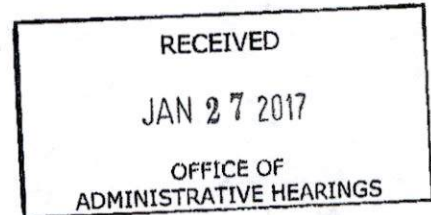
DAVID S. LYNCH
(410) 296-8166 Ext. 113
davidlynch@gmacynelson.com

*Also admitted in D.C.

January 27, 2017

Via Hand Delivery

Office of Administrative Hearings
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204



Re: Application for Special Exception
Property: 5298 Frye Road
Case No.: 2017-0107-X

Dear Clerk:

Paul B. Merritt, 14527 Hanover Pike, Upperco, Maryland 21155, Santo Mirabile, 4312 Windy Hill Road, Randallstown, Maryland 21133, and James C. Wolf, 5133 Frye Road, Upperco, Maryland 21155, engaged me to represent them in their opposition to the above-referenced application for a special exception. Please enter my appearance on their behalf and kindly notify me of the rescheduled hearing date.

Very truly yours,

A handwritten signature in blue ink, appearing to read "David S. Lynch".

David S. Lynch

cc: David Karceski, Esquire

BALTIMORE COUNTY, MARYLAND

RECEIVED

OCT 31 2016

Inter-Office Correspondence

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: October 31, 2016

SUBJECT: DEPS Comment for Zoning Item # 2017-0107-X
Address 5298 Frye Road
(Woodensburg Land & Cattle
Company, LLC Property)

Zoning Advisory Committee Meeting of **October 31, 2016**

X The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

- X Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).
- X Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Additional Comments:

The proposed solar array cannot be built as proposed unless a variance to the Law for the Protection of Water Quality, Streams, Wetlands and Floodplains is granted by the EPS director, as it would impact area that would be Forest Buffer Easement.

Reviewer: Glenn Shaffer

Date: October 27, 2016

1-19-17
Postponed

BALTIMORE COUNTY, MARYLAND INTER-OFFICE MEMORANDUM

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: November 22, 2016

FROM: Andrea Van Arsdale
Director, Department of Planning

RECEIVED

NOV 30 2016

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 17-107

OFFICE OF ADMINISTRATIVE HEARINGS

INFORMATION:

Property Address: 5298 Frye Road
Petitioner: Glen Elseroad, Woodensburg Land and Cattle Company, LLC
Zoning: RC 2
Requested Action: Special Exception

The Department of Planning has reviewed the petition for special exception to use the property for solar panel array field as a public utility use.

A site visit was conducted on November 2, 2016. Hanover Pike is a Baltimore County Scenic Route. The subject site is located within an Agricultural Priority Preservation Area and is also subject to the Hanover Pike Corridor Study, adopted by the Baltimore County Council April 19, 1993.

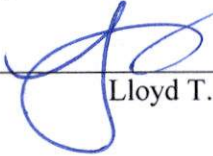
The Department has no objection to granting the petitioned zoning relief conditioned upon the following:

- Proposed signage and lighting to be limited to that necessary for safety and security purposes.
- Retain the existing woods between the location of the proposed solar panels and the residential property located at 14533 Hanover Pike.
- Provide a vegetative screening consisting of mixed indigenous hardwood and evergreen trees and shrubs between the security fence and the residential property located at 14619 Hanover Pike.
- 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.
- Protect the Hanover Pike Scenic Route by (a) planting a vegetative screening consisting of mixed indigenous hardwood and evergreen trees and shrubs along Hanover Pike to a depth that fully screens the solar panels and (b) retaining the woods on the top of the northern portion of the property to protect the distant scenic view from Hanover Pike.

The Hanover Pike Corridor Study identifies the retention of rural character as an issue of concern (Page 4) wherein a stated goal is to "Maintain the rural integrity and character of the Hanover Pike Corridor" (Page 5). The Study further lists specific design guidelines (Pages 34-41) for development along Hanover Pike. The Baltimore County Comprehensive Manual of Design Policies (CMDP) also establishes guidelines for development along Baltimore County Scenic Routes to include "maintain a buffer between the road and the new development" (Page 180) and to "site development in relation to the natural contours. Avoid placing structures on the tops of prominent ridges" (Page 182).

For further information concerning the matters stated herein, please contact Wally Lippincott at 410-887-3480.

Prepared by:



Lloyd T. Moxley

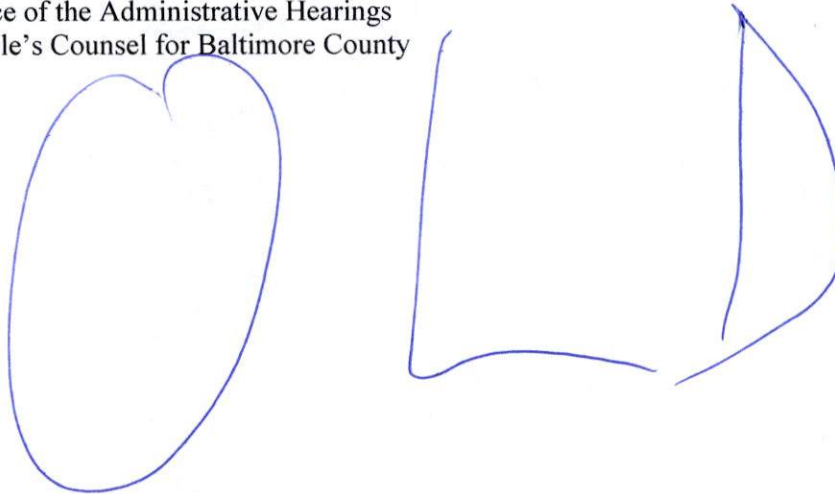
Division Chief:



Kathy Schlabach

AVA/KS/LTM/ka

c: Wally Lippincott
James Hermann, R.L.A., Department of Permits, Approvals and Inspections
David H. Karceski, Esquire
Office of the Administrative Hearings
People's Counsel for Baltimore County





Brian Dietz
9-3-16

Brian Dietz, Inc.

Professional Land Surveyor #21080

8119 Oakleigh Road, Parkville, MD 21234

Phone 410-661-3160 Fax 410-661-3163

www.dietzsurveying.net

September 8, 2016

19.689 Ac. parcel of land

All that piece or parcel of land lying, situate and being in the 4th Election District of Baltimore County Maryland and described as follows to wit;

Beginning for the same at the beginning of the parcel of land, which by a deed dated, April 8, 2010, and recorded among the land records of Baltimore County, Maryland in liber S.M. No. 29357, folio 77, was conveyed by Spyros Mamalis, Heather Anna Mamalis, Michael Mamalis and Katina Mamalis to Woodensburg Land And Cattle Company LLC, and running thence with and binding on said parcel of land, as now surveyed, and referring the courses of this description to the Maryland Coordinate System, NAD 83-91,

1. South 03 degrees 33 minutes 17 seconds West, passing over a stone heretofore set at the distance of 259.87 feet, in all, 705.48 feet, to a PK nail heretofore in the center of "Right-of-Way A", as set forth in a Declaration of Rights of Way, dated December 14, 1992 and recorded among the land records of Baltimore County in Liber S.M. No. 9509 folio 139, was declared by Charles C. Cambell, said "Right-of-Way A" (40' R/W), also known as Frye Road, thence running with and binding on the center of said "Right-of-Way A", or Fry Road, the two following courses and distances viz;
2. South 73 degrees 46 minutes 24 seconds West 1025.86 feet, and
3. South 69 degrees 23 minutes 24 seconds West 147.28 feet, to the center of Hanover Pike (MD Route 30), thence running with and binding on the said center of Hanover Pike

4. North 12 degrees 01 minutes 43 seconds West 48.24 feet, thence leaving the center of said Hanover Pike and running with and binding on the right-of-way line of Hanover Pike as shown of the State Roads Commission Plat #8911, the five following lines viz;
5. North 77 degrees 49 minutes 24 seconds East 60.00 feet,
6. North 12 degrees 10 minutes 36 seconds West 60.00 feet,
7. South 77 degrees 49 minutes 24 seconds West 20.00 feet,
8. North 12 degrees 10 minutes 36 seconds West 249.25 feet, and
9. Northwesterly by a line curving to the right having a radius of 2824.79 feet, for an arc length of 113.40 feet, the chord of said arc bearing North 11 degrees 01 minutes 37 seconds West 113.40 feet, thence leaving said Hanover Pike and continuing to run with and bind on the aforesaid parcel of land,
10. North 78 degrees 41 minutes 34 seconds East 233.54 feet, to a $\frac{1}{2}$ inch rebar heretofore set at the end of the 3rd or South 03 degrees 26 minutes 31 seconds East 315.56 foot line of the parcel of land, which by a deed dated February 26, 1996 and recorded among the land records of Baltimore County in liber S.M. No. 11494, folio 488, was conveyed by Spyros Mamalis, Heather Anna Mamalis, Michael Mamalis and Katina Mamalis to William A. Lofgren and Loretta M. Lofgren, his wife, thence running with and binding reversely on said 3rd line
11. North 03 degrees 23 minutes 03 seconds West 315.52 feet, to the end thereof and to intersect the 12th or South 89 degrees 39 minutes 37 seconds East 116.50 foot line of the herein above first mentioned parcel of land, thence running with and binding on a part of said 12th line of said parcel of land the following course and distance viz;
12. South 89 degrees 53 minutes 13 seconds East 108.07 feet, to a $\frac{1}{2}$ inch rebar heretofore set at the end of said 12th line, and in a 20' Right-of-Way, which by a deed dated, July 13, 1976 and recorded among the land records of Baltimore County in Liber E.H.K Jr. No. 5657 folio 294, was granted

by Chris C. Cambell to Charles C. Cambell and Patrica Ann Cambell, his wife, thence running with and binding on the 13th and 14th lines of said herein above first mentioned parcel of land and in the said 20' Right-of-Way, the 2 following courses and distances viz;

13. North 59 degrees 16 minutes 47 seconds East 432.30 feet, and

14. North 53 degrees 47 minutes 34 seconds East 140.95 feet, to a ½ inch rebar heretofore set, thence leaving said 20' Right-of-Way and running with and binding on the 15th thru the last lines of said herein above first mentioned parcel of land, the three following courses and distances viz;

15. South 25 degrees 17 minutes 04 seconds East 171.37 feet, to an axle heretofore set,

16. North 62 degrees 55 minutes 21 seconds East 266.97 feet, to a ½ inch rebar heretofore set, and

17. South 62 degrees 13 minutes 31 seconds East 124.03 feet, to the place of beginning.

Containing 19.689 acres of land more or less.

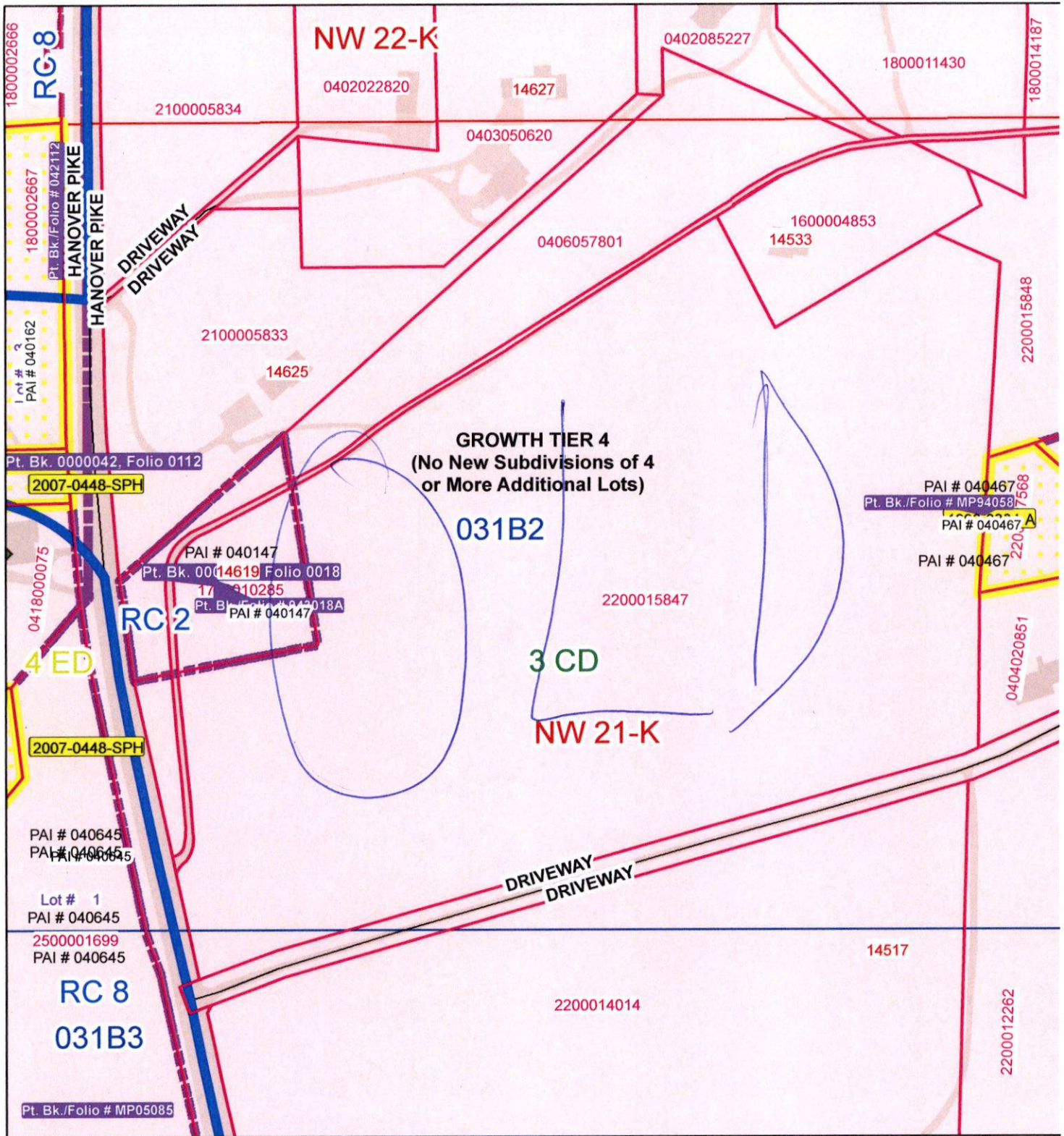
Being the parcel of land, which by a deed dated, April 8, 2010, and recorded among the land records of Baltimore County, Maryland in liber S.M. No. 29357, folio 77, was conveyed by Spyros Mamalis, Heather Anna Mamalis, Michael Mamalis and Katina Mamalis to Woodensburg Land And Cattle Company LLC.

Subject to an Easement for supporting slopes and drainage along Hanover Pike as shown on State Roads Commission Plat #8911.

Subject to and together with a Right-of-Way, as set forth in a Declaration of Rights of Way, dated December 14, 1992 and recorded among the land records of Baltimore County in Liber S.M. No. 9509 folio 139, was declared by Charles C. Cambell.

Also subject to and together with a 20' Right-of-Way, which by a deed dated, July 13, 1976 and recorded among the land records of Baltimore County in Liber E.H.K Jr. No. 5657 folio 294, was granted by Chris C. Cambell to Charles C. Cambell and Patrica Ann Cambell, his wife.

5298 Frye Road 2017-J107-X



Publication Date: 10/17/2016



Publication Agency: Permits, Approvals & Inspections
Projection/Datum: Maryland State Plane,
FIPS 1900, NAD 1983/91 HARN, US Foot



0 55 110 220 330 440 Fee

1 inch = 200 feet

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 twenty (20) 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: 2017-0107-X

Property Address: 5298 Frye Road

Property Description: (See attached)

Legal Owners (Petitioners): Woodensbury Land and Cattle Co. LLC

Contract Purchaser/Lessee: SoCore SE Development LLC

PLEASE FORWARD ADVERTISING BILL TO:

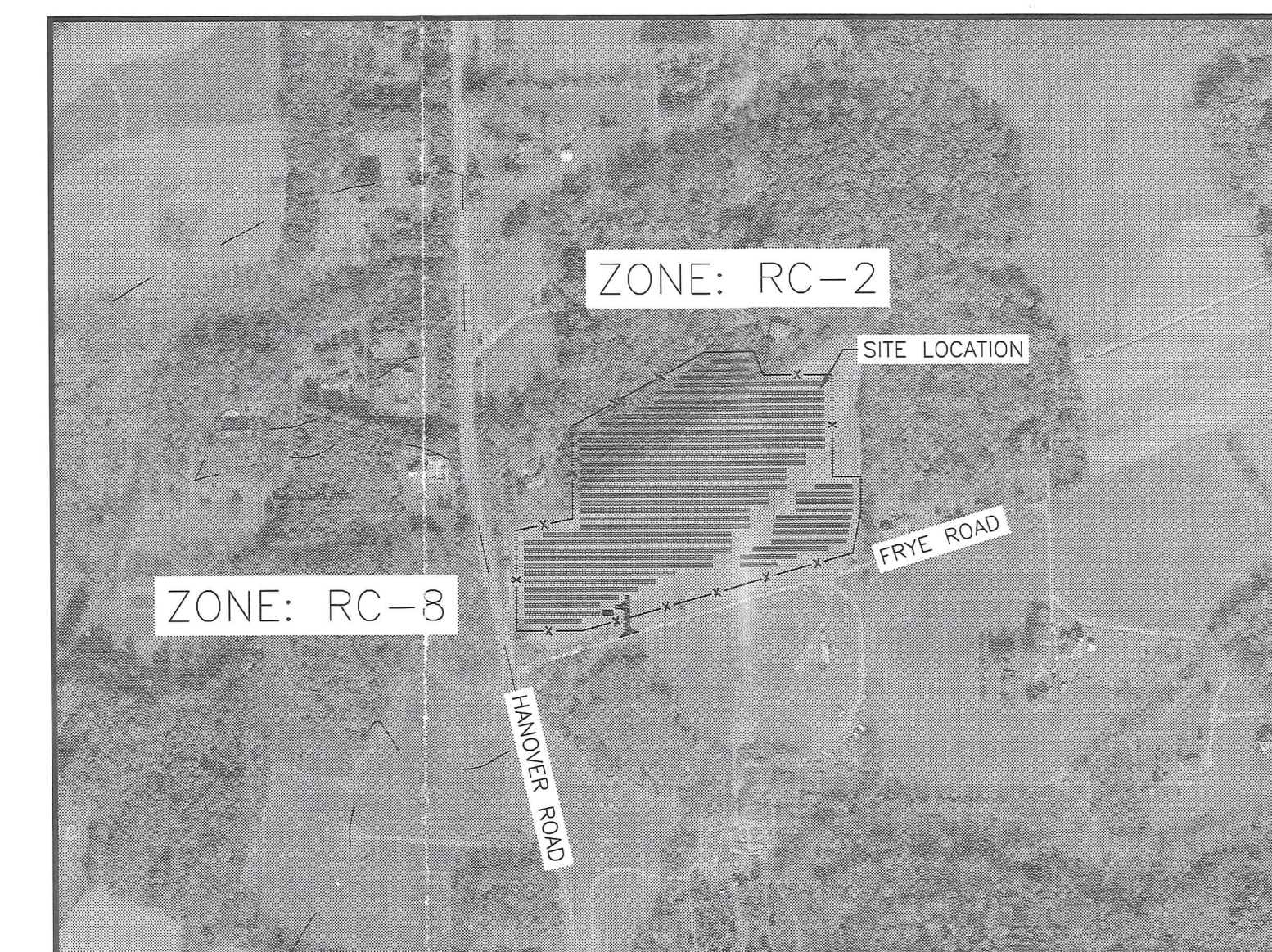
Name: Barbara Lukaszewich

Company/Firm (if applicable): Venable LLP

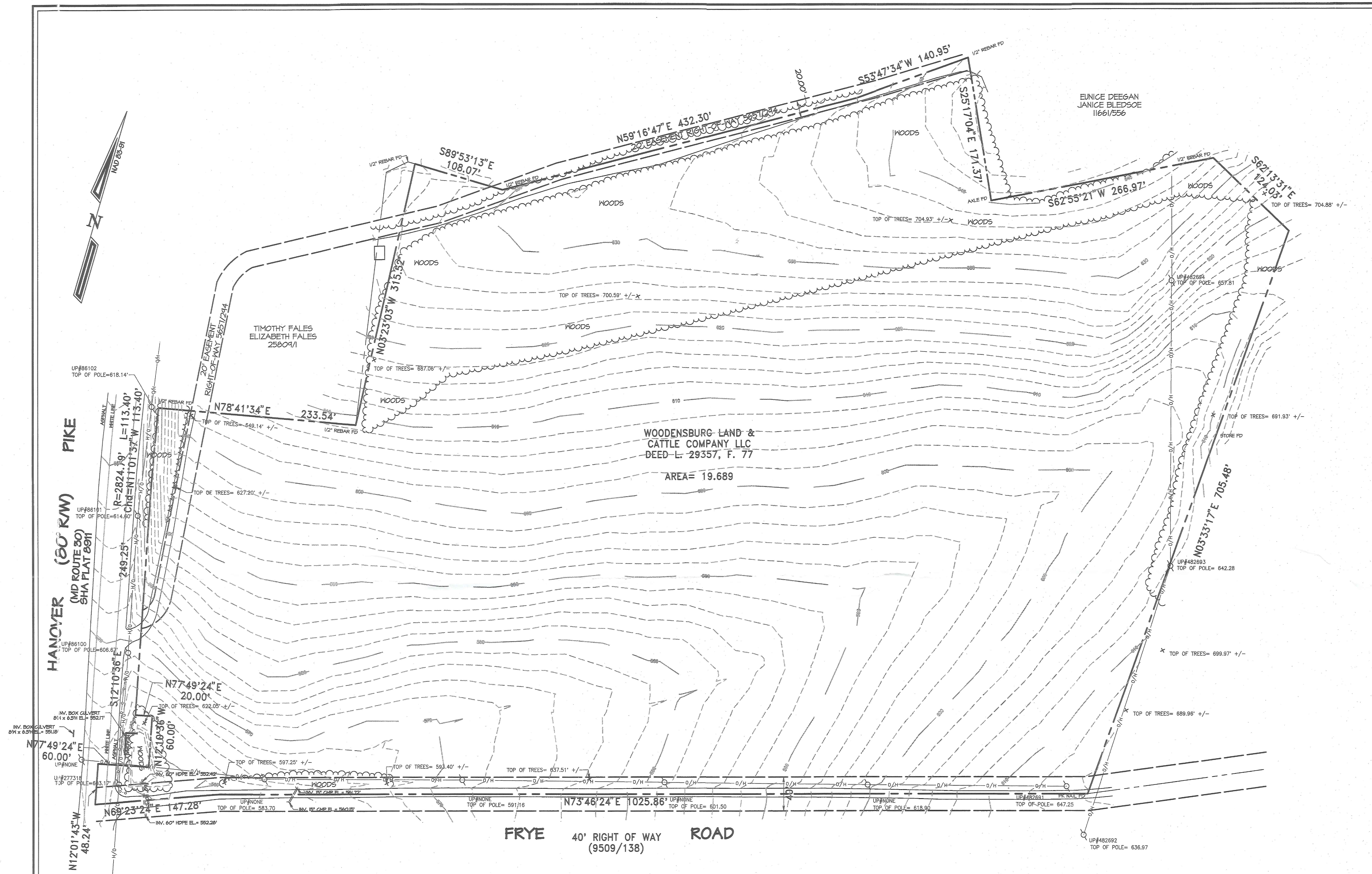
Address: 210 W. Pennsylvania Ave.
Suite 500

Towson, MD 21204
Telephone Number: (410) 494-6200

ADJACENT PROPERTY OWNERS				
PARCEL	PROPERTY OWNER	ADDRESS	DEED NUMBER	TAX ACCOUNT NUMBER
0344	SANTO & DEBRA MIRABLE	14517 HANOVER PIKE	27905 : 0372	2200014014
0091	JAMES & EILEEN COMPTON	14531 HANOVER PIKE	16580 : 0497	0404020851
0351	GARY TIGHE	14529 HANOVER PIKE	3294 : 0298	2200027568
0345	DIANA DORM	FRYE ROAD	09651 : 0103	2200015848
0238	EUNICE DEEGAN & JANICE BLEDSOE	14533 HANOVER RD	11661 : 0556	160004855
0060	CORINNE JOHNSON & ELEASE REYNOLDS	FRYE ROAD	13560 : 0058	0400657801
0278	TIMOTHY & ELIZABETH FALES	14619 HANOVER PIKE	25809 : 0001	1700010285
0057	K&R DEVELOPMENT LLC	14506 HANOVER RD	25190 : 0001	2500001699
0369	SANTO & DEBRA MIRABLE	2300 W OLD HANOVER RD	25190 : 0001	2500001699



SCALE: 1" = 500'



Notes

This Boundary Survey was prepared with a title report by Chicago Title Insurance Company policy # 72306-80669750, dated April 12, 2010.

Coordinates shown hereon are based on the Maryland Coordinate System, NAD 83-81, as established GPS observation.

Elevations and contours shown hereon are based on the NGVD-88 vertical datum as established GPS observation.

All visible utilities have been located.
No comparison to any plans has been made.
Pipe size, type and direction must be verified before construction.

BOUNDARY & TOPOGRAPHIC SURVEY

of the

Woodensburg Land & Cattle Company

Hanover Pike & Frye Road
Baltimore County, Maryland

4th Election District
Scale: 1"=60' Date: March 10, 2016

Dietz Surveying Co.

Land Surveying and Land Planning

8119 Oakleigh Road Baltimore MD 21234
Ph 410-661-3160, Fax 410-661-3163
www.dietzsveying.net

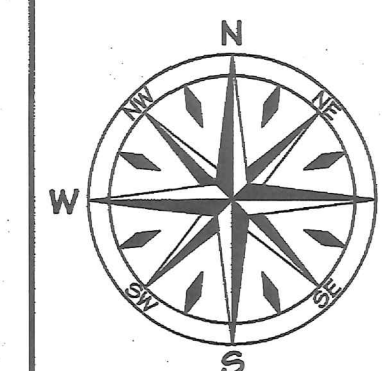
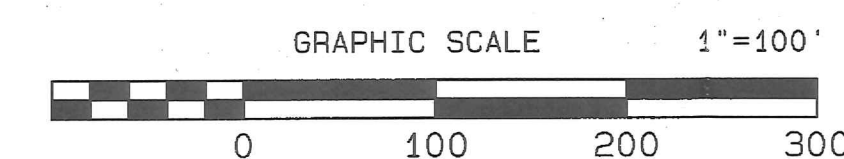
Plot Date: 4/15/2016

Job No. 2016-047
Party Chief: JSR

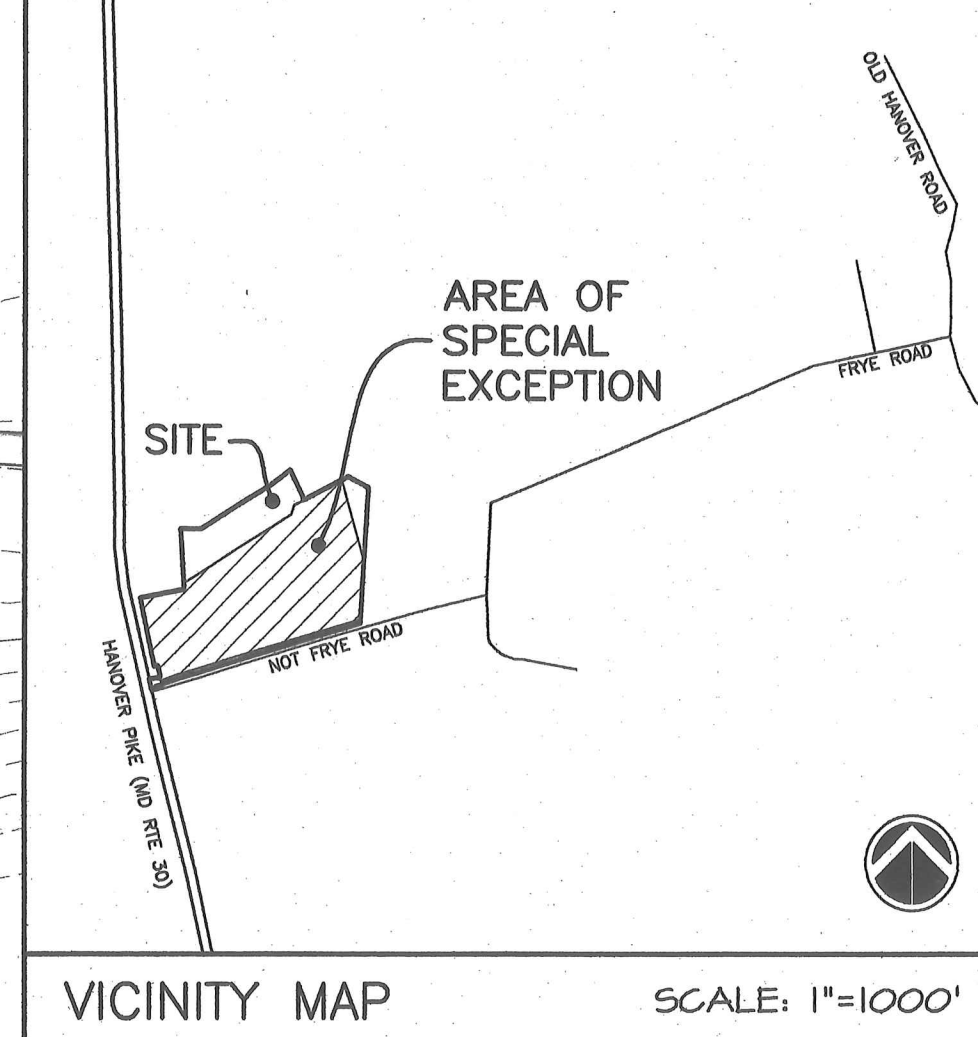
Surveyors Certificate

I HEREBY CERTIFY THAT THIS SURVEY HAS BEEN PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE, AND THAT I AM A DULY LICENSED PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE NO. 21080, EXPIRATION DATE 2-12-2017.

Brian R. Dietz
BRIAN R. DIETZ
PROFESSIONAL LAND SURVEYOR NO. 21080



2017-0107-X



GENERAL NOTES

- Owner: Woodensburg Land and Cattle Company, LLC, 5425 Mt. Pleasant Road, Ralestone, MD 21075-4110. Applicant: SGC Power, 6865 Deerpath Road, Suite 330, Elkridge, MD 21075. Plan Prepared by: D.S. Thaler & Assoc., LLC, 7115 Ambassador Road, P.O. Box 47428, Baltimore, MD 21244. ATTN: Brian Childress, 410-444-3647.
- Property Reference:

PARCEL	TAX ACCOUNT #	TAX MAP/GRID	HELD SINCE	DEED	ADC MAP
0846	22000015641	3/16	1996	24351/71	4K1 4K10
- Boundary: Dietz Surveying and Land Planning 4.15.2016. Zoning: Baltimore County 2016 Zoning Map, 615 title 31B2 & 31B3. Floodplain: There is no floodplain on site (per FEMA Panel 240000000P & 2401800240P).
- Site Area: 16.65 Ac.± (Net) / 851,260.0 S.F.±. 14.91 Ac.± (Gross) / 861,418.2 S.F.±. (Area of Special Exception: 15.10 Ac.±).
- Zoning: RC-2.
- Parking: Required: 0. Provided: 1 sp. (Vehicle Service).
- Existing Use is Agricultural.
- Site History: Zoning Case #2017-0107-X. (Postponed). A solar panel array held as a public utility. The site is not located within the Chesapeake Bay Critical Area. The site is located beyond the Urban Rural Demarcation Line (URDL). There have been no commercial permits or active zoning violations found on file with Baltimore County. No signage is proposed. Basic Services: N/A - Site is beyond the URDL.

ADJACENT OWNERS (WITHIN VICINITY OF SITE)

Parcel #	Owner	Address	Township	County	2016 Code	2016 Use	2016 Date	2016 Title	2016 Use
57	K & R Development, LLC	10000 House Hill Rd	Montgomery	MD	21111-1701	2500001691	2510/00/0001	Residential	
65	Alkemy & Larin Baranovsky	14620 Hanover Pike	Upper	MD	21155-9731	041800079	17418/00/00	Residential	
140	Robert & Amber Satterfield	14620 Hanover Pike	Upper	MD	21155-9731	180000268	1807/00/00	Residential	
240	David Toomey	14620 Hanover Pike	Upper	MD	21155-9731	180000267	1805/00/00	Residential	
278	Timothy & Elizabeth Fales	14619 Hanover Pike	Upper	MD	21155-9732	170000285	1708/00/00	Residential	
278	Timothy & Elizabeth Fales	14619 Hanover Pike	Upper	MD	21155-9732	200002979	1717/00/00	Residential	
324	Geo Holdings, LLC	14627 Hanover Pike	Upper	MD	21155-9730	210000583	19/08/00/00	Residential	
60	Johnston, Corinne D Fry & Reynolds (Estate M Fry et al)	Village of Cross Keys	Baltimore	MD	21210-2506	040007801	1356/00/00	Agricultural	
391	Lynn & Gary Doring	14627 Hanover Pike	Upper	MD	21155-9732	200002980	19/09/00/00	Residential	
338	Patricia & Thomas Fales	14619 Hanover Pike	Upper	MD	21155-9732	160000483	1609/00/00	Residential	
294	Dale Sidney Trump	22 Pine Bark Ct.	Cockeysville	MD	21030-3212	180001140	06/04/00/00	Agricultural	
294	Dale Sidney Trump	22 Pine Bark Ct.	Cockeysville	MD	21030-3212	180001140	06/04/00/00	Agricultural	
340	Olivia Shuman Dorn	100 Box 144	Chesapeake	MD	21117	220001584	19/01/00/00	Residential	
221	Melissa Depietro & Paul Martini	14627 Hanover Pike	Upper	MD	21155-9730	220002768	19/11/00/00	Residential	
351	Gary Tighe	14629 Hanover Pike	Upper	MD	21155-9730	220002768	19/11/00/00	Residential	
31	James & Ellen Compton	14629 Hanover Pike	Upper	MD	21155-9730	040000383	16/08/00/00	Residential	
344	Seneca & Debra Mitrakle	4352 Windy Hill Road	Hendricktown	MD	21133-1434	220001404	17/05/00/00	Agricultural	

PROJECT NAME:
SGC HANOVER

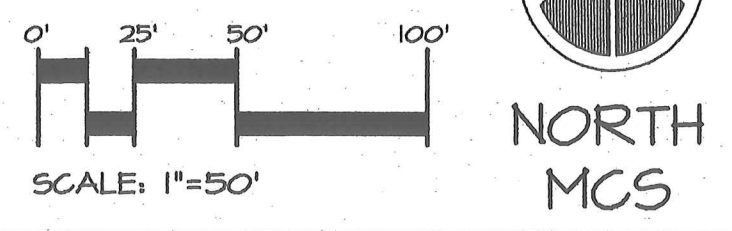
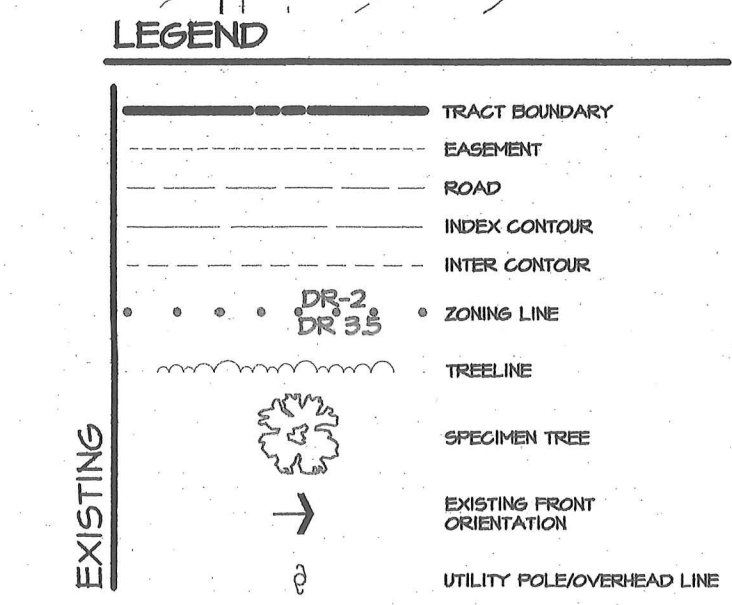
PLAN TITLE:
PLAT TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION

COUNCILMANIC DIST. 3RD. ELECTION DIST. 4TH. SITE ADDRESS: 5240 FRYE ROAD

APPLICANT:
SGC Power
6865 Deerpath Road
Suite 330
Elkridge, MD 21075
ATTN: Jack Copus
443-837-5634

Special Exception Relief:

- To grant Special Exception relief for a solar facility pursuant to BCZR Section 4F-102 (as established by Bill 37-17); and
- For such other and further relief as may be required by the Administrative Law Judge for Baltimore County.



DSThaler & ASSOC., LLC
CIVIL AND ENVIRONMENTAL ENGINEERS, SURVEYORS, LANDSCAPE ARCHITECTS & LAND PLANNERS
7115 AMBASSADOR ROAD
P.O. BOX 47428
BALTIMORE, MARYLAND 21244-7428
410-444-3647
www.dsthaler.com



DATE: 06-06-18
SCALE: 1"=50'
C.I.: 2'
PROJ. NO.: 4245
SHEET 1 OF 1

PLAT TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION
SGC HANOVER

2017-0107-X