IN THE MATTER OF DONALD AND KATHLEEN LIPPY, LEGAL OWNERS AND PETITIONERS FOR SPECIAL HEARING AND VARIANCE ON THE PROPERTY LOCATED AT 15700 HANOVER PIKE	*	BEFORE THE BOARD OF APPEALS OF
4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BALTIMORE COUNTY
	*	CASE NO. 18-052-XA

* * * * * * * * * * *

ORDER OF DISMISSAL

This matter comes to the Board of Appeals by way of an appeal filed by Michael R. McCann, Esquire on behalf of the Hanover Road Association, Santo and Debra Mirabili and John M. Couls, Protestants/Appellants, from a decision of Administrative Law Judge, John Beverungen, dated October 13, 2017, in which the requested zoning relief was granted with conditions.

WHEREAS, the Board is in receipt of a Request to Withdraw Petition filed by Lawrence E. Schmidt, Esquire on behalf of Donald and Kathleen Lippy, Petitioners (a copy of which is attached hereto and made a part hereof); and

WHEREAS, said Petitioner requests that the Petitions for Special Hearing and Variance that are the subject matter of this appeal be withdrawn and dismissed,

IT IS THEREFORE ORDERED this 29th day of September 2018 by the Board of Appeals of Baltimore County that, in accordance with Board of Appeals Rules of Practice and Procedure, Rule 3.b.2, the Petition for Special Hearing and Variance filed in Case No. 18-052-XA be and the same is hereby **WITHDRAWN AND DISMISSED with prejudice.**

BOARD OF APPEALS
OF BALTIMORE COUNTY

Jason S. Garber, Chairman

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

September 28, 2018

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

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

RE: *In the Matter of: Donald and Kathleen Lippy – Legal Owners*
Case No.: 18-052-XA

Dear Counsel:

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

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
DUKE MAY, V
CARMELO D. MORABITO
SARAH A. ZADROZNY
of counsel:
EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON
MARY G. LOKER
*Admitted in MD, FL, PA

September 14, 2018

Sent Via Email and First Class Mail
Ms. Krysundra L. Cannington, Administrator
Board of Appeals of Baltimore County
Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

RECEIVED
SEP 18 2018
BALTIMORE COUNTY
BOARD OF APPEALS

In the Matter of: Donald E. and Kathleen Lippy
Hanover Pike
4th Election District, 3rd Councilmanic District
Case No. 2018-052-XA

Dear Sunny,

Please accept this letter as notice of withdrawal of the Petitioner for Special Hearing and Variance in the above matter. The Petitioner no longer wishes to pursue this matter.

Thank you for your courtesy.

Very truly yours,

Lawrence E. Schmidt

LES/amf
cc: Michael R. McCann, Esquire
Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County

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
DUKE MAY, V
CARMELO D. MORABITO
SARAH A. ZADROZNY
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September 14, 2018

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Towson, MD 21204

RECEIVED
SEP 18 2018
BALTIMORE COUNTY
BOARD OF APPEALS

In the Matter of: Donald E. and Kathleen Lippy
Hanover Pike
4th Election District, 3rd Councilmanic District
Case No. 2018-052-XA

Dear Sunny,

Please accept this letter as notice of withdrawal of the Petitioner for Special Hearing and Variance in the above matter. The Petitioner no longer wishes to pursue this matter.

Thank you for your courtesy.

Very truly yours,

Lawrence E. Schmidt

LES/amf
cc: Michael R. McCann, Esquire
Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
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JASON T. VETTORI

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DUKE MAY, V
CARMELO D. MORABITO
SARAH A. ZADROZNY
of counsel:
EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON
MARY G. LOKER
*Admitted in MD, FL, PA

September 14, 2018

Sent Via Email and First Class Mail
Ms. Krysundra L. Cannington, Administrator
Board of Appeals of Baltimore County
Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

In the Matter of: **Donald E. and Kathleen Lippy**
Hanover Pike
4th Election District, 3rd Councilmanic District
Case No. 2018-052-XA

Dear Sunny,

Please accept this letter as notice of withdrawal of the Petitioner for Special Hearing and Variance in the above matter. The Petitioner no longer wishes to pursue this matter.

Thank you for your courtesy.

LES/amf
cc: Michael R. McCann
Peter Max Zimmer

Ken Don ithan ~~ADVOCATE~~ 9/14
@ Earth & Air 6:08pm
410-960-9325
Re: Lippy 18-052-XA
Canceling for Tuesday

Krysundra Cannington

From: Alyssa Moyers <amoyers@sgs-law.com>
Sent: Friday, September 14, 2018 3:23 PM
To: Krysundra Cannington
Cc: Peter Max Zimmerman; 'michael@mccannlaw.net'
Subject: Lippy/2018-052-XA
Attachments: Letter to BOA withdrawing petitions - pdf.PDF

Sunny –

Please see the attached.

- *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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Board of Appeals of Baltimore County

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

June 12, 2018

NOTICE OF POSTPONEMENT AND REASSIGNMENT

IN THE MATTER OF: Donald E. and Kathleen Lippy
Hanover Pike
18-052-XA 4th Election District; 3rd Councilmanic District

Re: Petition for Special Exception relief for a solar facility pursuant to BCZR § 4E-102 (as established by Bill 37-17); and

Petition for Variance to approve a minimum setback of 35 ft. in lieu of the 50 ft. solar facility setback required to the nearest tract boundary, pursuant to BCZR § 4E-104.A.4.

10/13/17 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED; and the Petition for Variance was GRANTED, subject to conditions.

This matter was assigned for hearing on July 31, 2018 and has been postponed. This matter has been

REASSIGNED FOR: SEPTEMBER 18, 2018, AT 10:00 A.M.

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

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.
- 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 Petitioner/Legal Owner : Lawrence E. Schmidt, Esquire
Petitioner/Legal Owner : Donald and Kathleen Lippy

Counsel for Protestants : Michael R. McCann, Esquire
Protestants : Hanover Road Association,
Santo and Debra Mirabili, John Couls

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

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

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

June 4, 2018

Via Email

Krysundra Cannington
Baltimore County Board of Appeals
Jefferson Building
105 W. Chesapeake Avenue, Ste. 203
Towson, Maryland 21204

Re: *Lippy Property*
Case No: 18-052-XA

Dear Ms. Cannington:

I received the Notice of Assignment in this matter. I will be out of town on July 31, 2018 on a long-planned family vacation and, therefore, request a postponement of that date.

Thank you for your attention to this matter. Please contact me if you have any questions or concerns.

Best Regards,

Michael McCann

cc: Larry Schmidt (via email)

Krysundra Cannington

From: Michael McCann <michael@mmccannlaw.net>
Sent: Monday, June 04, 2018 4:39 PM
To: Krysundra Cannington
Cc: Lawrence Schmidt
Subject: Lippy
Attachments: 20180604163225082.pdf

Sunny: Please see attached. Thank you.

Michael

Michael R. McCann
Michael R. McCann, PA
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(p) 410-825-2150
(f) 410-825-2149

E-mail Confidentiality: The information contained in this message may be confidential, proprietary and/or protected by the attorney-client privilege or work product doctrine. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please delete/destroy any copy of this message and notify Michael R. McCann at 410 825-2150.

Krysundra Cannington

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Monday, June 04, 2018 6:26 PM
To: Michael McCann
Cc: Krysundra Cannington; Alyssa Moyers
Subject: Re: Lippy

Sunny
I have no objection
Larry

Sent from my iPhone

On Jun 4, 2018, at 4:39 PM, Michael McCann <michael@mmccannlaw.net> wrote:

> Sunny: Please see attached. Thank you.
>
> Michael
>
> **Michael R. McCann**
> *Michael R. McCann, PA*
> *118 W. Pennsylvania Avenue*
> *Towson, Maryland 21204*
> *(p) 410-825-2150*
> *(f) 410-825-2149*
>
> E-mail Confidentiality: The information contained in this message may be confidential, proprietary and/or protected by the attorney-client privilege or work product doctrine. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please delete/destroy any copy of this message and notify Michael R. McCann at 410 825-2150.
>
> <20180604163225082.pdf>

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

May 31, 2018

NOTICE OF ASSIGNMENT

IN THE MATTER OF: Donald E. and Kathleen Lippy
Hanover Pike
18-052-XA 4th Election District; 3rd Councilmanic District

Re: Petition for Special Exception relief for a solar facility pursuant to BCZR § 4E-102 (as established by Bill 37-17); and

Petition for Variance to approve a minimum setback of 35 ft. in lieu of the 50 ft. solar facility setback required to the nearest tract boundary, pursuant to BCZR § 4E-104.A.4.

10/13/17 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED; and the Petition for Variance was GRANTED, subject to conditions.

ASSIGNED FOR: JULY 31, 2018, AT 10:00 A.M.

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

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.
- 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 Petitioner/Legal Owner : Lawrence E. Schmidt, Esquire
Petitioner/Legal Owner : Donald and Kathleen Lippy

Counsel for Protestants : Michael R. McCann, Esquire
Protestants : Hanover Road Association,
Santo and Debra Mirabili, John Couls

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

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

IN THE MATTER OF DONALD AND KATHLEEN LIPPY LEGAL OWNERS AND NEW SOURCE GENERATION, LLC, LESSEE AND PETITIONERS FOR SPECIAL EXCEPTION ON THE PROPERTY LOCATED AT 15700 HANOVER PIKE 4th Election District 3rd Councilmanic District	*	BEFORE THE BOARD OF APPEALS FOR BALTIMORE COUNTY Case No.: 18-052-XA

* * * * * * * * * * * * * *

RULING ON MOTION TO DISMISS

This case comes to the Board of Appeals (hereinafter "Board") on appeal from the October 13, 2017 decision of Administrative Law Judge Beverungen wherein the requested petition for special exception for a solar facility was granted. A timely appeal was noted by the Hanover Road Association, Santo Mirabili, Debra Mirabili and John M. Couls.

A hearing was scheduled to be held before this Board on February 27, 2018 at 10:00 a.m., for which proper notice was given. At the outset of the hearing, Appellants' attorney, Michael R. McCann, Esquire, moved to dismiss the case, arguing that the Board is barred from hearing the case on the theory of res judicata and a literal reading of Baltimore County Zoning Regulations, §500.12.

Oral arguments were presented and subsequently, counsel submitted legal memoranda addressing the issues raised for the first time by Mr. McCann at the hearing.

The Board met on April 11, 2018 and publicly deliberated the disposition of the Motion to Dismiss.

DISCUSSION

The subject petition (Lippy II) was filed in August, 2017, following the enactment of Baltimore County Council Bill No. 37-17, which took effect in July, 2017 and which recognized a solar facility as a use permitted by special exception in the R.C. 2, 3, 4, 5, 6, 7, 8 zones as well

in certain business and manufacturing zones in Baltimore County.

The Board, relying on *Whittle v. Board of Zoning Appeals*, 211 Md. 36 (1956) and *Gertz v. Anne Arundel County*, 339 Md. 261 (1995), determined that a change in law defeats the application of *res judicata* as a bar to hearing the subject petition. The Board also found that a reading of B.C.Z.R. §500.12 in its historical context and considering the application of *res judicata* doctrine to administrative law by the courts, the language of §500.12 was not intended to bar a new petition for a new use arising under a newly enacted law. For the foregoing reasons, this Board unanimously denies Protestants' Motion to Dismiss.

ORDER

THEREFORE, IT IS THIS 10th day of May, 2018, by the Board of Appeals of Baltimore County,

ORDERED that Protestants' Motion to Dismiss be, and it is hereby, **DENIED**; and it is further,

ORDERED that this matter shall be scheduled for an evidentiary hearing on a date mutually convenient for the parties and the Board's docket; and it is further

ORDERED that a final Opinion will be issued by this Board after a hearing on the merits and a public deliberation with no further action to be taken on this Ruling until such time as the Board's final decision is issued.

BOARD OF APPEALS
OF BALTIMORE COUNTY

Jason S. Garber, Chairman

Kendra Randall Jolivet

Deborah C. Dopkin

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

May 10, 2018

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

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

RE: *In the Matter of: Donald and Kathleen Lippy – Legal Owners*
New Source Generation, LLC – Lessee
Case No.: 18-052-XA

Dear Counsel:

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

Pursuant to the enclosed, this Ruling is not a final decision of the Board of Appeals for Baltimore County and does not constitute an appealable event at this time. This matter will be held open on the Board's docket until such time as a final opinion can be issued.

Should you have any questions, please do not hesitate to contact us.

Very truly yours,

Sunny Cannington Hay

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Duplicate Original Cover Letter

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

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Donald E. Lippy and Kathleen F. Lippy 18-052-XA

DATE: April 11, 2018

BOARD/PANEL: Jason S. Garber, Panel Chairman
Deborah C. Dopkin
Kendra Randall Jolivet

RECORDED BY: Tammy A. Zahner, Legal Secretary

PURPOSE: To deliberate the Protestants' Motion to Dismiss the Petition for Special Exception for a solar facility for the property located at 15700 Hanover Pike, and Petitioners' Response thereto.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

DISCUSSION

- The Board discussed the Petitioners request for a solar facility, and noted this is the second case filed by Petitioners. This second and current case was filed after the enactment of County Council Bill 37-17 which governs solar facilities.
- The Board members reviewed the arguments presented by counsel, pleadings and applicable case law.
- The Protestants argue in their Motion to Dismiss that the case should be dismissed on the grounds of *res judicata*, and BCZR Section 500.12.
- The Board considered the Motion and found the argument to be unpersuasive. The doctrine of *res judicata* does not apply when there has been a change in the law, as there has been in this case.

CONCLUSION: After thorough review of the facts and law in the matter, the Board unanimously agreed to DENY the Motion to Dismiss, and set the case in for a hearing on the merits.

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

Respectfully Submitted,

Tammy A. Zahner
Tammy A. Zahner

RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE BOARD
	*	OF APPEALS
Donald E. Lippy & Kathleen F. Lippy New Source Generation LLC Petitioners	*	OF
	*	BALTIMORE COUNTY
15700 Hanover Pike	*	**Case No.: 2018-0052-XA**
4th Election District 3rd Councilmanic District	*	

RECEIVED
MAR 23 2018
BALTIMORE COUNTY
BOARD OF APPEALS

* *

PETITIONERS' WRITTEN MEMORANDUM IN RESPONSE TO MOTION TO DISMISS

Petitioners, Donald E. Lippy, Kathleen F. Lippy and New Source Generation LLC (hereinafter "**Petitioner**" or "**Property Owner**"), by and through their attorneys, Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC, submit this Written Memorandum in Response to Motion to Dismiss and respectfully state:

I. STATEMENT OF THE CASE

This matter comes before the Board of Appeals (hereinafter "Board") on a Petition for Special Exception for a solar facility for the property located at 15700 Hanover Pike/Md. Route 30 (the "**Property**") in northwestern Baltimore County. The Petition was filed by Donald E. Lippy and Kathleen F. Lippy, Property owners and New Source Generation, LLC, an entity engaged in the business of operating solar energy facilities. New Source Generation, LLC is an entity created by Mr. & Mrs. Lippy to own/operate the use proposed in this matter. The Petition is filed pursuant to Baltimore County Zoning Regulations (hereinafter "BCZR") § 4E-102 (as established by Bill 37-17), which permits solar facilities in the RC 2 zone by special exception.

This matter is Petitioner's second request for approval to operate a solar facility on the Property and has been referred to by the parties at argument as Lippy II. The instant Petition was

initially considered by the Office of Administrative Hearings of Baltimore County ("OAH"). By written Opinion and Order dated October 13, 2017, Administrative Law Judge ("ALJ") John E. Beverungen granted the Petition for Special Exception and an associated setback variance. An appeal of the ALJ's decision to the Board was filed by Hanover Road Association, Santo Mirabili, Debra Mirabili, and John M. Couls. The public hearing before the Board consumed one day, February 27, 2018. Petitioners have withdrawn the requested variance and thus the only issue before the Board is that raised under the Petition for Special Exception. The Appellants/Protestants have moved to dismiss the petition on res judicata grounds and pursuant to BCZR § 500.12. This memorandum is in opposition thereto and to summarize the Petitioners' arguments.

II. STATEMENT OF FACTS

The collective evidence offered in this case established the following. The Property encompasses approximately 6.5 acres of RC 2 zoned land. The Property is an unimproved irregularly shaped parcel near the intersection of Hanover Pike and Fringer Road, in northwestern Baltimore County, not far from the Carroll County line. Hanover Pike is a major highway which extends from Baltimore County into Carroll County and is the main thoroughfare in this part of the County. The portion of Hanover Pike adjacent to the Property is classified as a scenic byway under the Baltimore County Master Plan 2020.[1] Although zoned with a resource conservation classification (RC 2, agricultural), the Property is in a locale which features somewhat diverse land uses. Given the character of Hanover Pike as the main thoroughfare in the area, there are a number of dwellings on relatively small lots immediately across from the

[1] The classification of Hanover Pike as a scenic byway triggers considerations contained in the Comprehensive Manual of Development Policies ("CMDP") and the Baltimore County Landscape Manual. These considerations were addressed by the Petitioners on the site plan and landscape plan submitted at the hearing. That landscape plan has been approved by the County's Landscape Architect.

Property. There are also businesses up and down (north and south) along Hanover Pike. The Carroll County/Baltimore County boundary and the town of Hampstead are a short distance away.

As reflected by the zoning of the Property and notwithstanding the diversity of land uses abutting Hanover Pike, the primary land uses in the immediate vicinity are agricultural (farming) in character. The property owners (Mr. & Mrs. Lippy) are part of a family which conducts one of the largest farming operations in the central Maryland area. The Lippy family (either as individual owners directly or through the Lippy Brothers family consortium) own and/or rent for farming significant acreage in Baltimore County and Carroll County. This farming family owns nearly 2,400 acres and approximately 2,200 acres of the Lippy family holdings are in land preservation programs/easements. The Property has been historically used to produce a variety of crops (i.e. corn, soy beans, etc.) and the Lippys also raise animals (chicken). It is undisputed that the Lippy brothers are respected stewards of the land. As noted above, they have placed a large majority of their lands in preservation and are dedicated to preserving the agricultural industry of Baltimore County. It is ironic that the Protestants who oppose the Petitioners (purportedly wanting to "protect agriculture") would oppose this farming family and a proposal which will provide economic assistance to allow the family farming business to continue.

Although the Lippy family owns and farms a number of properties, the subject property is a separate "lot of record" (as defined in BCZR § 101.1). As noted above, it is unimproved and currently actively farmed. Unlike many of the other Lippy properties, the subject lot is not

encumbered by a conservation easement and thus (from that perspective) can be utilized for the proposed purpose.[2]

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

The solar facility will actually be comprised of approximately 5,000 solar arrays (commonly referred to as "solar panels") which are glass encased structures. They are ground mounted and are approximately three feet by six feet in dimension. The arrays track the sun to capture solar energy. At their maximum height while tracking the sun, they reach approximately 6-7 feet from the ground. The solar facility will produce energy that will tie into the public grid (operated and maintained by BGE) and will produce power that will be used both by the Lippys and homes (approximately 100 in number) and/or businesses in the area.

The solar farm will be surrounded by a fenced and landscaped buffer. A landscape plan has been approved by the County's Landscape Architect, James Hermann. The landscape plan was designed with the purpose of visually screening the solar facility from surrounding properties and to meet the provisions of County law regarding development adjacent to a scenic byway. This will be an unmanned facility. There is a single equipment structure proposed on the Property (an inverter) that will contain the equipment required to convert the energy into

[2] Lands in the State's preservation program cannot be used for the proposed use (solar facility) under the express provisions of Bill 37-17. However, because it is not in any preservation program, the subject property could be subdivided into 2 building lots.

electricity. Through an underground transmission line, the power obtained will then be directed into the public transmission lines that abut Hanover Pike, which are owned by BGE.

In terms of the science of the project, the sun's energy is absorbed by the arrays which then, through underground wires, transmit the energy captured to the inverter. There, the energy is converted from Direct Current ("DC") to Alternating Current ("AC"), which is the electric current which powers our homes, businesses, etc. This AC current is then transmitted to a meter (also via underground wires) and then into the electric transmission wires maintained by BGE, which run up and down Md. Route 30 (Hanover Pike). Those transmission wires connect to the public grid which provides electricity to the homes and businesses in this area.

The solar facility will cause no adverse impact to the surrounding locale. The panels do not need maintenance, they do not generate noise or odors, they cause no environmental impact, they generate no traffic, they cast no shadow or glare, etc. As importantly, they will be virtually invisible to the surrounding locale given the extensive landscape plan (fencing and planting) that has been reviewed and approved by Baltimore County.

The instant case (Lippy II) is the Petitioner's second effort to obtain approval to erect a solar facility. In a prior case (Lippy I), the Petitioner's requested approval of a special exception was for a "public utility use." At the time of filing that petition (June 24, 2016) there were no provisions in the BCZR which identified or regulated "solar facilities". Following the precedent that had been established by the Department of Permits, Approvals and Inspections (more particularly the "Zoning Office" therein) the Petitioner's filed a Petition for Special Exception for a public utility use, which is an enumerated use permitted by special exception in the RC 2 zone. Initially, following a public hearing, the special exception was approved by order of ALJ Beverungen dated October 18, 2016. An appeal of that approval was filed by Protestants. By 2-1 decision, the Board denied the request by opinion and order dated April 28, 2017. Significantly,

the Board did not deny the request because the proposal did not meet the special exception criteria (i.e. BCZR § 502.1) but rather because it determined that the proposed solar facility was not a "public utility use." After a petition for judicial review was filed by Petitioners, the Circuit Court issued its order affirming the Board.

As Lippy I was being litigated, the legislative branch of Baltimore County government (i.e. the Baltimore County Council) was wrestling with an appropriate method of regulation (from a zoning perspective) of solar facilities. After a number of failed attempts (repeated legislation was introduced and then either withdrawn, defeated or vetoed by the County Executive), the Council ultimately enacted legislation which amended the BCZR to specifically identify and regulate solar facilities as a land use. This Bill (37-17) was enacted by the Council and became effective on July 17, 2017. It created a new section of the BCZR (4E). However, in apparent recognition of the prior petitions for approval of solar facilities as public utility uses (filed by Lippy and others), the Bill included language that grandfathered petitions that were filed prior to October 26, 2016. These prior filings were exempt from the provisions of the Bill.

III. THE PARTIES

The Appeal filed in this case was instituted by the Hanover Road Association, Santo Mirabili, Debra Mirabili, and John M. Couls.

IV. ARGUMENT

A. Res Judicata Is Inapplicable To The Instant Case (Lippy II).

Appellants argue that res judicata doctrine precludes the Board of Appeals from rendering an opinion on the merits of the petitions. Res judicata doctrine applies to final administrative orders in quasi-judicial proceedings. *Batson v. Shiflett* 325 Md. 684, 701-05 (1992). Its purpose is to resolve controversies expeditiously and preclude repetitive litigation.

The doctrine of res judicata was defined in *Boland v. Boland,* 423 Md. 296, 31 A.3d 529 (2011). The doctrine is applicable if the following requirements are met: "[1] if there is a final judgment [on the merits] in a previous litigation [and 2] where the parties, the subject matter and causes of action are identical or substantially identical as to issues actually litigated and as to those which could have or should have been raised in the previous litigation." Res judicata does not apply if the cause of action or claim in the second case is a different transaction from that presented in the first case. Significantly, as it applies to the instant matter, res judicata does not preclude a subsequent proceeding if the law is amended during the interim between the two proceedings or a material change in circumstances materializes following the initial proceeding. *Whittle v. Board of Zoning Appeals,* 211 Md. 36 (1956); *Marshall v. Fitzgerald,* 47 Md. App. 319 (1980).

I. The Claims In the Case At Bar Are Different

The Board should reject Protestants' argument because res judicata is reserved for cases in which a party seeks to re-litigate the same matter that was actually and necessarily litigated in a prior case. A fundamental concept of res judicata doctrine is that a court cannot rehear a claim simply because it incorrectly decided the initial action. But, when the claims at issue are not of the same action (i.e. transaction) res judicata is not applicable. "The cause of action is the same when the evidence will support both actions; or rather the judgment in the former action will be a bar, provided the evidence necessary to sustain the judgment for the plaintiff in the present action would have authorized a judgment for him in the former." *Klein v. Whitehead,* 40 Md. App.1, 18 (1978). In *Jack v. Foster Branch Homeowners's Ass'n No. 1, Inc.,* 53 Md. App. 325 (1982), the Maryland Court of Special Appeals discussed the standard used to determine whether a cause of action is identical to a prior cause of action. Employing the "same evidence analysis" test, the Court in *Jack* looked to the evidence required for the purpose of granting the relief sought by a petitioner in each case.

The facts, circumstances, and necessary evidence for relief have changed since Lippy I. The issues particular in the case at bar were not actually nor necessarily decided in the previously decided matter. The essential difference being Lippy I required evidence to satisfy a special exception for a public utility, while Lippy II requires evidence to satisfy a special exception for a solar facility. If this Board adopts the Appellants' reasoning for application of res judicata, the result would mean a landowner seeking to develop a parcel of land would have to request from a zoning board all of the alternative forms of relief the landowner might want, even if some forms of relief have yet to be considered by the local legislative body.

II. Bill 37-17 Represents A Change In The Law And Is An Exception To Res Judicata.

Even if the Board were to find that the causes in action in Lippy I and Lippy II are identical, Petitioner's claims in Lippy II are not precluded by the doctrine of res judicata due to a substantial change in circumstances. As previously stated, res judicata does not bar a subsequent cause of action if a substantial change in conditions has materialized during the interim between the first and second actions. See *Whittle v. Board of Zoning Appeals of Baltimore County,* 211 Md. 36, 45 (1956). In *Whittle,* the Court of Appeals of Maryland stated:

> "Many zoning questions do not rest upon immutable facts, [ ], and the application of the rules of res judicata is not always so easy and so clear cut ... It is our view that where the facts are subject to changes which might reasonably lead to an opposite result from that arrived at in an earlier case, and if there have been substantial changes in facts and circumstances between the first and second, the doctrine of res judicata would not prevent the granting of the special permit..."

Thus, res judicata applies only "to the facts and conditions as they existed at the time of the first judgment" and does act as a bar to subsequent claims predicated upon a substantial change of facts or conditions. *Towers v. Patuxent Institution,* 18 Md. App. 248, 250 (1973). This change in circumstances includes a change in the applicable law. Maryland law is clear that "a significant relevant change in the law subsequent to the initial decision will...preclude the

application of res judicata." *Gertz v. Anne Arundel County,* 339 Md. 261, 270 (1995); *Alvey v. Hedin,* 243 Md. 334, 340 (1966). Furthermore, "where the facts [or law] are subject to changes which might reasonably lead to an opposite result from that arrived at in an earlier case... the doctrine of res judicata would not prevent" a second application for relief. Marshall, 47 Md. App. at 324-25 (citing *Whittle v. Board of Zoning Appeals of Baltimore County,* 211 Md. 36, 45 (1956)).

The framework set forth by the Court of Appeals in *Gertz* is particularly instructive to analyzing the res judicata issue presented in the instant case. In *Gertz*, Mr. Gertz was filling his property with raw tree materials to establish pasture land, and despite Anne Arundel County's allegation that Gertzs' land filling activities constituted an impermissible "rubble landfill", the Circuit Court ruled that Gertz' activities were permissible farming. *Id.* at 264-65. Nine months later, Anne Arundel County amended the definition of "sanitary landfill" to include the disposal of rubble, and the issue presented was whether the doctrine of res judicata prohibited Anne Arundel County from seeking injunction relief against Gertz under the new law. *Id.* at 265. In addressing "whether the facts are related in time, space, origin, or motivation", the Court relied heavily on the fact that even though both of the County's claims related to the same land and activity, **the County's claims originated from different sources.** *Id.* at 270. More specifically, in considering whether res judicata applies when there has been a change in the law, the *Gertz* Court explained as follows:

> "The theory of liability in the instant action did not exist when the earlier suit was litigated; thus, Gertz's argument that the counterclaim is barred because the County merely changed its legal theory is inapposite. Although res judicata generally bars a second suit based on a different legal theory applied to the same set of facts previously litigated, that rule does not apply here because it assumes that the second theory of liability existed when the first action was litigated."

Similarly, a review of the Court of Special Appeals decision in *Marshall v. Fitzgerald,* 47 Md. App. 319 (1980), is instructive. In *Fitzgerald,* a property owner applied for reclassification of zoning to the R-T (Townhouse) zone. *Id.* at 322. At that time, the R-T zone was the County's only townhouse zone and permitted a density of 12.5 units per acre. *Id.* The application was denied on the ground that the 12.5 units per acre would create a density use higher than would be compatible with the surrounding residential areas. *Id.* Approximately nine months later, the District Council adopted a Zoning Text Amendment which redesignated the R-T zone into four separate RT categories based upon varying densities, as follows: RT 12.5; RT 10; RT 8; and RT 6 (the numerals indicate the maximum densities within each RT category). *Id.* at 323. After the change in the law, the owner again filed an application for rezoning, this time to an RT 8 zone. *Id.* Thus, the issue presented was if the application was for substantially the same rezoning, and if the subsequent application was barred by res judicata. *Id.* at 324. However, in consideration of the change in the law, the *Fitzgerald* court held that there was "substantial change in the structure of the zoning ordinance relating to townhouses" as the old and new R-T classifications are substantially different. *Id.* at 327-28. As such, res judicata did not act to bar the second reclassification application.

This Board cannot rely on principles of res judicata because this instant petition does not raise the issue that led the Circuit Court to deny the initial application in Lippy I. Like in *Gertz* and in *Fitzgerald,* the County's passage of Bill 37-17 in July 2017 constitutes a substantial change in circumstances. The present case is not the same cause of action presented to the Board at any time previously, nor could it have been. For the first time in Baltimore County history, the County has recognized a special exception for solar facilities in an RC 2 zone. With this change in the BCZR, there are new legal requirements to satisfy such a special exception request.

Approval of a special exception permit for a solar facility imposed significantly different obligations than approval of a special exception permit for a public utility.

The following are obligations specific to solar facilities and did not apply to public utility uses:

> (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 line; (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 use property or a public street; (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."

As obvious from the different obligations imposed, substantial change in conditions have materialized from the application of a special exception for a public utility in Lippy I to an application of a special exception for a solar facility in Lippy II. In summary, it is clear that because of the enactment of Bill 37-17 (and creation of Section 4E of the BCZR) the instant petition in Lippy II is not barred by res judicata. The instant case involves a different subject matter regulated by a law that did not exist when Lippy I was decided.

B. BCZR § 500.12 Is Not A Bar To Lippy II

I. The legislative purpose and history of § 500.12

In addition to the common law principles contained within the doctrine of res judicata, this Board need also consider the impact of the provisions of BCZR § 500.12 in determining if Lippy II is proper. BCZR § 500.12 provides as follows:

> 'If a zoning reclassification or special exception petition has been denied, the Zoning Commissioner may not accept for filing any other zoning classification or special exception petition with respect to the same property or any part of that property until at least 18 months have passed from the date of the final order relating to the previous petition, whether that order is issued by the Zoning Commissioner or Deputy Zoning Commissioner, by the Board of Appeals, or by a court of Competent jurisdiction considering the petition on appeal.'

This current language of BCZR § 500.12 was enacted on May 20, 1978 (Bill No. 25-78-59). Previously, in 1959, the County Council enacted Bill 144-59 which amended BCZR § 500.12. This 1959 version stated:

> 'No new petition for reclassification or special exception shall be entertained by the Zoning Commissioner in any case in any case which has been denied either by the Zoning Commissioner or the County Board of Appeals until the expiration of eighteen (18) months from the date of the final Order thereon.'

This 1959 version of BCZR § 500.12 itself replaced an earlier version of this section. In 1955, Baltimore County comprehensively amended its zoning regulations which had originally been adopted in 1945. Under the 1955 comprehensive amendment, BCZR § 500.12 stated:

> 'No new petition for reclassification or Special Exception shall be entertained by the Zoning Commissioner in any case which has been considered and acted upon by him until the expiration of 18 months from the date of his final Order thereon. Where an appeal is taken from any decision of the Zoning Commissioner to the Board of Zoning Appeals, the Zoning Commissioner shall not entertain any new petitions for reclassification or Special Exception until the expiration of 18 months from the date if the final Order of said Board of Zoning Appeals.'

The original ordinance (adopted well before Baltimore County became a chartered county and provided under Chapter 635 of the Laws of Maryland) contained substantially similar language.

In tracing the evolution of the current BCZR § 500.12, two factors are of significance. First, it is recognized that originally the Zoning Commissioner had original jurisdictions over both petitions for special exception and petitions for zoning reclassification. Thus, a property owner could, and frequently did, seek relief to allow a use either as a special exception, or seek a change (reclassification) in the zoning so that the use would be permitted by right. This explains why BCZR § 500.12 references both petitions for special exception and reclassification, notwithstanding that the reclassification process is now within the exclusive province of the Board of Appeals (See Baltimore County Code § 32-3-501 et. seq.) and not the Zoning Commissioner.

Secondly, and more importantly, it is noted that when BCZR § 500.12 was initially adopted, the doctrine of res judicata did not apply to administrative proceedings, such as hearings before the Office of Administrative Hearings and Board of Appeals. That is, the res judicata doctrine applied only to legal proceedings conducted in a court of law. With the advent and growth of administrative agencies, courts grappled over whether preclusion principles, such as res judicata, should apply to administrative decisions that share some of the hallmarks associated with court judgments.[3] Since the Supreme Court's 1966 decision in *United States v.*

[3] Historically, courts refused to give administrative decisions res judicata effect because administrative agencies are instruments of executive, not judicial power. *See, e.g., Pearson v. Williams,* 202 U.S. 281, 284-85 (1906). However, in light of the proliferation of administrative hearings during the late twentieth century, the Supreme Court held that "[w]hen an administrative agency [acts] in a judicial capacity and resolves disputed issues of fact ... which the parties have had an adequate opportunity to litigate," there is "neither need nor justification for a second evidentiary hearing on these matters already resolved as between these two parties." *United States v. Utah Constr. & Mining Co.,* 384 U.S. 394, 422 (1966).

Utah Construction & Mining Co.,[4] res judicata principles have been extended to administrative determinations. Many zoning determinations fit squarely within the adjudicative framework. When a zoning board considers a zoning application, an applicant is entitled to final determination of their claim. In making that determination, the zoning board must apply settled legal principals to the facts presented by the applicant. The board must conduct a public hearing at which all parties have an opportunity to present and rebut evidence. Therefore, preclusion doctrines, such as res judicata, would apply to requests for review by a zoning board. As such, the passage of § 500.12 occurred prior to the recognition that res judicata applies to local zoning decisions.

Quite obviously, BCZR § 500.12 was adopted to prevent repeated filings of the same or similar petitions because res judicata did not then apply to zoning hearings. Many times, a statute is adopted by the legislature in order to change the common law and precedent established by a decision of the appellant courts. But this case presents the opposite scenario. A statute was first adopted (500.12) and then the common law developed and changed in addressing the same issue.

But just as res judicata does not prohibit a second filing when there has been a change in the law, § 500.12 should likewise be construed similarly given its legislative history. That is, although the adoption of res judicata did not necessarily supersede BCZR § 500.12, it is clear that the legislative intent of the adoption of that section was to apply the principles of res judicata to the County's special exception/reclassification process. So just as res judicata recognizes its in application to a matter in which the law has changed; BCZR § 500.12 should be applied similarly. If this Board accepts Appellants' argument that § 500.12 is controlling, Petitioner's relief should still be granted because of a change in conditions and law from Lippy I to Lippy II. As stated above, there have been substantial changes (most notably to the law) which would

[4] 384 U.S. 394, 422-23 (1966).

render both res judicata and § 500.12 inapplicable to the case at bar. While § 500.12 does not explicitly state an exception due to substantial change, legislative intent must be considered. In determining the legislative intent, not only is consideration of the literal or usual meanings of the words used, but their meaning and effect considered in the light of the setting, the purposes of the enactment, the ends to be accomplished, and the consequences that may result from one meaning rather than another. *Scherr v. Braun,* 211 Md. 553, 561, 128 A.2d 388. With regard to statutory interpretation, the Court in *Lockshin v. Semsker,* 412 MD 257 (2012) stated that "the plain language must be viewed within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute. We presume that the Legislature intends its enactments to operate together as a consistent and harmonious body of law, and thus, we seek to reconcile and harmonize the parts of a statute, to the extent possible consistent with the statute's object and scope." As stated by the Maryland Court of Appeals in *Woodlawn Area Citizens Ass'n v. Board of County Com'rs* for Prince George's County, "[t]he general rule, where the question has arisen, seems to be that after the lapse of such time as may be specified by the ordinance, a zoning appeals board may consider and act upon a new application for a special permit previously denied, but that it may properly grant such a permit only if there has been a substantial change in conditions." The intent of the zoning authorities in adopting § 500.12, undoubtedly, was, to utilize the substantial change in conditions test. The passing of Bill 37-17 is a substantial change in conditions from Lippy I to Lippy II.

II. The Petition In The Instant Case Was Not Filed Within 18 Months *After* The Denial Of The Special Exception In The First Case.

Section 500.12 states:

> 'If a zoning reclassification or special exception petition has been denied, the Zoning Commissioner may not accept for filing any other zoning classification or special exception petition with respect to the same property or any part of that property until at

least 18 months have passed *from the date of the final order* relating to the previous petition, whether that order is issued by the Zoning Commissioner or Deputy Zoning Commissioner, by the Board of Appeals, or by a court of Competent jurisdiction considering the petition on appeal.' (emphasis added)

This section clearly states that only subsequent petitions filed within 18 months *after* a final order has been issued are barred. The first sentence of the section literally states that if a Zoning Commissioner accepts for filing a petition before a final order relating to a previous petition has been ordered, § 500.12 does not apply. The language clearly states that the eighteen month prohibition period does not begin until a final order has been issued. By written Order dated December 15, 2017, Judge Mickey J. Norman of the Circuit Court for Baltimore County affirmed the Board of Appeals' decision to deny Petitioner's requested relief. On August 14, 2017 filed the instant petiion in Lippy II before the Office of Administrative Hearings of Baltimore County. Petitions for Lippy II were filed some 5 months prior to the permit denial in Lippy I. As such, the Lippy II application for special exception is not barred by § 500.12. If the Board declines to accept such a literal meaning of the statute, then the Board is improperly substituting its own intent for that of the County Council.

III. The First Petition Was Not Denied Because The Proposal Was Determined To Be Detrimental To The Health, Safety And General Welfare Of The Locale.

A fair reading of BCZR § 500.12 is that when a request is denied on its merits (be it either as a request for reclassification or special exception) that this same request cannot be made again within 18 months of the final decision. But inherent in this language is the requirement that the first request was denied because it substantively did not meet the standard for relief. The special exception criteria is set forth in BCZR § 502.1 and is well known to this Board. Before any special exception can be granted, it must be shown that the proposed use will not be detrimental to the health, safety and general welfare of the locale. But in Lippy I, the request was not denied for this reason. Instead, the Board denied the petition because it determined that the proposal

was not a use permitted by special exception. Although there was a petition for special exception filed, the Board concluded that the use proposed was not a special exception use. That issue has been resolved by the Council's enactment of Bill 37-17, which identified and regulated solar facilities as a special exception use in the RC 2 zone. But clearly the intent of BCZR § 502.1 was to prevent the re-litigation of the same issue, not prohibit another filing when the first case was decided on an issue far removed from the request in the subsequent matter.

IV. Bill 37-17 Contains No Prohibition On The Filing Of A Second Zoning Petition For The Same Property

Section 3 of Bill 37-17 (enabling regulation of solar facilities) provides:

> "And be it further enacted, that this Act, having passed by the affirmative vote of five members of the County Council, shall take effect on July 17, 2017 and **shall apply retroactively to any zoning petition** filed after October 18, 2016."

The retroactive language in Section 3 acknowledges that solar facility petitions were previously filed as a public utility special exception. The County Council was well aware of the administrative practice that had developed by OAH and the Zoning Office of processing, considering and approving solar facilities as "public utility uses." The language in Section 3 of the Bill did nothing more than recognize that established practice, and allow those petitions to move forward. There is no language that prohibits a re-filing under the language established by Bill 37-17.

This type of retroactive language is not uncommon in zoning and planning. In fact, there is a general presumption in land use and zoning cases that unless the law specifically applies prospectively, a substantive change to the law during the pendency of land use litigation, will allow for an application retrospectively to some extent. *McHale v. DCW Dutchship Island, LLC,* 415 Md. 145, 999 A.2d 969 (2010). "The presumption against retrospectivity is rebutted only where there are clear expressions in the statute to the contrary." *Washington Suburban Sanitary*

Com'n v. Riverdale Heights Volunteer Fire Co. Inc., 308 Md. 561, 520 A.2d at 1322 (1987). Courts apply the traditional rules of statutory construction when there is indication that the Legislature intended for the prospective application only. However, as in the present case, the Legislatures were silent in Bill 37-17 with respect to prospective application and thus retrospective application applies. If retrospective construction of a statute would interfere, impair, or divest a vested right, a court should construe prospectively the statute. *Grasslands Plantation, Inc. v. Frizz–King Enters., LLC,* 410 Md. 191, 218, 978 A.2d 622, 638 (2009). A retrospective application of Bill 37-17 would not interfere, impair nor divest any vested right. In fact, a strict prospective application of Bill 37-17 would deprive the Lippy family of certain fundamental property rights. Finally, as noted by ALJ Beverungen in his opinion in this case, Bill 37-17 binds the number of solar facilities in any one Council district to ten. Obviously, it would be inferred and not within the Council's intent to prohibit the filing in Lippy II which would allow others to "jump in line" ahead of Lippy because of an 18 month moratorium.

IV. CONCLUSION

For the foregoing reasons and based upon the record of evidence offered in this case, the Petitioners request that the Board deny the Appellants' Motion to Dismiss.

Respectfully submitted,

LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
lschmidt@sgs-law.com
Attorney for Owners/Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of March, 2018, a copy of the foregoing Petitioners' Written Memorandum in Response to Motion to Dismiss was mailed first-class pre-paid postage to:

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

LAWRENCE E. SCHMIDT

RECEIVED
MAR 23 2018
BALTIMORE COUNTY
BOARD OF APPEALS

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

March 23, 2018

Via Hand-Delivery

Krysundra Cannington
Baltimore County Board of Appeals
Jefferson Building
105 W. Chesapeake Avenue, Ste. 203
Towson, Maryland 21204

Re: Notice of Appeal of OAH Decision
Case No: 2018-0052-XA

Dear Ms. Cannington:

Enclosed please find an original and three (3) copies of Protestants' Memorandum in Support of Motion to Dismiss for filing in the above-referenced matter.

Thank you for your attention to this matter. Please contact me if you have any questions or concerns.

Best Regards,

Michael McCann

cc: Arnold Jablon, Dir. of Permits Approvals and Inspections (via Hand-Delivery)

RECEIVED
MAR 23 2018
BALTIMORE COUNTY
BOARD OF APPEALS

IN RE: PETITION FOR SPECIAL HEARING AND SPECIAL EXCEPTION 15700 Hanover Pike 4th Election District 3rd Councilmanic District	*	BEFORE THE BOARD OF APPEALS FOR BALTIMORE COUNTY
Legal Owner: Donald and Kathleen Lippy	*	
Petitioners	*	Case No: 2018-0052-XA
	*	
	*	

* * * * * * * * * * * *

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Protestants, Hanover Road Association, Santo and Debra Mirabili, and John M. Couls, submit this memorandum in support of their motion to dismiss the Petition for Special Exception.

I. Factual and Procedural Background

On June 24, 2016, Petitioner filed a Petition for Special Exception (the "First Petition") seeking "a special exception for a solar panel array fields as a 'public utility use' under BCZR § 1A01.2.C.18." (Protestants' Ex. 1). By Order dated October 18, 2016, the Administrative Law Judge ("ALJ") granted the petition. Protestants appealed that decision and, by Order dated April 28, 2017, the Board of Appeals reversed the ALJ and denied the First Petition. The Board found that the proposed solar panel array was not a "public utility use" under § 1A01.2.C.18. Petitioner appealed the Board's decision to the Circuit Court for Baltimore County. (Protestants' Ex. 2).

During the pendency of the appeal before the Circuit Court, the County Council passed Bill 37-17 which amended the Zoning Regulations to allow solar facilities in the RC and other zones. (Protestants' Ex. 3). Importantly, the County Council made clear in Bill 37-17 that it was "allocating" a "limited" amount of land for solar facilities in the County.

THE ALLOCATION OF LAND FOR SOLAR FACILITIES IN THE COUNTY IS LIMITED TO THE FOLLOWING:

1. THE MAXIMUM AREA PERMITTED FOR A SINGLE SOLAR FACILITY IS THE AMOUNT OF ACREAGE THAT PRODUCES NO MORE THAN TWO MEGAWATTS ALTERNATING CURRENT (AC) OF ELECTRICITY.
2. NO MORE THAN TEN (10) SOLAR FACILITIES MAY BE LOCATED IN A COUNCILMANIC DISTRICT
3. THE DIRECTOR OF PERMITS, APPROVALS AND INSPECTIONS SHALL MAINTAIN A RECORD OF ALL PERMITS ISSUED FOR A SOLAR FACILITY IN THE COUNTY....
4. UPON REACHING THE THRESHOLD OF TEN (10) SOLAR FACILITIES IN A COUNCILMANIC DISTRICT, NO ADDITIONAL PERMITS SHALL BE ISSUED ....

(*Id.*, Section 1 at 4E-102.B).[1]

In regards to when the new law would take effect and to what zoning petitions it would apply, Section 3 of the Bill stated: "[T]his Act ... shall take effect on July 17, 2017 and shall apply retroactively to any zoning petition filed after October 18, 2016."

On August 14, 2017, while the First Petition was still under review by the Circuit Court, Petitioner filed a second Petition for Special Exception (the "Second Petition"), this time seeking a special exception "for a solar facility under BCZR § 4E-102 (as established by Bill 37-17)." On October 13, 2017, the ALJ entered an Order granting the Second Petition. Protestants filed a timely appeal of that decision to the Board. Prior to the hearing before the Board, the Circuit Court entered an Order on December 22, 2017 denying the Petition for Judicial Review filed by Petitioner and affirming this Board's April 28, 2017 Order regarding the First Petition.

At the hearing in this matter, Protestants moved to dismiss the Second Petition. The Board held the issue *sub curia* and asked the parties to file memoranda on the issues presented.

[1] The Bill directed the Planning Board, in consultation with private groups and the Departments of Planning and Environmental Protection and Sustainability, to study and evaluate the impact of solar facilities in the County. (*Id.*, Section 2).

II. Argument

A. Applying Bill 37-70 To The Second Petition Would Be Inconsistent With The Purpose Of Bill 37-17 And Render Its Retroactivity Clause Meaningless

It is not disputed that Bill 37-17 does not apply to the First Petition since that petition was filed in June 2016, before the October 18, 2016 deadline in the Bill. With respect to the Second Petition, it is true that it was "filed," technically speaking, on August 14, 2017 (after the October 18, 2016 deadline), but it is effectively the same petition as the First Petition. It proposes the same exact use, at the same location, on the same property, with the same impacts.

Applying Bill 37-17 to the Second Petition would defeat the purpose of the Bill, which was to not only limit its application to *new* projects, but also to protect those projects that were in the pipeline *before* the October 18, 2016 deadline so that they could be decided under the law as it existed prior to Bill 37-17.[2] It is not disputed that the October 18, 2016 deadline was a hard date specifically selected to allow several already-filed petitions, including Petitioner's, to be heard before the law changed.[3] (These petitions (attached as **Exhibit 1**) were all filed with the County either the day before or a few days before October 18, 2016 to take advantage of the prior law). If this Board's decision on the First Petition (that a solar array is not a "public utility use") is not what the County Council intended or anticipated when it passed Bill 37-17, then the County Council can always address the issue by enacting further legislation. This Board should not rewrite or repurpose Bill 37-17.

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[2] That the County Council intended to restrict application of Bill 37-17 is also demonstrated by the unique way in which the Bill "allocates" a "limited" amount of land for solar facilities in the County.

[3] The fact that the "public utility use" argument ultimately was rejected by the Board does not change the fact that this was undisputedly the purpose of Bill 37-17.

Allowing Petitioner to simply re-file its petition under the new law would accomplish an end-around the retroactivity clause of the Bill. Indeed, it would render the retroactivity clause completely meaningless, nugatory, and without effect. There would literally be no petition filed before October 18, 2016 which would be affected by the retroactivity clause (and decided under the law prior to Bill 37-07) because that petition could simply be refiled. To read the retroactivity clause out of Bill 37-17 would violate fundamental principles of statutory interpretation. *See F&M Schaefer Brewing Co. v. Comptroller of Treasury*, 255 Md. 211, 216 (1969) ("a statute is to be read so that no word, clause, sentence or phrase shall be rendered surplusage, superfluous, meaningless or nugatory"; *Taylor v. Mayor & City Council of Baltimore*, 251 Md. App. 435, 447 (1982) ("Before words in statute may be rejected as surplusage, it must be certain that legislature could not possibly have intended words to be in statute, and that correction of them serves merely as correction of careless language and actually gives true intention of legislature").

If no effect is given to the retroactivity clause of Bill 37-17, it is a virtual certainty that each of the property owners who filed petitions filed prior to the October 18, 2016 deadline (Ex. 1) will simply file new petitions, as this Petitioner did. In fact, it is not disputed that the petitioners who filed petitions filed prior to October 18, 2016 (Ex. 5) asked the County to put their petitions on hold, presumably to wait and see how the First Petition was decided.

While this result may seem unfair to Petitioner, allowing Petitioner to re-file its petition is also unfair to these protestants and others who relied on the Bill 37-17's retroactivity clause and would be forced to contest two cases involving the same project. If this Petitioner and others believe that enforcing the retroactivity provision of Bill 37-17 is not what the County Council intended, then they can ask the Council to change the law to clarify that the Bill.

B. Even If The Second Petition Is Not Barred By Bill 37-17, Section 500.12 Clearly And Unequivocally Prohibits The Filing Of The Second Petition

Section 500.12 provides, in full, as follows:

> If a zoning reclassification or special exception petition has been denied, the Zoning Commissioner may not accept for filing any other zoning reclassification or special exception petition with respect to the same property or any part of that property until at least 18 months have passed from the date of the final order relating to the previous petition, whether that order is issued by the Zoning Commissioner, by the Board of Appeals, or by a court of competent jurisdiction considering the petition on appeal.

Here, the First Petition was denied by the Circuit Court on December 22, 2017. Since the Second Petition is a "special exception petition with respect to the same property," that petition could not be accepted for filing until 18 months after the Circuit Court's final order. For this reason alone, the Second Petition must be dismissed.

Petitioner argues that section 500.12 is not applicable because the Second Petition is different than the First Petition in that it seeks relief under a different law (under Bill 37-17 rather than as a "public utility use"). However, the words "*any other* ...special exception petition," indicate clearly the County Council's intention to prohibit the filing of any and all petitions regardless of the legal basis for the petition or the specific type of special exception being sought. Similarly, the words "with respect to the same property" support that the only connection or relationship between the two petitions required by Section 500.12 is that they both pertain to the same property. There is nothing else in 500.12 that requires any degree of similarity or connection between the first petition and second petition.

The words "*relating to* the previous petition" does not change this analysis. Grammatically speaking, those words modify "final order" and thus the phrase "at least 18 months from the date *of the final order relating to the previous petition*" means only that the

final order relate or pertain to the first petition. The words "relating to the previous petition" do not in any way suggest that there must be some qualitative connection or similarly between the first and second petition. Again, section 500.12 provides no such limits on its application, only that the two petitions relate to the same property.

III. Conclusion

For the foregoing reasons, Protestants respectfully request that the Board dismiss the instant Petition for Special Exception.

Respectfully submitted,

Michael R. McCann
Michael R. McCann, P.A.
118 W. Pennsylvania Ave.
Towson, MD 21204
(410) 825-2150

Attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on 23rd day of March, 2018 a copy of the foregoing Memorandum in Support of Motion to Dismiss was mailed, via first-class mail, postage prepaid to:

Lawrence Schmidt
Gildea & Schmidt, LLC
600 Washington Avenue, Ste. 200
Towson, Maryland 21204

Michael R. McCann

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 1, 2018

NOTICE OF DELIBERATION ON MOTION TO DISMISS

IN THE MATTER OF: Donald E. and Kathleen Lippy
Hanover Pike
18-052-XA 4th Election District; 3rd Councilmanic District

Agenda: Motion to Dismiss made by Michael McCann, Esquire on behalf of Protestants at the hearing on February 27, 2018; and argument made thereon.

A public deliberation has been scheduled for the following:

DATE AND TIME: **APRIL 11, 2018 at 9:30 a.m.**

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

NOTE: Memoranda on the Motion to Dismiss are due on **March 23, 2018 before 3:00 p.m.**
(Original and three [3] copies)

NOTE: PUBLIC DELIBERATIONS ARE OPEN WORK SESSIONS WHICH ALLOW THE PUBLIC TO WITNESS THE DECISION-MAKING PROCESS. ATTENDANCE IS NOT REQUIRED AND PARTICIPATION IS NOT ALLOWED. A WRITTEN OPINION AND ORDER WILL BE ISSUED BY THE BOARD WITHIN A REASONABLE TIMEFRAME AFTER THE CONCLUSION OF THE DELIBERATION. A COPY OF THAT OPINION AND ORDER WILL BE 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 Petitioner/Legal Owner : Lawrence E. Schmidt, Esquire
Petitioner/Legal Owner : Donald and Kathleen Lippy

Counsel for Protestants : Michael R. McCann, Esquire
Protestants : Hanover Road Association,
Santo and Debra Mirabili, John Couls

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

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

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

December 22, 2017

NOTICE OF POSTPONEMENT AND REASSIGNMENT

IN THE MATTER OF: Donald E. and Kathleen Lippy
Hanover Pike
18-052-XA 4th Election District; 3rd Councilmanic District

Re: Petition for Special Exception relief for a solar facility pursuant to BCZR § 4E-102 (as established by Bill 37-17); and

Petition for Variance to approve a minimum setback of 35 ft. in lieu of the 50 ft. solar facility setback required to the nearest tract boundary, pursuant to BCZR § 4E-104.A.4.

10/13/17 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED; and the Petition for Variance was GRANTED, subject to conditions.

This matter was assigned for hearing on January 18, 2018 and has been postponed. This matter has been

REASSIGNED FOR: FEBRUARY 27, 2018, AT 10:00 A.M.

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

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.
- 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

Krysundra Cannington

From: Alyssa Moyers <amoyers@sgs-law.com>
Sent: Monday, December 18, 2017 7:41 AM
To: 'Michael McCann'; Krysundra Cannington; Lawrence Schmidt
Cc: Peoples Counsel
Subject: RE: Lippy 18-052-XA

Sunny,

I thought I responded to this email earlier last week. I apologize. We are fine for any of the dates provided. 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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From: Michael McCann [mailto:michael@mmccannlaw.net]
Sent: Saturday, December 16, 2017 2:26 PM
To: Krysundra Cannington; Lawrence Schmidt
Cc: Peoples Counsel; Alyssa Moyers
Subject: RE: Lippy 18-052-XA

Sunny: The dates that don't work are Feb 14, 21, and 22. Thank you.

Michael

Michael R. McCann
Michael R. McCann, PA
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(p) 410-825-2150
(f) 410-825-2149

E-mail Confidentiality: The information contained in this message may be confidential, proprietary and/or protected by the attorney-client privilege or work product doctrine. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please delete/destroy any copy of this message and notify Michael R. McCann at 410 825-2150.

From: Krysundra Cannington [mailto:kcannington@baltimorecountymd.gov]
Sent: Wednesday, December 13, 2017 1:46 PM

Krysundra Cannington

From: Michael McCann <michael@mmccannlaw.net>
Sent: Saturday, December 16, 2017 2:26 PM
To: Krysundra Cannington; Lawrence Schmidt, Esquire
Cc: Peoples Counsel; Alyssa Moyers
Subject: RE: Lippy 18-052-XA

Sunny: The dates that don't work are Feb 14, 21, and 22. Thank you.

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From: Krysundra Cannington [mailto:kcannington@baltimorecountymd.gov]
Sent: Wednesday, December 13, 2017 1:46 PM
To: Michael McCann <michael@mmccannlaw.net>; Lawrence Schmidt, Esquire <lschmidt@sgs-law.com>
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>; Alyssa Moyers <amoyers@sgs-law.com>
Subject: RE: Lippy 18-052-XA

Counsel,

Since the January dates don't work for Mr. McCann and the February dates don't work for Mr. Schmidt, I hereby offer the following dates.

February 13, 14, 15, 20, 21, 22, 27, and 28, 2018.

As previously indicated, there are other cases I am waiting to schedule until I receive your response. I kindly request your response by the close of business this Friday.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator

Krysundra Cannington

From: Krysundra Cannington
Sent: Wednesday, December 13, 2017 1:46 PM
To: 'Michael McCann'; Lawrence Schmidt, Esquire
Cc: Peoples Counsel; Alyssa Moyers
Subject: RE: Lippy 18-052-XA

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Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

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From: Michael McCann [mailto:michael@mmccannlaw.net]
Sent: Tuesday, December 12, 2017 9:28 AM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>; Lawrence Schmidt, Esquire <lschmidt@sgs-law.com>
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>; Alyssa Moyers <amoyers@sgs-law.com>
Subject: RE: Lippy 18-052-XA

Krysundra Cannington

From: Michael McCann <michael@mmccannlaw.net>
Sent: Tuesday, December 12, 2017 9:28 AM
To: Krysundra Cannington; Lawrence Schmidt, Esquire
Cc: Peoples Counsel; Alyssa Moyers
Subject: RE: Lippy 18-052-XA

Sunny: One of my clients cannot do the January dates. Also, I am in the process of planning a trip at the end of the month and perhaps early February.

So Feb. 6, 7, and 8 would be best.

Thanks.

Michael

Michael R. McCann
Michael R. McCann, PA
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(p) 410-825-2150
(f) 410-825-2149

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From: Krysundra Cannington [mailto:kcannington@baltimorecountymd.gov]
Sent: Tuesday, December 5, 2017 9:12 AM
To: Lawrence Schmidt, Esquire <lschmidt@sgs-law.com>; Michael McCann <michael@mmccannlaw.net>
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>; Alyssa Moyers <amoyers@sgs-law.com>
Subject: Lippy 18-052-XA

Good morning Counsel,

The Board has agreed to postpone the matter of Mr. and Mrs. Lippy 18-052-XA from January 18, 2018.

For ease of scheduling, I am providing the following dates which are currently available on our calendar. Please be advised I cannot hold these dates beyond the end of this week as we have other cases to schedule.

January 23, 24, 25, 30, 31, February 1, 6, 7, 8, 2018.

Additionally, please advise if you believe this matter will require more than one hearing date.

Please note, our inclement weather policy is posted on our web page, in the event it is needed.

Krysundra Cannington

From: Michael McCann <michael@mmccannlaw.net>
Sent: Monday, December 11, 2017 8:30 AM
To: Krysundra Cannington; Lawrence Schmidt, Esquire
Cc: Peoples Counsel; Alyssa Moyers
Subject: RE: Lippy 18-052-XA

Sunny: I did not forget about this. Should have answer today. Thank you.

Michael

Michael R. McCann
Michael R. McCann, PA
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(p) 410-825-2150
(f) 410-825-2149

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Sent: Tuesday, December 5, 2017 9:12 AM
To: Lawrence Schmidt, Esquire <lschmidt@sgs-law.com>; Michael McCann <michael@mmccannlaw.net>
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>; Alyssa Moyers <amoyers@sgs-law.com>
Subject: Lippy 18-052-XA

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Thank you in advance for your prompt response.

Sunny

Krysundra Cannington

From: Alyssa Moyers <amoyers@sgs-law.com>
Sent: Tuesday, December 05, 2017 9:20 AM
To: Krysundra Cannington; Lawrence Schmidt; Michael McCann, Esquire
Cc: Peoples Counsel
Subject: RE: Lippy 18-052-XA

Sunny,

Thank you for these dates. We are checking with our team now.

In the meantime, I can tell you that the February dates provided are no good for us as we are holding those dates for Court of Special Appeals argument. As you know, we will not get notice of oral argument until end of this month/early January.

I will update you as to the January dates as soon as I hear back from our clients. 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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From: Krysundra Cannington [mailto:kcannington@baltimorecountymd.gov]
Sent: Tuesday, December 05, 2017 9:12 AM
To: Lawrence Schmidt; Michael McCann, Esquire
Cc: Peoples Counsel; Alyssa Moyers
Subject: Lippy 18-052-XA

Good morning Counsel,

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Sunny

Krysundra Cannington

From: Krysundra Cannington
Sent: Tuesday, December 05, 2017 9:12 AM
To: Lawrence Schmidt, Esquire; Michael McCann, Esquire
Cc: Peoples Counsel; 'Alyssa Moyers'
Subject: Lippy 18-052-XA

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Thank you in advance for your prompt response.

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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Krysundra Cannington

From: Michael McCann <michael@mmccannlaw.net>
Sent: Saturday, December 02, 2017 7:49 AM
To: Alyssa Moyers
Cc: Krysundra Cannington; Peoples Counsel; Lawrence Schmidt
Subject: Re: 2018-052-XA

Sunny. We are not opposed to the request. Thanks.

Sent from my iPhone

On Nov 29, 2017, at 8:56 AM, Alyssa Moyers <amoyers@sgs-law.com> wrote:

> Sunny,
>
> Please see the attached request for postponement. 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
>
> 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.
>
> <Letter to BOA regarding 1.18.18 hearing - pdf.PDF>

Krysundra Cannington

From: Alyssa Moyers <amoyers@sgs-law.com>
Sent: Wednesday, November 29, 2017 8:56 AM
To: Krysundra Cannington
Cc: 'michael@mmccannlaw.net'; Peoples Counsel; Lawrence Schmidt
Subject: 2018-052-XA
Attachments: Letter to BOA regarding 1.18.18 hearing - pdf.PDF

Sunny,

Please see the attached request for postponement. 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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SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
JASON T. VETTORI

MICHAEL H. BOWMAN
CHRISTOPHER W. COREY
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH
WILLIAM L. RODOWSKY
SARAH A. ZADROZNY
of counsel:
EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON
MARY G. LOKER
*Admitted in MD, FL, PA

November 28, 2017

Sent Via Email and First Class Mail
Ms. Krysundra L. Cannington, Administrator
Board of Appeals of Baltimore County
Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

RECEIVED
NOV 30 2017
BALTIMORE COUNTY
BOARD OF APPEALS

Re: In the Matter of: Donald E. and Kathleen Lippy
Hanover Pike, 4th Election District, 3rd Councilmanic District
Case No. 2018-052-XA

Dear Sunny,

I am in receipt of the Board's Notice of Assignment in connection with the above referenced matter.

I understand that this matter has been scheduled for a hearing on Thursday, January 18, 2018 beginning at 10:00 a.m. Unfortunately, I am scheduled to be out of town the week of January 15th – 22nd on a preplanned, prepaid family vacation, and as such would appreciate this matter being postponed to a later date at the convenience of the Board.

Thank you for your courtesy. I look forward to hearing from you.

Very truly yours,

Lawrence E. Schmidt

LES/amf
cc: Michael R. McCann, Esquire
Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
JASON T. VETTORI

MICHAEL H. BOWMAN
CHRISTOPHER W. COREY
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH
WILLIAM L. RODOWSKY
SARAH A. ZADROZNY
of counsel:
EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON
MARY G. LOKER
*Admitted in MD, FL, PA

November 28, 2017

Sent Via Email and First Class Mail
Ms. Krysundra L. Cannington, Administrator
Board of Appeals of Baltimore County
Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

Re: In the Matter of: Donald E. and Kathleen Lippy
Hanover Pike, 4th Election District, 3rd Councilmanic District
Case No. 2018-052-XA

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Thank you for your courtesy. I look forward to hearing from you.

Very truly yours,

Lawrence E. Schmidt

LES/amf
cc: Michael R. McCann, Esquire
Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County

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

November 22, 2017

NOTICE OF ASSIGNMENT

IN THE MATTER OF: Donald E. and Kathleen Lippy
Hanover Pike
18-052-XA 4th Election District; 3rd Councilmanic District

Re: Petition for Special Exception relief for a solar facility pursuant to BCZR § 4E-102 (as established by Bill 37-17); and

Petition for Variance to approve a minimum setback of 35 ft. in lieu of the 50 ft. solar facility setback required to the nearest tract boundary, pursuant to BCZR § 4E-104.A.4.

10/13/17 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED; and the Petition for Variance was GRANTED, subject to conditions.

ASSIGNED FOR: JANUARY 18, 2018, AT 10:00 A.M.

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

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.
- 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 Petitioner/Legal Owner : Lawrence E. Schmidt, Esquire
Petitioner/Legal Owner : Donald and Kathleen Lippy

Counsel for Protestants : Michael R. McCann, Esquire
Protestants : Hanover Road Association,
Santo and Debra Mirabili, John Couls

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

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

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

November 22, 2017

NOTICE OF ASSIGNMENT

IN THE MATTER OF: Donald E. and Kathleen Lippy
Hanover Pike
18-052-XA 4th Election District; 3rd Councilmanic District

Re: Petition for Special Exception relief for a solar facility pursuant to BCZR § 4E-102 (as established by Bill 37-17); and

Petition for Variance to approve a minimum setback of 35 ft. in lieu of the 50 ft. solar facility setback required to the nearest tract boundary, pursuant to BCZR § 4E-104.A.4.

10/13/17 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED; and the Petition for Variance was GRANTED, subject to conditions.

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Krysundra "Sunny" Cannington, Administrator

c: Counsel for Petitioner/Legal Owner : Lawrence E. Schmidt, Esquire
Petitioner/Legal Owner : Donald and Kathleen Lippy

Counsel for Protestants : Michael R. McCann, Esquire
Protestants : Hanover Road Association,
Santo and Debra Mirabili, John Couls

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

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

c: Counsel for Petitioner/Legal Owner : Lawrence E. Schmidt, Esquire
Petitioner/Legal Owner : Donald and Kathleen Lippy

Counsel for Protestants : Michael R. McCann, Esquire
Protestants : Hanover Road Association,
Santo and Debra Mirabili, John Couls

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

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

KEVIN KAMENETZ
County Executive

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

November 13, 2017

RECEIVED
NOV 13 2017
BALTIMORE COUNTY
BOARD OF APPEALS

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

Re: Petitions for Special Exception and Variance
Case Number: 2018-0052-XA
Location: Hanover Road

Dear Mr. Schmidt:

Please be advised that an appeal of the above-referenced case was filed in this Office on November 9, 2017. 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,

LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS:sln

c: Baltimore County Board of Appeals
Peter Max Zimmerman, People's Counsel for Baltimore County
Michael R. McCann, Esq., 118 West Pennsylvania Avenue, Towson, Maryland 21204-4518

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

RECEIVED
NOV 09 2017
OFFICE OF
ADMINISTRATIVE HEARINGS

November 9, 2017

Via Hand-Delivery

Baltimore County Office of Administrative Hearings
105 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Notice of Appeal of OAH Decision
Case No: 2018-0052-XA

To whom it may concern:

Enclosed please find a notice of appeal of the Opinion and Order of the Office of Administrative Hearings in the above-referenced matter.

Thank you for your attention to this matter. Please contact me if you have any questions or concerns.

Best Regards,

Michael McCann

cc: Arnold Jablon, Dir. of Permits Approvals and Inspections (via Hand-Delivery)

IN RE: PETITION FOR SPECIAL HEARING AND SPECIAL EXCEPTION 15700 Hanover Pike 4th Election District 3rd Councilmanic District	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
Legal Owner: Donald and Kathleen Lippy	*	FOR BALTIMORE COUNTY
Petitioners	*	Case No: 2018-0052-XA

* * * * * * * * * * * *

NOTICE OF APPEAL

Protestants, Hanover Road Association, Santo and Debra Mirabili, and John M. Couls, pursuant to Baltimore County Code §32-3-401, hereby file an appeal to the Board of Appeals of Baltimore County from the Opinion and Order of the Administrative Law Judge dated October 13, 2017. Pursuant to Rule 3 of the Rules of Practice and Procedure of the Board of Appeals, the addresses of the appellants are: Hanover Road Association, PO Box 121, Upperco, Maryland 21155; Santo Mirabili, 14517 and 14525 Hanover Pike, Upperco, Maryland 21155, and John Couls, 15708, 157012, and 157014 Hanover Road, Upperco, Maryland 21155.

Respectfully submitted,

Michael R. McCann
Michael R. McCann, P.A.
118 W. Pennsylvania Ave.
Towson, MD 21204
(410) 825-2150

Attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on 9th day of November, 2017 a copy of the foregoing Notice of Appeal was mailed, via first-class mail, postage prepaid to:

Lawrence Schmidt
Gildea & Schmidt, LLC
600 Washington Avenue, Ste. 200
Towson, Maryland 21204

and hand-delivered to:

Arnold Jablon, Director
Department of Permits, Approvals & Inspections
111 W. Chesapeake Ave.
Suite 205
Towson, Maryland 21204

Michael R. McCann

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No 143353

Date: 11/9/17

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		4150				650.00

Total: 650.00

Rec From: Michael McCann

For: Hanover Road
2018-0052-XA

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING
PLEASE PRESS HARD!!!!

PAID RECEIPT
BUSINESS ACTUAL TIME DRW
11/09/2017 11/09/2017 11:43:07 1
REG WS01 WALKIN LJR
>>RECEIPT # 760500 11/09/2017 OFLN
Dept 5 528 ZONING VERIFICATION
CR NO. 143353
Recpt Tot $650.00
$650.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

IN RE: PETITIONS FOR SPECIAL EXCEPTION AND VARIANCE (Hanover Road)	*	BEFORE THE
4th Election District	*	OFFICE OF
3rd Council District	*	ADMINISTRATIVE HEARINGS
Donald E. & Kathleen Lippy *Legal Owners*	*	FOR BALTIMORE COUNTY
New Source Generation, LLC *Lessee* **Petitioners**	*	**Case No. 2018-0052-XA**

* * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located on Hanover Road in northwest Baltimore County, not far from the Carroll County line. The Petitions were filed on behalf of Donald E. and Kathleen Lippy, legal owners of the subject property and New Source Generation, LLC, lessee. The Special Exception petition seeks approval for a solar facility. The Petition for Variance seeks to approve a minimum setback of 35 ft. in lieu of the 50 ft. setback imposed by Article 4E of the B.C.Z.R. A site plan was marked as Petitioners' Exhibit 2.

Appearing at the hearing in support of the petitions were Ken Donithan, Donald Lippy and professional land surveyor John Lemmerman. Lawrence E. Schmidt, Esq. represented Petitioners. The Hanover Road Community Association, represented by Mike McCann, Esq. opposed the request. The Petition was advertised and posted as required by the B.C.Z.R. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP). That agency did not oppose the request.

The subject property is approximately 6.454 acres in size and is zoned RC 2. The property is unimproved and is currently in agricultural use. Petitioners propose to install solar panels on the property which would generate approximately one megawatt of electricity. Mr. Donithan testified

ORDER RECEIVED FOR FILING
Date 10-13-17
By

at least 60% of the power generated would be used by the Lippy brothers in their farming operations in Baltimore and Carroll Counties.

Mr. Donithan testified Petitioners have obtained conditional approval from both the PSC and BGE pursuant to the community solar energy program adopted by the State of Maryland. Baltimore County has approved a final landscape plan for the project (Exhibit 6) and there will be enhanced screening along both road frontages. The facility will also be enclosed by a security fence.

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.

Based on the testimony of Messrs. Donithan and Lemmerman, and mindful of the presumption supplied by Maryland case law, I believe Petitioners are entitled to the special exception. Both witnesses stressed the project would not generate traffic or noise and the facility will for the most part be monitored remotely. Mr. Donithan testified that after construction the only regular visits to the property would be for mowing the grass. Protestant did not call any witnesses in its case and did not submit any documents or other evidence which would refute or undermine in any way the testimony and evidence presented by Petitioners. As such, the special exception will be granted.

ORDER RECEIVED FOR FILING
Date 10-13-17
By

VARIANCE

A variance request involves a two-step process, summarized as follows:

1. It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and

2. If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

John Lemmerman, a professional surveyor accepted as an expert, testified the property has a unique "L" shape and is bordered by agricultural properties protected by State easements. As such I agree with his opinion the property is unique. If the B.C.Z.R. were strictly interpreted Petitioners would suffer a practical difficulty since they would be unable to complete the proposed solar facility.

Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the lack of Baltimore County opposition. In addition, only one variance is sought and the relief requested is in my opinion modest, especially considering there will be enhanced landscaping along the road frontages that will mitigate the impact of the reduced setback (i.e., 35 feet in lieu of the required 50 feet).

LEGAL ISSUES

Protestant's counsel contends the petition should be dismissed since it was filed in violation of B.C.Z.R. §500.12, which concerns "subsequent petitions" after the denial of a petition for special exception. While it is true the previous petition for special exception (in Case No. 2016-0335-SPHX) was denied by the Board of Appeals, a petition for judicial review was filed and that matter is pending in the circuit court. As such, there has not been a final order denying

ORDER RECEIVED FOR FILING
Date 10-13-17
By KW

the earlier petition, which in my opinion renders B.C.Z.R. §500.12 inapplicable. In addition, the earlier petition sought to operate a "public utility" at the site while the special exception in this case is for a "solar facility."

Even if this were not the case, I also believe that provision should not bar the Petitioners from seeking relief in this case. Section 500.12 is in my opinion meant to address a scenario where a litigant files successive petitions for special exception involving the same use and the same property after a final denial of his initial request.

In that sense I agree with Petitioners' counsel that Section 500.12 is akin to a *res judicata* provision, and should be given a similar interpretation. This regulation appears to have been enacted in 1959, at which time Maryland law held that decisions of administrative bodies were not entitled to preclusive effect. *Seminary Galleria, LLC v. Dulaney Valley Improv. Ass'n., Inc.*, 192 Md. App. 719, 735-36 (2010). In this case specific legislation (Bill 37-17) was enacted by the County Council in June 2017, permitting solar facilities in the rural zones by special exception. A change in law will overcome a *res judicata* defense, and for similar reasons I believe it makes Section 500.12 inapplicable. In addition, it would be inequitable to require Petitioners to wait 18 months before seeking approval for a solar facility, especially since the law itself caps (at ten) the number of such facilities permitted in any council district, which makes time of the essence.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 13th day of **October, 2017**, that the Petition for Special Exception to approve a solar facility be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance pursuant to the Baltimore County Zoning Regulations (B.C.Z.R.) to approve a minimum setback of 35 ft. from the tract

ORDER RECEIVED FOR FILING

Date 10-13-17

By DW

boundary in lieu of the 50 ft. solar facility setback required by Article 4E of the B.C.Z.R., be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon 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 comment of the DOP dated September 13, 2017, a copy of which is attached.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

ORDER RECEIVED FOR FILING

Date 10-13-17

By SLN

KEVIN KAMENETZ
County Executive

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

October 13, 2017

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

RE: Petitions for Special Exception and Variance
Case No. 2018-0052-XA
Property: Hanover Road

Dear Mr. Schmidt:

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,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:dlw
Enclosure

c: Michael R. McCann, Esq., 118 West Pennsylvania Avenue, Towson, Maryland 21204-4518

10-5

RECEIVED

SEP 26 2017

OFFICE OF
ADMINISTRATIVE HEARINGS

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

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

DATE: 9/13/2017

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: **ZONING ADVISORY COMMITTEE COMMENTS**
Case Number: 18-052

INFORMATION:

Property Address: Hanover Road
Petitioner: Donald E. Lippy, Kathleen F. Lippy
Zoning: RC 2
Requested Action: Special Exception, Variance

The Department of Planning has reviewed the petition for a special exception to use the property for a solar facility (as established in Baltimore County Council Bill 37-17) and also the petition for variance to permit a minimum setback of 35 feet in lieu of the required 50 foot setback to the nearest tract boundary for solar facilities.

The site was the subject of zoning case #16-335. The Department recommended granting the petitioned zoning relief in that case with conditions. On October 18, 2016 the Administrative Law Judge granted said relief which was subsequently denied by the Baltimore County Board of Appeals on April 28, 2017. There are no substantive changes between the plan filed in the aforementioned case #16-335 and that filed in the instant case.

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

- Install vegetative screening consisting of mixed indigenous hardwood and evergreen trees and shrubs in a natural formation along the Fringer Road and Hanover Pike frontages to mitigate the visual impact of the public utility from the scenic route.
- All proposed lighting will be sited in such a way as to have minimal spillage unto neighboring properties.
- Proposed signage to be limited to that necessary for safety and security purposes.
- Prior to building permit application, the petitioners shall submit a solar glare analysis to the Department, to the attention of the contact person listed below, accompanied by a written statement confirming that the surrounding adjacent residential properties will not be adversely impacted by glare emanating from the facility.

ORDER RECEIVED FOR FILING

Date 10-13-17

By DJ

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

Prepared by:

Lloyd T. Moxley

Division Chief:

Kathy Schlabach

AVA/KS/LTM/ka

c: Joseph Wiley
James Hermann, R.L.A., Department of Permits, Approvals and Inspections
Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC
Office of the Administrative Hearings
People's Counsel for Baltimore County

ORDER RECEIVED FOR FILING

Date 10-13-17

By

PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address Hanover Road **which is presently zoned** RC 2

Deed References: 27651/00231 10 Digit Tax Account # 1900007892

Property Owner(s) Printed Name(s) Donald E. Lippy and Kathleen F. Lippy

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. ____ **a Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

2. X **a Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

Please see attached.

3. X **a Variance** from Section(s)

Please see attached.

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: **(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)**

TO BE PRESENTED AT HEARING

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.
Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

Donald E. Lippy, Authorized Representative of New Source Generation, LLC
Name- Type or Print

Donald E. Lippy
Signature

421 Lees Mill Road | Hampstead | MD
Mailing Address | City | State

21074 / / /
Zip Code | Telephone # | Email Address

Legal Owners (Petitioners):

Donald E. Lippy / Kathleen F. Lippy
Name #1 – Type or Print / Name #2 – Type or Print

Donald E. Lippy / Kathleen F. Lippy
Signature #1 / Signature # 2

421 Lees Mill Road | Hampstead | MD
Mailing Address | City | State

21074 / / /
Zip Code | Telephone # | Email Address

Attorney for Petitioner:

Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC
Name- Type or Print

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

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 2018-0052-XA **Filing Date** 8/14/17 **Do Not Schedule Dates:** _____ **Reviewer** AT

ORDER RECEIVED FOR FILING

Date 10-13-17

By DW

REV. 10/4/11

ATTACHMENT TO PETITION FOR SPECIAL EXCEPTION AND VARIANCE

Bortner Farm: *Tax Id. No. 1900007892*

Special Exception Relief:

1. To grant Special Exception relief for a solar facility pursuant to BCZR § 4E-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.

Variance Relief:

1. To approve a minimum setback of 35 feet, in lieu of the 50 ft. solar facility setback required to the nearest tract boundary, pursuant to BCZR § 4E-104.A.4; and

2. For such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

2018-0052-XA

RTF ASSOCIATES, INC. *LAND SURVEYORS & PLANNERS*

142 East Main Street
Westminster, Maryland 21157
Phone 410-848-2040, 410-876-1222
Web RTFsurveying.com
Fax 443-289-8942

June 15, 2016
RTF Assoc. # 16-44

ZONING PROPERTY DESCRIPTION FOR LIPPY PROPERTY

INTERSECTION OF MD. ROUTE # 30 AND FRINGER ROAD

BEGINNING at a point on the west side of Maryland Route # 30 (Hanover Pike), which is a 66 foot wide right of way at the distance of 200.00 feet north of the centerline of the nearest improved intersecting street Fringer Road which is a 40 foot wide right of way. Thence with the following course and distances: (1st Point of Call "POC") S.01°09'49" E. 161.44', (2nd POC) S. 63°49'56" W. 743.76', (3rd POC) N. 04°17'59" W. 688.02', (4th POC) N. 79°12'03" E. 318.88', (5th POC) S. 01°09'49" E. 332.00', (6th POC) N. 79°12'03" E. 403.00', back to the point of beginning, S. 01°09'49" E. 332.00' from the beginning point as recorded in deed liber 27651, folio 231, containing 281,130 square feet or 6.454 acres of land. Located in the Fourth Election District and the Third Council District of Baltimore County, Maryland.

JOHN E. LEMMERMAN
PROFESSIONAL LAND SURVEYOR NO. 21096
CURRENT LICENSE EXPIRES AUGUST 3, 2017

2018-0052-XA

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.

2018-0052-XA

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.

§4E-101.2. DEFINITIONS.

AS USED IN THIS ARTICLE, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED:

A. "SOLAR FACILITY" MEANS A FACILITY THAT INCLUDES A SERIES OF ONE OR MORE SOLAR COLLECTOR PANELS OR SOLAR ENERGY SYSTEMS THAT ARE PLACED IN AN AREA ON A TRACT OF LAND FOR THE PURPOSE OF GENERATING PHOTOVOLTAIC POWER FOR COMMERCIAL USE. THE TERM INCLUDES A SOLAR POWER PLANT OR SOLAR PHOTOVOLTAIC FARM.

B. "COMMERCIAL USE" MEANS THE TRANSFER TO THE ELECTRICAL POWER GRID OF ENERGY PRODUCED BY A SOLAR FACILITY FOR SALE BY ENERGY SUPPLIERS TO CONSUMERS.

§4E-102. LOCATION OF SOLAR FACILITIES.

A. SUBJECT TO PARAGRAPH B, 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.

B. THE ALLOCATION OF LAND FOR SOLAR FACILITIES IN THE COUNTY IS LIMITED TO THE FOLLOWING:

1. THE MAXIMUM AREA PERMITTED FOR A SINGLE SOLAR FACILITY IS THE AMOUNT OF ACREAGE THAT PRODUCES NO MORE THAN TWO MEGAWATTS ALTERNATING CURRENT (AC) OF ELECTRICITY.

2. NO MORE THAN TEN (10) SOLAR FACILITIES MAY BE LOCATED IN A COUNCILMANIC DISTRICT.

3. THE DIRECTOR OF PERMITS, APPROVALS AND INSPECTIONS SHALL MAINTAIN A RECORD OF ALL PERMITS ISSUED FOR A SOLAR FACILITY IN THE COUNTY, INCLUDING THE LOCATION AND COUNCILMANIC DISTRICT FOR EACH SUCH FACILITY, AND SHALL KEEP A CURRENT ACCOUNTING OF THE NUMBER OF FACILITIES IN EACH COUNCILMANIC DISTRICT UNDER THIS PARAGRAPH.

4. UPON REACHING THE THRESHOLD OF TEN (10) SOLAR FACILITIES IN A COUNCILMANIC DISTRICT, NO ADDITIONAL PERMITS SHALL BE ISSUED FOR A SOLAR FACILITY IN THAT DISTRICT UNLESS AN EXISTING FACILITY PREVIOUSLY APPROVED UNDER THIS ARTICLE HAS BEEN REMOVED PURSUANT TO SECTION 4E-107.

§4E-103. EXCEPTION.

THIS ARTICLE DOES NOT APPLY TO THE FOLLOWING SOLAR FACILITY INSTALLATIONS:

1. A GROUND-MOUNTED SOLAR FACILITY ~~LOCATED IN A YARD AREA, BUILDING, OR STRUCTURE THAT IS ACCESSORY TO A PRINCIPAL RESIDENTIAL, AGRICULTURAL, COMMERCIAL OR INSTITUTIONAL USE~~ THAT IS ACCESSORY TO A PRINCIPAL RESIDENTIAL OR AGRICULTURAL USE (SUBJECT TO SECTIONS 400.1 AND 400.2 OF THESE REGULATIONS APPLICABLE TO ACCESSORY BUILDINGS), OR ACCESSORY TO A PRINCIPAL COMMERCIAL, INDUSTRIAL, OR INSTITUTIONAL USE;

2. A ROOFTOP SOLAR FACILITY;

~~2~~ 3. A SOLAR FACILITY ON FEDERAL, STATE OR LOCAL GOVERNMENT-OWNED OR LEASED LAND THAT PRODUCES ENERGY FOR GOVERNMENT USE; OR

~~3~~ 4. A SOLAR FACILITY LOCATED ON THE SAME PROPERTY OR TRACT AS A FARM THAT USES AT LEAST 66% OF THE ENERGY GENERATED BY THE FACILITY FOR AGRICULTURAL USES ON THE FARM.

§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.

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 VISABLE 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 SECTION 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.

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

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.

§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

3. STABILIZATION OR RE-VEGETATION OF THE SITE AS NECESSARY TO MINIMIZE EROSION.

C. IF THE OWNER OR OPERATOR FAIL TO REMOVE THE FACILITY WITHIN 150 DAYS OF ABANDONMENT, THE COUNTY RETAINS THE RIGHT TO ENTER AND REMOVE THE FACILITY. AS A CONDITION OF SPECIAL EXCEPTION APPROVAL,

THE PETITIONER AND LANDOWNER AGREE TO ALLOW ENTRY TO REMOVE AN ABANDONED FACILITY.

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

1. THE CODE OFFICIAL DETERMINES THAT THE SOLAR FACILTY 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 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, R.C.6, AND R.C.8 ZONE.

SECTION 2. AND BE IT FURTHER ENACTED, that the Planning Board shall, in consultation with the Departments of Planning and Environmental Protection and Sustainability,

and with participation of the Baltimore County Commission on Environmental Quality, representatives of the Solar Industry, the Sierra Club's Greater Baltimore Group, and the Valleys Planning Council, study and evaluate the impact of Solar Facilities in Baltimore County and the effect of Article 4E of these Regulations, and by July 1, 2018 submit recommendations to the County Council and the County Executive regarding potential changes to current law.

SECTION 3. 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 July 17, 2017 and shall apply retroactively to any zoning petition filed after October 18, 2016.

KEVIN KAMENETZ
County Executive

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

August 29, 2017

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: 2018-0052-XA
Hanover Road
W/s Hanover Pike, 200 ft. N/of centerline of Fringer Road
4th Election District – 3rd Councilmanic District
Legal Owners: Donald & Kathleen Lippy

Special Exception to grant Special Exception relief for a solar facility; for such other and further relief as may be required by the Administrative Law Judge for Baltimore County. **Variance** to approve a minimum setback of 35 ft. in lieu of the 50 ft. solar facility setback required to the nearest tract boundary; and for such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

Hearing: Thursday, October 5, 2017 at 1:30 p.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

Arnold Jablon
Director

AJ:kl

C: Lawrence Schmidt, 600 Washington Avenue, Ste. 200, Towson 21204
Mr. & Mrs. Lippy, 421 Lees Mill Road, Hampstead 21074

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY FRIDAY, SEPTEMBER 15, 2017.**
(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.

THE BALTIMORE SUN MEDIA GROUP

501 N. Calvert St., P.O. Box 1377
Baltimore, Maryland 21278-0001
tel: 410/332-6000
800/829-8000

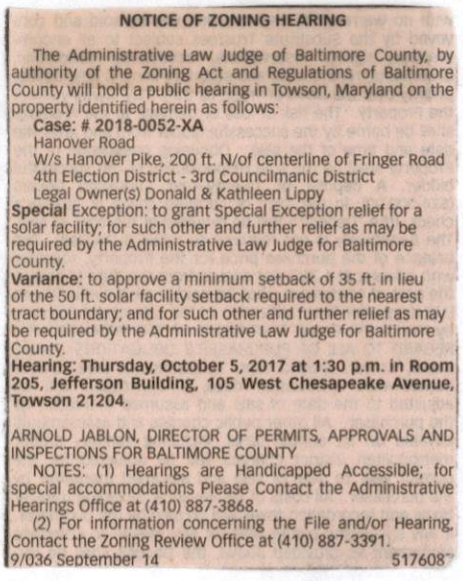
WE HEREBY CERTIFY, that the annexed advertisement of Order No 5176087

Sold To:
Smith Gildea & Schmidt LLC - CU00433777
600 Washington Ave Ste 200
TOWSON,MD 21204

Bill To:
Smith Gildea & Schmidt LLC - CU00433777
600 Washington Ave Ste 200
TOWSON,MD 21204

Was published in "Jeffersonian", "Bi-Weekly", a newspaper printed and published in Baltimore County on the following dates:

Sep 14, 2017



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Case: # 2018-0052-XA
Hanover Road
W/s Hanover Pike, 200 ft. N/of centerline of Fringer Road
4th Election District - 3rd Councilmanic District
Legal Owner(s) Donald & Kathleen Lippy

Special Exception: to grant Special Exception relief for a solar facility; for such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

Variance: to approve a minimum setback of 35 ft. in lieu of the 50 ft. solar facility setback required to the nearest tract boundary; and for such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

Hearing: Thursday, October 5, 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.

9/036 September 14 517608

The Baltimore Sun Media Group

By S. Wilkinson

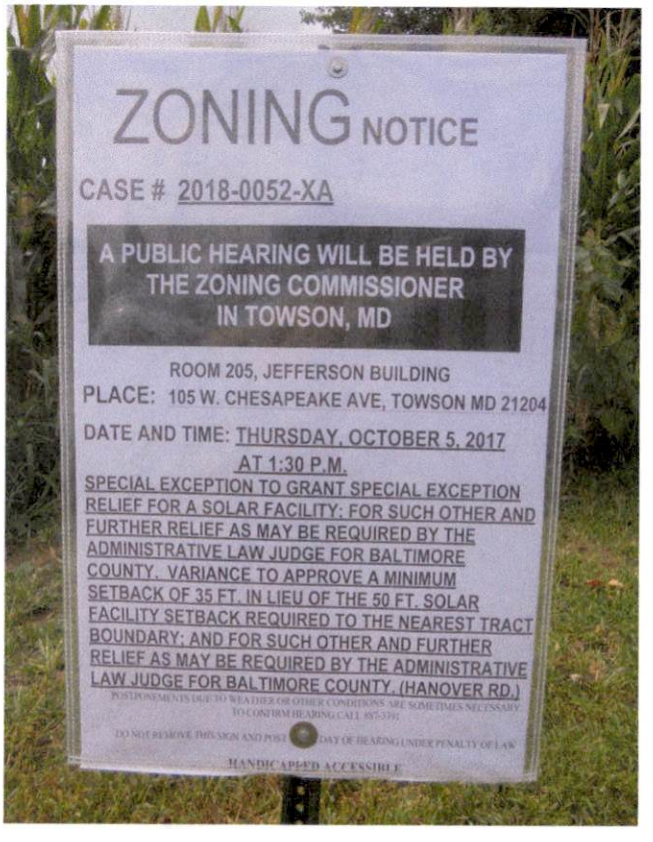
Legal Advertising

CERTIFICATE OF POSTING

ATTENTION: KRISTEN LEWIS
DATE: 9/14/2017
Case Number: 2018-0052-XA
Petitioner / Developer: LAWRENCE SCHMIDT, ESQ. ~ MR. & MRS. LIPPY
Date of Hearing (Closing): OCTOBER 5, 2017

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:
HANOVER ROAD –(ON-SITE)

The sign(s) were posted on: SEPTEMBER 14, 2017



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)

RE:	PETITION FOR SPECIAL EXCEPTION AND VARIANCE	*	BEFORE THE OFFICE
	Hanover Pike; W/S Hanover Pike, 200' N of c/line Fringer Road	*	OF ADMINSTRATIVE
	4th Election & 3rd Councilmanic Districts	*	HEARINGS FOR
	Legal Owner(s): Donald & Kathleen Lippy		
	Contract Purchaser(s): New Source Generation, LLC	*	BALTIMORE COUNTY
	Petitioner(s)	*	2018-052-XA

* * * * * * * * * * * * *

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.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

RECEIVED
AUG 28 2017

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 28th day of August, 2017, a copy of the foregoing Entry of Appearance was mailed to Lawrence Schmidt, Esquire, 600 Washington Avenue, Suite 200, Towson, Maryland 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

PLEASE PRINT CLEARLY

CASE NAME Lapp 2018-0052
CASE NUMBER
DATE 10-5-2017

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E - MAIL
Ken Downhan	60 Aileron St ~~Westm~~	Westminster MD 21157	kendee@earthandairtech.com
Lapp Schmidt	600 Washington Ave Ste 200	Towson MD 21204	lschmidt@sgs-law.com
Donald Lypopy	471 Lee's Mill Rd. ~~Hampstead MD~~	Hampstead Md 21074	delippy44@gmail.com
John Lemmerman	142 E. Main St. ~~Westminster MD~~	Westminster, MD	John.RTFC@GMAIL.com

PLEASE PRINT CLEARLY

CASE NAME 2018-0052
CASE NUMBER
DATE 10-5-2017

CITIZEN'S SIGN - IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E - MAIL
John Coulis	15714/15712/15708 Forever Pike	Upperco MD. 21155	Yourhonesthandyman@Gmail.com

KEVIN KAMENETZ
County Executive

ZAC Comments

September 28, 2017

Donald E & Kathleen F Lippy
421 Leeds Road
Hampstead MD 21074

RE: Case Number: 2018-0052 XA, Address: Hanover Road

Dear Mr. & Ms. Lippy:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on August 11, 2017. 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,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: jaw

Enclosures

c: People's Counsel
Lawrence E Schmidt, Esquire, 600 Washington Avenue, Suite 200, Towson MD 21204

MARYLAND DEPARTMENT
OF TRANSPORTATION

STATE HIGHWAY
ADMINISTRATION

Larry Hogan
Governor

Boyd K. Rutherford
Lt. Governor

Pete K. Rahn
Secretary

Gregory Slater
Administrator

Date: 8/23/17

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. 2018-0052-XA
Special Exception Variance
Donald E. & Kathleen F. Lippy
Hanover 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,

Richard A Zeller

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

WW/RAZ

10-5

RECEIVED

SEP 26 2017

OFFICE OF ADMINISTRATIVE HEARINGS

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

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

DATE: 9/13/2017

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: **ZONING ADVISORY COMMITTEE COMMENTS**
Case Number: 18-052

INFORMATION:

Property Address:	Hanover Road
Petitioner:	Donald E. Lippy, Kathleen F. Lippy
Zoning:	RC 2
Requested Action:	Special Exception, Variance

The Department of Planning has reviewed the petition for a special exception to use the property for a solar facility (as established in Baltimore County Council Bill 37-17) and also the petition for variance to permit a minimum setback of 35 feet in lieu of the required 50 foot setback to the nearest tract boundary for solar facilities.

The site was the subject of zoning case #16-335. The Department recommended granting the petitioned zoning relief in that case with conditions. On October 18, 2016 the Administrative Law Judge granted said relief which was subsequently denied by the Baltimore County Board of Appeals on April 28, 2017. There are no substantive changes between the plan filed in the aforementioned case #16-335 and that filed in the instant case.

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

- Install vegetative screening consisting of mixed indigenous hardwood and evergreen trees and shrubs in a natural formation along the Fringer Road and Hanover Pike frontages to mitigate the visual impact of the public utility from the scenic route.
- All proposed lighting will be sited in such a way as to have minimal spillage unto neighboring properties.
- Proposed signage to be limited to that necessary for safety and security purposes.
- Prior to building permit application, the petitioners shall submit a solar glare analysis to the Department, to the attention of the contact person listed below, accompanied by a written statement confirming that the surrounding adjacent residential properties will not be adversely impacted by glare emanating from the facility.

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

Prepared by:

Lloyd T. Moxley

Division Chief:

Kathy Schlabach

AVA/KS/LTM/ka

c: Joseph Wiley
James Hermann, R.L.A., Department of Permits, Approvals and Inspections
Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC
Office of the Administrative Hearings
People's Counsel for Baltimore County

10-5

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

RECEIVED
AUG 25 2017
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: August 25, 2017

SUBJECT: DEPS Comment for Zoning Item # 2018-0052-XA
Address Hanover Road
(Lippy Property)

Zoning Advisory Committee Meeting of **August 28, 2017.**

X The Department of Environmental Protection and Sustainability has no comment on the above-referenced zoning item.

Reviewer: Steve Ford Date: 8-25-2017

Debra Wiley

From: John E. Beverungen
Sent: Thursday, October 12, 2017 12:56 PM
To: Debra Wiley
Subject: 2018-0052-XA
Attachments: 2018-0052-XA.doc

Deb, this is the final order. It gets sent to Larry Schmidt and Mike McCann, and the DOP ZAC comment needs to be attached. And a copy to Jen Bussee?

IN THE MATTER OF DONALD AND KATHLEEN LIPPY LEGAL OWNERS AND NEW SOURCE GENERATION, LLC, LESSEE AND PETITIONERS FOR SPECIAL EXCEPTION ON THE PROPERTY LOCATED AT 15700 HANOVER PIKE 4th Election District 3rd Councilmanic District	*	BEFORE THE BOARD OF APPEALS FOR BALTIMORE COUNTY Case No.: 18-052-XA

* * * * * * * * * * * * *

RULING ON MOTION TO DISMISS

This case comes to the Board of Appeals (hereinafter "Board") on appeal from the October 13, 2017 decision of Administrative Law Judge Beverungen wherein the requested petition for special exception for a solar facility was granted. A timely appeal was noted by the Hanover Road Association, Santo Mirabili, Debra Mirabili and John M. Couls.

A hearing was scheduled to be held before this Board on February 27, 2018 at 10:00 a.m., for which proper notice was given. At the outset of the hearing, Appellants' attorney, Michael R. McCann, Esquire, moved to dismiss the case, arguing that the Board is barred from hearing the case on the theory of res judicata and a literal reading of Baltimore County Zoning Regulations, §500.12.

Oral arguments were presented and subsequently, counsel submitted legal memoranda addressing the issues raised for the first time by Mr. McCann at the hearing.

The Board met on April 11, 2018 and publicly deliberated the disposition of the Motion to Dismiss.

DISCUSSION

The subject petition (Lippy II) was filed in August, 2017, following the enactment of Baltimore County Council Bill No. 37-17, which took effect in July, 2017 and which recognized a solar facility as a use permitted by special exception in the R.C. 2, 3, 4, 5, 6, 7, 8 zones as well

in certain business and manufacturing zones in Baltimore County.

The Board, relying on *Whittle v. Board of Zoning Appeals*, 211 Md. 36 (1956) and *Gertz v. Anne Arundel County*, 339 Md. 261 (1995), determined that a change in law defeats the application of *res judicata* as a bar to hearing the subject petition. The Board also found that a reading of B.C.Z.R. §500.12 in its historical context and considering the application of *res judicata* doctrine to administrative law by the courts, the language of §500.12 was not intended to bar a new petition for a new use arising under a newly enacted law. For the foregoing reasons, this Board unanimously denies Protestants' Motion to Dismiss.

ORDER

THEREFORE, IT IS THIS 10th day of May, 2018, by the Board of Appeals of Baltimore County,

ORDERED that Protestants' Motion to Dismiss be, and it is hereby, **DENIED**; and it is further,

ORDERED that this matter shall be scheduled for an evidentiary hearing on a date mutually convenient for the parties and the Board's docket; and it is further

ORDERED that a final Opinion will be issued by this Board after a hearing on the merits and a public deliberation with no further action to be taken on this Ruling until such time as the Board's final decision is issued.

BOARD OF APPEALS
OF BALTIMORE COUNTY

Jason S. Garber, Chairman

Kendra Randall Jolivet

Deborah C. Dopkin

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

May 10, 2018

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

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

RE: *In the Matter of: Donald and Kathleen Lippy – Legal Owners*
New Source Generation, LLC – Lessee
Case No.: 18-052-XA

Dear Counsel:

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

Pursuant to the enclosed, this Ruling is not a final decision of the Board of Appeals for Baltimore County and does not constitute an appealable event at this time. This matter will be held open on the Board's docket until such time as a final opinion can be issued.

Should you have any questions, please do not hesitate to contact us.

Very truly yours,

Sunny Cannington

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Duplicate Original Cover Letter

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

Board of Appeals

Case No: 18-052-XA Case Name: Donald & Kathleen Lippy

Exhibit List

Party: Protestant Date: 2/27/18

Exhibit No:	Description:
✓ 1	Petition for Zoning Hearing 6/24/16 by Lippy
✓ 2	12/15/17 Circuit Ct. Order Affirming BOA denial
✓ 3	Bill No. 37-17 6/5/17
✓ 4	Article 5 § 500.12 Petitions after denial
	VERIFIED BY KC DATE: 2/27/18

IN THE MATTER OF	*	IN THE
	*	CIRCUIT COURT
	*	FOR
	*	BALTIMORE COUNTY
DONALD LIPPY, et al	*	Case No.: 03-C-17-005187

* * * * * * *

ORDER

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

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

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

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

Mickey J. Norman, Judge
Circuit Court for Baltimore County

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

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

True Copy Test
JULIE L. ENSOR, Clerk
By _____
Assistant Clerk

FILED DEC 22 2017

Protestant
CBA Exhibit
2

KEVIN KAMENETZ
County Executive

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

November 13, 2017

RECEIVED
NOV 13 2017
BALTIMORE COUNTY
BOARD OF APPEALS

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

Re: Petitions for Special Exception and Variance
Case Number: 2018-0052-XA
Location: Hanover Road

Dear Mr. Schmidt:

Please be advised that an appeal of the above-referenced case was filed in this Office on November 9, 2017. 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,

LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS:sln

c: Baltimore County Board of Appeals
Peter Max Zimmerman, People's Counsel for Baltimore County
Michael R. McCann, Esq., 118 West Pennsylvania Avenue, Towson, Maryland 21204-4518

CASE NO. 2018-0052-XA

CHECKLIST

Comment Received	Department	Support/Oppose/ Conditions/ Comments/ No Comment
_____	DEVELOPMENT PLANS REVIEW (if not received, date e-mail sent _____)	_____
8/25	DEPS (if not received, date e-mail sent _____)	no comment
_____	FIRE DEPARTMENT	_____
9/26	PLANNING (if not received, date e-mail sent _____)	no obj w/conditions
8/23	STATE HIGHWAY ADMINISTRATION	no obj
_____	TRAFFIC ENGINEERING	_____
_____	COMMUNITY ASSOCIATION	_____
_____	ADJACENT PROPERTY OWNERS	_____

ZONING VIOLATION (Case No. _____)

PRIOR ZONING (Case No. _____)

NEWSPAPER ADVERTISEMENT Date: 9/14/17

SIGN POSTING Date: 9/14/17 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

Account Identifier: District - 04 Account Number - 1900007892

Owner Information

Owner Name:	LIPPY DONALD E LIPPY KATHLEEN F	**Use:** **Principal Residence:**	AGRICULTURAL NO
Mailing Address:	421 LEES MILL RD HAMPSTEAD MD 21074-1904	**Deed Reference:**	/27651/ 00231

Location & Structure Information

Premises Address:	HANOVER RD 0-0000	**Legal Description:**	6.837 AC WS HANOVER 1590 S BORTNER RD

Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0025	0021	0267		0000				2016	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
			6.8300 AC	05

Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation

Value Information

	Base Value	Value	Phase-in Assessments	
		As of 01/01/2016	As of 07/01/2017	As of 07/01/2018
Land:	2,500	2,500		
Improvements	0	0		
Total:	2,500	2,500	2,500	2,500
Preferential Land:	2,500			2,500

Transfer Information

Seller: LIPPY BROTHERS INC	**Date:** 02/13/2009	**Price:** $205,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /27651/ 00231	**Deed2:**
Seller: BORTNER ROBERT O	**Date:** 12/08/1982	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /06442/ 00740	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2017	07/01/2018
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Tax Exempt:	**Special Tax Recapture:**
Exempt Class:	AGRICULTURAL TRANSFER TAX

Homestead Application Information

Homestead Application Status: No Application

TO: PATUXENT PUBLISHING COMPANY
Thursday, September 14, 2017 Issue - Jeffersonian

Please forward billing to:
Lawrence Schmidt 410-821-0700
Smith, Gildea & Schmidt
600 Washington Avenue, Ste. 200
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: 2018-0052-XA
Hanover Road
W/s Hanover Pike, 200 ft. N/of centerline of Fringer Road
4th Election District – 3rd Councilmanic District
Legal Owners: Donald & Kathleen Lippy

Special Exception to grant Special Exception relief for a solar facility; for such other and further relief as may be required by the Administrative Law Judge for Baltimore County.
Variance to approve a minimum setback of 35 ft. in lieu of the 50 ft. solar facility setback required to the nearest tract boundary; and for such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

Hearing: Thursday, October 5, 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.

PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address Hanover Road **which is presently zoned** RC 2

Deed References: 27651/00231 10 Digit Tax Account # 1900007892

Property Owner(s) Printed Name(s) Donald E. Lippy and Kathleen F. Lippy

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. ____ **a Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

2. X **a Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

Please see attached.

3. X **a Variance** from Section(s)

Please see attached.

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: **(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)**

TO BE PRESENTED AT HEARING

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.
Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

Donald E. Lippy, Authorized Representative of New Source Generation, LLC
Name- Type or Print

Donald E. Lippy
Signature

421 Lees Mill Road | Hampstead | MD
Mailing Address | City | State

21074 / / /
Zip Code | Telephone # | Email Address

Legal Owners (Petitioners):

Donald E. Lippy , Kathleen F. Lippy
Name #1 – Type or Print | Name #2 – Type or Print

Donald E. Lippy , Kathleen F. Lippy
Signature #1 | Signature # 2

421 Lees Mill Road | Hampstead | MD
Mailing Address | City | State

21074 / / /
Zip Code | Telephone # | Email Address

Attorney for Petitioner:

Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC
Name- Type or Print

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

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 2018-0052-XA Filing Date 8/14/17 Do Not Schedule Dates: _____ Reviewer AT

REV. 10/4/11

ORDER RECEIVED FOR FILING

Date 10-13-17

By DW

ATTACHMENT TO PETITION FOR SPECIAL EXCEPTION AND VARIANCE

Bortner Farm: *Tax Id. No. 1900007892*

Special Exception Relief:

1. To grant Special Exception relief for a solar facility pursuant to BCZR § 4E-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.

Variance Relief:

1. To approve a minimum setback of 35 feet, in lieu of the 50 ft. solar facility setback required to the nearest tract boundary, pursuant to BCZR § 4E-104.A.4; and

2. For such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

2018-0052-XA

RTF ASSOCIATES, INC. *LAND SURVEYORS & PLANNERS*

142 East Main Street
Westminster, Maryland 21157
Phone 410-848-2040, 410-876-1222
Web RTFsurveying.com
Fax 443-289-8942

June 15, 2016
RTF Assoc. # 16-44

ZONING PROPERTY DESCRIPTION FOR LIPPY PROPERTY

INTERSECTION OF MD. ROUTE # 30 AND FRINGER ROAD

BEGINNING at a point on the west side of Maryland Route # 30 (Hanover Pike), which is a 66 foot wide right of way at the distance of 200.00 feet north of the centerline of the nearest improved intersecting street Fringer Road which is a 40 foot wide right of way. Thence with the following course and distances: (1st Point of Call "POC") S.01°09'49" E. 161.44', (2nd POC) S. 63°49'56" W. 743.76', (3rd POC) N. 04°17'59" W. 688.02', (4th POC) N. 79°12'03" E. 318.88', (5th POC) S. 01°09'49" E. 332.00', (6th POC) N. 79°12'03" E. 403.00', back to the point of beginning, S. 01°09'49" E. 332.00' from the beginning point as recorded in deed liber 27651, folio 231, containing 281,130 square feet or 6.454 acres of land. Located in the Fourth Election District and the Third Council District of Baltimore County, Maryland.

STATE OF MARYLAND · JOHN E. LEMMERMAN · No. 21096 · PROFESSIONAL LAND SURVEYOR

JOHN E. LEMMERMAN
PROFESSIONAL LAND SURVEYOR NO. 21096
CURRENT LICENSE EXPIRES AUGUST 3, 2017

2018-0052-XA

DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
ZONING REVIEW OFFICE

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the legal owner/petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the legal owner/petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Case Number: 2018-0052-XA

Property Address: Hanover Road

Property Description: _____

_____

Legal Owners (Petitioners): Donald E. Lippy and Kathleen F. Lippy

Contract Purchaser/Lessee: New Source Generation, LLC

PLEASE FORWARD ADVERTISING BILL TO:

Name: Lawrence E. Schmidt, Esquire

Company/Firm (if applicable): Smith, Gildea & Schmidt, LLC

Address: 600 Washington Avenue, Suite 200

Towson, MD 21204

_____

Telephone Number: 410-821-0070

Revised 5/20/2014

IN RE: PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION	*	BEFORE THE
(15700 Hanover Pike)	*	OFFICE OF
4th Election District		
3rd Council District	*	ADMINISTRATIVE HEARINGS
Donald E. & Kathleen F. Lippy		
Legal Owners	*	FOR BALTIMORE COUNTY
Petitioners	*	**Case No. 2016-0335-SPHX**

* * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Special Exception filed on behalf of Donald E. & Kathleen F. Lippy, legal owners ("Petitioners"). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve the proposed solar panel array field as a permitted accessory use or structure to the farm. A Petition for Special Exception was filed to approve the proposed solar panel array field as a "public utility use."

Appearing at the public hearing in support of the requests was Donald E. Lippy, surveyor John Lemmerman and Ken Donithan. Lawrence E. Schmidt, Esq. represented the Petitioners. Several protestants, represented by Michael McCann, Esq., opposed the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR).

Petitioners presented testimony from surveyor John Lemmerman, who described the project and introduced the site plan (Ex. 2A) he prepared for the case. The witness testified the parcel is approximately 6.5 acres and is zoned R.C.-2. He stated landscaping and fencing would be provided to screen the solar panels, and noted Petitioners would comply with the County's

ORDER RECEIVED FOR FILING
Date 10-18-16
By NLO

Scenic Route guidelines.

Ken Donithan is the owner of Earth and Air Technologies, and he testified that solar projects comprise the vast majority of his business. He has an electrical engineering degree from Johns Hopkins University and is certified as a "power engineer." Mr. Donithan testified he has designed and constructed approximately 100 solar farms, and he believes the subject property is ideal given the site is open, relatively flat and adjacent to high power electric lines on Hanover Pike. The witness stated approximately 6,500 panels would be installed at the site--which would be an unmanned facility--which would generate two (2) megawatts of electricity. Mr. Donithan opined the use would not be detrimental to the community, and he also stated the panels would meet all fire protection codes and the solar farm would not generate any noise which could be heard off site.

In response to questions on cross-examination, the witness stated approximately 60% of the electricity generated would be used by the Lippy farm, while 40% would go into the electric grid and sold to other customers. Given the size and scope of the facility, he confirmed the project would be regulated by the Maryland Public Service Commission.

The final witness in Petitioners' case was Donald Lippy, who has been farming in Baltimore County for over 50 years. Mr. Lippy testified his family owns approximately 2,600 acres of land in the County, 2,200 of which are protected by agricultural easements. The witness stated his children would like to continue farming, but face increasing economic pressures with the rapidly fluctuating prices of crops. He testified the solar farm would generate steady income that would greatly assist his farming operations.

Several community members testified and expressed concern with the project. In addition to noting that proposed legislation concerning solar farms was pending before the County Council,

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Date 10-18-16
By DER

neighbors stated that numerous applications have been made recently to construct solar farms in agricultural zones. The neighbors believe the solar farm would be a visual blight that would be detrimental to the character of the rural area. In addition, they testified that using prime and productive agricultural land for solar farms would jeopardize the viability of area farms.

One threshold issue concerns whether a "solar farm" is permitted in the R.C.-2 zone. The Regulations permit by special exception "public utility uses." B.C.Z.R. §1A01.2.C.18. The term "public utility" is not defined in the Regulations. The Webster's Third New International Dictionary defines the term as "a business organization deemed by law to be vested with public interest usually because of monopoly privileges and so subject to public regulation." Here, Mr. Donithan confirmed this project would be regulated by the Maryland Public Service Commission, which regulates public utility companies. As such, I believe the solar farm would qualify as a "public utility use" permitted in the zone by special exception.

SPECIAL EXCEPTION

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. Schultz v. Pritts, 291 Md. 1 (1981). The Schultz standard was revisited in People's Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use.

Maryland courts recognize most uses for which a special exception is required are regarded as "potentially troublesome because of noise, traffic, congestion...." Montgomery County v. Butler, 417 Md. 271, 297 (2010). The primary concern identified by the community was aesthetics or the loss of a rural feel, which I believe would be the case for a solar farm in an R.C.-2 zone.

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Date 10-18-16
By NDN

Thus that impact is "inherent" in the use. To warrant the denial of a special exception, the opponents must show that the use, at the particular location proposed, would have "non-inherent adverse effects." Id. at 282. In this case, I do not believe the Protestants made such a showing.

A discussion was held at the hearing concerning the evidentiary burden in a special exception case. I believe Petitioners have an initial burden to establish a *prima facie* case, demonstrating they "conform to all applicable requirements." Loyola College, 406 Md. at 109. Thereafter, protestants must rebut the evidence presented by Petitioners and establish that the adverse impacts at this location would be greater than those inherent in the use. Id.; Attar v. DMS Tollgate, LLC, 2015 WL 9461754 (unreported, Court of Special Appeals); Dellinger v. Lincoln County, 789 S.E.2d 21, 30 (N.C. 2016)(reviewing special exception burden of proof in case involving solar farm).

Based on the testimony of Petitioners' witnesses (as summarized above), I believe they have stated a *prima facie* special exception case, especially since they are aided by the presumption discussed in Schultz. In rebuttal, Protestants focused upon the aesthetic or visual impact of the use, which I believe is "inherent" in "public utilities" generally and solar farms specifically. Protestants argue the impact would be greater here due to the scenic route designation, but I do not believe such a designation would cause the panels to have any non-inherent impacts. The scenic route guidelines do not prohibit development; instead they attempt to ensure that new buildings and projects are constructed in such a manner so as to reduce to the extent possible their impact upon the scenic view or route. Here, Petitioners' witnesses testified there will be a significant buffer area with fencing and landscaping, which I believe is consistent with the scenic view requirements set forth in the CMDP.

In granting a special exception in the R.C.-2 zone, the ALJ must also find "that the use

ORDER RECEIVED FOR FILING
Date 10-18-16
By

would not be detrimental to the primary agricultural uses in the vicinity." B.C.Z.R. §1A01.2.C. Testimony addressing this point was provided by Donald Lippy, who is arguably one of the best known and well regarded farmers in Baltimore County. In fact, it is the Lippy family that owns and conducts most of the "agricultural uses in the vicinity." Mr. Lippy explained the solar farm would provide a reliable source of income that would help to subsidize his farming operations that face enormous economic pressures in the current climate. The solar farm would occupy only six (6) acres of agricultural land, but would yield significant benefits that would allow Mr. Lippy's children to continue farming in this area.

I understand Protestants' concerns about the large number of solar farms proposed in this area and throughout the County generally. But I am required to focus upon the facts of this case, and cannot consider the impact of other cases that may or may not be filed in the future seeking similar approvals. Such issues will of course be considered by the County Council as it determines whether or not to enact legislation governing solar farms.

SPECIAL HEARING

The petition for special hearing seeks approval of the solar array as accessory to the farm use. As indicated at the hearing, while solar panels are frequently located in rural agricultural settings, I do not believe the practice is so widespread that it can be said they are "customarily" found on farms. B.C.Z.R. §101.1 (definition of "accessory use or structure"). In addition, the proposed solar panels will occupy nearly all of the parcel on which they would be situated, as shown on Petitioners' Exhibit 2B. There would be no farming operations on the parcel if the solar panels were installed, and thus there would not be a principal farm use to which the panels would be "accessory." The principal--and only--use of the property would be a solar farm. As

ORDER RECEIVED FOR FILING
Date 10-18-16
By Den

such, I believe the petition for special hearing must be denied.

THEREFORE, IT IS ORDERED this **18th** day of October 2016, by this Administrative Law Judge, that the Petition for Special Hearing to approve the proposed solar panel array field as a permitted accessory use or structure to the farm, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Special Exception to approve the proposed solar panel array field as a "public utility use" be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.

2. Prior to issuance of permits Petitioners must submit for approval by the Baltimore County landscape architect a landscape plan demonstrating the "solar farm" will be adequately screened from Hanover Pike consistent with the Scenic View guidelines in the CMDP.

3. No signage or lighting shall be permitted.

4. If the solar farm is not in continuous use and operation for a period of one (1) year or more, it shall be removed at the owners' or operator's sole expense. Should the owners or operators fail to do so, Baltimore County may engage a contractor to perform the work, and all costs and expenses associated therewith shall be a lien on the property and collected in the same manner as real estate taxes.

5. The solar farm shall be enclosed by perimeter fencing to prevent unauthorized access to the site and screen the view from off-site.

6. All power lines at the site, to the extent practicable, shall be placed underground.

ORDER RECEIVED FOR FILING
Date 10-18-16
By

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

ORDER RECEIVED FOR FILING
Date 10-18-16
By SLN

KEVIN KAMENETZ
County Executive

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

October 18, 2016

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

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

RE: Petition for Special Hearing and Special Exception
Property: 15700 Hanover Pike
Case No. 2016-0335-SPHX

Dear Counsel:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the Baltimore County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Baltimore County Office of Administrative Hearings at 410-887-3868.

Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

IN THE MATTER OF: DONALD AND KATHLEEN LIPPY – LEGAL OWNERS – PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION FOR THE PROPERTY LOCATED AT 15700 HANOVER PIKE 4th Election District 3rd Councilmanic District	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 16-335-SPHX

* * * * * * * * * * * *

OPINION

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

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

Petitioner
CBA Exhibit
2

FACTS

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

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

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

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

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

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

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

Discussion

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

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

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

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

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

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

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

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

> The following uses, only, may be permitted by special exception in any R.C.2 Zone, provided that in each case the hearing authority empowered to hear the petition finds that the use would not be detrimental to the primary agricultural uses in its vicinity. . . .
>
> 18. Public utility uses not permitted as of right.[2]

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ORDER

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

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

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

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

BOARD OF APPEALS
OF BALTIMORE COUNTY

Benfred B. Alston

Benfred B. Alston, Panel Chairman

Meryl C. Rosen

Meryl W. Rosen

IN THE MATTER OF: DONALD AND KATHLEEN LIPPY – LEGAL OWNERS – PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION FOR THE PROPERTY LOCATED AT 15700 HANOVER PIKE 4th Election District 3rd Councilmanic District	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 16-335-SPHX

* * * * * * * * * * * *

CONCURRING/DISSENTING OPINION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

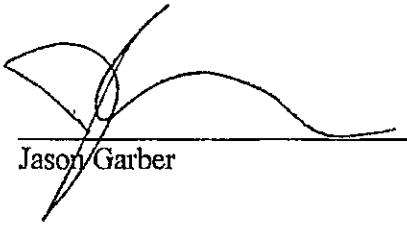
The undersigned further concludes that the proposal satisfies the criteria under BCZR § 502.1 to grant the Petition for a Special Exception. The Board is also required to consider BCZR § 411.1 and find that the location of the use will not seriously impair the use of the neighboring property. On this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

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

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

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

April 28, 2017
Date



Jason Garber

Board of Appeals of Baltimore County

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

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

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

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

Dear Counsel:

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

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

Very truly yours,

Sunny Cannington /tam

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

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

Protestant
CBA Exhibit
1

PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address Hanover Road 15706 Hanover Pike **which is presently zoned** RC 2

Deed References: 27651/00231 10 Digit Tax Account # 1900007892

Property Owner(s) Printed Name(s) Donald E. Lippy and Kathleen F. Lippy

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. ✓ **a Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

Please see attached.

2. ✓ **a Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

Please see attached.

3. ____ **a Variance** from Section(s)

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: **(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)**

TO BE PRESENTED AT HEARING

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.
Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

Donald E. Lippy, Authorized Representative of New Source Generation, LLC
Name- Type or Print

Donald E. Lippy
Signature

421 Lees Mill Road | Hampstead | MD
Mailing Address | City | State

21074 | | |
Zip Code | Telephone # | Email Address

Legal Owners (Petitioners):

Donald E. Lippy | Kathleen F. Lippy
Name #1 – Type or Print | Name #2 – Type or Print

Donald E. Lippy | Kathleen F. Lippy
Signature #1 | Signature # 2

421 Lees Mill Road | Hampstead | MD
Mailing Address | City | State

21074 | | |
Zip Code | Telephone # | Email Address

Attorney for Petitioner:

Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC
Name- Type or Print

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

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 2016-0335-SPHX **Filing Date** 6/24/2016 **Do Not Schedule Dates:** _____ **Reviewer** LW

REV. 10/4/11

ATTACHMENT TO PETITION FOR SPECIAL EXCEPTION AND SPECIAL HEARING

Bortner Farm: *Tax Id. No. 1900007892*

Special Exception Relief:

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

2. For such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

Special Hearing Relief (in the alternative):

1. If necessary and in the alternative to the Special Exception relief requested, to approve the proposed solar panel array field as a permitted accessory use or structure to the farm; and

2. For such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

2016-0335-SPHX

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.

Protestant
CBA Exhibit
3

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.

§4E-101.2. DEFINITIONS.

AS USED IN THIS ARTICLE, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED:

A. "SOLAR FACILITY" MEANS A FACILITY THAT INCLUDES A SERIES OF ONE OR MORE SOLAR COLLECTOR PANELS OR SOLAR ENERGY SYSTEMS THAT ARE PLACED IN AN AREA ON A TRACT OF LAND FOR THE PURPOSE OF GENERATING PHOTOVOLTAIC POWER FOR COMMERCIAL USE. THE TERM INCLUDES A SOLAR POWER PLANT OR SOLAR PHOTOVOLTAIC FARM.

B. "COMMERCIAL USE" MEANS THE TRANSFER TO THE ELECTRICAL POWER GRID OF ENERGY PRODUCED BY A SOLAR FACILITY FOR SALE BY ENERGY SUPPLIERS TO CONSUMERS.

§4E-102. LOCATION OF SOLAR FACILITIES.

A. SUBJECT TO PARAGRAPH B, 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.

B. THE ALLOCATION OF LAND FOR SOLAR FACILITIES IN THE COUNTY IS LIMITED TO THE FOLLOWING:

1. THE MAXIMUM AREA PERMITTED FOR A SINGLE SOLAR FACILITY IS THE AMOUNT OF ACREAGE THAT PRODUCES NO MORE THAN TWO MEGAWATTS ALTERNATING CURRENT (AC) OF ELECTRICITY.

2. NO MORE THAN TEN (10) SOLAR FACILITIES MAY BE LOCATED IN A COUNCILMANIC DISTRICT.

3. THE DIRECTOR OF PERMITS, APPROVALS AND INSPECTIONS SHALL MAINTAIN A RECORD OF ALL PERMITS ISSUED FOR A SOLAR FACILITY IN THE COUNTY, INCLUDING THE LOCATION AND COUNCILMANIC DISTRICT FOR EACH SUCH FACILITY, AND SHALL KEEP A CURRENT ACCOUNTING OF THE NUMBER OF FACILITIES IN EACH COUNCILMANIC DISTRICT UNDER THIS PARAGRAPH.

4. UPON REACHING THE THRESHOLD OF TEN (10) SOLAR FACILITIES IN A COUNCILMANIC DISTRICT, NO ADDITIONAL PERMITS SHALL BE ISSUED FOR A SOLAR FACILITY IN THAT DISTRICT UNLESS AN EXISTING FACILITY PREVIOUSLY APPROVED UNDER THIS ARTICLE HAS BEEN REMOVED PURSUANT TO SECTION 4E-107.

§4E-103. EXCEPTION.

THIS ARTICLE DOES NOT APPLY TO THE FOLLOWING SOLAR FACILITY INSTALLATIONS:

1. A GROUND-MOUNTED SOLAR FACILITY ~~LOCATED IN A YARD AREA, BUILDING, OR STRUCTURE THAT IS ACCESSORY TO A PRINCIPAL RESIDENTIAL, AGRICULTURAL, COMMERCIAL OR INSTITUTIONAL USE~~ THAT IS ACCESSORY TO A PRINCIPAL RESIDENTIAL OR AGRICULTURAL USE (SUBJECT TO SECTIONS 400.1 AND 400.2 OF THESE REGULATIONS APPLICABLE TO ACCESSORY BUILDINGS), OR ACCESSORY TO A PRINCIPAL COMMERCIAL, INDUSTRIAL, OR INSTITUTIONAL USE;

2. A ROOFTOP SOLAR FACILITY;

~~2~~ 3. A SOLAR FACILITY ON FEDERAL, STATE OR LOCAL GOVERNMENT-OWNED OR LEASED LAND THAT PRODUCES ENERGY FOR GOVERNMENT USE; OR

~~3~~ 4. A SOLAR FACILITY LOCATED ON THE SAME PROPERTY OR TRACT AS A FARM THAT USES AT LEAST 66% OF THE ENERGY GENERATED BY THE FACILITY FOR AGRICULTURAL USES ON THE FARM.

§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.

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 VISABLE 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 SECTION 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.

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

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.

§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

3. STABILIZATION OR RE-VEGETATION OF THE SITE AS NECESSARY TO MINIMIZE EROSION.

C. IF THE OWNER OR OPERATOR FAIL TO REMOVE THE FACILITY WITHIN 150 DAYS OF ABANDONMENT, THE COUNTY RETAINS THE RIGHT TO ENTER AND REMOVE THE FACILITY. AS A CONDITION OF SPECIAL EXCEPTION APPROVAL,

THE PETITIONER AND LANDOWNER AGREE TO ALLOW ENTRY TO REMOVE AN ABANDONED FACILITY.

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

1. THE CODE OFFICIAL DETERMINES THAT THE SOLAR FACILTY 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 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, R.C.6, AND R.C.8 ZONE.

SECTION 2. AND BE IT FURTHER ENACTED, that the Planning Board shall, in consultation with the Departments of Planning and Environmental Protection and Sustainability,

and with participation of the Baltimore County Commission on Environmental Quality, representatives of the Solar Industry, the Sierra Club's Greater Baltimore Group, and the Valleys Planning Council, study and evaluate the impact of Solar Facilities in Baltimore County and the effect of Article 4E of these Regulations, and by July 1, 2018 submit recommendations to the County Council and the County Executive regarding potential changes to current law.

SECTION 3. 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 July 17, 2017 and shall apply retroactively to any zoning petition filed after October 18, 2016.

Baltimore County, MD
Tuesday, February 27, 2018

ARTICLE 5. Administration and Enforcement

SECTION 500. Zoning Commissioner and/or Deputy Zoning Commissioner

§ 500.12. Subsequent petitions after denial of zoning reclassification or special exception petition.

[Bill Nos. 144-1959; 25-1978]
If a zoning reclassification or special exception petition has been denied, the Zoning Commissioner may not accept for filing any other zoning reclassification or special exception petition with respect to the same property or any part of that property until at least 18 months have passed from the date of the final order relating to the previous petition, whether that order is issued by the Zoning Commissioner or Deputy Zoning Commissioner, by the Board of Appeals, or by a court of competent jurisdiction considering the petition on appeal.

Protestant
CBA Exhibit
4

Exhibit 1

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 RC 2

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. X **a Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for A solar panel array field as a public utility use, pursuant to Section 1A04.2.B.12 of the Baltimore County Zoning Regulations.

3. ____ a Variance from Section(s)

19.69 acres RC 2
no principal residence

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:

SEE ATTACHED SHEET
Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Woodensburg Land and Cattle Company LLC
By: Glenn Elseroad, Manager
Name #1 – Type or Print Name #2 – Type or Print

Signature #1 Signature # 2

5423 Mt. Gilead Road, Reisterstown, Maryland
Mailing Address City State

21136-4110
Zip Code Telephone # Email Address

Attorney for Petitioner:

David H. Karceski, Esquire
Name- Type or Print

Signature

Venable LLP
210 W. Pennsylvania Ave., Ste. 500 Towson MD
Mailing Address City State

21204 410-494-6285 dhkarceski@venable.com
Zip Code Telephone # Email Address

Representative to be contacted:

David H. Karceski, Esquire
Name – Type or Print

Signature

Venable LLP
210 W. Pennsylvania Ave., Ste. 500 Towson MD
Mailing Address City State

21204 410-494-6285 dhkarceski@venable.com
Zip Code Telephone # Email Address

CASE NUMBER 2017-0107-X Filing Date 6/17/2016 Do Not Schedule Dates: 12/26/16-1/3/17 Reviewer TW

REV. 10/4/11

WOODENSBURG LAND AND CATTLE COMPANY LLC

5298 FRYE ROAD

ATTACHMENT TO PETITION FOR SPECIAL EXCEPTION

Contract Purchaser:

SoCore SE Development LLC

Authorized Signatory: SoCore Energy LLC
225 W. Hubbard Street, Suite 200
Chicago, Illinois 60654
Telephone: 773-897-5782

By: _____
Eric Luesebrink

Title: SVP Development

2017-0107-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 632 Freeland Road, Freeland, MD 21053 **which is presently zoned** RC 2

Deed References: 26823/303 10 Digit Tax Account # 0 7 0 1 0 8 9 0 6 0

Property Owner(s) Printed Name(s) Charles Gary Atkinson and Stephen Gordon Atkinson

(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. X **a Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

A solar panel array field as a public utility use, pursuant to Section 1A01.2.C.18 of the Baltimore County Zoning Regulations.

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:

SEE ATTACHED SHEET

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Charles Gary Atkinson / Stephen Gordon Atkinson

Name #1 – Type or Print Name #2 – Type or Print

Signature #1 Signature # 2

632 Freeland Road Freeland MD

Mailing Address City State

21053 / /

Zip Code Telephone # Email Address

Attorney for Petitioner:

Patricia A. Malone, Esq.

Name- Type or Print

Signature

210 W. Pennsylvania Ave., Suite 500, Towson, MD

Mailing Address City State

21204 / (410) 494-6200 / pamalone@venable.com

Zip Code Telephone # Email Address

Representative to be contacted:

Patricia A. Malone, Esq.

Name- Type or Print

Signature

210 W. Pennsylvania Ave., Suite 500, Towson, MD

Mailing Address City State

21204 / (410) 494-6200 / pamalone@venable.com

Zip Code Telephone # Email Address

CASE NUMBER 2017-0104-X Filing Date 10/3/16 Do Not Schedule Dates: _____ Reviewer JCM

REV. 10/4/11

ATTACHMENT TO PETITION FOR SPECIAL EXCEPTION

632 Freeland Road

Contract Lessee:

OneEnergy Development, LLC
2003 Western Avenue, Suite 225
Seattle, WA 98121
Telephone: 206-900-9930
Facsimile: 206-922-7079
Email: projects@OneEnergyRenewables.com

By: _____
Name: Travis Bryan
Title: Chief Operating Officer

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 20450 Middletown Road, Freeland, MD 21053 which is presently zoned RC-2, RC-4, RC-8

Deed References: 33873/119 10 Digit Tax Account # 2 3 0 0 0 1 0 0 5 0

Property Owner(s) Printed Name(s) David William Matthews

(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. X a **Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for A solar panel array field as a public utility use, pursuant to Sections 1A01.2.C.18, 1A03.3.B.13, and 1A09.3.B.2 of the Baltimore County Zoning Regulations.

3.____ a **Variance** from Section(s)

MD principal res.

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:

SEE ATTACHED SHEET

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

David William Matthews /

Name #1 – Type or Print Name #2 – Type or Print

Signature #1 Signature # 2

20450 Middletown Road, Freeland, MD

Mailing Address City State

21053 / bevanddave05@yahoo.com

Zip Code Telephone # Email Address

Attorney for Petitioner:

Patricia A. Malone, Esq.

Name- Type or Print

Signature

210 W. Pennsylvania Avenue, Suite 500, Towson, MD

Mailing Address City State

21204 / (410) 494-6200 / pamalone@venable.com

Zip Code Telephone # Email Address

Representative to be contacted:

Patricia A. Malone, Esq.

Name- Type or Print

Signature

210 W. Pennsylvania Avenue, Suite 500, Towson, MD

Mailing Address City State

21204 / (410) 494-6200 / pamalone@venable.com

Zip Code Telephone # Email Address

CASE NUMBER 2017-0108-X Filing Date 10/17/2016 Do Not Schedule Dates: _____ Reviewer _____

REV. 10/4/11

ATTACHMENT TO PETITION FOR SPECIAL EXCEPTION

20450 Middletown Road

Contract Lessee:

Bluefin Solar, LLC
5818 Tudor Lane
Bethesda, MD 20852
Telephone: (757) 646-0200

By: _____ 10/13/16
Name: Tim Dertzbaugh
Title: Managing Partner

13247080-v1

2017-0108-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: 11956 Philadelphia Rd, Kingsville, MD 21087 which is presently zoned RC-5

Deed References: Liber 33390, Folio 1 10 Digit Tax Account # 1 1 0 7 0 8 3 3 2 5

Property Owner(s) Printed Name(s) 11956 Philadelphia Road 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)

please see attached

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 provided at the 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:

Turning Point Energy LLC
Name- Type or Print

Signature

747 S Corona St Suite 100 | Denver, | CO
Mailing Address | City | State

80209 | 785-393-6505 | mgreczyn@altisenergy.com
Zip Code | Telephone # | Email Address

Legal Owners (Petitioners):

11956 Philadelphia Road LLC | /
Name #1 – Type or Print | Name #2 – Type or Print

Signature #1 | Signature # 2

12140 Pulaski Highway | Baltimore | MD
Mailing Address | City | State

21085 | / | /
Zip Code | Telephone # | Email Address

Attorney for Petitioner:

Scott Barhight, Esquire / Jennifer Busse, Esq.
Name- Type or Print

G. Scott Barhight / Jennifer Busse
Signature

Towson Commons, Suite 300 One West Pennsylvania Ave Towson, MD
Mailing Address | City | State

21204-5025 | 410-832-2118 | GSBarhight@wtplaw.com
Zip Code | Telephone # | Email Address

Representative to be contacted:

Howard Alderman, Jr. Esquire / Jennifer Busse Esq.
Name – Type or Print

Howard Alderman / Jennifer Busse
Signature

Nottingham Centre 8th Floor 502 Washington Ave. Towson, MD
Mailing Address | City | State

21204 | 410-321-0600 | halderman@levingann.com
Zip Code | Telephone # | Email Address

CASE NUMBER 2017-0101-XA Filing Date 10/19/16 Do Not Schedule Dates: _____ Reviewer gh

REV. 10/4/11

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

BALTIMORE COUNTY, MARYLAND

In Re:	:	BEFORE THE OFFICE
PETITION FOR SPECIAL HEARING:		OF ADMINISTRATIVE
AND SPECIAL EXCEPTION	:	HEARINGS FOR
15700 Hanover Pike	:	BALTIMORE COUNTY
4th Election District	:	
3rd Councilmanic District	:	Case No:
Legal Owner: Donald and	:	2016-0335-SPHX
Kathleen Lippy,	:	
Petitioner	:	

TRANSCRIPTION OF PROCEEDINGS
FROM AUDIO FILES

NOTE: Portions of the recording that were unintelligible to the transcriptionist are indicated as U/I.

BE IT REMEMBERED that the above-entitled Cause came regularly on for HEARING before the HONORABLE JOHN BEVERUNGEN, on Wednesday, October 12, 2016, at 9:55 a.m.

Transcribed by:

Paul A. Gasparotti

Petitioner
CBA Exhibit
3

APPEARANCES

LAWRENCE E. SCHMIDT, ESQUIRE
Smith, Gildea & Schmidt
600 Washington Avenue
Towson, Maryland 21204
On behalf of the Petitioner

MICHAEL R. MCCANN, ESQUIRE
Michael R. McCann, PA
118 West Pennsylvania Avenue
Towson, Maryland 21204
On behalf of Falls Road Community Association

PROCEEDINGS

JUDGE BEVERUNGEN: At Mr. McCann's request now we're back, and it looks like today we're ready to go with the case; is that right?

MR. SCHMIDT: I believe so. For the record, Judge Beverungen, Lawrence E. Schmidt with the law firm of Smith, Gildea & Schmidt, with an office in Towson at 600 Washington Avenue. I'm here on behalf of the property owners and the petitioners, who are Donald and Kathleen Lippy, in support of the two petitions that we filed.

JUDGE BEVERUNGEN: Good, okay.

MR. MCCANN: Good morning, Judge.

JUDGE BEVERUNGEN: Good morning.

MR. MCCANN: Michael McCann on behalf of John Smith.

JUDGE BEVERUNGEN: Okay.

MR. MCCANN: And I do have a preliminary matter that I'd like to address briefly.

JUDGE BEVERUNGEN: Okay, why don't you

do that.

MR. MCCANN: (U/I).

JUDGE BEVERUNGEN: Okay.

MR. MCCANN: I would ask that the hearing once again be postponed, Your Honor, this time for a different reason, and that is that just yesterday the County Council met in board session to discuss a moratorium on the loopholes regarding the solar panels, I don't know how much you know about it, for the purpose of looking at the issue further, looking at its impacts, et cetera. So I would ask that given the prospect of a moratorium being imposed on any of the loopholes, that all these impacted may be moot, and would ask that we put off until a decision is made on that bill, which is expected to go before the council, I believe next week, and for that reason we ask that the hearing be postponed until that issue is resolved.

JUDGE BEVERUNGEN: Okay. Mr. Schmidt?

MR. SCHMIDT: We would oppose that, and

just a little bit more background. Quite interestingly, after this case was postponed last time, I think you recall, Judge Beverungen, it was somewhat over my objection, but Councilman Kach introduced both a bill and a resolution at the County Council, and I would note that the bill and the resolution was sponsored only by him, by no other members of the seven-person County Council. And the effect of the bill and the resolution was to basically refer the matter of the solar farms, the solar facilities to the County Planning Board for the purpose of study and possible recommendations to the council of zoning regulations to regulate these more so than they are regulated today. And as you know, they are regulated and considered based on at least a prior decision by you as a public utility, at least as they exist here in an RC-2 zone.

My understanding is that that bill is under consideration, it has obviously not been enacted yet, there was a work session yesterday,

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none of us know whether it's going to be passed, what form it's going to be passed. I will tell you that information that I have been told at least from some sources that I have in the County Council is that it would exempt this particular property, either because we are in process and before you, or because of the size of this property which is about, six-and-a-half acres is the size of the proposed solar farm here.

As I indicated when we were here a month ago, my client, Mr. Donithan, seated to my right, who is here on behalf of Earth and Air Technologies, any delay, the delay that we've had is detrimental to him both from a business standpoint and from a regulatory standpoint in terms of this is a technology, which we certainly can and will get into, which is being pushed by the State of Maryland on providers such as him in jurisdictions to provide alternative energy other than fossil fuel energy.

So we would strenuously object to any

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postponement. There is no assurance whatsoever that this legislation will pass by the council and if it does, it may well exempt us anyway. So particularly given the fact that the case has been postponed once, we're here, we're ready to go forward.

JUDGE BEVERUNGEN: Okay. Well, I'm going to do that, I'm going to deny the request and allow the petitioner to go forward. I was willing to grant the request last time to allow Mr. McCann and his clients to gather and look at the petition and discuss it more. I think Mr. Schmidt is right, we have no idea what the County Council will do and if this is all futile, I guess it's your choice to move forward, Mr. Schmidt, so we'll let you do that. Anything else that we need to do?

MR. MCCANN: No.

JUDGE BEVERUNGEN: Okay.

MR. SCHMIDT: If I could make kind of an opening statement and a proffer, I do have some

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witnesses, because Mr. McCann is here and certainly they are available for questions, but if I can sort of give you a presentation and I guess an overview, Judge Beverungen, of why we're here?

JUDGE BEVERUNGEN: Yes.

MR. SCHMIDT: The property that is under consideration is shown on the site plan, but let me before I do that, identify who is here. The property is owned by Donald and Kathleen Lippy, who are actually property owners, Mr. Lippy is seated behind me. Mr. Lippy is a farmer in the Lippy Brothers, he and his brother farm about 2,800 acres, about 2,800 acres in this area of Baltimore County, we're not far from the Carroll County line, and much of their property is in Carroll County. So Mr. Lippy is a family farmer and has been for years.

You may have heard of the Lippy Farms because they are certainly well known and are, I would say a viable important base of the

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agricultural economy as it exists in Baltimore County. In any event, Mr. Lippy owns this property.

My other client who is here who I identified before is Ken Donithan, who is with Earth and Air Technologies, who is the company which actually installs the solar farm which is going to be put on the Lippy property, and he will be able to explain, hopefully, to you and those present about how it works and basically the mechanics of that.

And then my other witness would be John Lemmerman, who is the surveyor who prepared the site plan.

But with all that being said, again, the Lippy's own about 2,800 acres all together, interestingly, about 2,200 of it in preservation, in land preservation that is encumbered by easements with the state and with the various organizations which hold agricultural easements in Baltimore County. This particular property in

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this immediate vicinity is something over 200 acres but the subject property that we're here on, the area of this special exception is shown on this site plan --

JUDGE BEVERUNGEN: Is that a lot or is it just --

MR. SCHMIDT: It is a separate parcel and it is about six-and-a-half acres. It is one of these properties that if you look at the land records, it describes it as closer to 6.8 acres, but as is common with many agricultural properties and I know you've seen it before, you have the legal description which runs to the center line of the road, which in this case is Hanover Pike, Route 30, so when you talk about the actual area of ground, it's something less than 6.8 acres, it's shown on this plan as being 6.454 acres.

It is not under an agricultural easement at the present time, and I've got some aerials which I can produce which show you a broader area

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of Lippy farm which runs back off of and to the west of Maryland Route 30, Hanover Pike, but this is all agricultural planting, and I think now it's soy beans.

MR. LIPPY: Soy beans and some corn.

MR. SCHMIDT: That was Mr. Lippy talking, and some corn he has indicated.

Obviously it's a fairly agricultural area, some residences on the other side of Hanover Pike. The zoning map would show, you have an exhibit with that, that there are some clusters of commercial uses as you would expect in a sort of rural area of the county. When you go out 30 from Reisterstown you have various, a lot of sort of farming and agricultural related type of businesses which are here.

And so what the proposal is is to install a solar farm here, and although I know you're aware, if you look at the county zoning regulations, and this is probably some of the genesis of the legislation that Mr. McCann was

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talking about, you don't see anything in the regulations that says solar farm per se. The property is zoned RC-2 which you would expect because of the agricultural nature of this property and the area at large.

But there was a prior case that came in before you, I have a copy of it and maybe I can offer it now, I'll give Mr. McCann certainly a copy, as Petitioner's Exhibit Number 1, and it was Case 2016-0086 X, it came before you earlier this year, and basically it was for a property over in the Kingsville area where another solar provider was preparing or proposing a solar farm, and that's what I call generically a solar farm. That property was about 30 acres, a little more than that, and was generally an agricultural property.

And in your decision, which I understand was not appealed and is a final decision, you determined that this type of use was a, quote, public utility as defined in the RC regulations

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and it was permitted by special exception, and after hearing that case you granted a special exception in that matter, so I'm going to give you a copy of that.

JUDGE BEVERUNGEN: Okay.

MR. SCHMIDT: We're following, obviously in view of that precedent, that's how uses such as this have been classified and regulated by the county, we're following the same track. In your case that involved a special exception, that was an RC-5 and this is RC-2, but it's the same approach and the same use.

What we're proposing here is a solar farm and we have some photos which I'll show you, which is basically the panels which I think most of us are familiar with, we may have seen, which will be in this area. There is an area around the perimeter where the panels will not be located, and that is designed in order to provide screening and fencing and so on and so forth. And while I point that out, I'll say that you'll

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notice that there was a comment from the zoning advisory committee and particularly the planning office, I can say, and Mr. (U/I) can confirm that we have had conversations with both Mr. Lippincott in the planning office and Mr. Herman, who is the county's registered landscape architect, and we were willing as a restriction in this case, as Mr. Lippincott asked, that we provide a landscape plan here.

That's somewhat consistent of the order that you've issued in the other case to provide landscaping, and then we're going to do that here obviously. That's all premature, to talk about the species of the landscaping until we have the underlying zoning approval, but what was done in the other case, I actually have a copy of the landscape plan, it was sort of a combination of landscaping and screening. There was a security fence which was designed to sort of blend in, not to be a stark fence but to provide both buffer and security, and visual buffer, and then outside

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the fence a series of bushes, trees, et cetera, and that's we anticipate here.

So again, as a condition of any approval you would grant, we would be agreeable to having the requirement that we get a landscape plan approved by, Mr. Herman is the landscape architect. And that would be particularly appropriate here because Hanover Pike is a scenic highway under the county zoning regulations and obviously those considerations would go into that design as well, and we're certainly agreeable to that.

In any event, this is a solar farm that we're proposing, it's an unmanned facility, it is merely the solar panels with the related equipment. Mr. Donithan can explain the way it works and answer questions. I know a lot of folks aren't familiar with these because it's a newer technology, but essentially as I indicated, it's unmanned, there is periodic maintenance but there's no traffic generated. The panels are six

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to seven feet in height in terms of coming out of the ground. The idea is that they capture the sun and convert it into electricity. There is electric lines, and Mr. Donithan I think is going to explain this, and this is a particularly good site for this because of the electrical infrastructure which is located here immediately adjacent on Hanover Pike, which will allow the electricity which is produced and the energy that's produced by this to serve not only the Lippy farm, but other farms and other properties in the area. And as he will explain, it essentially will allow energy to be, to go into the electric grid, not for the Lippy property.

This is not -- you see around, a lot of folks have solar panels on their roofs and even in an agricultural setting on barns and sheds and so on and so forth, which particularly belong with that property. This is not that, this is a farm which is more of a public utility, again, which generates electricity which will serve not

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only the Lippy farm but other properties in the area, and Mr. Donithan can talk about that in some detail.

As such, we think it's a real benefit to the area and the agricultural community, and certainly a benefit to this particular farmer, who like other farmers is under increased pressure from the development, pressures that are brought from the agricultural base in Baltimore County, that this produces a sort of energy and savings, monetary incentives for Mr. Lippy for his farm. And it takes, as I indicated, of this 2,800 acres that he owns, a very very small portion, six-and-a-half acres out of the agricultural production.

We also believe that there would be no detriment to the health, safety and general welfare of the locale. There's no traffic generated, visual impacts will be minimal, there's no environmental issue in terms of chemical release or toxic release of any type.

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It is simply a very small facility, as we will describe.

So with that being said, I do have those three witnesses to sort of present the plan, and I think Mr. Donithan will probably be my primary witness because he can really explain how this works and how it works as part of the grid system and what it will look like and so on and so forth. Mr. Lippy is also here as the farmer and can explain how his farm operates, so that's where we'll go for our case.

JUDGE BEVERUNGEN: Okay. Mr. McCann, do you have anything?

MR. MCCANN: Nothing in opening.

JUDGE BEVERUNGEN: Okay, so let's get going.

MR. SCHMIDT: Okay. I'd call Mr. Lemmerman, if I could.

JUDGE BEVERUNGEN: Okay. Sir, come on up, and make sure that microphone is on with the green light, please, and remain standing and

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raise your right hand.

Whereupon,

JOHN LEMMERMAN,

being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

JUDGE BEVERUNGEN: Take a seat, tell us your name and business address, and Mr. Schmidt will ask you questions.

THE WITNESS: Good morning. John Lemmerman with RTF Associates, land surveyors and planners. Address is 142 East Main Street, Westminster, Maryland 21157.

DIRECT EXAMINATION

BY MR. SCHMIDT:

Q. Mr. Lemmerman, you work for RTF Associates, which you've indicated are land surveyors and planners, and which are you, a land surveyor or planner, or both?

A. I'm a professional land surveyor licensed in the State of Maryland, and I do some

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planning also.

Q. And your office is in Westminster?

A. Yes.

Q. And you do hold a professional license as a surveyor in the State of Maryland?

A. Yes.

Q. Have you ever testified in either any court or other proceeding as an expert witness as a land surveyor?

A. Yes.

Q. And where was that, sir, if you can tell us?

A. Most of it is in Carroll County zoning hearings, and a couple in District and Circuit Court also.

Q. And in those cases, particularly the ones in the courts of Carroll County, were you accepted as an expert witness as an expert land surveyor?

A. Yes.

MR. SCHMIDT: I would offer

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Mr. Limmerman as an expert surveyor given his credentials and prior testimony in courts of this state.

JUDGE BEVERUNGEN: Okay. Any voir dire or objection?

MR. MCCANN: I can wait until cross.

JUDGE BEVERUNGEN: Okay, so yeah, Mr. Lemmerman will be accepted as an expert in those areas proffered.

MR. SCHMIDT: Okay, thank you.

BY MR. SCHMIDT:

Q. Mr. Lemmerman, why don't you come up and just stand next to the plan, because I'm going to ask you just some general questions about that.

Mr. Lemmerman, did there come a time that you were asked to prepare a zoning site plan in connection with this case?

A. Yes.

Q. And is that plan that you prepared pursuant to those instructions on the board next to you?

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A. Yes, sir.
Q. And that was prepared either by you or under your supervision and direction?
A. Yes.
Q. And it does bear your signature as the registered land surveyor who prepared the plan?
A. Yes.
Q. Okay. Just if you can for Judge Beverungen and those who are here, give us a little idea of what we're looking at in terms of size and maybe the general area, kind of tell us what that's depicting.
A. Sure. This black outline here is an outline of the property. This is Spring Grove Road which is a rural country road. This is Route 30 which was mentioned earlier. There is some residential houses on the opposite side of Route 30. Donald Lippy owns a couple hundred acres that surrounds this property. This is, this area here is located in an agricultural preservation area. There's a large lot here that

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has residences on it and it's overlaid on an aerial photo, and the zoning is RC-2.
Q. Okay. Now, Hanover Pike I think it is, or Route 30, is a public road?
A. Yes.
Q. And the other road you mentioned, I don't know, is that a public road or private road?
A. It is a public road.
Q. It's a public road as well, okay. And Mr. Lippy and his wife own a number of, do you know how many acres approximately that surround this, not part of this property?
A. I believe it's around 200.
Q. Okay. And this particular lot, is that a separate lot?
A. Yes, it is, I believe a third parcel on one of the deeds.
Q. And how big is it acreage wise?
A. Deed wise it is 6.8 acres because of the right-of-ways as was previously explained. What

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you're looking at here without the right-of-ways is 6.45 acres.
Q. And you indicated that much of the Lippy property holdings is in agricultural preservation; is that correct?
A. Yes.
Q. Is this property in an agricultural preservation?
A. This property, the subject property is not.
Q. Is not, okay, so there are no restrictions, lines, deeds which would prevent this from being used as it's proposed?
A. Not that I know of.
Q. Okay. And if you know, Mr. Lemmerman, is this, how would this use be permitted, the proposed farm, under Baltimore County zoning regulations?
A. It would be permitted as a special exception under public utilities.
Q. Okay. And you are familiar, are you

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not, with the prior case that I gave to Judge Beverungen and you reviewed that, where indeed he allowed a similar type facility as a special exception as a public utility?
A. Yes, clearly you may.
Q. Okay. Now in addition to the top page which you've shown, you also have an overlay on the bottom. Can you tell us exactly what that is?
A. Sure. This is the outlines of the property in black. What is red was indicated as a (U/I) arrays. This hatched area surrounding it is dedicated, you know, between the effective minimum setback lines required by zoning, and for, you know, additional space for planting, landscaping and screening.
Q. Okay. And so far as planting and landscaping and screening, did RTF indicate that their has been communication, has there not, with Baltimore County officials about providing a landscape plan for approval, assuming the zoning

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variance is approved?
A. Yes.
Q. And does the plan show and accommodate fencing, screening which might be necessary in a plan for that purpose?
A. Yes, there is.
Q. Okay. And do you know, or as a surveyor, would you just kind of describe what you would anticipate the type of screening to be?
A. What we're at this point envisioning is like a chain link fence that has screening on it so it kind of blends in a little bit better than chain link typically does, and a mixed planting, use of bushes and shrubs and all. That would be mainly guided consistent with the, I'm sorry, scenic route guidelines.
Q. Okay, and you have reviewed those scenic route guidelines as well?
A. Yes, sir.
Q. And you believe your landscaping plan is designed to meet the goals of those guidelines in

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terms of screening and buffers at this proposed facility?
A. Yes.
MR. SCHMIDT: Okay. I don't think I have any other questions of Mr. Lemmerman.
JUDGE BEVERUNGEN: Okay. Mr. McCann.
MR. MCCANN: Yes, thank you. You may sit down, sir, if it's easier for you.
CROSS-EXAMINATION
BY MR. MCCANN:
Q. A couple questions about your background first of all. You mentioned that you've testified in Carroll County; have you ever testified before this administrative law judge before?
A. I have not.
Q. Have you ever testified before the Board of Appeals in Baltimore County?
A. No.
Q. Have you ever worked on a project in Baltimore County involving solar paneling?

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A. No. There's only limited cases of this.
Q. Have you ever worked on a project involving a special exception in Baltimore County?
A. Yes.
Q. And which case was that?
A. Honestly I was more involved in the boundary and the topography aspect of it, so I didn't do specific testimony about the special exceptions.
Q. How many cases were there?
A. It's been a while, but there were probably a couple.
Q. So two over the years?
A. Yes.
Q. How long ago?
A. I'd say six, seven years probably.
Q. So your involvement in that case was strictly as surveying, that is preparing the plan or similar exhibits, but you didn't testify in any of those cases, those couple of cases

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involving a special exception from a special exception standpoint, correct?
A. Correct.
Q. So no cases in Baltimore County in which you've addressed the standard for special exception in Baltimore County, correct?
A. Correct.
Q. You mentioned that the subject property is not in a conservation easement, and I thought you mentioned that the surrounding property was; is that your understanding?
A. Yes.
Q. So in other words, if the property depicted on --
MR. MCCANN: Is that Petitioner's 2-A?
MR. SCHMIDT: Yeah. I didn't offer that, maybe I should have, I apologize. I'm going to find it if I can and Mr. McCann, with your indulgence I will mark the one which is the aerial overlays 2-A and the other one which is the grid as 2-B, if I can.

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MR. MCCANN: Okay.
MR. SCHMIDT: I'll certainly do it now.
MR. MCCANN: Okay. So those will be coming in.
BY MR. MCCANN:
Q. So more specifically with reference to Petitioner's Exhibit 2-A, is all the property outside the subject property in conservation easements as far as you know, that is the property to the west of the subject property as well as the property to the south, and south of Spring Grove Road?
A. Certainly this is.
Q. When you say this, you mean the area to the west and northwest?
A. Yes, and I can't be certain whether this parcel --
MR. MCCANN: Mr. Lippy will be testifying about this?
MR. SCHMIDT: He will.
BY MR. MCCANN:

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Q. What about this area where, to the north and northeast?
A. I don't believe that's (U/I).
MR. SCHMIDT: And that's not on (U/I) here?
MR. MCCANN: Oh, it's not, all right. Thank you.
BY MR. MCCANN:
Q. You mentioned that there is room outside of the solar panels themselves on the subject property to accommodate landscaping, correct?
A. Yes.
Q. So that's the area outside the 2-B, or the area outside the grid, correct?
A. It includes that area also.
Q. (U/I).
A. (U/I) understanding outside 75 feet from the center line, 35 feet from all other property lines, would be the area that we use.
Q. Okay, and that would be area that's not occupied by the panels themselves or anything associated with the panels, correct?
A. That's correct.
Q. And not occupied by what, it would be essentially undisturbed?
A. That's correct.
Q. This is a question about 2-B. Is this outer boundary in red on 2-B, is that part of the panels themselves or is that part of the setback?
A. That is part of the setback. The (U/I).
Q. Okay. So why is it that you have that in red?
A. It's just for illustration purposes as the outline. There's no other purpose.
Q. But this, and I know I'm not describing it accurately, but this outline is not going to be used for the actual panels?
A. That's correct.
Q. Other than access to the panels?
A. Right, other than that.
Q. Okay. But again, no one, there is no landscape plan, correct?

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A. Not at this time.
Q. Is there any drafts of any landscape plan that have been prepared?
A. Not that I'm aware of.
Q. Is anybody working on the project other than your firm, like an engineering survey to begin with?
MR. SCHMIDT: Objection. If he knows.
JUDGE BEVERUNGEN: If you know.
THE WITNESS: I'm not aware of any at this time. I believe the intent was to get zoning approval before too much time and money is spent.
BY MR. MCCANN:
Q. And in terms of – well, (U/I) Carroll County, you've worked on these plans in Carroll County?
A. Yes, I have.
Q. How many?
A. Three large ones that are Carroll County as the developer. One would be the Hampstead

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wastewater treatment plant. There is, half of that property is an agricultural use and they're taking that portion of the property.

Q. Okay.

A. Carroll County Community College is one of the sites, and the third site is a landfill that's been capped over and annexed as well.

Q. And the first two projects were during what period of time?

A. The one is, it was within the past year and a half for all of them.

Q. Am I correct, all three of those projects involved public property?

A. That is correct.

Q. In Carroll County is -- well, is that project allowed by special exception or was it allowed (U/I), do you know?

A. It depends on the zoning, to answer your question.

Q. All right. In any of those, did you testify in any of those three cases you just

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mentioned?

A. No.

Q. Did those go to a hearing?

A. They were in a property zoning, that was the principal piece of the case, but no.

Q. In terms of Baltimore County scenic route guidelines, you said you reviewed those in connection with this case, correct?

A. Yes.

Q. Have you ever reviewed those guidelines in connection with any other project?

A. Yes, I have done similar research in Baltimore County.

Q. You have?

A. Yes, sir.

Q. Where?

A. Mostly rural areas, like Birch Road, Back River, I believe it's called, a few others.

Q. And those involved a scenic route, or indicated scenic routes?

A. Some of -- a couple of the projects I

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have reviewed for those purposes.

Q. You never testified in any case, any subdivision case about conforming with the scenic route guidelines?

A. No.

Q. Did someone else in your firm, or (U/I)?

A. There was no test for that.

Q. Have you had any communications with anybody in the Baltimore County (U/I)?

A. Me personally, no, not at this time.

Q. Anybody from your firm?

A. Not at this time.

Q. Anybody in your firm work on this project other than yourself?

A. I had a draftsman also, yes.

Q. Were you asked -- strike that.

When you were first approached to help with this project, what were you asked to do?

A. Back in May of 2016 we were asked to provide a drawing and survey as an exhibit for this purpose.

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Q. For this particular property?

A. Yes, sir.

Q. And were you asked to do anything with this other portion of the property?

A. Not -- no.

Q. You were not asked to put solar panels anywhere else on the property?

A. No, that would be probably inconsistent with that.

Q. So you agree that solar panels would be inconsistent with an agricultural preservation?

A. In this particular situation I do.

Q. And I think I heard Mr. Schmidt say, I'm not sure if you did, the total acreage is 200 acres, but in this area, do you know how many parcels there are, I think he said two or three, or two in addition to this property?

A. I mentioned that the parcel that we're referring to is the third parcel on one of the title deeds for the property.

Q. Okay, and that's three, and it's

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approximately 200 acres, right?
A. I would have to look at the deed to tell you how many exact units are there specifically.
Q. Did you work on the residential stuff on any of the property?
A. Yes.
Q. And where was that?
A. That was Baltimore and Carroll County.
Q. In Baltimore County, or Carroll County, was it connected with this subject property in any way, is it part of that 200 acres?
A. It's possible on the other side of the county line, in Carroll County, that we built some residential lots, or that was excluded from the (U/I) at the time.
JUDGE BEVERUNGEN: Wait. You said in Carroll County?
THE WITNESS: I believe so.
BY MR. MCCANN:
Q. What was the name of that property, do you recall the name or the address?

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A. I don't recall the exact name.
Q. But you're pretty sure there were in Carroll County and not Baltimore County?
A. Yes. They were minor, we're talking about two lots (U/I).
Q. I saw something about five lots (U/I) as well. Did you work on that property?
A. You would have to be more specific.
Q. I don't know if I can. In 2012 there was five lots that were subdivided.
JUDGE BEVERUNGEN: In Carroll County?
MR. MCCANN: No, in Baltimore County.
BY MR. MCCANN:
Q. And I was wondering if I'm correct on that.
A. It doesn't ring a bell.
Q. But the one you did work on that you mentioned earlier, it took a while?
A. Yes, there were several small lots, so a modern subdivision in Carroll County.
Q. But none in Baltimore County?

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A. No, not that I can recall.
Q. (U/I).
A. Yes.
Q. Along the (U/I) Road?
A. I don't recall.
Q. (U/I) Baltimore County?
MR. SCHMIDT: Objection. I just don't see what the relevance is.
JUDGE BEVERUNGEN: Overruled. You can answer.
THE WITNESS: Not that I can recall.
BY MR. MCCANN:
Q. The one on (U/I) is not connected to this property?
A. No, it was not.
Q. This isn't Carroll County?
A. No, it's not.
MR. MCCANN: Okay. That's all I have, thank you.
MR. SCHMIDT: Just a couple questions on redirect.

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BY MR. SCHMIDT:
Q. I think you indicated this, but are there any variances required for this proposal?
A. Not that I'm aware of, no, other than the setbacks that we're providing.
Q. And insofar as the setback requirements the facility does meet the relevant setback requirements from both the public road and from the property line, does it not?
A. Yes, it does.
Q. And although you haven't yet done a detailed landscape plan, you are a surveyor and you've done landscape plans or had landscape plans that you've done for other subdivisions or other projects in the past; is that correct?
A. Yes, for residential and commercial.
Q. And the area that you show outside of where the panels are going to be, in your judgment, is that a sufficient area to install a landscaping to buffer this site adequately under the scenic road documents?

A. Yes.

Q. How much area do you actually have, I guess in terms of width, that you could landscape and put trees and fences and bushes and all, from where the panels are to the property line?

A. From the property line itself is a 35-feet setback, which is more than enough for a landscaping buffer, and along the road frontage it's 75 feet from the center line.

Q. Okay. Did you see the landscape plan that was approved in the other case, have you seen it?

A. I don't believe I have.

Q. Okay. Now insofar as just this property or this immediate property, the Lippy's own as I understand it, something like 2,800 acres of land in Baltimore and Carroll County; is that right, to the best of your knowledge?

A. Yes.

Q. Okay. And so insofar as the holdings they may have associated with this, this

particular parcel has never been subdivided, correct?

A. Correct.

Q. And in fact if this property wasn't used for this purpose, it could be developed to single family houses on it, couldn't it?

A. To the best of my knowledge, yes.

Q. And the Lippy property in the immediate area goes into Carroll County, this is fairly close to the Carroll County line, is it not?

A. It is.

Q. Okay. And you said the subdivisions there were child lots?

A. To the best of my knowledge they were.

Q. Okay.

A. They were approved by the preservation.

MR. SCHMIDT: I don't have any other questions.

JUDGE BEVERUNGEN: Okay. Any followup?

FURTHER CROSS-EXAMINATION

BY MR. MCCANN:

Q. Sir, would you be the one to design the landscape plan when it is prepared?

A. I would have a licensed landscape architect perform the design.

Q. Someone in your department?

A. Yes.

MR. MCCANN: Thank you.

JUDGE BEVERUNGEN: Good. Thank you, sir.

THE WITNESS: Thank you.

(Witness excused.)

MR. SCHMIDT: I would next call Ken Donithan.

JUDGE BEVERUNGEN: Okay. Good morning, sir. Remain standing and raise your right hand. Whereupon,

KEN DONITHAN,

being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

JUDGE BEVERUNGEN: Take a seat, tell us

your name and business address please.

THE WITNESS: Ken Donithan, Earth and Air Technologies, 60 Aileron Court, Suite Number 4, Westminster, Maryland 21157.

DIRECT EXAMINATION

BY MR. SCHMIDT:

Q. Mr. Donithan, what's your relationship with Earth and Air Technologies, LLC?

A. I'm the owner.

Q. Okay. And I guess as the owner, briefly, what do you do for the company? I guess everything, but tell Judge Beverungen what your role is.

A. Well, we're a certified small business. When you're a small business, you pretty much do everything, but mainly the engineering, design, oversight of the operation and installation of renewable energy systems.

Q. Okay. Tell us a little bit about your educational background.

A. I was in the United States Navy, I was

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discharged in 1980, honorably discharged. Went to work in the field that I was in in the Navy, which is power engineering, and became a loss control inspector for several -- well, two insurance companies, and basically loss control, inspecting power plants, equipment, machinery, generating facilities. And I went back to school and got my degree in electrical engineering from Johns Hopkins University.

Q. And when did you start Earth and Air Technologies, how long has the company been around?

A. 2008-2009 time frame.

Q. Do you have any kind of licenses or registrations with the State of Maryland, either you or Earth and Air as a company?

A. I do.

Q. What are those, sir?

A. We have a contractor's license, construction license in the state. We have an MHIC license, a contractor's license in the

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state. I'm also a certified power engineer, i nationally carry various certifications, licensing in the power engineering field.

Q. And what's a power engineer, what is that?

A. Basically, you know, a utilities engineer that would operate power plant, generating station, heating, cooling, commercial industrial system, and the auxiliary equipment that go along with that for a university or a hospital, and the electrical components for basically site support systems.

Q. Okay. And you actually have a registration or certification as a, quote, power engineer?

A. I do.

Q. Who gives that to you?

A. That's a national license that is issued through the National Institute of Uniform License of Power Engineers.

Q. Okay. Now Earth and Air Technologies,

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if you can, tell us a little bit about specifically in the years that the company has been in operation, what does Earth and Air Technologies do?

A. Well, we started out doing strictly wind installations, and after turning about nine out of ten people down, everybody thinks they have the wind, but they don't have the wind you need to sustain, to get the payback for these systems, and so we got into other renewable energies, geothermal and solar mainly, which is 99 percent of what we do.

We go out and take a look at a site, we do an analysis, a site analysis to see if it's, you know, a good site for solar. If it meets all the requirements of the applicable jurisdictions' requirements as well as the utility requirements, so there's several oversight authorities that have, it has to meet certain requirements before we can actually submit documents and paperwork and applications to install.

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Q. Okay. And you said you look to see if a site is a, quote, good site for solar. What makes a site a good site for solar, what kinds of things do you look at?

A. Well, it's open, it has good sun, you have to have sun, that's number one, make sure you have a good, you know, energy source from the sun, and that you can electrically connect to a viable electrical feeder or meter or panel in order to tie this system into, whether it's a home, a business, or you're going back into the utility.

Q. Okay. So you have to have a good site in terms of good sun, and then the proximity of the grid over something that can actually tie into it?

A. Absolutely.

Q. Okay. How many solar systems have you developed or installed since you have been doing this, Mr. Donithan?

A. Well, with renewable, including wind and

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solar, geothermal, I would say a hundred.
Q. How about just for the solar?
A. Probably a hundred. Very few wind cells.
Q. Very few wind or geothermal?
A. Yeah.
Q. And any in Baltimore County?
A. Several, yes.
Q. Can you tell us a little bit about where they were, what kind of facilities?
A. Butler (U/I) Farm. We did another farm on, in the Hereford area, a small farmhouse on a residential farm.
MR. SCHMIDT: Judge Beverungen, in light of his background and credentials, I would ask that he be accepted in the field of, as a power engineer and in the field of alternative, and particularly solar energy systems.
JUDGE BEVERUNGEN: Mr. McCann, do you have voir dire on that?
MR. MCCANN: Nothing that I can't do on

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cross.
JUDGE BEVERUNGEN: Okay. Yeah. Well, Mr. Donithan has degrees from Johns Hopkins, and he indicated that he was licensed by the National Association for Power Engineers, so because of his training and background, he's got sufficient ability to express opinions in this case. Go ahead.
BY MR. SCHMIDT:
Q. Let me, Mr. Donithan, if I can, turn to kind of this particular property. I assume there came a time that you entered into, identified this site and entered into an arrangement with the owner, Mr. and Mrs. Lippy regarding the potential exploration of a solar farm here; is that correct?
A. Yes.
Q. And when was that, if you can tell us kind of how that came about, how did you identify the site, et cetera?
A. I want to say we were looking at sites

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towards the end of 2015, so we had looked at several sites, and this particular site was the best site for this installation in that one of the important components of this, you have to have a transmission or a distribution feeder in order to tie in a system of this size.
Q. Okay. And you approached Mr. Lippy after identifying the property about putting a solar farm here, I'm going to call it a solar farm, I don't know if that's the proper technical name, but that's how it was described; is that correct?
A. Yes.
Q. What, can you tell us a little bit about, I guess this particular six-and-a-half acre property, not only its proximity to the feeder system, but the site itself, is there anything that makes it particularly attractive for this use?
A. Absolutely. It's not an ag preserve, which is a reason for using the site. It does

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fall under the guidelines for conditional approval under special exceptions. And it has plenty of sun and it's open, it's not flat but it doesn't have significant slopes, which makes it important when you're doing an installation of this type, that you don't have a lot of hills or slopes where you're installing the equipment. And paramount is the high voltage tension lines that run along 30 that you would be tieing into.
Q. All right. Tell us, if you can, explain in a little more detail as to how that connection would be made, how is that done, Mr. Donithan?
A. Well, we would tie the system into a utility meter, and that meter would be tied directly to the transmission feeder that runs along Route 30.
Q. Can you point on that plan as to where that is located on Route 30?
A. The high tension lines are running along the side of the road.
Q. And that's where you would actually make

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the connection?

A. Well, the connection would be made off of these feeders; we would be connecting at the meter that's, that is (U/I) on the electricity that the system is producing.

Q. Okay, you can be seated. I'm going to show you a photograph that you actually just, you actually provided me two of them. I'll give one to Mr. McCann and I'll mark these as -- your indulgence for just a second. I want to make sure I give Mr. McCann exactly what I'm giving you. I've pre-marked these Petitioner's 3-A and 3-B, and I'll give you the original ones to make sure they're exactly the same ones I'm giving to the witness, a couple of photographs.

Mr. Donithan, I'm going to show you two photographs that I've marked as Petitioner's 3-A and 3-B. I think you actually provided those to me, did you not?

A. Yes.

Q. And if you can, hand those up to Judge

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Beverungen so he can look at them. What is it that we're actually looking at, what does it show?

A. These are the actual solar modules, which is the meat of this system. That is where the energy from the sun is collected. Those modules are connected in a series pattern and we use an inverter that ties the modules to the inverter.

Q. Okay. Now where is that facility, if you know, those panels, do you know where that picture was taken?

A. I do not.

Q. Okay. Are those the type of panels, though, that you would see and that are proposed out here?

A. Correct.

Q. Okay. Could you describe the panels, and the photograph speaks for itself, but how tall are they, how big are they?

A. Well, the modules that we'll be using

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will be 72 cell, which are approximately three feet by six feet.

Q. Okay. And how tall are they?

A. They're six feet by three feet.

Q. Oh, six feet tall by three feet wide?

A. Yes.

Q. Okay. And they will be in essence installed in sort of a pattern that's shown on that Exhibit 2-B?

A. Correct.

Q. And just give us a sense of scale. How many of those panels would you have installed in this kind of arrangement, approximately?

A. About 6,500.

Q. About 6,500, okay. And again, because we're not all power engineers, tell us how it works scientifically or practically, the sun comes up, shines down, what happens?

A. Well, if you think of the solar modules as a battery, that would be a good analogy, and then the more batteries you put together the more

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powerful that battery is. So these solar modules are direct current, the sun hits the cells, there are 72 cells in there and just think of the cells as a battery, so you have 72 batteries in each one of these cells. So you know, the more batteries you put in there, the bigger brighter light you can shine. However, something like this will probably have the power to shine the lights of a stadium, so to speak. So it's a direct current that is being generated from the sun, the photo array of the sun, and then the energy that, the direct current energy flows in the wires, the wires are connected to an inverter, which basically converts that direct current to a house power, so to an alternating current that can be used, you know, anywhere, commercially, residentially, industrial.

Q. So the sun provides the energy to create in essence the direct current, which then is inverted or converted into the alternating current which is used by all of us when we plug

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anything in in our house?
A. Yes.
Q. Okay. In terms of the amount, if I'm asking this correctly, and let me just reduce it down to layman's terms. What's the amount of power or measure of power which is produced by a facility like this?
A. Well, you're looking at about two megawatts of power.
Q. Okay.
A. And just to give, you know, an idea of that, Calvert Cliffs nuclear power plant is 1,800 megawatts, so this is two megawatts.
Q. Okay. And in terms of -- now, this current, this energy will be fed into the system, the grid as it were, of the public grid; is that correct?
A. Correct.
Q. And so this power will be able to be used by, first of all, the subject property, the Lippy's, correct, in the operation of their farm?

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A. Yes.
Q. So their lights, their machinery, anything that they use electrically will be obtained, or can be obtained from this; is that correct?
A. Yes, correct.
Q. How about other uses, will there be other users up and down Hanover Pike who will be able to benefit from this?
A. We have gotten, you know, commitments from some of the business owners along Route 30, as well as farmers in the area, that expressed interest in regards to utilizing electricity that's generated from the system.
Q. Now, how will that actually work? I mean, how does the electricity get to them, and how are you saying that they're using this electricity?
A. I mean, it's similar as if you had it on your house. I mean, there's not really a big difference. You're tieing into a feeder and

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whether the electrons from that solar go directly into your home or go back out onto the grid, that's what this does, the electrons flow into the transmission lines and those electrons are then distributed along that feeder system to whoever is on that feeder system, which the Lippy's are, along with some of the other farmers and businesses along the corridor there.
Q. Okay. Can you tell us, you said that the power generated here would light a stadium, for example.
A. Yes.
Q. In terms of residents, or residences or businesses, if you can give us an idea, how many individuals or individual properties or farms, however you would quantify it, will be able to use the power that's generated here?
A. Probably about 200 to 250 residential customers would, from a size standpoint, that's how much electricity would be generated.
Q. And obviously a business would probably

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consume more electricity than a residence would?
A. Correct.
Q. So if you had a mix of businesses and houses taking electricity, that would be a lesser number overall than 250 properties?
A. Correct.
Q. Okay. And you indicate that you have had several adjacent property owners, businesses and farms who have expressed an interest in tieing into this system and utilizing this system?
A. Correct.
Q. If I can, Mr. Donithan, let me ask you about the state regulations and the State of Maryland viewpoint on this alternative energy and how that plays into your decision to come here. Does the state have any regulations, incentives or programs related to solar power?
A. Yes, they do.
Q. Can you tell Judge Beverungen about them and how they work?

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A. Well, the state has a net energy (U/I) that allows homeowners, businesses, anyone can connect to the utility grid through a net meter. Recently that has been extended by the governor who signed into the law a community solar energy generating pilot program, which this is going to be a part of. That allows any individual, any business, company, what have you, to be able to install a community solar energy generating system and supply power from that system to anyone on the grid.

So, this will be in the BGE territory, so any energy that's generated from this would be allowed to go to any customer in the BGE service area. Now the reasoning for this pilot program is to increase the renewable portfolio standard that the state has, two percent solar by 2020.

Q. So the state is requiring two percent of our energy be solar by 2020?

A. Correct.

Q. Okay.

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A. And right now we're at about .5, .7, somewhere around there in the latest figures, plus or minus, so it, in addition to this, it also allows businesses that may not have the right roof space or the right property for their leasing, it allows them the opportunity to purchase clean green solar energy from the community solar system. And you have residences also that may not have the roof space, or may be renting or don't have the property. And we have a lot of them when we go out, and one of the things, we want to make sure they have (U/I), so we've had a lot of customers in the past that we, you know, would love to have solar energy supplying their property, so it gives them the advantage too to be able to purchase electricity at a cheaper rate than what they're paying now from a community solar energy generating system.

Q. So this system will actually be consistent or, I guess I'll ask it as a question, will it be consistent to further the goal of the state program that you've described, so that public utilities can be operating more efficiently and in accordance with the state guidelines?

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A. Yes.

Q. And it will be part of that program to get to the two percent?

A. Correct.

Q. Okay. And I think you did indicate that the public utility which is actually in this area is BGE?

A. Correct.

Q. Okay. Let me ask you, if I can, Mr. Donithan, a little bit more about the actual facilities and I think some of the considerations that Judge Beverungen has to consider. First of all, you described the panels in terms of their dimension, and you've also heard the testimony from Mr. Lemmerman. If the plan is approved and zoning approval given, is it your intention to prepare or have Mr. Lemmerman's office prepare a landscape plan in order to buffer and shield the facility?

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A. Yes.

Q. And in fact, you have met with Mr. Lippincott to discuss landscaping issues, have you not?

A. Yes.

Q. And have provided him, have you not, with some photographs and details of fencing and landscaping that you have done for other projects or used for other projects, have you not?

A. Yes.

Q. And is there any reason to believe that you cannot (U/I) this facility in the areas shown within the buffer created by Mr. Lemmerman on this plan to satisfy the county's landscape architect?

A. Yes.

Q. Now with that being said, take us through this. If the approval was granted, then the solar panels would be installed here

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obviously, correct?
A. Correct.
Q. How long does that take on a site like this to do the installation?
A. Depending on weather and the timing, but three months to four months.
Q. And other than putting those panels out there, what other, if any, infrastructure, is there any other building or any other thing that needs to be done other than the panels that are put out there?
A. The panels and the inverters, and that would basically be it.
Q. Now the inverter, what's that, can you describe physically what that is?
A. That is probably the size of a commercial reaching cooler or freezer that converts the, again, the direct current into alternating current.
Q. Okay. And is that the little structure in the middle of Petitioner's Exhibit Number 2

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down there?
A. Yes.
Q. And the inverter that you described as about the size of a commercial freezer, is this the inverter?
A. Yes.
Q. Okay. All right. So what you would see or what would be here would be the panels which we've done the pictures of, and then a structure about the size of a commercial freezer?
A. Correct.
Q. The lines that are going out to the utility on Hanover -- Maryland Route 30, I keep saying it wrong, are they above ground, below ground?
A. Below ground, they would be buried.
Q. Okay, they would be buried, so you're not going to see any electric lines above ground coming out from here?
A. No.
Q. Okay. And no other construction or

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nothing else above ground that you could see, no tall buildings or wind turbines or anything like that?
A. No.
Q. Okay. Is this a manned facility, is there anybody working on this once all this is done?
A. No.
Q. Okay. Is there any kind of maintenance that's done on these panels daily, monthly, yearly or anything like that?
A. No, other than just the landscaping aspect of it, you know, the mowing and that around the modules.
Q. But nobody works here, I mean there's no employee out here or anything like that?
A. No.
Q. Do you have to come out and maintain these panels or check them every so often?
A. Well, we monitor, this will be monitored remotely, so we will know of any issues that

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occur through remote monitoring, Internet monitoring.
Q. And that's based on, I assume, it's not producing power or there's a disruption of the power, you would have to send somebody out there to see what's going on?
A. Correct. I mean, for the first few months, it's always, we make sure we get the bugs out of things, so there will be more visiting the site than it would after the system, the bugs have been taken out of the system, so to speak.
Q. Okay. And so there's no traffic really, vehicular traffic produced by this facility of people coming and going?
A. No.
Q. Okay. How about the maintenance of the area around the facility? Do you have to mow that, or how is that controlled?
A. Yeah, that will be, you know, grass and that.
Q. So it will be grass under the panels,

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which would be maintained?
A. Correct.
Q. Now the panels are actually above ground, right, so they're not sitting on the ground creating an impervious surface on the ground; is that correct?
A. Correct.
Q. So, do you have any kind of runoff or anything like that when it rains, from these panels?
A. No.
Q. In terms of the panels themselves, is there any maintenance required, washing, cleaning or anything like that?
A. No.
Q. Okay. I assume they're cleaned when it rains?
A. Absolutely. That's one good thing about the rain in this area.
Q. Okay. Insofar as, these panels are designed to absorb the sun's energy, I think you

Page 71

said, correct?
A. Yes.
Q. So, and I think it's shown on the photograph that we've submitted, but is there any kind of reflection that might shine into somebody's eyes caused by these panels?
A. Well, the design of these panels is to absorb the energy, absorb the sun, the energy from the sun, not reflect it, so very little reflection develops.
Q. Okay. Have you ever done panels at any facilities where, or any sites where a glare would be an issue?
A. I have -- well, yes, I have, out by the airport in Carroll County. We did an installation which, we had to go through the Federal Aviation Administration process because of planes flying in and --
Q. You don't want things reflecting in their eyes.
A. Correct, and so there's no, there was no

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issues with that.
Q. And is it the same kind of panels and facility here that you did up near the Carroll County airport?
A. Similar, yes.
Q. Okay. And you indicated that there's no chemicals or anything used to clean the panels or maintain the panels?
A. No.
Q. I know you went to a community meeting that the Hanover Road Association sponsored regarding this facility and generally solar farms generally, correct?
A. Yes.
Q. And I'm just trying to think, but were there any issues? I know we have some folks here who were identified there. Any concerns or issues that you can address at this hearing in terms of the potential impact of this solar farm, either on the life, or health, or environmental, or any other kind of issues other than the ones

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that you've discussed?
A. No, I don't recall anything that, from that meeting that would be an issue.
Q. Okay. Mr. Donithan, based on your experience as an expert in the solar system industry, do you have an opinion, or can you give us an opinion from your perspective as to whether this facility would cause any detrimental impacts on the health or the safety or the welfare of its surrounding town?
A. No, sir, I don't.
Q. You can't?
A. No. Actually, it's the inverse of that, there are benefits of solar that offset the electricity that would be produced from coal, which has detrimental effects on the health and wellbeing of individuals, and especially older individuals that have respiratory or asthma problems, so this kind of offsets a lot of the pollutions that are coming from coal fired power plants. So it has an inverse, a beneficial

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effect, versus a detrimental effect.

Q. And you've indicated that this will not produce, I guess other than disruption in the event there's a monitoring issue, it will produce no traffic to the site, people aren't going to come in and out to visit the site?

A. Correct.

Q. So there really won't be any, or is there any impact on the flow of traffic or the volumes of traffic on any of the adjacent public streets?

A. No.

Q. How about, is there any kind of potential in these facilities, and we all read about the Samsung phones, but can these things catch fire or cause any other type of hazard from fire or any other thing like that?

A. These systems are built to be authority of the county, which requires they meet NFPA, National Fire Protection Association standards, as well as UL standards nationally, and utilities

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require that they meet certain standards before we can connect to their grid.

Q. Is there any type of environmentally, any type of material that could be a contamination of any type that could come from these panels? I mean, is there any chemical or anything inside that could escape from the panels and leak into the ground, anything like that?

A. No.

Q. There's no liquid, right?

A. Correct, not that I'm aware of. I have not seen anything like that.

Q. Now you also indicated that the height of the panels in terms of off the ground would be, I think six or seven feet, I'm trying to think of what you said?

A. Depending on, you know, the location and the lay of the land, yes.

Q. Okay. So in terms of any shadow that they cast, it would be restricted to the height that they are; is that correct?

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A. Say that again.

Q. In terms of any shadow, you know, there are big structures that can cast a shadow on adjacent properties and then traffic disruption, view shed up and down Hanover Road or anything like that, but there is just the height of six or seven feet?

A. Correct, there's no shading or flickering or anything like that.

Q. They don't have any lights that are flashing or anything like that?

A. No.

Q. Now insofar as, I think you've answered this, but insofar particularly as to agricultural users or agricultural uses in this area, will they stand to get a benefit, and Mr. Lippy, will he stand to get a benefit from this facility?

A. In terms of?

Q. Costs, anything, is there a benefit of this to the agricultural users up and down Route 30?

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A. Absolutely. I mean, specifically for Mr. Lippy, they're offsetting one of the biggest costs farmers have and that's electricity, so you have the benefit of that, as well as incentives and credits that the federal government has in place right now which, you know, time is pretty critical to, you know, monetize that before they expire.

Q. One other impact that I think I've heard. Do these, will these panels make any noise?

A. No.

Q. Okay. So they're not, people who live across the street or in the area aren't going to hear anything from these panels in terms of noise?

A. Not from the panels, no.

MR. SCHMIDT: Okay. I don't think I have any other questions, Judge Beverungen, at this time.

JUDGE BEVERUNGEN: Mr. McCann?

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MR. MCCANN: Thank you.

CROSS-EXAMINATION

BY MR. MCCANN:

Q. Good morning.

A. Good morning.

Q. I'm going to jump around a bit, so let me start with the impression Mr. Schmidt was asking you about with noise. Your response was not from the panels. Is there noise from somewhere else?

A. Well, the inverter does have a slight noise to it, about 60 decibels, which is equivalent to a conversation.

Q. Okay. What do you mean by that?

A. Meaning that the decibel level of 60 decibels is similar to having a conversation with your competitors, like we're talking right now would be a decibel level that you would hear.

Q. Okay. And at what point would you hear that decibel level, at the property border, or where?

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A. Well, the only time you're going to hear it is on the site somehow, so when the sun comes up, the inverter starts converting, and when the sun comes down at night, you're not going to hear anything.

Q. What about on a cloudy day? Today is sort of cloudy, but would that have any effect on that?

A. Again, if you're standing, you know, 30 feet from the converter, you could hear it.

Q. But my question is more directed to the time. At any time during the day, whether it's sunny out or cloudy, the converter would be going?

A. That's correct.

Q. And then 60 decibels, I'm sorry --

A. So basically you wouldn't hear that outside the border of that property at all.

Q. Because it's more than 30 feet?

A. Correct?

Q. Even the folks on the adjacent property couldn't hear it?

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A. Correct.

Q. Any other noise?

A. No.

Q. Are there studies that have shown -- you mentioned a specific decibel level. Are you relying on a study for that?

A. Well, the manufacturer specifies the decibel levels, you know, and the data.

Q. For this type of inverter?

A. Yes.

Q. What type of inverter is it?

A. When you say what type?

Q. I guess what manufacturer, what model, if that's the right term?

A. Yeah. We are looking at a couple different models of inverters, SMA 2000 CP would be one of them.

Q. Do they come in sizes?

A. Correct.

Q. What size would this inverter have to be?

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A. This inverter is going to be about 1.5 megawatts.

Q. Would that have some effect on the physical size?

A. I mean, a two megawatt, 1.5 is not a big difference.

Q. And that, the megawatts I guess is based on the number of panels?

A. Correct.

Q. Mr. Schmidt asked you about what if any benefit there would be to agricultural use and to Mr. Lippy himself, and you mentioned two things. You mentioned the offsetting of the cost of electricity, which you characterized as one of the biggest costs in farming, and secondly credits; what do you mean by credits?

A. Well, you have a federal tax credit for using alternative energy.

Q. And what's the name of that program?

A. That's the ITC.

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Q. What is that?
A. I don't know what the acronym stands for but it's a federal subsidy.
Q. Other than those two things, any other benefits to the agricultural use that you can think of?
A. Yeah, there's (U/I).
Q. Okay. And you mentioned the approximate height of these as being six or seven feet or so. And that, I guess depends on the topography of the property and the way the sun hits the property?
A. Well, it really depends more on the lay of the land.
Q. Right. So we don't know sitting here today, we don't know specifically where theses panels will be placed and how they will be placed, is that fair?
A. Yeah, we do.
Q. You do. Is that an engineering thing you can figure out?

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A. Yes.
Q. So how high will they be?
A. Six to seven feet.
Q. Oh, the varying height.
A. Yes, correct.
Q. And you said there's some maintenance involved such as mowing of the property, I guess around and under the panels; is that right?
A. Correct.
Q. You don't want grass blocking the sun?
A. Well, with -- you don't have a lot of grass that's going to be growing there because the sun's not hitting underneath of it, so that's a benefit. But yeah, that's, we want to maintain it just aesthetically just to make sure that weeds and stuff aren't growing.
Q. And how do you mow it, is it a hand mower?
A. Well, no.
Q. So the land, the property with the panels could not be used for agricultural purposes, you can't plant on it, right?

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A. Correct.
Q. Mr. Schmidt asked you about any chemicals, and you said not that I'm aware of.
A. Well, I'm just saying that, not that I know of. If there are, and I'm not aware of them, there's no issues whatsoever in systems that we've put in. I'm not aware of any study that was done that would indicate otherwise.
Q. But there are no chemicals used in this system?
A. No, none.
Q. And in terms of contaminants, what contaminants other than chemical forms, which are there in this facility?
A. There aren't any contaminants.
Q. What are they made out of?
A. Silicon, glass, and metal.
Q. Where are they manufactured?
A. Well, they're manufactured all over the world, United States.

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Q. Is there any -- you mentioned a couple of products or models that you're familiar with. Is there a particular product that you'll purchase?
A. Well, there are several, and you know, depending on the pricing and the timing of things, I mean, the solar industry is sort of like the farming industry, you don't know what the corn price is going to be from one day to the next.
Q. Right.
A. So it depends, you know, a lot on the pricing of the equipment.
Q. You said that the panels are built to national fire code standards. Can they catch fire, though, is it possible, say for instance a lightning strike, can they catch on fire?
A. You mean glass?
Q. Silicon?
A. I'm sure there is a possibility, but it would be tough if it's glass.

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Q. You've never heard of that happening?
A. No.
Q. All right.
A. Now if they were on a roof, that's a possibility, if the roof catches fire, they could sustain fire damage.
Q. Okay. And then in terms of reflection, you said very little reflection. Where does the reflection come from, is it the panels themselves or the metal around them?
A. Well, the panels are made of glass almost like car windshields. I mean, they're sort of, the reflection is little to none. It's an absorbent, absorbing effect that, these modules are designed to absorb, just like your windshield, you know, of your car. If you're driving down the highway, you know, you don't want that windshield to reflect, and it's a similar kind of design for these modules.
Q. What about the base, I mean the outside, the metals themselves, is it the same thing?

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That's metal, right?
A. Yes, correct.
Q. What kind of metal?
A. Aluminum, typically aluminum, either a dull nonreflective type of design, or black.
Q. So they'd be flat?
A. Yes.
Q. Or black?
A. Or black.
Q. And no washing, in other words, you don't have to wash them down?
A. No, that's -- you know, Maryland is an excellent state for solar, I mean, and one of the reasons is it gets a lot of rain, and sometimes you may say too much, but the rain is enough to wash the panels. And even the snow, we don't like to have snow on the panels, but they also have a scrubbing effect as well to clean these modules, so it's an excellent state for solar.
Q. Rain is dirty, we have to wash our windshields on our cars. You don't think the

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panels themselves won't need cleaning?
A. No, not at all, not in this area. The only time I ever cleaned panels was when they cleaned the chicken houses up on the site when the wind was blowing 20 miles an hour out towards the solar farm, so that's the only time we've ever cleaned a panel. So they're at an angle such that when it does rain, you know, it's not sticking to the panel.
Q. What is the life of these panels, how long do they last?
A. Well, the manufacturer guarantees production, and that's 25 years, but the panels last much longer than that. There's panels that have been installed since the '70s that are still operating and producing.
Q. Now the lines aren't connected to the transmission lines themselves, they're connected to a meter, and that's connected to the transmission lines?
A. Well, that's going to depend on the

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utility, what they have -- they can decide how we have to connect, and I'll just say typically that's what we would do, is bring our feed to the meter, and the utility connects it.
Q. The meter is on the west side of the (U/I)?
A. We're not sure if, we may have to put the meter there or on the property near the inverter, which probably, that's a good way to do it.
Q. So where does the line run, I'm sorry, the line going from the inverter to --
A. Underground to connect to the distribution transmission line along 30.
Q. Under 30?
A. Correct.
Q. And how deep would they be?
A. Well, the requirement by the state requires specific depths, so we have to meet state road requirements.
Q. And how big would the line be?

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A. It will be a conduit, so you're probably talking a maximum of four inches, or two two-inch, depending on the equipment that we use.

Q. But just a single line from the inverter?

A. Correct, three-phase power is used to connect.

Q. You said you are not aware of any runoff from the panels. What about channeling the water, the rainwater will hit these panels and slide down to the soil, right?

A. Correct.

Q. And then won't that create you having to seal that, in systems you've installed generally?

A. Well, what you have is, you're going to have about 15 feet of opening between each array, so you have plenty of land between the arrays that it's negligible, any issues with runoff would be negligible.

Q. So 15 feet between the top of one panel and the bottom of the next?

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A. No, like from center line to center line of the array, so when you're taking a look and see a vertical line, think of that array as one section, and in between each one of those is about 15 feet in spacing between them.

Q. I was talking about the edge, in other words from top of the one panel, that point.

A. To the ground?

Q. To the ground, or to the bottom of the next panel connected to the ground, how far is that?

A. I'm not quite sure I follow you, I'm sorry.

Q. This is 3-A. So for instance this panel right here, if you were to draw a string line to the ground, perpendicular to the ground, draw that distance along the ground to a perpendicular line on the bottom of the next panel, what would be the distance on the ground?

A. (U/I).

Q. Okay, so you're not measuring the panels themselves when you say 15 feet?

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A. No.

MR. MCCANN: All right, thank you.

EXAMINATION BY THE ADMINISTRATIVE LAW JUDGE

BY JUDGE BEVERUNGEN:

Q. Why do you allow any space at all? In other words, wouldn't you get enough sunlight doing that?

A. Well, you don't want to shade from one array to the other, so you have to have the spacing.

Q. And that's all that you need?

A. Correct.

JUDGE BEVERUNGEN: Okay.

MR. MCCANN: I have a couple more questions.

JUDGE BEVERUNGEN: Okay, go ahead.

FURTHER CROSS-EXAMINATION

BY MR. MCCANN:

Q. Have you ever seen channeling, in other words, water (U/I) channeling?

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A. No, not on any of the installations that we've installed.

Q. And you as the owner of the company, you went back and forth with these installations?

A. Correct.

Q. You mentioned, I think you provided some photos of, am I correct, of the land as well?

A. I'm trying to think what we supplied. I'm not exactly sure what we supplied him with, but we did give him some of the permits, and I believe it was maybe a copy of, from the property.

Q. But Mr. Lemmerman said there has been no landscape plan prepared?

A. No, we're working on that.

Q. Who's working on that?

A. Well, we have contracted, or I should say been in contact with several landscaping, architectural landscaping companies.

Q. Not from Mr. Lemmerman's firm?

A. Yes.

Q. And Mr. Lemmerman's firm?
A. Yes.
Q. Okay. So here's what I don't understand, and I'll be honest with you, meaning power that's generated by these panels, you are suggesting that you would have the ability -- well, strike that.
You're connecting to a meter that's monitored by BGE, correct?
A. Yes.
Q. And BGE will pay, once it's installed, Mr. Lippy for the amount of energy generated by the panels?
A. With the community solar project, what they do is they credit the electric pill. So for instance, if we were to supply electricity to your home and you pay a hundred dollars a month, we would supply enough power to offset your hundred dollar a month bill.
Q. I'm asking, what does Mr. Lippy get directly from BGE (U/I) Mr. Lippy gets paid for

providing this energy to BGE, correct?
A. Correct.
Q. And BGE turns around and sells it essentially?
A. Well, actually, it's like a third party supplier basically.
Q. Mr. Lippy would be the third party supplier?
A. Correct.
Q. He's supplying to BGE, getting paid for that, right?
A. Well, BGE is not paying Mr. Lippy. Mr. Lippy will be charging the subscribers who are getting the electricity from this system.
Q. Directly?
A. Correct.
Q. He would send a bill out to whom?
A. The subscribers, whoever subscribes to the electricity, which would be, 60 percent of the electricity is going to his farms.
Q. Okay. So 60 percent of the electricity

generated by these panels goes to his farms. When you say his farms, you mean this 200 acres, or somewhere else?
A. Well, they have an adjacent farm up in Hampstead in Carroll County, and another one in Westminster.
Q. So with respect to the remaining 40 percent that was generated, how does that work? Does he have to go out and seek subscribers?
A. Correct, whether it's Mr. McVere (phonetic), they hire someone else to do the administrative work.
Q. Okay. And that administrator selects -- or, whoever the subscribers are, they don't have to be in the vicinity of the town, they can be anywhere, right?
A. Correct, as long as they're within the BGE utility area.
Q. Okay. How big is that area?
A. BGE, Baltimore County, Carroll County, Harford County, Anne Arundel County, anyone in

the BGE service area is eligible. That's what the community solar power program, that's the purpose of it.
Q. Is to create a scenario where subscribers can (U/I) solar panels and subscribe to provide them? And you're actually -- so the question is, you're not really providing those subscribers, every single person in Carroll County the actual solar energy itself, but --
A. It's possible. It's very possible.
Q. How? Would you have a line from Mr. Lippy's property all the way to someone in Carroll County, say 20 miles away?
A. Not 20 miles away, but on the same feeder, absolutely, that these electrons can get to that house or that farm or that business.
Q. On that line, through that line?
A. Through the feeder, through the utility feeder. So this is connected to the utility feeder and then that utility feeder supplies electricity to the entire area.

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Q. You say utility feeder, is that (U/I) line?

A. Correct.

Q. So this person will connect in to the feeder?

A. They already are in service.

Q. You may have answered the question and I didn't understand, but the name of that program again?

A. That is the -- it's House Bill 1087, which is, I guess they're referring to it as the community solar energy generating system program, pilot program.

Q. You mentioned 200 what, houses could be served by that 40 percent that Mr. Lippy is not using; is that correct?

A. I believe the question was what, what was the possibility that that system would have served if it was serving residential and that was 250, if it was doing residential. That is a different case, that's not the business plan for

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this.

Q. The business plan is providing 40 percent to other users?

A. Approximately, other farms, businesses, and residential as well.

Q. And is that based on some standard, a standard that talks about usage on average?

A. (U/I).

Q. Is that pretty standard in the industry?

A. As far as?

Q. Those numbers for power usage?

A. That's what the Public Service Commission and the working group that's working on this community solar power program, that's kind of the numbers that they use, which is, you know, it's common.

Q. Okay. This is not regulated by the Public Service Commission, though, is it?

A. It is.

Q. It is?

A. Yes.

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Q. In what way?

A. They have received through the community solar energy generators, it's sort of like the marijuana program, you know, you have to be accepted into this, there's no guarantee. It's not that strict where there's only going to be one license, but you have to apply, an application to be accepted into this pilot program.

Q. Okay. That's what I thought you had said, that is, right now Mr. Lippy is not in the pilot program, you have to apply, correct?

A. Correct, and that hasn't even started yet.

Q. What happens if he's not accepted into the pilot program, what happens then, what's different about this system?

A. If he's not accepted into the system, probably, I guess, I don't know if he will build it or not. That's all part, that's the reasoning behind this, is the community solar.

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Q. So the Public Service Commission regulates or oversees the program, the pilot program, but does it oversee anything beyond that, for instance the rates that are charged, and does it oversee any increase, or decrease?

A. The OPC, Office of People's Counsel, they have the oversight for that, I believe.

Q. But I guess other than overseeing the program itself, administering the program, what oversight does the Public Service Commission have over a six-and-a-half acre facility like this?

A. Other than approving it as a community solar energy generator, I can't think of any other.

Q. And the 60-40 split that you described, how did you reach that figure?

A. Based on the size of the system and the annual usage for the farms.

Q. You had to make some, do some analysis to do that?

A. We basically looked at the annual

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consumption through the electric bills.
Q. Is that work reflected in a report of some sort that you prepared?
A. No, other than, you know, we had them when we looked at this.
Q. So how do you know it's accurate?
A. That's what, we looked at the electric bills for the farms and based on those electric bills and the size of the system, that will consume about 60 percent of the generation of this system, so we have 40 percent, approximately 40 percent left over to supply others other than the farms.
Q. Okay. My question was, the analysis, is that in writing anywhere, not necessarily a formal report you submitted to PSC, but is that in writing anywhere?
A. It may be. I would have to check my computer.
Q. So in followup to Mr. Schmidt's question about what makes a good site, number one, you

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have to have sun, right, and number two, you have to have some opportunity to --
A. Access to transmission, yes.
Q. And then you have to build the other line on your own to connect with that?
A. Correct.
Q. And topography, is that a factor?
A. Yes.
Q. And what about, what, could you describe that a little further, what types of topography will not work, or is there some standard that you go by to see whether the lay of the land is adequate?
A. Well, cost, I mean is a big factor. I mean, you get into areas where the topography is such that, you know, you'd have to brace differently, you'd have to design things to be able to handle, or you may have to, it may have to be bigger if it's, the topography may have to have more panels to produce what a smaller system would produce on flat land.

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Q. (U/I) property would be, correct?
A. Yeah. I mean, in some cases it could work if it's facing in the right direction, you know, if it's facing south, the slope that is.
Q. Any other factors that go into deciding whether the site is good for a solar panel system like this, other than what you just mentioned?
A. Well, I mean, you know, we want to make -- one of the big things we try to do is how can we aesthetically install this system that minimizes any impact to the farm. For instance, if we -- most of the time we do an installation, we look for non-tillable land if we can get it if it's going to be installed on a farm. And you know, that's kind of where we start, where is it hard to farm, where is it not tillable, and you know, that is a big factor. So the location obviously is important, and how do we aesthetically install this so it kind of fits in with the surrounding community.
Q. Well, first of all, is this soil

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non-tillable, this 6.5 acres?
A. No.
Q. It is not non-tillable?
A. It is tillable, yes.
Q. And when you say tillable, what is your understanding of that?
A. In a farm community, that it's easy to grow crops.
Q. And what do you base that on, is that something in your field?
A. No, a farmer, you ask the farmer.
Q. And what is your understanding of how this 6.5 acres is being used currently?
A. It's currently being used for farming, it is tillable.
Q. And in terms of the aesthetic impact, I think that you recognize that there is some effect as a result of this solar farm, and right now it's flat?
A. Yes.
Q. And what if anything did you do in this

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particular case in designing the solar panel system to reduce the aesthetic impact?

A. Well, that's going to be the plan for the screening of, and basically the planting and screening from the surrounding neighborhood.

Q. Would you agree that that (U/I)?

A. Yes.

Q. And you got Mr. Lippy by, you approached him, is that correct, is that your business model, in other words, right now you want to put solar panels on the farm (U/I)?

A. This goes by word of mouth, and this time it was a farmer.

Q. But in this case you sought out Mr. Lippy?

A. I'm not sure what -- we've done other projects for Mr. Lippy and I probably did approach him about the community solar aspect of it, so I would say yes.

Q. What other projects have you done?

A. His house and one other farm.

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Q. What farm is that?

A. That's in Westminster, Sunny Side Farm.

Q. And I should have asked you, but the other solar farms you've worked on in Baltimore County are where?

A. White Hall.

Q. Where in White Hall?

A. White Hall, it's for, I believe Greenland is the farm.

Q. Okay. And any others in Baltimore County?

A. Yes. Butler, on Butler Road, and I don't recall the actual name of that, but the individual, Rufus Williams is the owner.

Q. Any others?

A. We did a residential slash kind of a, they do do farming there, but the panels were put on their roof, and that was for the Hasper's.

Q. Where is that?

A. That is in Hampstead, Baltimore County.

Q. When you mentioned White Hall, Butler Road, Sunny Side, those are all farms?

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A. Yes.

Q. Southern Farms?

A. Yes. Well, the Sunny Side is, and Greenland is a farm, Greenland is a farm.

Q. You mean a farm as opposed to a house?

A. Yes, correct.

Q. And Butler Road is?

A. That's on the barn actually, part of the farm.

Q. How do the size of those installations compare to this one?

A. They're small compared to this.

Q. Smaller?

A. Yes.

Q. Is there, are you familiar with the farm buildings on site, that is on the 200 acres?

A. The farm buildings?

Q. Yes, is there a house, barns, out buildings, are you familiar with how many, or do you recall that?

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A. On this parcel there are none.

Q. On the 200 acres, I'm sorry.

A. I am not.

Q. What about the farmhouse, are you familiar with it, that you did already? The farmhouse that you did for Mr. Lippy, is that on this 200 acres or is that somewhere else?

A. Oh no, that's adjacent to one of the properties.

Q. What would you say is the most common complaint you hear from neighbors about solar panel farms?

A. The common complaints that I hear?

Q. Yes.

A. Glare.

Q. Do you know if people complain about the aesthetics, if you recall?

A. Yeah, I have.

MR. MCCANN: Okay. That's all, thank you.

THE WITNESS: You're welcome.

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JUDGE BEVERUNGEN: Mr. Schmidt.
MR. SCHMIDT: Mr. McCann, in view of his questions, I was going to have Mr. Lippy perhaps do this, but it might be just as easy now to have him identify those photos that you asked him about. So, I've labeled 4-A through 4-M a series of photographs, and Judge Beverungen, maybe you can just follow along, and I've given them to Mr. McCann.

REDIRECT EXAMINATION

BY MR. SCHMIDT:

Q. But, Mr. Donithan, Mr. McCann asked you some questions about the, you know, about the property and its grade and so on and so forth, and I think these photographs may be helpful in showing Judge Beverungen exactly what this site looks like.

So let's start at the beginning, start with 4-A, just tell us what we're looking at. You're familiar with these photographs, you've seen them, been to the property a number of

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times; is that correct?

A. Yes.

Q. Okay. And I believe I actually took these photographs when we were out there together; do you recall that?

A. Yes.

Q. Okay. 4-A, what are you looking at?

A. Excuse me. That's looking at Route 30 looking south from Fringer Road.

Q. And obviously, the Fringer Road intersection is shown by the street sign right in the foreground?

A. Yes.

Q. Okay. 4-B?

A. That's Fringer Road looking east, with the parcel to the left that we're looking at to do the solar.

Q. Now the houses in the background are across Hanover Pike, across Route 30?

A. Correct.

Q. So no neighbors houses across the

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street, and the soybeans to the left is where the solar farm would be?

A. That's correct.

Q. Okay. 4-C, is that the same area?

A. That's correct.

Q. 4-D, which is the one with the silver vehicle on the right-hand side, same thing with Fringer Road and the subject property to the left?

A. Yes.

Q. Okay. 4-E is, again, the same property?

A. Correct.

Q. The large trees that are there, are they on our side of Hanover or on the other side?

A. I believe they are on the other -- oh, our side of 30.

Q. Our side of 30, buffering this site right here?

A. Correct.

Q. Owned by Mr. and Mrs. Cowle (phonetic), right?

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A. I'm not sure.

Q. The house whose name is shown on the plan?

A. Yes.

Q. Okay. 4-F?

A. Okay, that's looking, I guess, what, northwest?

Q. Sort of going this way?

A. That's correct.

Q. And the Lippy farm is sort of behind, the 200 acres?

A. Correct.

Q. G is, again, Fringer Road?

A. Yes.

Q. Okay. H, what road is that?

A. That's Route 30, and we're looking north now.

Q. So if I was standing there, I'd be looking to my left?

A. Yes.

Q. Okay. And the same view, but more of

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the subject property?
A. Yes, correct.
Q. Okay, that was I. J is from the south?
A. Looking south, correct.
Q. Looking south. K is also from the south?
A. Yes.
Q. Okay. L is some of the houses across the street?
A. Yes.
Q. Okay. And M is, again, northbound?
A. Correct.
Q. And I think those are the photos on the Cowles property of the trees, the large mature trees?
A. Yes.
MR. SCHMIDT: Okay. I would offer them as Exhibits 4-A through L.
MR. MCCANN: A through M.
MR. SCHMIDT: A through M, excuse me.
JUDGE BEVERUNGEN: Okay. No objections?

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MR. MCCANN: No objections.
JUDGE BEVERUNGEN: Okay, so those are received.
MR. SCHMIDT: And if I can as well, I think it might be helpful to you, Judge Beverungen, to have a sense, and I'll put this in while Mr. Donithan is there. These are photographs simply of, taken, these were taken from the Baltimore County website, these are from the website, and I've marked this first one as 5-A.
BY MR. SCHMIDT:
Q. Mr. Donithan, this is a large aerial taken off the county website, aerial photography. The property that is the six-and-a-half acres where the solar farm would be is outlined in blue, is it not?
A. Correct.
Q. And Hanover Pike is labeled, is it not?
A. Correct.
Q. And all of the area virtually

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surrounding that essentially on the west side of Hanover Pike, which is, at the time this aerial was flown was not in active growing season, would be the Lippy farm, parts of the 200 acres of the Lippy farm; is that correct?
A. I believe so, yes.
Q. Okay. Similarly, I'll hand Mr. McCann a copy of this as well. Judge, I marked this as 5-B. Again, it's the same data source, and Mr. Lippy may be able to identify it, but again, our site is in the RC-2, the blue line perimeter, is it not?
A. Yes.
Q. And the agricultural area, the Lippy property is shown surrounding it?
A. Correct.
Q. Okay. I think I have one more which will give you a better idea of the area, and I will mark this as 5-C. And again on 5-C, which is even further out, it shows the Lippy, shows our site outlined in blue as well as the Hanover

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Pike, and the uses immediately surrounding that?
A. Yes.
MR. SCHMIDT: I would collectively offer all those as Exhibits 5-A through C.
JUDGE BEVERUNGEN: Any objections?
MR. MCCANN: No.
JUDGE BEVERUNGEN: Okay, they're admitted.
MR. SCHMIDT: I don't have any other questions of Mr. Donithan.
JUDGE BEVERUNGEN: Mr. McCann, anything else?
MR. MCCANN: No.
JUDGE BEVERUNGEN: Thank you, sir.
MR. MCCANN: You're welcome.
(Witness excused.)
MR. SCHMIDT: I have one more fairly short witness, and that will be Donald Lippy. Mr. Lippy, if you'll make your way up. He has recently had some knee replacement surgery.
JUDGE BEVERUNGEN: All right.

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Whereupon,

DONALD LIPPY,

being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

JUDGE BEVERUNGEN: Okay, take a seat and tell us your name and address.

DIRECT EXAMINATION

BY MR. SCHMIDT:

Q. Mr. Lippy, if you could give us your name and address for us?

A. Donald Lippy, 421 Lee's Mill Road, Hampstead, Maryland 21074.

Q. And Mr. Lippy, are you and your wife the owners of this property which is, I think, known as 15700 Hanover Pike?

A. Yes.

Q. Okay. And you've heard testimony from Mr. Donithan and Mr. Lemmerman, you've been here all morning, correct?

A. Yes.

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Q. Now to the best of your knowledge, this is a, when I say this, the property that's six-and-a-half acres, is a separate parcel that you and your wife own; is that correct?

A. Yes.

Q. But you own other parties both adjacent to this and in the area, right?

A. Yes.

Q. Do you know how many acres you, or you and your brother, or the Lippy Brothers family owns?

A. Total?

Q. Total in this immediate area?

A. In the immediate area, or are you talking down --

Q. Well, in this area.

A. Around 2,600 acres.

Q. Okay. And in this immediate area that this piece is a part of, how much is that property, if you can tell us?

A. Well, this property is a 73-acre farm,

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and then across the road is about a 230-acre farm. It's all adjacent to it.

Q. Okay.

A. Plus, there's another 139 acres that's all tied together with the two.

Q. And I hadn't shown you this before, but I'm going to give you, I think it's 5-D; is that D?

A. Yes.

Q. This is an aerial photo, and to be fair to you, Mr. Lippy, I don't know if I had shown you this before.

A. Yes, you had.

Q. But again, this would be outlined in blue, the six-acre property. What, if you can generally describe to Judge Beverungen, as shown on this, what do you own?

A. This is the farm right here that's 73 acres, and over here there's two farms combined, it's like 230 acres.

Q. Okay. And so that Judge Beverungen can

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see it, the area that is on the north side of Fringer Road is the 73-acre farm, and on the south side of Fringer Road is --

A. 200, I'm guessing 230 acres.

Q. Now of the property that belong to you, and when I say you I mean you and your brothers, I know, it's a family enterprise, is it not?

A. Yes.

Q. How long have you been farming in Baltimore County?

A. Since the beginning of time, but 1965. Well, actually 1952, I'm sorry.

Q. Is that you or --

A. My brother started first, they got out of school in '52 and they ran the farm right near this. No, they rented that farm, they rented that farm first and that was the property in 1952, and then one on the other side of the railroad tracks there, actually they bought it and -- no, they rented it first, about the same time, '55 or something like that.

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Q. And how old are you, if I may ask?
A. 38.
Q. You're 38?
A. 74.
Q. 74. So is it fair to say you've been a farmer most of your adult life?
A. Yes.
Q. And what do you, on this property and the farms right adjacent here, what do you do, what do you grow?
A. Well, we grow corn sidings, string beans, wheat, barley, and it's a little bit of hay on there now, some alfalfa.
Q. And insofar as, you participate with the easements with the state, and you said you have 2,600 acres altogether here in Baltimore County and Carroll County. Do you know how much of your property, that 2,600 is in easement?
A. It's around 2,200-some acres, plus or minus a few acres.
Q. And actually we put together a chart,

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did we not, that -- I'll give a copy to Mr. McCann. This chart basically shows acreage which totals 2,212.8 acres and describes the farm and what county it's located in, and the acreage, and is that the property that you have under your control that's in easement?
A. Yes, me and my brother.
Q. You and your brother?
A. Yeah, I own some, he owns some, and the corporation owns some.
Q. And the corporation being the Lippy Brothers?
A. Yes.
MR. SCHMIDT: I'll offer them as Number 6.
JUDGE BEVERUNGEN: Okay.
BY MR. SCHMIDT:
Q. Needless to say, you're fairly committed to agriculture and being the steward of the land since you've worked all 2,200-some acres into the preservation?

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A. Pretty much so, yes.
Q. Now this particular property is not in preservation, is it, this six acres?
A. No, it's not.
Q. Why are you doing this?
A. Why are we doing this?
Q. Uh-huh.
A. Well, it's, you know, corn prices fluctuate a lot. A few years ago we had $8.00 corn, today we have $3.50 corn, a bushel. Last year, we have a chicken complex, last year we were selling eggs for $2.50, $2.90 a dozen, right now they're 58 cents. So, I've got a son, a daughter, four grandchildren, and they all want to sort of be in the business, and this would be something a little more steadier than the farm economy.
Q. To produce income for you?
A. Yeah.
Q. Also saving money in terms of your own electric bills, right?

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A. Right.
Q. Not only here but on the other farms you operate, right?
A. Right.
MR. SCHMIDT: I don't have any other questions.
JUDGE BEVERUNGEN: Okay. Mr. McCann?
CROSS-EXAMINATION
BY MR. MCCANN:
Q. Good morning, sir, just a couple.
A. Good morning.
Q. On this particular property, the 73 acres and 230 acres, are there any farm buildings on those two properties?
A. No, there's been no farm buildings on any of it. Well, there is 19 acres in Carroll County of this 73, and there is a, there is, the Carroll County part is not an easement, and there is about four lots on it, and somebody's built a house on there. So it's one house, but it's no connection, it's owned by somebody else, but

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other than that, there's no structures.
Q. Would you agree with Mr. Donithan's assessment that the soils at this particular 6.5-acre parcel are productive and tillable?
A. Yes.
Q. What do you grow there now?
A. I think there's a (U/I) soy bean. I think we had wheat in there and then we well dropped it with soy beans.
Q. Of these 73 acres, do you lease any of that out to other farmers or do you farm it yourself?
A. No, it's farmed by ourselves, plus we lease a bunch of other acres.
MR. MCCANN: No other questions, thank you.
JUDGE BEVERUNGEN: Thank you, Mr. Lippy.
(Witness excused.)
MR. SCHMIDT: And that would be the petitioner's case.
JUDGE BEVERUNGEN: Okay. Mr. McCann,

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what do you anticipate you would like to do?
MR. MCCANN: In about five minutes -- I mean, some of these folks want to speak, and I don't represent all of them.
JUDGE BEVERUNGEN: What I'm trying to wonder is, do you think we're going to continue and not break for lunch and finish the case, or do you think we're going to break for lunch, then come back and finish the case?
MR. MCCANN: I'd just as soon finish, I don't see this taking more than an hour.
JUDGE BEVERUNGEN: All right, well then, is that --
MR. SCHMIDT: That's not objectionable.
JUDGE BEVERUNGEN: Okay, I'm amenable to that. Let's take five minutes, we'll come back at 12:15 and see where we are.
(Recess from 12:00 to 12:08 p.m.)
(Recording started mid sentence.)
MR. SCHMIDT: -- he certainly can ask my witness.

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JUDGE BEVERUNGEN: Okay.
MR. MCCANN: And I know you did get a summary advisory committee comment in this case from --
MR. SCHMIDT: Yes. I indicated at the beginning that we had met with Mr. Lippincott, and I have no objection to the first bullet point, which is to install the vegetative screening, which would be the plan to be I think ultimately approved, and I'm not sure how they would do it.
JUDGE BEVERUNGEN: But there was also a comment from Mr. Hurley's group with Mr. Kennedy --
MR. SCHMIDT: Yes, saying the same thing, that they wanted a landscape plan.
JUDGE BEVERUNGEN: Correct.
MR. SCHMIDT: But what I wanted to say, and I apologize that I didn't say this before, and Mr. McCann, if you've got to ask any question, there are two bullet points, one about

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the proposed lighting.
JUDGE BEVERUNGEN: Uh-huh.
MR. SCHMIDT: There will be no lighting.
And the third one is proposed signage. There will be no signage, so there is no issue there.
That fourth provision, and I just leave it at your discretion, that's the section of, 426.10 is the section which deals with, I believe with cell towers.
MR. MCCANN: Taking them down.
MR. SCHMIDT: It says you have to take them down if you're not using them.
JUDGE BEVERUNGEN: Yeah.
MR. SCHMIDT: I mean, that's not really germane to this, but that's what planning asked, and I will leave that to your discretion.
JUDGE BEVERUNGEN: Yeah, I really don't -- do you see how that's applicable, Mr. McCann?
MR. MCCANN: No.

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JUDGE BEVERUNGEN: I mean, it's actually 426, I had a case yesterday on cell towers, so I don't know how that applies, but I'll see, I'll take a look at it.

MR. SCHMIDT: As did I, I know it's in the Court of Special Appeals, and --

JUDGE BEVERUNGEN: Well, they're very popular issues in the county.

MR. SCHMIDT: They certainly are.

But I just wanted to put that in the record, I neglected to ask Mr. Donithan about no lighting.

JUDGE BEVERUNGEN: Okay, good, so that's, really only one issue from planning is at play, and that's the landscape plan, and as far as that Section 436, I'll take a look at it.

Mr. McCann, I'll turn things to you.

MR. MCCANN: Yeah, I do, there are some individuals who have something to say, but I don't think it will take that long.

JUDGE BEVERUNGEN: Okay, you can do

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that.

MR. MCCANN: Go right on up there.

JUDGE BEVERUNGEN: Come on up. Good afternoon.

THE WITNESS: Good afternoon, Your Honor.

Whereupon,

DEBRA MIRABILE,

being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

JUDGE BEVERUNGEN: Okay, take a seat and tell us your name and address, and then you can tell us what you want or Mr. McCann can ask questions, however it's best.

THE WITNESS: Sure. My name is Debra Mirabile, I'm the property owner of two parcels that front Hanover Road, 14525 and 14517.

EXAMINATION BY THE ADMINISTRATIVE LAW JUDGE

BY JUDGE BEVERUNGEN:

Q. Okay, residences?

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A. Agricultural farms including residences.

Q. Okay, good.

A. And that was formerly the Cable Farm.

Q. Okay.

A. What wasn't mentioned about yesterday's hearing when there was a discussion about more towers, was that there was a large outbreak from the community regarding a few things about solar farming.

There is admittedly a cost advantage to developing this sort of farm very close in proximity to these large power lines. There has been significant efforts by the community for a number of years to preserve the rural character and aesthetic of this section of Baltimore County and along Route 30. Right now what we're seeing is aggressive targeting by solar utility development companies, three that I can personally attest to, that are looking to develop directly along the frontage on Route 30.

So I would offer the perspective that

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the decision for development is not to be done in a vacuum, but larger it should be considered, what is the strategic development along this section of Route 30 when so many companies are finding reasons for cost protection to develop along there, and what is that mean to the future of our community.

I would also ask, what does it mean for the agricultural tax incentives for the properties that were formerly agricultural but now are going to be used in a commercial-industrial manner for utility generation and power generation, and what financial impact that's going to have as well.

Q. You mean whether they would lose those credits, is that your point?

A. Correct.

Q. All right. I understand that. Anything else?

A. No. Just generally the concern of, when we talk about really Section A, the general

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welfare of the community that was formerly of rural character and aesthetic now being completely industrial and commercialized with solar panels in a very concentrated area along the highway.

JUDGE BEVERUNGEN: Okay, got you. Mr. McCann, or Mr. Schmidt, any questions?

MR. SCHMIDT: I don't have any questions.

EXAMINATION BY PETITIONER

BY MR. SCHMIDT:

Q. Ma'am, how much acreage do you own?

A. 70, 76.

Q. How long have you been there?

A. Seven-and-a-half presently, and roughly three years before that.

Q. You mentioned efforts over the years that the county has made to protect, I think you said the agriculture character here, and what efforts?

A. The Hanover Road Association has a very

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long decorated history of preventing development.

Q. I'm not really talking about that, I don't mean to interrupt, but I thought in your testimony you said Baltimore County has made efforts, so I'm trying to understand what those efforts are.

A. No, I said the community.

Q. Oh, the community, okay, the community has opposed development over the years?

A. Correct.

Q. Okay. You talked also -- you understand that this case is only about this six-acre property and not the other larger solar farms that are proposed in the area?

A. I understand.

Q. Okay. Do you know Mr. Lippy, are you familiar with his operation?

A. No, not personally.

Q. Do you understand why he's requesting this after hearing him this morning?

A. I do, and I'll offer that I personally

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am not opposed to solar plants in general, but I think the location of where we put them is important.

Q. And you believe that this one, if screened as we proposed and discussed today, do you think that it would be detrimental to Hanover Road, is that what you're saying, this particular one?

A. I do. I don't know that it can be fully screened, and I also question what the Hanover Road property is going to look like if more and more properties in a concentrated area are to be developed in this manner.

Q. So you're concerned about the domino effect?

A. Correct.

MR. SCHMIDT: No other questions.

JUDGE BEVERUNGEN: Okay.

MR. MCCANN: I do have some, Your Honor.

JUDGE BEVERUNGEN: Go ahead.

MR. MCCANN: I just wanted her to

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identify where her property is in relationship to this property.

JUDGE BEVERUNGEN: Yeah, sure. Can you do it on that plan that's up on the board, ma'am, Exhibit Number 2?

THE WITNESS: If somebody can help me. I'm not sure.

JUDGE BEVERUNGEN: Okay.

EXAMINATION BY FALLS ROAD COMMUNITY ASSOCIATION

BY MR. MCCANN:

Q. Are you familiar with where the subject property is, Mr. Lippy's farm?

A. No, I'm aware it's on Route 30. I'm not sure.

Q. Do you know where Fringer Road is? Now you live along Hanover road, it looks like the 14000 block as opposed to -- do you know how close it is to the subject property?

A. No, I'm not sure offhand.

MR. MCCANN: Okay, thanks.

FURTHER EXAMINATION BY PETITIONER

BY MR. SCHMIDT:

Q. Let me understand. Do you know how close you are to this?

A. No, I'm not aware.

Q. Okay. Are you within a mile of this property?

A. I'm not aware of the specific location.

Q. So if you drove up Hanover Road, you wouldn't know where this property is?

A. No, I have not actually been to any of the site development plans, I have not seen anything.

Q. And you don't know how far it is from where you live, I mean where your properties are?

A. No, I do not know this is without looking at a map. If I looked at a map, I would know very easily.

JUDGE BEVERUNGEN: Well, your address is 14517, is that right, ma'am?

THE WITNESS: Correct.

BY MR. SCHMIDT:

Q. And the subject property is 15700, but you don't know how far that is, you're not familiar, you have been there more than seven but you're sure, you don't know how far your property is from the Lippy farm?

A. No, I don't know where this specific lot is.

Q. Okay.

A. It's not a very large area, though.

Q. Okay. Is your property in preservation?

A. It is not.

Q. It is not, so you haven't committed your property to the preservation?

A. Correct, I'm a homesteader so I'm building a house there.

Q. Okay. So you're going to residentially develop your property?

A. No, not develop it.

Q. You don't live there now?

A. No.

Q. Where do you live now?

A. Randallstown.

Q. Do you lease the property?

A. Currently.

Q. Okay. So you live in Randallstown and you lease the property that you own up on this site; is that correct?

A. Correct.

Q. Okay. That explains why you don't know where the farm is. I thought you lived on the property, I'm sorry.

A. Correct. In the last seven-and-a-half years, my husband and I have made great plans and worked very very hard to get money to build a house so that we can invest and move into our forever home here.

Q. Okay, but that hasn't happened yet, still working on getting the money together?

A. Well, we have the money together at this point. Now our larger concern is how our solar farms are going to impact our area.

Q. How your -- you've got one of these?

A. How these developments -- actually one of the other projects in the area is adjacent to my property.

Q. Okay. So your concern is if this one's approved, that might mean the one next to you gets approved?

A. And several others. I've also personally been approached for development.

Q. Okay. So --

A. This is a systemic issue rather than just one particular project.

Q. Right. So your testimony is really about the overall effect of a lot of these solar farms, including what's coming very close to your property?

A. Absolutely, that is one concern.

MR. SCHMIDT: Now I understand. Thank you, ma'am. No other questions.

JUDGE BEVERUNGEN: Okay. Thank you.

(Witness excused.)

JUDGE BEVERUNGEN: Okay? Good

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afternoon. Please raise your right hand.
Whereupon,
PAUL JOYCE,
being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:
EXAMINATION BY THE ADMINISTRATIVE LAW JUDGE
BY JUDGE BEVERUNGEN:
Q. Okay, take a seat, tell us your name and address, and than whatever you would like to.
A. Paul Joyce, president, Hanover Road Association. Excuse me. Post Office Box 121, Upperco, Maryland 21155.
I want to validate what Debra just said. We are being inundated by all these different companies calling. It got to the point where we actually had to call a special meeting of the Valleys Planning Council and Hanover Road Association working together at this special meeting. What you're finding when you're talking to these people, last week they may have been

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selling used cars and today they're selling solar panels. And we're concerned, not that we don't agree with like solar power and all, but there has to be some kind of regulations or guidelines trying to put some kind of order to this, and the preservation and rural character.
We're an organization under 501(c)3 that's been in existence for over 50 years, and we've never had anything like this happen ever, where everybody is like the wild wild west trying to get these solar farms all over the place. And using Mr. Lippy's concern too, it's like he said about the price of corn and all. Well, if you're a farmer and you have property along Hanover Pike and it's not in land preservation, and somebody comes up to you and tells you they're going to put all this money in your pocket and you don't have to do anything, and all that, I mean, the farmers are concerned too, the Farm Bureau has been involved in all this.
Everybody is pushing for a breathing

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spell, like a moratorium so we can have some kind of regulations developed, and right now it's really loose as a goose, the regulations. We're not against solar if done properly. Today we did not see the landscaping plan. I can tell you when I visited the site with these folks here, we looked down on Hanover Pike, and if these panels are six to seven feet high and you're already looking down on Hanover Pike, I don't know how they're going to put a screen around that to try to block that to preserve that rural character we have.
Another concern we have is not necessarily with this group perhaps but with some, is what happens if, like say these gentlemen would go out of business? Who's cutting the grass or who pays to take all these solar panels down? You know, maybe there should be a bond or something that would cover that and nothing like that is in existence right now.
So, that's what we're all about, we're

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just trying to preserve our rural character and trying to work with Mr. Lippy, who is an excellent community member with the Hanover Road Association, but we want it done in such a way that everybody wins, and some of these other fly by night outfits are not allowed to just keep growing all the way in.
JUDGE BEVERUNGEN: Okay, I understand that. Mr. Schmidt?
EXAMINATION BY PETITIONER
BY MR. SCHMIDT:
Q. Mr. Joyce, if I told you that Earth and Air does place a bond as part of its contractual arrangement with Mr. Lippy to insure that the site would, or the equipment would be properly removed, would that address your fear?
A. It's not just my fear, it's like hundreds of people that are concerned about this.
Q. Because that's what the contract provides.
A. Yeah, I think that's wonderful, it

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sounds very professional.

Q. And you would admit that Mr. Lippy is one of the largest landowners along Hanover Pike?

A. He's an excellent owner, excellent.

Q. And you would like to see his farm remain, I assume?

A. Yes.

Q. And you understand why this would be beneficial to him and his agricultural operation in view of the pressures that farmers are facing?

A. I can see that it would help him offset expenses, sure, I can see that. We're concerned about preserving, help him offset, but kind of preserve the rural character, not just a big field of glass with all of these green hills covered with solar panels, that's what we don't want to happen.

Q. And this is six acres out of over 300 that he's got in this area?

A. Yeah, but it's where it's located, it's right on the pike.

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Q. Well, you understand that's right next to the main?

A. Yeah, I understand that, and so do all these other companies that want to do this to, and that's what we're worried about. Like (U/I) and all the others, there's 25 of them. If you go across the Eastern Shore right now, you can drive for like many many miles and it's one solar farm after another and it's kind of sad.

MR. SCHMIDT: Okay. I have no other questions.

JUDGE BEVERUNGEN: Okay. Mr. McCann, do you have anything?

MR. MCCANN: No.

JUDGE BEVERUNGEN: Okay, thank you, Mr. Joyce.

(Witness excused.)

JUDGE BEVERUNGEN: Good afternoon.

Whereupon,

GEORGE HARMAN,

being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

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EXAMINATION BY THE ADMINISTRATIVE LAW JUDGE

BY JUDGE BEVERUNGEN:

Q. Take a seat and tell us your name and address.

A. My name is George Harman, I'm living at 5429 Weywood Drive, Reisterstown 21136.

Q. Okay.

A. Ready?

Q. Go ahead.

A. I am a past president of the Hanover Road Association from, I think it was the 1990's. I have been three times president of the Reisterstown-Owings Mills-Glyndon Coordinating Council, which includes the Hanover Road Association, so we've had, I have dual interest in this from two community perspectives. I remain on the board of the Hanover Road Association and am currently the zoning committee chair.

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I have to complain a little bit about something that's always concerned me, that is the posting of these properties. I have driven up 30, I have not had the time to pull over and see the sign. I did notice that this hearing, today's hearing was not posted on line, and I realize there may be some permissive opportunities for applicants to not repost the property, and the county does not have any obligation to post on line these hearings, but I find it very unsettling that an important hearing like this is not posted where people could readily see it.

I just want to go back to Mrs. Mirabile's question to her about how far away, and she's about a mile and a half south on 30 from, she's at the corner of Frye Road, which is a small private road.

I can attest to the fact that the Hanover Road Association has spent years trying to preserve the agricultural integrity of the

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community. We've tried to minimize the amount of residential development, even fought a significant church in the area, it was a mega church, and were unfortunately unsuccessful. But the whole incentive of the Hanover Road Association at that time and continuing is that we want to see viable agriculture in the area.

There appear to be in the county regulations nothing that restricts the continued assault, as I believe the phrase was used, on the land. And while this may only be six acres out of several hundred, there are several other projects in the mill and there are other opportunities for many more acres to fall, and I know that in the past when development occurred without control, the agricultural industry greatly was diminished.

There's a point in time when you have too much, in this case I call it industrial development of agricultural land, that the contract farmers, which Mr. Lippy is, will sooner

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or later not have enough farms to lease and function, and the whole agricultural business will collapse. I find this is a very questionable precedent setting issue that you need to deal with, and we're looking for a decision from you that would allow for the bills that are before the, and the resolutions, resolution that's before the county council, to consider rules and regulations that should be applied in this type of situation.

I also did not hear anything today on the withdrawal of farmers ability to withdraw from conservation easements, so if it becomes more lucrative for farmers to withdraw from agricultural easements, and I think that's possible, then there could be no limit to the amount of development that could occur. So at this point in time and with the uncertainty of what the county council is doing, I would say that this project should be denied until such time as appropriate regulations are in place

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concerning not just this project but all projects, and that's all I have to say. Thank you.

JUDGE BEVERUNGEN: Okay. Mr. Schmidt, any questions?

EXAMINATION BY PETITIONER

BY MR. SCHMIDT:

Q. Mr. Harman, how far away do you personally live from this site?

A. About two miles south.

Q. And you haven't introduced or offered any position today on behalf of the Hanover Pike Association, you're testifying as an individual?

A. As an individual, because we have not had enough information provided to us on the details to make a rational decision about what to do with this particular area.

Q. And you -- well, you were contacted by me months ago, were you not, via email about this case, you and Mr. Joyce, I reached out to both of you?

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A. That's correct.

Q. To advise you of this matter before it was posted, before it was filed?

A. But I was not involved in the interview on site.

Q. You were invited, were you not?

A. No, I was not.

Q. You were invited by me, you didn't show up but you were invited by me.

A. I don't recall seeing a specific invite from you.

Q. So in other words, your comments about this not being posted, my client and I were at the community meeting, were we not?

A. That's correct.

Q. And we hosted Mr. Joyce and Mr. Lippincott on the site, correct?

A. I was told that.

Q. There hasn't been any attempt to hide this.

A. Well, I just want to emphasize that

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outreach is not just to one community organization, outreach needs to be to all interested community groups, and it should be more widely presented through on line postings, because I as an individual that has some interest and responsibility to Reisterstown, Owings Mills and Glyndon, does not have time to go to all the sites and check the white signs that are posted on the properties. You have to rely on the county for posting, and when they don't post the information on line, it makes it virtually impossible for the average community person like myself who's interested to find out exactly what's going on.

Q. You knew we followed the rules, is all I can tell you.

A. That's all we can do is follow the rules.

Q. And we've followed whatever the rules are.

A. And I've tried to follow the rules as

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closely as I can, but the rules are not adequate to get all the community participation that the county should be seeking for this type of operation.

Q. All I can tell you, and I think you've acknowledged, is that we reached out to the Hanover Road Association, met Mr. Joyce on site before Mr. McCann entered his appearance, attended the community meetings, so when you make reference or make inference that my client is somehow trying to sneak this through --

A. I didn't make any inference of that type, none whatsoever.

Q. -- then I take a little bit of umbrage at that.

A. Well, you can take umbrage, but I didn't do anything to say that it was hidden. I'm saying the county process is inadequate.

Q. Okay. Mr. Lippy is one of the largest property owners and farmers along Hanover Road, is he not?

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A. I don't know the facts, I've heard today, so I'll take what I've heard today and say he's probably one of the larger ones, yes.

Q. And he's one of the bigger farmers in the area, more important farmers in the area, isn't he?

A. That's what you're telling me.

Q. You don't know? I thought you lived there?

A. I do live there, I've lived there for 28 years.

Q. And you don't know how big the Lippy farm is?

A. I just heard the actual acreage today, I never knew the actual acreage. And I know that he, from conversation with him prior to this meeting, he indicated that he rents and leases a lot of additional acreage.

Q. That he farms?

A. That he farms as a, what do we call it, a contract former, I guess you might call it, or

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contract provider of services.

MR. SCHMIDT: Okay. I have no other questions.

JUDGE BEVERUNGEN: Mr. McCann?

MR. MCCANN: No questions.

JUDGE BEVERUNGEN: Thank you, Mr. Harman.

THE WITNESS: Thank you for your time.

(Witness excused.)

JUDGE BEVERUNGEN: Is that it for the protestants?

MR. MCCANN: Yes, it is.

JUDGE BEVERUNGEN: Okay. Nothing else?

MR. SCHMIDT: No rebuttal.

JUDGE BEVERUNGEN: So we're completed?

MR. MCCANN: Yes. I wanted to ask Mr. Schmidt if, I wanted to submit a brief in short order, so if I could have a week or ten days to do that?

JUDGE BEVERUNGEN: Well, I don't normally do that in a --

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MR. SCHMIDT: I don't -- I mean, based on what I heard, I don't know what -- I mean, I didn't hear any testimony about I guess 502.1 or --

MR. MCCANN: If I can respond?

JUDGE BEVERUNGEN: Yeah, go ahead.

MR. MCCANN: We just, Valleys Planning Council just lost (U/I) so in addition to me just being retained and someone not being able to be here today --

JUDGE BEVERUNGEN: Something happened to her?

MR. MCCANN: She left.

JUDGE BEVERUNGEN: Okay, she's gone, okay. I thought you were implying that she was sick.

MR. MCCANN: No, no, no, she departed.

JUDGE BEVERUNGEN: Okay, she's gone.

MR. MCCANN: So I would sort of like, what my client really wants to say about this case, I'm not sure if -- I'm not even positive

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they want to speak since there's nothing in writing, but I mention the possibility for that, and I'm sorry, and I'll let you know if we want to submit something soon enough, but that's the factual reason why I would like the opportunity to submit something later, not additional evidence, that's not what I'm saying, but just the statement of the organization against the project.

JUDGE BEVERUNGEN: Okay.

MR. SCHMIDT: Time is really of the essence for us. We had a postponement of this case, you've heard the case, you're aware of the 502.1. Obviously because this is in the RC-2, there's a requirement that you look at the impact on the (U/I) and agricultural uses, and I think Section 411 is also in play, we've done this in other cases you've had. I mean, the burden of testimony and evidence, I don't know what we can argue. They can file an appeal to the Board of Appeals, which they may or may not do, but I

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mean, I would tell you that because of the state mandates and the business arrangements, there's a variety of reasons that this is important that my client get a decision on this, and I tried to cooperate with them, but I just don't see based on what I've heard here today that's going to be argued. I mean, I'm happy to submit to you, or we can offer oral argument now, but --

JUDGE BEVERUNGEN: Well, the one issue I wanted to ask you about was the special hearing. What --

MR. SCHMIDT: The special hearing was just to confirm your prior ruling in this case as we get it in front of you. But I think we filed that -- again, when we filed this with the zoning office, and you'll look at --

JUDGE BEVERUNGEN: I thought it said special hearing to confirm that --

MR. SCHMIDT: That we're a public utility.

JUDGE BEVERUNGEN: No, to approve the

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solar array as a permitted accessory use to the farm.

MR. SCHMIDT: Oh, wait a minute.

JUDGE BEVERUNGEN: I mean, I don't see how I'd go that route, really, without having any evidence that -- I mean, I know farmers are doing this nowadays, but I don't think it's kind of reached the level where it's habitual, like a grain silo that virtually every farmer has.

MR. SCHMIDT: Yes. I apologize, and I misspoke.

Again, many times, as you know, we file these, and when we get intake from the zoning office, they want us to file a certain way.

JUDGE BEVERUNGEN: Yeah.

MR. SCHMIDT: As that does note, it's in the alternative to a special exception.

JUDGE BEVERUNGEN: I saw that.

MR. SCHMIDT: And I do not think, I'm not really going to argue it here. If you were to find for some reason, for example, your prior

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order, I believe we meet the threshold that you identified in your prior order of one megawatt, or what is it?

JUDGE BEVERUNGEN: One megawatt.

MR. SCHMIDT: One megawatt in order to qualify as a public utility, that's what you said in the prior case. If for some reason we chose to change that and found it's not to be a public utility, we filed this as an alternative.

JUDGE BEVERUNGEN: All right, I understand that. And I'm not saying, I don't see how I would even have enough to rule. I'm just letting you know, I think I'm going to decide it as a special exception.

MR. SCHMIDT: And that's fine.

MR. MCCANN: That's fine.

JUDGE BEVERUNGEN: Because I don't think, my understanding of accessory, the way it's designed, the way it --

MR. SCHMIDT: Well, it has to be on the same lot and all that.

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JUDGE BEVERUNGEN: Yeah, you can have some sort of newfangled thing, it should be some kind of thing that's habitually seen or customarily seen.

MR. SCHMIDT: Customarily or incidental.

JUDGE BEVERUNGEN: And I don't think that it's reached that level. In ten years maybe it will be, if what happens is the community is right about the popularity of this.

MR. SCHMIDT: No. And again, just to give you the benefit of that, when we filed this, obviously when the zoning technician was flipping through the county zoning regulations and saying I don't see a solar farm in the RC-2 regulations, we can say well, Judge Beverungen has ruled that it's a public utility under the special exception criteria in a prior case. And they say well, in order to do everything, we think you also ought to have a special hearing to say no, if it's not a public utility as a special exception, it arguably is an accessory to the farm since it's

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part of the larger farm. So we followed the way they told us to do it, but I certainly understand that, and I would agree with you, but that's why we filed it this way.

JUDGE BEVERUNGEN: All right, I understand that.

MR. SCHMIDT: It does say in there, in the alternative.

JUDGE BEVERUNGEN: I knew that, I just wanted to let you know what I was thinking.

MR. SCHMIDT: Sure.

JUDGE BEVERUNGEN: Mr. McCann, is there anything you want to just kind of tell me that you think is unique about the case other than hundreds of other special exceptions I've ruled on? I mean, the facts of every case are somewhat unique but the laws aren't really, the law is pretty straightforward. Is it as simple as saying that there will be a detrimental impact and that it's a visual blight or aesthetic? You know, that's a fairly familiar argument.

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MR. MCCANN: No, I don't think Mr. Schmidt has been proceeding with that.

JUDGE BEVERUNGEN: Because of what?

MR. MCCANN: Because --

JUDGE BEVERUNGEN: Whose burden is it in a special exception case?

MR. MCCANN: That's a loaded question, and that's one of the things I wanted to think about, and perhaps --

JUDGE BEVERUNGEN: Well, evidently there is a case decided somewhere, Mr. Zimmerman tells me, but the way I read Maryland law and the way I put it in orders, and I've put it in orders for the six years I've done that, I've read the cases, I see the cases saying it's a presumptively valid use, I think I'm using a quote there. So I took that to mean the county council has already put this in the category of an allowed use, it's a conditional use, and the condition is that it not have these impacts that are talked about in Section 502. So that's the

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way I view it, and I view it as well, then I think the table turns for somebody here to show -- the plaintiff, the petitioner isn't going to get up and say they have an adverse impact.

MR. MCCANN: I just think that analysis is, if that's true, they have no, essentially what that's saying is they have no burden whatsoever, they can just show up at the hearing and simply say nothing.

JUDGE BEVERUNGEN: They have to prove that it's a special exception, which in this case it's, you know, it's a little bit of an open issue, you know. I mean, the precedent is --

MR. MCCANN: The precedent for this case is.

JUDGE BEVERUNGEN: So you're not entirely right there, they have to come in and say oh, the zoning code says this is a special exception, I have number of acres, I've met the setbacks. I mean, there are some tests, but I agree with you, I think special exceptions are

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permitted uses. Suppose somebody files one and no one shows up over here. The reality is it's going to be granted but --

MR. MCCANN: I think they would still have the burden of putting on evidence to the case, and the task would be much easier, yeah, but they still have that burden. I just don't think that the (U/I) is they have no burden.

JUDGE BEVERUNGEN: Okay. Well then, shifting back to this case, we've got the testimony they've put on that it doesn't have chemicals, it's not going to cause a hazard or traffic or fire, and the testimony from protestants is they're ugly, that they don't like them, that it's an aesthetic assault, and that there's kind of a long list of applicants going on here, that this is, everybody's pushing this. So, are either of those enough, is there anything else that I should --

MR. MCCANN: Well, we still have the issue of the scenic route impact. There's been

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no testimony really about the scenic route and relative impact, at least (U/I) but I think they have some burden to put on some evidence of relative impact, you know, the balance between what is presumptively valid and what's going to happen in this case, so I think there is a burden on them to make some showing, maybe not showing an approved plan, but I don't think they've done that.

I also think that this is a scenic route, so I think (U/I) elsewhere, and when the factor of, this is a very large farm and could be elsewhere on that very same parcel, and not have that same proposed, you know, because it is so proximate to Hanover Road, and I don't think costs associated with (U/I) that I could understand, it's a part of the way you do the panels, but this very same solar panel system could be moved farther back, potentially anyway, without an effect on the scenic route. And I also, I think Mr. Schmidt and his client were

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saying he recognizes that impact.

JUDGE BEVERUNGEN: I mean, I'm glad he was honest. I mean, who can say that these are attractive, they're not attractive, they're solar panel. Cell towers are ugly, but that's the classic Schultz versus Bratton --

MR. MCCANN: They all look the same.

JUDGE BEVERUNGEN: I understand what it is, and I understand that everyone here today, I don't actually because I don't carry one, bu probably most people have smart phones and we need the cell towers, so is it a necessary evil, you know, I don't know, but frankly I'm glad the gentleman didn't say that he's never heard anyone say these are ugly, because you'd much rather see a hillside than see these, but that's not what my task is, that would be insane.

Certainly that's not my task on this side, is it, for me to agree that these are ugly, and that's enough so we can deny the case?

MR. MCCANN: Well, I think it

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complicates things that are not allowed by special exception. So there is, you know, a feeling, like in your earlier decision which, there really was not a lot of evidence in the case, but --

JUDGE BEVERUNGEN: No, the evidence was a lot of my research, right, and the industry does call it utility level solar. I actually know some folks in the industry. You know, they could have, somebody could have appealed that case if they wanted to, and maybe you'll appeal this one, but I don't think -- that is how it's phrased, it's utility grade solar, as compared to a panel on your house.

And then when this joins the BG&E infrastructure, what else are you going to call it? How is that not -- BG&E is a public utility, right?

MR. MCCANN: They are the public utility but this is no, I would submit this is not a public utility.

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JUDGE BEVERUNGEN: So you think that section of the zoning code means BG&E, C&P, because it was written 50 years ago, do you think so now it couldn't include geothermal, wind, anything like that? If wind became wildly successful and wind turbines generated 80 percent of our electricity needs here, would that be a public utility?

MR. MCCANN: I think the reference to public in that term is not to confuse who uses it, but rather who is providing it.

JUDGE BEVERUNGEN: Is BG&E the public? They're very much private, and now they're owned by a company in France, I believe, so --

MR. MCCANN: But again, that's something I would like to speak to in writing, but that's fine.

JUDGE BEVERUNGEN: Well, I mean, we're doing it here.

MR. MCCANN: Yeah. And then the other thing I would say, Mr. Donithan was also frank in

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saying the aesthetic impact would be less if there were less panels, so there clearly has to be some showing by Mr. Schmidt about, you know, about that, why couldn't you do this with fewer panels. We're talking about impact, relative impact and impact on the scenic route, and we have no landscape plan so we have no idea --

JUDGE BEVERUNGEN: But we never do in a zoning case, do we?

MR. MCCANN: And I would make the same argument, so --

JUDGE BEVERUNGEN: I know, so then you want me to change county policy, and I can't do that.

MR. MCCANN: I don't know that it's -- I don't think there's anything that allows a developer to wait to submit a landscape plan until after permitting, there's nothing explicit that says that.

JUDGE BEVERUNGEN: No, but just practicality, they've done it for 20 years and

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the developers say look, do you want us to spend an extra ten grand and then be denied? Should they design a house all the way down to the gingerbread and the bric-a-brac, and then have the plan disapproved?

MR. MCCANN: Well, I think a development case is different. When you have cases like this that we're taking about, a special exception case with impact on a scenic route, this is not a special exception of that kind, and maybe when you view that particular impact, then no, maybe the costs come down, it wouldn't be $10,000.

JUDGE BEVERUNGEN: I don't know, but it costs some money.

MR. MCCANN: I just don't think it's -- I think, and I've said it before and it's been rejected by you before, I don't think you can approve a plan unless you have some level of, any level of detail. Something, some scratching on a piece of paper saying we're going to put a bunch of trees this tall --

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JUDGE BEVERUNGEN: Well, they've done that, they've shown me where the trees are going to be, they told me the width of the buffer.

MR. MCCANN: But that's just the location.

JUDGE BEVERUNGEN: What else do I need?

MR. MCCANN: What's going to be there.

JUDGE BEVERUNGEN: Isn't that for a landscape architect to determine, won't the county's landscape architect do that?

MR. MCCANN: I just think the impact, there's some burden of Mr. Schmidt to prove scope of impact, and the impact would be greater on this scenic route and on the neighboring properties if it was (U/I) something, how can you make that determination.

JUDGE BEVERUNGEN: Then you could argue for me to put conditions in the order.

Let me ask you, so this public utility would be BG&E. Suppose BG&E were to come out here and put up those hideous transformers; would

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that just be allowed as a special exception? Those ugly transformers with wire fences all around them that you see in a lot of rural areas, would they all be allowed?

MR. MCCANN: I don't know what that would be. (U/I) BGE and we won that case.

JUDGE BEVERUNGEN: Okay, so that's why I asked the question. Cell towers, they sometimes put flags on or they put evergreen trees around them.

MR. SCHMIDT: I think they're permitted as a right.

JUDGE BEVERUNGEN: BG&E?

MR. SCHMIDT: Uh-huh.

JUDGE BEVERUNGEN: How so?

MR. SCHMIDT: Under 1.A.01.2, in which their use is permitted as a right in an RC-2 zone, telephone, telegraph, electric power underground cables are provided to any such (U/I) underground gas, water and sewer mains, so, since they're not underground --

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MR. MCCANN: If you look at all the special exceptions, they're all subject to another section or provided they're underground. But there's none of that here because we just don't know what's going to be done.

Other than that, I don't have anything.

JUDGE BEVERUNGEN: Okay. Anything else, Mr. Schmidt?

MR. SCHMIDT: The only other thing I would say is that, I guess sit down and shut up maybe when you're ahead of the game, but if you look at the scenic route guidelines, there's nothing in there that prohibits this. I mean, they're really geared toward tall structures and tall buildings.

JUDGE BEVERUNGEN: Well, he didn't say they're prohibited. What about his argument, he sets that it meets the special exception test because it's going to be a worse impact here than it would a mile down the road where the scenic district stops.

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MR. SCHMIDT: Well, all of Route 30 is a scenic route.

JUDGE BEVERUNGEN: Well then, make a left turn. His point is, you'll find somewhere else in the RC-2 where there's not a scenic district. Does that meet that Loyola College burden?

MR. SCHMIDT: Yeah, not, because there's nothing in the scenic district regulations that to me really govern this. I mean, yeah, it's on a scenic route, but there's nothing that says -- the scenic route guidelines are designed for large buildings, housing developments, changing the topography of the land. I don't even think they're geared to this type of situation.

JUDGE BEVERUNGEN: Okay. All right. Anything else, Mr. McCann?

MR. MCCANN: No.

JUDGE BEVERUNGEN: All right, thanks everybody.

MR. SCHMIDT: Thank you.

(Whereupon, the hearing adjourned at 12:50 p.m.)

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IN THE MATTER OF:

DONALD AND KATHLEEN LIPPY
CASE NUMBER: 16-355-SPHX

Hearing Date: February 7, 2017

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, commencing at 10:00 AM.

PANEL PRESIDING:

BENFRED B. ALSTON, CHAIRMAN

MERYL W. ROSEN, BOARD

JASON S. GARBER, BOARD

PRESENT ON BEHALF OF THE PARTIES:

LAWRENCE E. SCHMIDT, ESQUIRE

MICHAEL MCCANN, ESQUIRE

CAROL DEMILIO, PEOPLE'S COUNSEL

Christine R. Leary
8200 Featherhill Road, #204
Perry Hall, Maryland 21128

Petitioner
CBA Exhibit
4A

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(ON RECORD - 10:08:57 AM)

CHAIR: Good morning.

MR. SCHMIDT: Good morning.

MR. MCCANN: Good morning.

CHAIR: Good morning. We're here in the matter of Donald and Kathleen Lippy, case number 16-355-SPHX. This hearing will be held de novo. Parties identify themselves, attorneys?

MR. SCHMIDT: Thank you, Chairman Alston and members of the Board. I'm Lawrence E. Schmidt with the law firm of Smith, Gildea & Schmidt, with offices in Towson at 600 Washington Avenue on behalf of the underlying Petitioner, Donald and Kathleen Lippy. Mr. Lippy is seated in the first row behind me and also, as I'm sure you're aware, this relates to a proposed solar farm and Ken Donithan, who is the principal of Earth & Air Technologies is also a client and he's seated immediately next to me. Thank you.

CHAIR: Thank you.

MR. MCCANN: Good morning, everyone. Michael McCann on behalf of the Protestants, who include the Hanover Road Association, Santo Mirabili, M-I-R-A-B-I-L-I, Mr. Mirabili is right behind me in the blue shirt, and also Chris Colao, C-O-L-A-O, who is seated to Mr. Mirabili's right, second row.

CHAIR: Okay.

MR. MCCANN: Thank you.

MS. DEMILIO: Carol Demilio, Deputy People's Counsel for Baltimore County.

CHAIR: Okay. Just a query, are there any preliminary matters that people want to discuss or anybody wants to discuss before we get started.

MR. SCHMIDT: Go ahead, you --

MS. DEMILIO: (inaudible).

MR. SCHMIDT: I had a, I had a brief discussion this morning with Ms. Demilio about, about the case and I don't really have a Motion but I'm going to at least bring an issue up to the Board that the Board may be aware of and I think it, it will probably generate some discussion, maybe between the Board and the parties, as to whether we're proceeding and the nature of proceeding today. Just by way of kind of background if I may, what is proposed here is a solar farm which is an activity that I'm sure many of you have seen. The Board members have probably seen either in Baltimore County or on the Eastern Shore or elsewhere. Mr. Lippy is a farmer, has been a farmer for years, farms about twenty-six hundred acres in Baltimore County and in Carroll County and owns several large tracts of land on which he's farmed. And this case is about a proposed lease of the property that he is entering into with Mr. Donithan's company where Mr. Donithan will be installing on about a six-and-a-half-acre tract of land solar panels, the structures that come up about six feet off the ground that

capture the sun's energy and convert it to electricity through a process that Mr. Donithan would be able to explain to the Board. Under current County zoning regulation, there is no definition of solar farm in the Baltimore County zoning regulations today. This is something that happens, it always hearkens me back to when I served as Zoning Commissioner of Baltimore County and tattoo parlors became the rage. There were no regulations in Baltimore County as to tattoo parlors and for a while, the County zoning people struggled to figure out what an establishment where someone goes to have ink, permanent ink on their arm actually was because there was no definition. And I remember there was a case where they were determined to be residential art salons because that was the closest defined use in the County zoning regulations to what we know now as tattoo parlors and the County eventually did adopt regulations and now they are regulated in the, in the zoning regulations. We have the same issue here and to the effect that solar farms are not regulated currently under the County zoning regulations. I think from a, sort of a constitutional question, if a use is not illegal, if we are not selling, for example, illicit drugs or running a brothel or doing some illegal activity, a legal use, such as a solar farm, has to be permitted somewhere in Baltimore County. There are cases involving methadone clinics that have gone up in the Federal Courts where the Courts have said the County can regulate them

but just can't prohibit them carte blanche because it is a legal use, not a criminal activity. And, and thus, solar farms the County may regulate but they have not chosen to do so, I guess, specifically as of yet. With all that background, there was a prior solar farm case that came before Administrative Law Judge Beverungen and in that case, he determined that the solar farm use was, would be a public utility because that's the closest thing that he could find in the regulations that it would be. Public utilities, we might often, from a layman's perspective, think of BG&E as a public utility but Mr. Beverungen said solar farms which are also regulated by the PSC, are close, are close and that's a similar kind of activity and thus he found that to be the case in this one particular case that he heard. When our case was filed, based on the history, we filed a Petition for Special Exception for a public utility in an RC-2 zone, which is what this subject property is and public utility uses are permitted by special exception in the RC-2 zone. And this case, as you know, went before Judge Beverungen, he granted the use, found it to be a public utility as he had in the prior case and granted the special exception and it has been appealed by Mr. McCann's clients and that where, that's where we find ourselves today. With that background as to this case, I would tell you and the Board may or may not be aware of this, that the counsel has looked to adopting regulations specifically as to solar farms. There was

legislation passed by the Baltimore County Council I'm going to say about six months ago, around the time we were before Judge Beverungen related to solar farms. That legislation was passed, passed by the Baltimore County Counsel, however, it was vetoed by the County Executive. So, and that effect is there is no regulation. There have been two other bills since that time that had been introduced but to the County Council that I'm aware of, I believe, there have been two but I guess there could be more but there's two that I know of that had been introduced to the County Council but have been withdrawn and so, again, neither of those have taken effect. I am aware and the Board may be aware that last night at the County Council session last night, Bill 917 was introduced, which is 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. So, there is legislation but with the history that we face to, one bill being ve, vetoed, two being withdrawn, I have no idea and I don't think any of us can know whether this bill will ever be enacted or whether if it, if it will be enacted, it will be enacted in its present form. I will tell you that as it relates to the subject property and I have looked at the bill very quickly, it still has a requirement for a solar farm would be permitted in the, in the RC-2 zone by special exception so that would not change to the effect that it's still a special exception case, be it a

public utility or be it a solar farm in the RC-2. However, there do appear to be some other requirements that are generally not associated in, with the public utility that may be applicable here. Complicating all this is, is, at least I would say to the Board, that unlike many laws which are applied prospectively when a new regulation is adopted, zoning is one of those areas of the law that is typically applied retroactively, that's, that is generally the statement of law as I understand it. Mr. Zimmerman and Ms. Demilio may dispute me or I don't know, but that is a general statement of the law unless there is an indication in the bill that it is not to be applied retroactively. So, if this law were to be enacted, then if you heard the case today but didn't decide the case in terms of deliberation or memos until time in the future that this law was enacted, then we may try the case today under one law and you may decide it under another law, which creates --

CHAIR: Well, well, Mr. Schmidt, not to cut you off, but, but we did read the bill.

MR. SCHMIDT: Okay.

CHAIR: Bill 917.

MR. SCHMIDT: Right.

CHAIR: And on the last page.

MR. SCHMIDT: Right.

CHAIR: Section 4.

MR. SCHMIDT: Right.

CHAIR: It says that this bill shall apply retroactively to Petitions filed October 18th.

MR. SCHMIDT: Right.

CHAIR: And except for certain subparagraphs to apply, shall apply to Petitions filed after July 1.

MR. SCHMIDT: Right.

CHAIR: I think your Petition initially was filed on June 24?

MR. SCHMIDT: It was, so --

CHAIR: So, what does that do to us?

MR. SCHMIDT: Well, I think what it says is that this bill and I was going to get to that, slowly, I admit, but trying to build on one step to the other, assuming this bill remains in its present form, then I think we would still be properly considered as a public utility request because we were filed prior to July the 1st of 2016. And again, Mr. Alston, that's assuming --

CHAIR: Right.

MR. SCHMIDT: -- that this bill passes in its present form.

CHAIR: Right.

MR. SCHMIDT: And that's part of the other issue here because I would tell you that the bills that were never enacted did have a series of amendments that were considered by the Council. So, I don't know how, I don't know what this is going

to end up looking like is what I'm saying. So, I'm not making a Motion and I'm anxious to see what Ms. Demilio and Mr. McCann may say but it certainly presents an issue that I think it's appropriate to bring it to your attention before we start here today and get a sense of the best route. And I, I will say this too, obviously, like every other business, time is money for my client and this case, they filed last June. And so, they have been through one hearing, they want to get a decision hopefully favorably as they did before Judge Beverungen and move this along. So, that is a factor for their consideration as well but with these issues, I just bring all this to the Board's attention and I'll hear what fellow counsel say and, and any thoughts that the Board may have.

BOARD: Just so I understand, you're, what you're saying in conjunction with this bill is as it presently, as presently written, it wouldn't impact your case?

MR. SCHMIDT: I, I do not believe it would.

BOARD: Right.

MR. SCHMIDT: Because --

BOARD: I just, what, no, I understood that.

MR. SCHMIDT: Right, because, again, --

BOARD: Right.

MR. SCHMIDT: -- we were filed, we filed this zoning Petition on June the 23rd.

BOARD: Right.

CHAIR: Mr. McCann?

MR. MCCANN: Yeah, thank you. I'm not sure what relief Mr. Schmidt is asking for but if he's asking for a response to everything he said, I don't disagree with the facts as he laid them out and as, Mr. Alston, you pointed out the bill explicitly would not apply to this Petition. So, I don't see how any of that impacts us proceeding forward today at all, frankly. The fact that the bill may change in the future, I mean, laws always change. If they change, they change. But this Petition was brought, I think we should proceed on it, is our position.

BOARD: Then I can ask a question then --

MR. MCCANN: Sure.

BOARD: -- based on what you just said.

MR. MCCANN: Yeah.

BOARD: Well, one of the things that could change is the date for retroact, retroactive application.

MR. MCCANN: Correct.

BOARD: So, if they make it to 2015, the, this bill would cover this Petition and we would have, as Mr. Schmidt said, a hearing today based on one, one understanding of the law, or one (inaudible) law and then by the time that perhaps there is (inaudible) or there could be a different law in place.

MR. MCCANN: I understand that and the law could

change, that's what you said is basically I, I believe what I said and that is the law can change, any part of the law could or could not apply to Mr. Lippy, the Petitioner, that presently does not. That, that's true, including the, the date by which the Petition had to have been filed. This issue was brought up when we were before the ALJ, this issue was brought up because we had pending legislation, as Mr. Schmidt said, and the, Mr. Beverungen denied any continuance and said let's, let's proceed, let's move forward and unless Mr. Schmidt is going to withdraw the Petition, I think we need to proceed. That's our position so.

CHAIR: Is, is that what that was, a Motion for Continuance?

MR. MCCANN: I don't think so, no.

MR. SCHMIDT: No, I, I --

CHAIR: I didn't get that impression.

MR. MCCANN: No, I didn't either.

CHAIR: Oh, okay.

MR. MCCANN: Yeah, I said, unless that's what he intends to do I think we, we need to proceed, we should proceed.

CHAIR: Right.

BOARD: Well, there's no Motion pending.

MR. MCCANN: Yeah, true, true. Yeah. So. Thank you.

CHAIR: Ms. Demilio?

MS. DEMILIO: Yes, thank you. We're here somewhere, I guess, maybe in between some of these arguments. This, our office really paid, looked at the Petition initially because we do not believe it's a public utility whatsoever. I think if you look at the definitions of public utility, if you look at the history of public utility, there's no way that this is under a public utility. I understand Mr. Schmidt's argument that he thinks it does because it doesn't fit anywhere else. Well, that's really not the way we, you know, (inaudible) uses in zoning in Baltimore County. I mean, there's the case law (inaudible) Board is familiar with the *Kowalski* case, 25 Md.App. 493, what they've been saying forever is that if it's not specifically permitted in the zoning regulations, it's prohibited. Then there is case law which says, look, you don't distort a meaning, definition or a meaning or use under the zoning regulations just in order to shoehorn something in so you can get the use that you want. I mean, the important thing is, we think, is that legislation has to authorize the use and the legislation has to come from the County Council. With all due respect, it doesn't come from this Board. This Board is a judicial body and it's not a legislative body so its, its purpose is not to, in effect, draft new legislation by expanding the meaning of something just to accommodate a particular Petitioner. And we think that is why the County

Council is addressing this issue (inaudible). It could be a complicated issue, solar panel facility. I don't, to call it a farm I think is really a misnomer. Another misnomer is the use of the word farm. This one happens to be in a rural area and that's what they're calling it. I don't know who originated that term but solar facility, it, it can be a complicated issue and that's probably why, on speculation, is that why the Council has looked at this and the bill that was withdrawn really only said there should be a study done and it was putting some dates in there and I think that's why the bill was vetoed by then the County Executive. That bill didn't say one way or another about solar facilities. It said that there should be a study done. I think that's what the Council intends. So, the current bill that (inaudible) came in, you know, last evening, 9-17, is sponsored by four Council members, Councilmen Koch, Almond, Marks and Devin and two of those were the ones that originally had done separate bills so here we are with one bill that, as I understand it, will be voted upon at the March 6th Council meeting. In that bill, it's true, it says solar facilities also are supposed to be special exceptions in the, in the zone. It goes on and on to talk about what are the requirements, what are the standards that have to be met. This is important, this is important stuff and I do note in the introduction, or in the definition, it says in the bill and I, and I admit this bill has not been passed, it's just been

introduced, notwithstanding any other provision of law, a solar facility may not be considered a public utility under the Baltimore County Code or under the zoning regulations. So, I think the Co, I think we certainly agree with the Council's assessment of this issue and that is why they're addressing it. So, it brings to mind the way the Council addressed wireless facilities, cell, cell phone towers under 426, I think. There was a use that came about after the initial, original zoning regulations were, were in place and the Council felt it was important to address it. So, we have several pages of wire, how, where cell towers are able to go and I think the solar facilities should be judged under those same types of standards. The Council is looking at it carefully and this bill is ten pages, so, I mean, they're looking at this carefully, so in our opinion, it certainly isn't a public utility and we will argue that consistently throughout, wherever this case goes. But, the question then becomes, what should the Board do here and I, I'm, it's up to the Board what it wants to decide to do. I would like to see the Board act on what we think is the appropriate definition of solar facilities and that is the County Council's pending bill. And I think we would all be better served by having the Council regulate this and having the Board do what it's supposed to do in (inaudible) cases and that is apply the law to the uses proposed. I'm not making really any judgment on this particular facility, on Mr.

Lippy, on solar panel companies but, look, the Petitioners here are not BG&E. The whole purpose of public utility law is that the, is that the government wants to make sure that the citizens and the public have access to public utilities, electricity of which is one. Well, public utilities are not defined in the zoning regulations. They're defined in the Webster's, the dictionary, which says the business organization deemed by law to be vested in the public interest because of monopoly privileges so subject to public regulation. (inaudible) standards of service improvisions of facilities. So, I don't think Mr. Lippy or the solar panel company in any way qualifies under that definition. Even under the, under, particularly under the traditional law and I believe that's why the Council is addressing this and (inaudible) so it's up to the Board in a way, I guess, how it wants to proceed. I wouldn't want to suggest anything that would be prejudicial to Mr. Lippy so I don't see any res judicata argument here because it's a new law or Mr., I don't think Mr. Schmidt and his clients are required to come in under the grandfather provision. They could just dismiss their case and file a new Petition if the law is passed and proceed under that. I don't, I don't want to, I'm not suggesting anything that would prejudice them, nor am I suggesting anything that would prejudice the citizens who want to have their day here but --

CHAIR: But Mr. McCann didn't make the, didn't make

(inaudible) that's okay for People's Counsel but I don't think Mr. McCann is going to join you in that position.

MS. DEMILIO: No, I, I know and I mean, I'm sitting here but I'm trying to give a kind of independent assessment from our office and I recognize that it's up to the Board whether to decide --

CHAIR: Well, it, it seems to me that we probably do need some sort of, this is going to be a post-memoranda issue on whether or not this is, in fact, a public utility and I guess the next item is whether or not, because we do have some precedent, which I don't know whether we have to adhere to or not, but it was called a public utility but clearly this bill seems to permit solar uses for commercial purposes and I guess my question if the County Council has decided that that is going to be proper use in the County or, or can we look at that as some sort of guidance for us to determine whether or not, I guess that's two things that we're going to need --

MS. DEMILIO: Well, my suggestion is, do you want a pre-hearing memoranda before we get into all the evidence here and just have, I mean, that's been done before. Have the Board address, if you want us to address a specific issue whether we should proceed under, whether it's a public utility or not. (inaudible) possible suggestions.

CHAIR: Yeah, I am a little --

MS. DEMILIO: And by then we would know maybe what

the Council was going to do, Mr. Chairman.

CHAIR: Yeah, I am a little, I'm, I'm not concerned, so to speak, but the definition of public utility is, is something that they used in a prior case because there, just like the tattoo parlors, there was no tattoo parlors so we're going to do the next best thing.

MS. DEMILIO: See, that's what I, I mean, the end doesn't justify the means.

CHAIR: I understand.

BOARD: Because your argument is if, if it's not specifically stated, therefore, it's not under the --

MS. DEMILIO: That's Federal law, that's Federal law in Baltimore County.

CHAIR: Right.

MS. DEMILIO: That's Federal law in Baltimore County, which is why I think the Council is addressing it, which is why I think they addressed cell towers, which is why they address a lot of things that may not be specific.

BOARD: And then, so the question is whether Mr. Schmidt's client falls within the, the scope of what a public utility is as permitted by special exception in RC-2 zone.

MS. DEMILIO: Right.

MR. SCHMIDT: But see, I mean, with all due respect to Ms. Demilio, and I know what *Kowalski v. Lamar* says and that's the leading case that says the use has to be identified

under the zoning regulations in order to be allowed. But the problem is here, is, and this is, this is what these methadone cases, which I haven't looked at in a while, but this is what they, this is what they dealt, the, the government would simply not include a definition of methadone clinic in its regulations and that, and then that served to be effectively a moratorium for methadone clinics throughout the County. For example, if the County, the County regulates methadone clinics in the Baltimore County zoning regulations. If it did not, and I represented a methadone clinic and I came in for a hearing, Ms. Demilio's argument would be there's no methadone clinics regulated in the Baltimore County zoning regulations. There's no solar farms regulated in the Baltimore County zoning regulations twenty years ago, there's no tattoo parlors regulated in the Baltimore County zoning regulations. Therefore, they are not allowed, they don't appear anywhere, there's nowhere where they're permitted. And what the Courts have said, and this is with all due respect for, I think she's completely erroneous, the Courts have said Baltimore County, or any jurisdiction, you can't do that. You can control uses, you can say where tattoo parlors and under what circumstances they can be allowed. You can say where and when methadone clinics or solar farms can be. But you can't, by an absence of regulation, say that that use is nowhere permitted in Baltimore County. It's got to be permitted somewhere, it's a legal use

of land, it's not a criminal activity. And indeed, that's what the County has done in the tattoo parlor case when they said it was a residential art salon, because it was the only thing in the regulations that appeared to be forced on, on point and here, when they called it a public utility. I mean, solar farms not, may not be a public utility from sort of a public's typical viewpoint of that phrase. I mean, I understand that. But if it's not a public utility and the Council doesn't pass this bill, then where are they allowed, Ms. Demilio? How are they controlled? Are solar farms forever barred in Baltimore County? That's your position and I would submit that that's, that's unconstitutional. They've got to allow it. So, absent this regulation, they're public utilities. I don't know what else you'd call them, unless you want to call them tattoo parlors or residential art salons or you come up with some other use that you think they are.

BOARD: Well, if I may, it sounds like this is actually a pretty big threshold issue, whether or not the absence of solar farm means that they are not allowed or whether they are allowed because they're a sole legal use, correct?

MR. SCHMIDT: Yeah, I mean, I'd like to hear her response to that. I mean, --

MS. DEMILIO: It's not my response, Mr. Schmidt, it's the County Council's response. I didn't make the --

MR. SCHMIDT: Well, I would like to know what People's Counsel would submit if they're, if they are not a public utility and this bill exempts us under its current language because we filed prior to July the 1st, what is this use in Bal, under Baltimore County, under the Baltimore County zoning (inaudible) what is this use?

MS. DEMILIO: It's Petitioner's burden, it's not my burden, Mr. Schmidt. I am not, I think, I am suggesting that I believe, and I don't think we should get into an argument in opening, but I believe that's why the Council is addressing it. My only, my, my word to the Board is the Council is addressing this, maybe for the very reasons that you said. I have no problem with the Council addressing it. That's where I think it belongs. I think the Council should pass, should develop legislation, hopefully pass legislation to address solar facilities period. Not this Board, not your, your interpretation of the law.

MR. SCHMIDT: I'm not saying --

MS. DEMILIO: I think the Council should do it and because it's, because we have it, something that the Council is looking at, if the Council is saying it's not a public utility, this is what they want it to be, you happened to file something early. What happens to all the other people coming after? They will come, if the law passes, they will come under it, fine.

MR. SCHMIDT: Right.

MS. DEMILIO: That's where the, that's, that is my point exactly. I really think you're making my point that the law is there. I'm not, I'm not suggesting it should be prohibited at all. I'm just saying they have to, they have to be a certain use that's permitted or the, the Board actually was asking this and you brought up about this law coming into effect, possibly coming into effect. So, here it is. That's what, that's what I'm saying to the Board. Here it is and I don't know if the Board is asking us or we're asking the Board, what should we do about that?

BOARD: But are, are we talking about now two different points? One is what impact, if any, does the bill have on this case and then two, though, there's the threshold issue of leaving the bill aside. Does the, I guess, as you put it, since solar farms, you call it a solar farm, since it's not mentioned, does that mean that you can't have that, it's not a legal use basically and your position, of course, is the opposite of that, that is, wait a minute, you know, you try to find something that's close, they say it's a public utility and, therefore, it is regulated and even still, if it wasn't, if it doesn't fall within the public utility, you can't ban the use that's legal otherwise.

MR. SCHMIDT: Well, and that's my question and I'm not asking Ms. Demilio to create legislation. My simple

question to her is, if, if this use, if this case is not governed by the new legislation, which in its present form it will not be.

BOARD: Right.

MR. SCHMIDT: Because we'll pre-date it, okay. What is the position of People's Counsel as to what this use is under the Baltimore County zoning regulations as they are not amended, as they, as they exist today? That's, that's my only question to her.

BOARD: Well, and you're putting it one step further. Even if that bill in its present form is enacted, it's still the, you still have the same question.

MR. SCHMIDT: I still have the same question.

BOARD: Right.

MR. SCHMIDT: What are we then?

MR. MCCANN: Can I, can I speak to that issue?

CHAIR: Oh, absolutely.

MR. MCCANN: Okay and I'll be brief. Mr. Schmidt's own Petition that he filed in this case tells us what he believes it is and that is he filed two Petitions, he filed Petition for Special Exception. He also filed a Petition for Special Hearing to ask the Board to determine that this is an accessory use. So, he, in an, in an RC-2 zone. So, he's already identified where it fits into the zoning regulations. So, I don't know where all this ambiguity is coming up in Mr.

Schmidt's mind all of a sudden. So, he put that before the ALJ, the ALJ rejected that, that position. Secondly, I don't know, I don't know if I need to say anymore on that topic but again, I, I just want to reiterate the point that we're talking about legislation that may or may not happen. Just, we don't know.

BOARD: I thought we were past that.

MR. MCCANN: I know and I'm repeating what, maybe I shouldn't say anything else. But, we're talking about possibilities and as far as briefing the issue before a hearing, the, the problem I have with that is there, there is a factual record that needs to be established, that I intend to establish. My points, Ms. Demilio has articulated some of my points about public utility and this is not being one of them. But certainly not all of them and the factual record needs to support that or not, so.

CHAIR: Well, I, I tend to agree. The, the fact that this does have, I think that the retroactivity effect on this bill has no effect as written. It could be something different. There are four County Councilmen, persons, who signed onto this likely to pass, likely. I just think that, you know, whether this is a public utility and whether or not we're allowed to somehow, you know, kind of overlap and kind of use information from this bill to help us analyze what we're going on right now, I think that's best at a post-hearing

memorandum and I think that we just should hear the facts, hear the Petition and just deal with those issues later.

MR. SCHMIDT: Okay.

CHAIR: That's, that's what I think and I'm going to ask the fellow Board members what they think.

BOARD: That's fine by me. I mean, I think that the only other way to handle it is to get into the public utility issues, that is, is this a public utility or not and then figure out if the case needs to proceed following that. But I agree, it would need a factual record.

MR. MCCANN: Some factual record.

MS. DEMILIO: (inaudible).

BOARD: Right.

MR. MCCANN: Some factual record.

MR. SCHMIDT: And I just, very briefly, I did file and Mr. McCann is right, but I think he actually makes my point for me. We filed, again, when we filed this Petition with the Zoning Office, we filed it as a special exception for a public utility because of the precedent of there being a prior case. But in order to give, actually Mr. Beverungen but now the Board on appeal, since it's a de novo hearing, flexibility, I did file a special hearing and say that the Board or Mr. Beverungen could find this to be an accessory use to a farming operation. That's another way this could be approved as a use, since again, solar farms don't exist. I'm not sure what Mr. McCann's

point was. You can certainly, you are all attorneys, can plead alternative relief when you file a lawsuit and that's what I did here. You may determine it's a public utility, you may determine that it's a properly accessory to a farming operation as an accessory use and accessory uses are allowed in the RC-2 zone. That's just trying to give the finders of fact, Mr. Beverungen and you that flexibility. The only other thing is, I am not, and I just want to make it clear because I'm referring to Board's Rule 3-B-2, which states, a Petition that is withdrawn less than ten days before the scheduled hearing date shall be dismissed with prejudice and I am not dismissing my Petition with prejudice and then getting into res judicata and I can't refile it under the new bill and all the other things that you'll, that we have had in other cases. I think you can understand my situation and I'm not making any Motion to do that so we'll go forward.

CHAIR: Okay. Well, with that, I guess the Petitioner can call his first witness.

MR. SCHMIDT: John Lemmerman, please.

BOARD: And please remain standing when you get there. Thank you. Okay. Do you swear and affirm under the penalties of perjury, that the testimony you're about to give is true and correct to the best of your knowledge and belief?

MR. LEMMERMAN: I do.

BOARD: Please state your name.

MR. LEMMERMAN: John Lemmerman.

BOARD: And how do you spell your last name, please?

MR. LEMMERMAN: L-E-M-M-E-R-M-A-N.

BOARD: And what is your work address?

MR. LEMMERMAN: 142 East Main Street, Westminster, Maryland.

BOARD: And is that a business?

MR. LEMMERMAN: Yes, sir.

BOARD: Okay. What's the title of the business, name of the --

MR. LEMMERMAN: RTF Associates Incorporated.

BOARD: And what's your position?

MR. LEMMERMAN: I'm the owner, operator and professional land surveyor.

BOARD: Thank you.

MR. SCHMIDT: Okay. Mr. Lemmerman, you can have a seat for a minute. You've indicated in answer to Mr. Garber's questions, that you are a professional landscaper, are you not?

MR. LEMMERMAN: Land surveyor.

MR. SCHMIDT: I'm sorry, land surveyor. I said landscaper. Land surveyor, correct?

MR. LEMMERMAN: Correct.

MR. SCHMIDT: And are you registered and licensed by the State of Maryland?

MR. LEMMERMAN: Yes.

MR. SCHMIDT: How long have you been so licensed by Maryland?

MR. LEMMERMAN: Since 2001.

MR. SCHMIDT: Okay. Can you just briefly describe to the Board what you do, the kind of things you do, at RTF?

MR. LEMMERMAN: Sure. We're, we're a land surveying and planning business so we kind of do all types of residential and commercial and light industrial development or land surveying related services.

MR. SCHMIDT: Okay and do you do work in Baltimore County?

MR. LEMMERMAN: Yes.

MR. SCHMIDT: And I know you're also located, your business is located in Carroll County, I assume you do work there?

MR. LEMMERMAN: Yes, sir.

MR. SCHMIDT: Have you prepared site plans and drawings for use in connection with zoning cases in Baltimore County?

MR. LEMMERMAN: Yes.

MR. SCHMIDT: Okay and as you indicated, you hold a professional license in the State of Maryland?

MR. LEMMERMAN: Yes.

MR. SCHMIDT: Do you have a copy of your resume? Did you bring that?

MR. LEMMERMAN: I do.

MR. SCHMIDT: Okay. And this is a copy of your resume indicating your qualifications and some of your prior experience, is that correct, Mr. Lemmerman?

MR. LEMMERMAN: Yes.

MR. SCHMIDT: Okay and --

BOARD: I just, real quick, you'll have to keep your voice up so it gets captured because also the windows are open.

MR. LEMMERMAN: Okay.

BOARD: Okay?

MR. LEMMERMAN: Yes, thanks.

BOARD: Thank you.

MR. SCHMIDT: I'm going to mark this as Petitioner's exhibit number one and submit it as our first exhibit, if I may.

MR. MCCANN: No objection.

MR. SCHMIDT: And I would ask that Mr. Lemmerman be accepted as a professional land surveyor. Obviously, he's prepared a couple of exhibits which I'm going to have him introduce through his testimony.

MR. MCCANN: Nothing other than land survey?

MR. SCHMIDT: Just land surveying.

MR. MCCANN: Just a couple quick questions as to the scope of his proffer, if I, if I may?

CHAIR: Sure. Are you finished, Mr. Schmidt?

MR. SCHMIDT: Yes.

CHAIR: Okay.

MR. SCHMIDT: Yes, his survey speaks for itself.

CHAIR: Voir dire.

MR. MCCANN: Real quick.

CHAIR: Okay, sure.

MR. MCCANN: Since he's only being offered in land surveying. Good morning, sir.

MR. LEMMERMAN: Good morning.

MR. MCCANN: In terms of your preparation of site plans, your testimony about your experience in that regard, how many approximately site plans have you, have you prepared for projects in Baltimore County as opposed to Baltimore County?

MR. LEMMERMAN: The majority of the work is in Carroll County, but we do work in the surrounding Counties also, so I would say in my lifetime experience of twenty-eight years in the business, ten percent would be Baltimore County.

MR. MCCANN: And those are plans that you prepared as opposed to someone else in your office?

MR. LEMMERMAN: Correct, or had oversight of, yes.

MR. MCCANN: Okay. And any, any, any of those plans in Baltimore County involve a solar array panel in agriculturally zoned property?

MR. LEMMERMAN: Aside from the previous hearing on this case, no, because it's a fairly new entity.

MR. MCCANN: Okay. So, you're not here to talk about the Baltimore County zoning regulations, I take it, is that correct?

MR. LEMMERMAN: I'm here for land surveying purposes.

MR. MCCANN: Okay. Okay. No other questions. Thank you.

CHAIR: Ms. Demilio, any questions? Okay. I guess we'll accept him as an expert in land surveying.

MR. SCHMIDT: Okay. Mr. Lemmerman, did there come a time that you were hired in connection with this property and this project, this process?

MR. LEMMERMAN: Yes, I believe it was May of last year.

MR. SCHMIDT: Okay and what were you hired to do, sir?

MR. LEMMERMAN: Prepare a site plan for a special exception hearing with the alternative that was offered.

MR. SCHMIDT: The special hearing?

MR. LEMMERMAN: Yes.

MR. SCHMIDT: Okay. Now, we've mounted on the board a document that we can see down on the lower right-hand corner, RTF Associates, Inc. Is that the site plan that you prepared?

MR. LEMMERMAN: Yes.

MR. SCHMIDT: Okay. I'm going to ask you maybe to step over to that plan, if I can? And does that plan have your

seal and signature on it, Mr. Lemmerman?

MR. LEMMERMAN: Yes, it does.

MR. SCHMIDT: Okay. Why don't you stand over this way, just so the Board can see it?

MR. LEMMERMAN: Sure.

MR. SCHMIDT: And that's your, your signature. I'm going to ask you a little bit about the property, Mr. Lemmerman. Can you describe to the Board the property that's under consideration here, just tell us a little bit about the site and the neighborhood? Just kind of a general overview?

MR. LEMMERMAN: Sure. The outline of the site that we're discussing is this black, the black lines here. It's 6.4 acres surveyed. There's a, it's off of Fringer Road, which is a rural road that turns into Carrollton Road, once it gets to Carroll County. Carroll County border is about a half a mile that way, if that. And this is Route 30, Maryland Route 30, a State highway.

MR. SCHMIDT: Also known as Hanover Pike?

MR. LEMMERMAN: Correct.

MR. SCHMIDT: Okay.

MR. LEMMERMAN: The, generally, this is a, agricultural land as you can see from the aerial. It's surrounded by lands that are owned and farmed by the Lippys. All the land to the north, the west and the south is in agricultural preservation already. I think Mr. Lippy and the

family has a, over twenty-two hundred acres from what I understand in agricultural preservation between the two Counties in this area. The six acres particularly is not in an agricultural preservation easement, therefore, it would be technically eligible for two residential lots by, in the RC-2 zone. There's a larger tract of land here that has a, I think one or two houses on it. I believe, it appears to be two houses on the site and then some residential lots on the right, which is behind them is also agricultural land.

MR. SCHMIDT: Okay and you've indicated that it's part of the Lippy family holdings. Is this a separate lot or is it part of other lots, is it part of a larger tract?

MR. LEMMERMAN: This is an existing lot of record.

MR. SCHMIDT: Okay. So, the 6.5 is its own lot of record?

MR. LEMMERMAN: Yes.

MR. SCHMIDT: Okay and you indicated that it could be subdivided under the RC-2 regulations if the Lippys decided to residentially develop it?

MR. MCCANN: Objection.

MR. LEMMERMAN: By right, yes.

MR. SCHMIDT: Okay.

CHAIR: Basis?

MR. MCCANN: He's, he's, was specifically not going to testify about the Baltimore County zoning regulations and

what's, including what's permitted and not permitted. I'm sorry?

BOARD: Keep your voice up.

MR. MCCANN: Did you get that?

CHAIR: I did, I did.

MR. MCCANN: Okay.

CHAIR: Well, it was too late, it was so quick, but we'll let it go, Mr. McCann.

MR. SCHMIDT: Okay. I, I mean, I'm going to ask, I mean, Mr. Lip, or Mr. Lemmerman, you are familiar from preparing site plans with the Baltimore County zoning regulations, are you not?

MR. LEMMERMAN: Yes.

MR. SCHMIDT: Okay. I mean, okay. I'm not going to ask him a bunch of expert witness questions on the solar farms and the bills and all that kind of stuff.

CHAIR: Okay, overruled.

MR. SCHMIDT: But as a surveyor, I think he can certainly render opinions if he's worked with them before. So, okay, you said it's an (inaudible) of record and the zoning, again, for the, for the record?

MR. LEMMERMAN: It's RC-2.

MR. SCHMIDT: Okay. Can you describe briefly, and I know we have other witnesses, but what's proposed here, Mr. Lemmerman?

MR. LEMMERMAN: Sure. The, there's zoning setback lines that are shown also on this particular drawing. It is thirty-five feet on the north and western property lines and because of the road (inaudible) it's seventy-five feet from the center line of a public road. So, there's setbacks. Inside the setbacks, are proposed solar arrays with proposed landscaping around the perimeter between the property lines and the zoning lines. I could pull this down and show the overall --

MR. SCHMIDT: Why don't you do that?

MR. LEMMERMAN: Okay.

BOARD: Well, if I may?

MR. LEMMERMAN: Yes, sir?

BOARD: Is that marked for identification?

MR. SCHMIDT: Yeah, I'll mark it for the record.

BOARD: Because we're going to be going to, jumping to another --

MR. SCHMIDT: Because it's two pages.

CHAIR: Because we're talking about it right now.

MR. SCHMIDT: For the record, he's identified it and I'm going to mark it as Petitioner's Exhibit 2-A, if I can. And this is the plan that you prepared, Mr. Lemmerman, that you've described to the Board, correct?

MR. LEMMERMAN: Correct.

MR. SCHMIDT: Okay. There's another page, which is

just an overlay, I'll mark 2-B, and then collectively introduce them, if that's okay, Mr. Garber.

MR. LEMMERMAN: So, this is a, this is actually the landscape plan that was proposed and approved but I don't want to get into that because I have, we have the more qualified landscape expert witness here today but what is shown between, in these, inside of the zoning lines, setback lines, is the proposed solar array for the most part. They're facing north and south because they're tracking, again, I'm not going to get too involved because there's more qualified expert witnesses and that's what we see here.

MR. SCHMIDT: Okay and the panels are the vertical lines that are shown inside the setbacks?

MR. LEMMERMAN: That's correct. They are, what's proposed will be the rows of the arrays and in between will be converted into lawn or maintained vegetation basically.

MR. SCHMIDT: Okay and Mr. Lemmerman, is this, is this use permitted under the current zoning regulations in your view?

MR. MCCANN: Objection.

CHAIR: You, you, you introduced him as only being for land surveying. Now, you're asking him to opine, I'm, I'm going to sustain that.

MR. SCHMIDT: Okay. If I can, with the Board's indulgence, I'll ask him about his familiarity with the

Baltimore County zoning regulations.

CHAIR: Okay.

MR. SCHMIDT: I mean, ultimately, it's a question for the Board to make a determination of.

CHAIR: Right.

MR. SCHMIDT: And, where you're going to hear legal argument on it but as one who prepared this plan --

CHAIR: Yeah, but just spec, yeah, but he was specifically qualified as a land surveyor. Now you're asking him to give an opinion on use regulations.

MR. SCHMIDT: Well, I guess what I'm saying, Mr. Alston, as, as someone who is required under the County zoning ordinance, these plans have to be sealed by an engineer or surveyor or architect, he sealed this plan. He has to have some fundamental understanding of the County zoning regulations in order to do that. It's not dispositive on your determination.

CHAIR: Overrule. Go ahead.

MR. SCHMIDT: Okay. Mr. Lemmerman, in your opinion at least, when you prepared this plan, I assume you prepared thinking that this was a legal site plan showing a legal use on this property?

MR. LEMMERMAN: Yes, it's a permitted use with the special exception.

MR. SCHMIDT: As what?

MR. MCCANN: Mr., Mr. Alston, may I have a continuing objection? I don't want to keep on interrupting.

CHAIR: Oh, absolutely, yes.

MR. MCCANN: Okay, thank you.

MR. SCHMIDT: Okay. As what?

MR. LEMMERMAN: As a public utility.

MR. SCHMIDT: Okay. Thank you.

MR. LEMMERMAN: Based on precedence.

MR. SCHMIDT: Okay. Now, in order to accommodate this use, are there any zoning variances that are required?

MR. LEMMERMAN: No.

MR. SCHMIDT: Okay. You meet all the setbacks?

MR. LEMMERMAN: Yes, sir.

MR. SCHMIDT: No other variances, no other requirements under the zoning regulations come into play that would require to be varianced in order to accommodate your plan, is that correct?

MR. LEMMERMAN: Correct.

MR. SCHMIDT: Okay. Mr. Lemmerman, tell us a little bit about what, if any, environmental constraints there are associated with the property?

MR. LEMMERMAN: This particular property has no significant environmental features. The, there's no steep slopes, there's no streams or stream buffers that would affect this proposal. There's no wetlands identified on or near the

site that would, the setbacks would affect it so I'm not aware of any environmental concerns at all on this project.

MR. SCHMIDT: Are there any other restrictions, by deed or anything else, that in the, in, in the process of preparing this plan, you have come up with or identified, which would prohibit the use?

MR. LEMMERMAN: No.

MR. SCHMIDT: It's not restricted by any of the deeds or anything that you're aware of?

MR. LEMMERMAN: No.

MR. SCHMIDT: Okay. There was a question below, so let me ask you, Mr. Lemmerman, you indicated that this property is a, is its own separate lot of record as def, as shown in the land records, correct?

MR. LEMMERMAN: Yes.

MR. SCHMIDT: Has this property ever been subdivided or, or, or developed in any way?

MR. LEMMERMAN: No, it has not.

MR. SCHMIDT: Okay. Okay. That's all the questions I have of this witness.

CHAIR: Cross?

MR. MCCANN: Thank you. Mr. Lemmerman, am I, your name, right?

MR. LEMMERMAN: Lemmerman.

MR. MCCANN: Lemmerman, I'm sorry.

MR. LEMMERMAN: That's okay.

MR. MCCANN: You said the lot is a lot of record, I understand that and you also mentioned that the area around the lot to the north, to the west and to the south is also owned by Mr. Lippy and/or his family, correct?

MR. LEMMERMAN: Correct.

MR. MCCANN: And you mentioned the number, twenty-two hundred acres, how much of that land, or all of it for that matter, is, surrounds this 6.4-acre parcel?

MR. LEMMERMAN: There are several tracts of land that the Lippys own or farms, whatever you want to call them, that touch this, but by my count, it was over four hundred acres that, if you're including the home farm that Mr. Lippy lives on.

MR. MCCANN: So, around four hundred acres adjoins or, adjoins this parcel?

MR. LEMMERMAN: Correct.

MR. MCCANN: Or adjoins other parcels that adjoins this parcel?

MR. LEMMERMAN: Yeah, (inaudible).

MR. MCCANN: Okay and in terms of buildings, whether they be farm buildings, houses, what buildings are on that, are on that four hundred acres that you're aware of?

MR. LEMMERMAN: There are mostly farmland and I, I really don't, haven't personally visited every one of those

properties, so I can't really speak with certainty.

MR. MCCANN: But there are structures somewhere on that four hundred acres?

MR. LEMMERMAN: I would imagine there would be some farm structures, but again, I'm just speculating.

MR. MCCANN: Were, were you asked at any point in time to locate this solar array panel somewhere else in that four hundred acres or were you told just to put it here?

MR. LEMMERMAN: This was the site that was picked out from what I understand, because of the agricultural preservation restrictions on the majority of the remaining lands.

MR. MCCANN: Okay. You just said the majority, I thought you said earlier that all of the land, that is all the remaining four hundred, of the remaining three hundred and ninety-four acres, is, is it your understanding that all of that land is, is in agricultural preservation or just some of it?

MR. LEMMERMAN: I didn't, that's not what I said. There is, I said they have twenty-two hundred acres in total.

MR. MCCANN: Total.

MR. LEMMERMAN: And agricultural preservation program that I'm aware of.

MR. MCCANN: Right.

MR. LEMMERMAN: But as far as land owned, you asked

me if land that touches them owned by the Lippys can, you know, contiguous property owners for the most part, by my count, was around four hundred plus acres --

BOARD: Please keep your voice up because you're also away from the microphone.

MR. LEMMERMAN: Sorry.

MR. MCCANN: Let me be clear then, I'm, I apologize. Of the four hundred acres that, that is contiguous, how much of that is in ag preservation? Do you know?

MR. LEMMERMAN: I can't answer you with acreages but I do know that all the exact contiguous properties to this one is in agricultural preservation.

MR. MCCANN: So, are you, are you certain enough to say that there is some part, portion of that four hundred acres that is not under ag easement?

MR. LEMMERMAN: I will have to defer that to Mr. Lippy. I can't answer your question.

MR. MCCANN: Okay. And I think you may have mentioned this already, but you have prepared a site plan for solar array panel on farmland in Baltimore County at any point prior to this case, correct?

MR. LEMMERMAN: I have in other counties, but not Baltimore County.

MR. MCCANN: Okay. You stated that the proposed use, in your opinion, is a, quote, public utility based on

precedent. My first question is, what precedent are you talking about?

MR. LEMMERMAN: I was referring to a previous case by Mr. Bev, Beverungen, excuse me, it's on Peffer (phonetic) Road, I believe, in the Bel Air area.

MR. MCCANN: Okay. Any other precedent other than that that you're aware of, that supports your opinion?

MR. LEMMERMAN: That was the precedent I was given and used to, to prepare our site plan.

MR. MCCANN: Who gave that to you?

MR. LEMMERMAN: That would have been our, our client.

MR. MCCANN: But any other precedent that you're aware of other than that decision that you're referring to?

MR. LEMMERMAN: In this County?

MR. MCCANN: Yes.

MR. LEMMERMAN: No, that's, that's the only one I'm aware of.

MR. MCCANN: Any other basis other than that president, other than, other than that precedent, for your opinion that this proposed use is a public utility, as you stated?

MR. LEMMERMAN: That and that Mr. Beverungen had reaffirmed that decision in our previous case.

MR. MCCANN: In this case?

MR. LEMMERMAN: Yes.

MR. MCCANN: Any authority other than that?

MR. LEMMERMAN: No.

MR. MCCANN: Do you know how a public utility is defined under County or State law?

MR. LEMMERMAN: I haven't memorized the definition, no.

MR. MCCANN: Have you, did you look at that?

MR. LEMMERMAN: I have.

MR. MCCANN: Okay and how is it defined? Do you know?

MR. LEMMERMAN: I'm, I'm not going to speculate.

MR. MCCANN: Is there a definition in State law for public utility?

MR. LEMMERMAN: I'm not going to answer that. I can't answer that.

BOARD: Again, please keep your voice up.

MR. LEMMERMAN: Sorry.

MR. SCHMIDT: The witness said he can't answer that, doesn't know.

MR. MCCANN: Okay. And who is it that is the public utility? Is it Mr. Lippy, is it RTF, or is it Air, Earth & Air Technologies?

MR. LEMMERMAN: My understanding is it's the use that we're proposing.

MR. MCCANN: It's a public utility use, in your

opinion?

MR. LEMMERMAN: That was the land use that we were, yeah, that we were --

MR. MCCANN: Yeah, so you don't, you don't contend that either Mr. Lippy or his family or your company or Earth & Air Technologies is a public utility, you don't make that contention?

MR. SCHMIDT: Objection.

CHAIR: Basis?

MR. SCHMIDT: I, that's beyond the scope and, and I don't know that this, I, I don't know --

CHAIR: Overruled.

MR. SCHMIDT: -- what the --

CHAIR: Overruled.

MR. SCHMIDT: Okay.

MR. LEMMERMAN: Could you repeat the question?

MR. MCCANN: Yeah. The question is simply, do you or do you not contend that either Mr. Lippy and/or his family, Earth & Air Technologies or your company, RTF, is a public utility under the law as you know it, as you understand it?

MR. LEMMERMAN: I wouldn't define myself as a public utility, that's for sure.

MR. MCCANN: Okay. What about Earth & Air Technologies?

MR. LEMMERMAN: From what I, my understanding is if

they were approved for this use and this was connected to the grid, they are a public, in that realm of use, just like BG&E, BG&E is a private company from what I understand.

MR. MCCANN: Okay. So, the answer is yes, Earth & Air Technologies, in your opinion is a public utility?

MR. LEMMERMAN: Potentially, under some circumstances, they could be.

MR. MCCANN: Under what circumstances?

MR. LEMMERMAN: This particular project, (inaudible) grid and sold to the public.

MR. MCCANN: So, so is it your opinion that the selling of electricity to the public is what makes a company, such as Earth & Air Technologies, if it does that, a public utility?

MR. LEMMERMAN: I'm going to defer that to other experts that are more qualified.

MR. MCCANN: Okay. So, you don't know? You don't know?

MR. LEMMERMAN: I'm not going to answer that.

MR. MCCANN: Do you, do you or do you not know the answer?

CHAIR: That's a yes or a no?

MR. LEMMERMAN: I'm going to say no. I do not know the exact answer to that question.

MR. MCCANN: And I understand, you, I think you

mentioned that someone else is going to talk about the landscaping, is that correct?

MR. LEMMERMAN: Yes.

MR. MCCANN: Okay. Let me just ask you quickly, though, since you prepared the plan itself, and I'm looking at Petitioner's 2-B, if you don't mind me standing that close to you.

BOARD: You're going to have to speak up because your back is to the microphone.

MR. MCCANN: Okay.

MS. DEMILIO: Why don't you first of all move the board closer?

MR. MCCANN: Okay.

MR. LEMMERMAN: Closer to the microphone as well?

MS. DEMILIO: Exactly.

MR. MCCANN: Yeah, okay. Thank you. In terms of Petitioner's 2-A, which is, I think you described as the landscape plan --

MR. SCHMIDT: It's 2-B.

MR. MCCANN: 2-B?

MR. SCHMIDT: Yeah.

MR. MCCANN: I'm sorry. I see where the solar array panels are located. The area outside the solar array panels, is that thirty-five-foot setback that you mentioned?

MR. LEMMERMAN: On these lines, yes.

MR. MCCANN: Okay and is, and that thirty-five area, that thirty-five-foot area in its entirety will be used for landscaping, or do you know? In other words, will any, will any, will any portion of it be used for anything connected with the panels themselves, other than landscaping (inaudible)?

MR. LEMMERMAN: There is a proposed screen perimeter fence.

MR. MCCANN: Okay.

MR. LEMMERMAN: That will run basically on these zoning setback lines to contain all solar activities inside.

MR. MCCANN: Okay. So, landscaping (inaudible) be outside that fence?

MR. LEMMERMAN: Correct.

MR. MCCANN: And that fence detail is depicted on 2-B, correct?

MR. LEMMERMAN: Yeah, a representation, yes.

MR. MCCANN: So, a chain link fence. Do you know how high that fence will be?

MR. LEMMERMAN: Roughly, six, six feet.

MR. MCCANN: Okay. Will any of the area outside of the chain link fence, in the, in the area where the landscaping will be, will any of that be used for farming purposes?

MR. LEMMERMAN: I don't believe there's enough acreage in there to be farmed (inaudible).

MR. MCCANN: Okay and then obviously the area in and

around the solar array panels, those areas themselves, will not be used for farming purposes, correct?

MR. LEMMERMAN: Not to my knowledge.

MR. MCCANN: Okay. Okay. I'm going back, I think Ms. Demilio reminded me that I may not have asked you this question and that is whether Mr. Lippy, the owner of the property, whoever that may be, Mr. Lippy or, and/or his family, whether you contend that they, him or they, is a public utility under the law as you understand it?

MR. SCHMIDT: I'm going to object to that question.

MR. LEMMERMAN: I don't know the answer, I don't know how to answer the question.

CHAIR: It's overruled.

MR. MCCANN: You don't know?

MR. LEMMERMAN: I don't know.

MR. MCCANN: Okay. Your company, RTF, right, that's the --

MR. LEMMERMAN: Yes.

MR. MCCANN: Who are the owners of that company?

MR. LEMMERMAN: Myself and I have a minority partner.

MR. MCCANN: And who is that?

MR. LEMMERMAN: His name is Larry Slomiker (phonetic). He's worked for the company since the seventies.

MR. MCCANN: Okay. What kind, it, it's a private corporation?

MR. LEMMERMAN: Yes.

MR. MCCANN: What type of company is it?

MR. LEMMERMAN: It's an S corporation.

MR. MCCANN: Okay. Other than you and the other owner, any other owners or employees even?

MR. LEMMERMAN: We have employees, yes.

MR. MCCANN: How many employees?

MR. LEMMERMAN: Roughly eight.

MR. MCCANN: So, it's a private corporation, not publicly traded in any way?

MR. LEMMERMAN: Correct.

MR. MCCANN: Okay. Thank you. No other questions.

CHAIR: Ms. Demilio?

MS. DEMILIO: The area encompassing the 6.45 acres, is farmland now?

MR. LEMMERMAN: I guess it is.

MS. DEMILIO: (inaudible)?

MR. LEMMERMAN: Correct.

MR. MCCANN: Do you have another copy? You have another copy of the plan, 2-A, 2-B?

MR. SCHMIDT: The plan? I, I may. I'll have, I'll, if I can, I'll look for it in a break. I would, I think they're done their questions, I wanted to mark this as 2-B and then collectively offer both of the exhibits, Petitioner's 2-A and 2-B.

CHAIR: Do you have any follow-up questions based upon --

MR. SCHMIDT: No, I don't have any follow-up questions of Mr. Lemmerman.

BOARD: And do you have copies of the, 2-A and 2-B for the Board?

MR. SCHMIDT: Yes. The ones that are on the board, I'll, I'll, I have marked and I will hand up to him.

BOARD: Right, well, those are the exhibits --

MR. SCHMIDT: DO you want them right now?

BOARD: Do you have copies for Board members?

MR. SCHMIDT: Yes, we do.

BOARD: Okay.

MR. SCHMIDT: Would you like them in front of you right now?

BOARD: Yeah, actually, that would be helpful.

MR. SCHMIDT: Okay.

BOARD: Thank you.

MR. SCHMIDT: That'd be fine.

MR. LEMMERMAN: (inaudible) go get them?

MR. SCHMIDT: Sure. And if he can be excused?

MR. MCCANN: And do you have one for me as well, Larry?

MR. SCHMIDT: Yeah. Let's go off the record. John, if you have extra copies, please give it to the Board. Where's

the other pages? Where's 2-A, the one I marked 2-A? Just because, off the record if I can, because other witnesses may well refer to these, if I can keep these up here.

CHAIR: Sure, I understand.

MR. SCHMIDT: Formally, put them in the file, but I'll provide you with other copies. I'd ask Mr. Lemmerman to bring them. Chris, why don't we put both of these up so they can see both of them? We might want to raise this one so they're high enough to be seen.

MS. DEMILIO: (inaudible).

MR. SCHMIDT: Okay.

VOICE: I have two copies of each additional.

VOICE: Okay.

BOARD: And, Mr. McCann, do you have a copy?

MR. MCCANN: I have it from below. I don't know, I was just looking to see if it was the same one. I don't need an extra copy if it's the same one. What's the date of that, (inaudible)?

VOICE: These are the exact same things you have (inaudible).

MR. MCCANN: Larry?

MR. SCHMIDT: Yes.

MR. MCCANN: Why don't you tell Larry? Okay.

VOICE: I have two copies of each. I was just mentioning this is the exact same thing Mr. McCann has except

with the exception that we expanded the view.

MR. SCHMIDT: The view, from below.

VOICE: Right.

MR. SCHMIDT: But the property is the same, everything else (inaudible).

VOICE: Everything is the same --

BOARD: And the copies in Mr. Schmidt's hand, that's the same as 2-A?

MR. SCHMIDT: Yes.

BOARD: Up there?

MR. SCHMIDT: Right.

VOICE: Yes, so the rest of these are identical and I have two copies --

CHAIR: We'll take them. We'll figure it out.

BOARD: Okay.

MR. SCHMIDT: (inaudible). Okay. Okay. Just for the record, Mr. McCann asked me to clarify, I think we've offered and they've been accepted, Exhibits 2-A and 2-B, which is the two-page site plan, 2-A being the aerial photograph with the information superimposed and 2-B being the schematic. Those are, Mr. McCann, the same documents that were offered below that are in the Board's file as an exhibit from below, with the exception of, there's, I think the, the, the camera has been pulled out a little bit so you actually see a little bit more of the surrounding property.

BOARD: And that's actually noted on the bottom of 2-A?

MR. SCHMIDT: Yes, I was going to say that.

BOARD: Revision 2/6/2017, remove LOD and expand view?

MR. SCHMIDT: Right. And then you can see, the first note 6/15 was before actually Judge Beverungen even heard the case and it was filed but those revisions are shown at the bottom and I think Mr. Lemmerman has described the property. So, I think that is now in evidence.

MR. MCCANN: The only thing I would add is 2-B was not introduced below.

MR. SCHMIDT: Yes, yes, that's correct. We didn't have a final landscape plan approved at that time. We do now have a final landscape approved, plan, and I will be having a witness testify that, who is an RLA, who prepared the final landscape plan. Just while I'm, it might, might be helpful and this is a County document, it's in file, but I'm going to mark it if I can, Mr. McCann asked the witness about precedent in this case and I've marked Petitioner's exhibit number three. This is already in your file as an exhibit below, but it is Administrative Law Judge Beverungen's opinion in case 2160086-X, for 11121 Feffer's Road where this similar issue came before Mr. Beverungen. Counsel, do you need a copy of that? I assume you have it. I do have some extra copies.

MR. MCCANN: Do you have an extra one?

MR. SCHMIDT: Since this is a County document, I don't think it has to be authenticated by a witness, it's just a copy of a County document.

CHAIR: Sure.

MR. SCHMIDT: I've got one for each of you and have marked those all.

CHAIR: Any objections to this?

MR. SCHMIDT: As Exhibit 3.

BOARD: Objections?

CHAIR: Any objections?

MR. MCCANN: No, no objection.

MR. SCHMIDT: Okay. With that being said, my next witness would be Don Lippy. I'm, yeah, Mr. Lippy, can you go on up?

BOARD: Okay. Do you swear and affirm under the penalties of perjury, that the testimony you are about to give is true and correct to the best of your knowledge and belief?

MR. LIPPY: Yes.

BOARD: And please state your name?

MR. LIPPY: Donald Lippy.

BOARD: And spell your last name?

MR. LIPPY: L-I-P-P-Y.

BOARD: And your address?

MR. LIPPY: 421 Leesmill Road, Hampstead, Maryland

21074.

BOARD: Thank you.

MR. SCHMIDT: Okay. Mr. Lippy, you can be seated, just keep your voice up for us.

MR. LIPPY: Keep it up?

MR. SCHMIDT: Keep it up so we can hear you, okay? You don't have any problem being heard usually, I know.

MR. LIPPY: No.

MR. SCHMIDT: Okay. Mr. Lippy, you're the owner of the subject property, which is generally known as 15700 Hanover Pike?

MR. LIPPY: Yes.

MR. SCHMIDT: Who do you own that with, if anyone?

MR. LIPPY: My wife.

MR. SCHMIDT: Okay and can you just briefly describe that property and when I say that property, you were here for Mr. Lemmerman's testimony?

MR. LIPPY: Yes.

MR. SCHMIDT: And you heard him describe this separate lot, which he described as 6.5 acres, which is irregularly shaped with frontage on Maryland Route 30 so, how long have you owned that property?

MR. LIPPY: Myself, my wife and I have owned it for five years, but Lippy Brothers has owned it for about thirty-five years.

MR. SCHMIDT: Okay. Now, Lippy Brothers, who are the Lippy Brothers?

MR. LIPPY: Lippy Brothers, right now, are myself and my brother.

MR. SCHMIDT: Okay. Were there other members of Lippy Brothers?

MR. LIPPY: At one time, there were four.

MR. SCHMIDT: Four brothers?

MR. LIPPY: Yes.

MR. SCHMIDT: And --

MR. LIPPY: And that was Lippy Brothers Incorporated.

MR. SCHMIDT: Okay.

MR. LIPPY: Since 1965.

MR. SCHMIDT: Okay and the other two brothers, are they no longer involved in the corporation?

MR. LIPPY: One's de, one's deceased and the other one's get out of the corporation in about 1990.

MR. SCHMIDT: Okay. But Lippy Brothers, or at least the entity that you were a part of and now you individually have had an association as owner of this property for how long?

MR. LIPPY: As, as Donald Lippy, for about five or six years. We re-organized and my brother took some farms and I took some farms and this is one of my farms.

MR. SCHMIDT: Okay. But your association with Lippy Brothers, how long has this been in the Lippy Brothers' realm?

MR. LIPPY: Oh, fifty years.

MR. SCHMIDT: Fifty years.

MR. LIPPY: May, maybe a little more.

MR. SCHMIDT: Okay. Tell us a little bit about the property, what's it look like, how's it used?

MR. LIPPY: Well, we farm it, we farm all around it, it's a, just a special part, I mean, it's a, I, a partial that I kept out of land, ag land preservation just because it was available to have two lots on it and, and it was a vestment, I mean, I hold it and maybe, you know, maybe part of retirement, you know?

MR. SCHMIDT: Okay and you presently use it for agricultural operations and farming now?

MR. LIPPY: Yes.

MR. SCHMIDT: What do you grow there?

MR. LIPPY: Last year I think it was soy beans.

MR. SCHMIDT: Okay. What else have you grown there?

MR. LIPPY: Corn, soy beans, string beans, wheat, barley and right behind it right now is a field of alfalfa.

MR. SCHMIDT: Okay. Now, you're familiar with the company Earth & Air Technologies, correct?

MR. LIPPY: Yes.

MR. SCHMIDT: And you've made an arrangement with them, have you not, to change the use from the active plant, growing of, of crops there to, to another use, correct?

MR. LIPPY: Yes.

MR. SCHMIDT: What, what do you propose doing here?

MR. LIPPY: Solar panels.

MR. SCHMIDT: Okay. Can you tell us just a little bit, from your perspective, and I know Mr. Donithan will testify as the owner of the company but your perspective, tell the Board a little bit about what's proposed here?

MR. LIPPY: Well, it's a little less than six acres of solar panels and, and it's supposed to be the new, oh, God, I can't think, --

MR. SCHMIDT: Can't ask him.

MR. LIPPY: I can't ask him. Farm, --

MR. SCHMIDT: I can't tell you.

MR. LIPPY: Okay. It's --

MR. SCHMIDT: Senioritis, Mr. Lippy.

MR. LIPPY: Yes, I know it is, that's what it is.

MR. SCHMIDT: I know how it is.

MR. LIPPY: Community solar, community solar program.

MR. SCHMIDT: Okay.

MR. LIPPY: That's, that's the idea.

MR. SCHMIDT: Okay.

MR. LIPPY: I, I couldn't come up with community to save my name.

MR. SCHMIDT: Okay. Okay. I'm going to show you some aerial photos of the exhibit that I, let me see, offer,

I've got to change this number, the Board's indulgence for just a minute because --

BOARD: I believe you're on four.

MR. SCHMIDT: I am and I had previously marked this, Board's indulgence. I pre-marked these and I'm a little bit out of my sequence because of introducing the copy of Mr. Beverungen's decision in the other case. I'm going to hand to the Board, and I'll give one to each member, if I can. Just some aerial photographs which are taken off the County, My Neighborhood, website as indicated in the bottom. Mr. McCann, these have a wrong exhibit number on them but it's the same one.

MR. MCCANN: It should be four?

MR. SCHMIDT: It should be 4-A, B and C.

MR. MCCANN: Thank you.

MR. SCHMIDT: And again, these are taken from the public domain as shown from the My Neighborhood map. Mr. Lippy, I'm going to give --

VOICE: Let me just say, are you introducing these as (inaudible)?

MR. SCHMIDT: Why don't you take one of them and make it the exhibit, but you can certainly all have them. And, well, there's enough for everybody. How, whatever is easiest for you. Mr. Lippy, I'm going to hand you three pages of an aerial exhibit and what I'd like you to do is just take a look

at that. Do you need reading glasses or are you okay?

MR. LIPPY: I got them in my pocket if I need them.

MR. SCHMIDT: Okay and if I can, let's start on page one and tell the Board exactly what it is you're looking at and, and if you can, describe not only the subject property, but other properties that you may own or the Lippy Brothers may own that are shown on Exhibit, Exhibit 4-A?

MR. LIPPY: Okay. You want to start with this?

MR. SCHMIDT: Yes, sir.

MR. LIPPY: It's, that's the 6.4 acres, which I pay taxes on 6.8 acres, okay? Anyway, this is where the solar panels --

MR. SCHMIDT: And that's outlined in the blue line?

MR. LIPPY: In the blue line, yeah.

MR. SCHMIDT: Okay.

MR. LIPPY: Now, on the other side of it is, is the rest of this farm, which is, we call the Bortner (phonetic) farm, which is seventy-three acres.

MR. SCHMIDT: Okay. Now, that's the farm, that's the area to the north and above --

MR. LIPPY: That's, that's (inaudible), yeah.

MR. SCHMIDT: North and west or --

MR. LIPPY: West, north and west.

MR. SCHMIDT: Okay.

MR. LIPPY: Follows the, follows the (inaudible) Road

back.

MR. SCHMIDT: Okay.

MR. LIPPY: And it's seventy-three acres here.

MR. SCHMIDT: And do you own that?

MR. LIPPY: Yes.

MR. SCHMIDT: Do you own that individually or is that part of Lippy Brothers?

MR. LIPPY: Individually.

MR. SCHMIDT: Okay and is, you indicated that the 6.5-acre property is not in ag preservation, correct?

MR. LIPPY: No, right.

MR. SCHMIDT: How about the seventy-three acres, which is next to it?

MR. LIPPY: There is everything in Baltimore County, which is another forty-eight acres, is ag preservation, then there's nineteen acres behind that in Carroll County which is not in preservation.

MR. SCHMIDT: Okay. As Mr. Lemmerman indicated, this property is very close, is it not, to the Baltimore County/Carroll County border?

MR. LIPPY: Yes, back half of the, back, nineteen acres of farm is in Carroll County.

MR. SCHMIDT: So, if one would drive from Hanover Pike down Fringer Road or to the left, going right to left on the drawing, one would eventually get to Carroll County?

MR. LIPPY: Right.

MR. SCHMIDT: How far back is the Carroll County line?

MR. LIPPY: Half a mile, something like that.

MR. SCHMIDT: Okay and you indicated that what you called the Bortner farm, which is the farm that touches this property to the north --

MR. LIPPY: Right, surrounded that.

MR. SCHMIDT: Okay. That extends into Carroll County?

MR. LIPPY: Yes.

MR. SCHMIDT: Okay and all of the acreage of the Bortner farm is in land preservation?

MR. LIPPY: All the, in Baltimore County.

MR. SCHMIDT: All that's in Baltimore County. Okay. How about the property to the south of the Fringer Road?

MR. LIPPY: That is owned by, when we reorganized, this farm went, it's a D.E. Lippy Incorporated, but I am the sole stockholder (inaudible).

MR. SCHMIDT: You are, you are D.E. Lippy?

MR. LIPPY: I am D.E. Lippy Incorporated. It used to be Lippy Brothers, now it's D.E. Lippy and it's, there's two farms there. The first farm is called the Fringer farm, which is, has about a hundred and, I'm guessing, a hundred and twenty acres in Baltimore County and then it's got another seventy-

five acres in Carroll County and then there's another farm behind it, it's a hundred and sixteen acres, which is in Carroll County.

MR. SCHMIDT: Okay.

MR. LIPPY: It's all contiguous right at Fringer Road.

BOARD: I'm sorry, just so I know, where is this on the map?

MR. SCHMIDT: This is, the Bortner prop, Bortner farm?

BOARD: Right.

MR. SCHMIDT: This is the other one that he's describing now, that also goes back to Carroll County, correct?

MR. LIPPY: Yes.

MR. SCHMIDT: Mr. Lippy?

MR. LIPPY: Yes.

MR. SCHMIDT: Okay. Actually, --

MR. LIPPY: And that's all an easement.

MR. SCHMIDT: That's all an ag, easement too. So, the Bortner farm, which is to the north and the west and abuts this property, is an easement in Baltimore County?

MR. LIPPY: Yes, yes.

MR. SCHMIDT: And the, I think you called it the Fringer farm?

MR. LIPPY: Fringer, Fringer, yeah, Fringer.

MR. SCHMIDT: Farm, which is to the south on the other side of, of --

MR. LIPPY: Fringer Road.

MR. SCHMIDT: -- Fringer Road, is also an easement.

MR. LIPPY: West of thirty, yeah.

MR. SCHMIDT: And west of thirty, okay.

MR. LIPPY: Yes.

MR. SCHMIDT: Is that shown any better, Mr. Lippy, in any of the other photographs that are submitted and, if so, maybe you could describe that because some of those are a little further out.

MR. LIPPY: The last one shows a little more of it.

MR. SCHMIDT: Okay.

MR. LIPPY: Not a whole lot.

MR. SCHMIDT: Okay.

MR. LIPPY: That's, you can see the Baltimore County line.

MR. SCHMIDT: Okay and --

MR. LIPPY: Baltimore/Carroll County line (inaudible).

MR. SCHMIDT: And the witness is referring to Exhibit 5-C --

MR. MCCANN: Four.

CHAIR: Four, yeah.

MR. SCHMIDT: I'm sorry, 4-C, I apologize, 4-C and

the Carroll County line is shown in what color, Mr. --

MR. LIPPY: Red.

MR. SCHMIDT: Okay. The red line that runs from the top of the page to the bottom, Mr. Lippy, correct?

MR. LIPPY: Yes, top to the bottom.

MR. SCHMIDT: Okay and the subject property is also shown outlined in blue?

MR. LIPPY: Right.

MR. SCHMIDT: Okay and then I think the, does, does Fringer Road change its name as the road gets into Carroll County?

MR. LIPPY: Carrollton Road in Carroll County, it's right here.

MR. SCHMIDT: Okay and that's shown on the map as --

MR. LIPPY: Yes.

MR. SCHMIDT: -- Carrollton Road?

MR. LIPPY: Carrollton, Fringer out here, I think it's Fringer. Here in Carrollton, when it gets into Carroll County.

MR. SCHMIDT: Okay. Now, the properties and let's, let's focus on Baltimore County. I think the Board's jurisdiction stops at the Baltimore County/Carroll County line. But the properties in Baltimore County, the, part of the Bortner farm and part of the Fringer farm that you've described, both of those are in an ag easement, you've

indicated, correct?

MR. LIPPY: Yes.

MR. SCHMIDT: And they limit and restrict the use of the property to an agriculture use, correct?

MR. LIPPY: Right.

MR. SCHMIDT: And how do you use them now? Exactly what is being used for, on those properties now?

MR. LIPPY: (inaudible) crops, that's it.

MR. SCHMIDT: Okay and what kind of crops are you growing?

MR. LIPPY: Corn, wheat, soy bean, string beans, did I mention them all? Corn, wheat, soy bean, string beans and some hay, wheat and barley.

MR. SCHMIDT: Okay, okay.

MR. LIPPY: It depends on the year and the rotation.

MR. SCHMIDT: The rotation, okay. And you're still actively involved in the farming operation?

MR. LIPPY: Yes.

MR. SCHMIDT: Okay. Do you have family involved?

MR. LIPPY: Yes.

MR. SCHMIDT: Who is that?

MR. LIPPY: I have a son-in-law and I have four grandchildren that are in the fifteen to twenty-four, which is, they're all plan, would like to come back.

MR. SCHMIDT: Okay.

MR. LIPPY: In the farming operation.

MR. SCHMIDT: Okay. I would offer that, those three exhibits as 4-A, B and C. Again, they are just taken from the My Neighborhood data base in Baltimore County and the witness just, has described them.

MR. LIPPY: I didn't put my brother in there, but he's in there too.

MR. SCHMIDT: Your brother's involved as well?

MR. LIPPY: Yeah.

MR. SCHMIDT: Mr. Lippy, how much land either you individually or through any corporations that you control or even the Lippy Brothers, of which you are a member, how much land do you all own or farm in this area, Baltimore County/Carroll County?

MR. LIPPY: Right in that area?

MR. SCHMIDT: Yes, sir.

MR. LIPPY: Probably eight, nine hundred acres.

MR. SCHMIDT: Okay.

MR. LIPPY: And we own most of it, we rent some but additional acres.

MR. SCHMIDT: Okay and do you own other farms elsewhere in Baltimore County?

MR. LIPPY: Yes.

MR. SCHMIDT: Or Carroll County?

MR. LIPPY: Well, yeah, it's a, it's a couple more

farms in Baltimore County, yeah. On the other side of thirty, there's probably around two hundred and some acres on the other side of thirty.

MR. SCHMIDT: Okay.

MR. LIPPY: And, and then we own a good bit, we own about twenty-four or five hundred acres. We own.

MR. SCHMIDT: Okay.

MR. LIPPY: We farm about eight thousand.

MR. SCHMIDT: Okay. But you own about twenty-four hundred acres in Baltimore County and Carroll County?

MR. LIPPY: Yes.

MR. SCHMIDT: And you farm about eight thousand total acres?

MR. LIPPY: Eight to eighty-five, something like that.

MR. SCHMIDT: Okay and I, the difference between those two numbers would be farms or properties that you lease?

MR. LIPPY: Yes.

MR. SCHMIDT: And that could change if you --

MR. LIPPY: It changes from year to year.

MR. SCHMIDT: -- walk away from that lease? I think we're on exhibit number five. Again, I keep having to change these numbers. Mr. Lippy, I, I'd ask you to just help me put together a exhibit showing areas of the properties that, or the properties that you own that are in ag easements and I'm

showing exhibit number five.

MR. LIPPY: Yeah.

MR. SCHMIDT: Ask you to review that. Can you tell the Board exactly what that is and does that accurately show your, your properties that are in agricultural easement?

MR. LIPPY: Yes, yes.

MR. SCHMIDT: And it also identifies, does it not, the Counties in, or the County, either Carroll or Baltimore County?

MR. LIPPY: Right, yeah.

MR. SCHMIDT: Which is an easement?

MR. LIPPY: Yes.

MR. SCHMIDT: Okay. Would the solar farm be permitted in these easement areas?

MR. LIPPY: No.

MR. SCHMIDT: Okay. But, again, it is permitted to the best of your knowledge in the 6.5 acre?

MR. LIPPY: Yes.

MR. SCHMIDT: Okay. Can you tell me, why are you, let's, I guess, business or personal reasons, that you're entering into this arrangement with Mr. Donithan for this construction of this solar farm?

MR. LIPPY: Well, as I, you probably know that farm income up and down, up and down, and this is with family coming on, this would be a twenty-five-year project that would furnish

some income, pretty steady income, not like the, not quite as fluctuation like the farming industry does.

MR. SCHMIDT: Okay.

MR. LIPPY: We go from $8 a bushel of corn, down to $3.50 here about two years.

MR. SCHMIDT: Okay.

MR. LIPPY: The eight, we got, we got an egg complex and, and the price of eggs in the last three years have varied from $2.90 to $.58 a dozen. Right now, they're on the low side.

MR. SCHMIDT: And in terms of, I guess a --

MR. LIPPY: So, this is --

MR. SCHMIDT: I'm sorry.

MR. LIPPY: This is, this would be more steady income, I think.

MR. SCHMIDT: Okay. In terms of a percentage of the property that you farm or even own, we don't have to, I'm not going to ask you to do the math, but this 6.5 acres is a relatively small percentage of the eight thousand or eighty-five hundred acres that you farm?

MR. LIPPY: Yes.

MR. SCHMIDT: Okay and, and why here, why this property?

MR. LIPPY: Well, it's, it wasn't an easement.

MR. SCHMIDT: Okay.

MR. LIPPY: That's one thing.

MR. SCHMIDT: Okay.

MR. LIPPY: It's, most of our property is an easement and, and it's not allowed in, I don't think the State allows it, MALF doesn't allow solar on easement property.

MR. SCHMIDT: Okay. When you said MALF, that's the Maryland Agricultural --

MR. LIPPY: Maryland Agricultural, yeah.

MR. SCHMIDT: -- Easement folks.

MR. LIPPY: Carroll County doesn't, I know, and Baltimore County doesn't so, I know the State doesn't but some of the easements, it's just a County easements and most of them are State easements, so.

MR. SCHMIDT: Okay, okay. I have no other questions of Mr. Lippy.

CHAIR: Cross?

MR. MCCANN: Thank you. Good morning, sir.

MR. LIPPY: Morning.

MR. MCCANN: Déjà vu. The 6.4-acre parcel that we're talking about, when was that created? That is, when was that parcel subdivided, do you know?

MR. LIPPY: Way before we, I say way before but we, we bought it, it was like this.

MR. MCCANN: Okay. So, it wasn't created for the purpose of putting these solar panels on?

MR. LIPPY: No.

MR. MCCANN: Okay and do you know when the properties that you described were put in agricultural easements, when that was?

MR. LIPPY: Oh, man. It's been an easement for, I'm guessing, fifteen or twenty years anyway.

MR. MCCANN: Okay.

MR. LIPPY: I don't have the date.

MR. MCCANN: Okay, approximately.

MR. LIPPY: It sort of all runs together, you know?

MR. MCCANN: I understand. The property on the other side of thirty that you mentioned, which I think is reflected maybe best in Petitioner's Exhibit 4-C, do you have that in front of you, Mr. Lippy?

MR. LIPPY: I don't (inaudible).

MR. MCCANN: Let me show it to you real quick just so you can see it.

MR. LIPPY: Let's see. I got to get my bearings here. There's one that's, I think that's a hundred and sixteen acres and that's, that's actually part of the Fringer property there.

MR. MCCANN: Okay. (inaudible) describe it --

MR. LIPPY: Which, which my brother owns now so.

MR. MCCANN: Okay. So, let me describe it, just so the Board --

MR. LIPPY: Okay.

MR. MCCANN: -- because the record won't reflect it if I don't, across the other side, the east side of Route 30, there's an area behind what appear to be single family homes?

MR. LIPPY: Yes.

MR. MCCANN: That area behind there, both, where, this is sort of a polygon, as well as the area to the south of that, which is more square in shape, those are both parcels that you own?

MR. LIPPY: Yes.

MR. SCHMIDT: Or your brother owns.

MR. LIPPY: My brother owns, I'm sorry. Yeah, it's my brother.

MR. MCCANN: Exclusively? You don't own any portion of those farms?

MR. LIPPY: No.

MR. MCCANN: Okay.

MR. LIPPY: We, when we reorganized about five years ago.

MR. MCCANN: Yeah.

MR. LIPPY: He took some farms, I took some farms but we all farm it together, you know, we rent it and farm it.

MR. MCCANN: Okay. Is he involved in any way in, in the solar panel?

MR. LIPPY: No.

MR. MCCANN: Okay. So, just then I know Mr. Schmidt asked you this extensively but I just want to make sure I'm clear. Of all the property on the west side of Hanover Road that surrounds the 6, 6.4 acres, is there any property on that side of the road that is in Baltimore County that is not an ag easement other than the 6.4 acres itself?

MR. LIPPY: No.

MR. MCCANN: You don't think so?

MR. LIPPY: I don't think so.

MR. MCCANN: Okay.

MR. LIPPY: I know that I own, that's a farm up here that my brother owns up.

MR. MCCANN: North of that?

MR. LIPPY: Up where that pond is, see it?

MR. MCCANN: Oh, you mean farther up?

MR. LIPPY: Yeah, that's --

MR. MCCANN: Okay.

MR. LIPPY: I, it's thirty --

MR. MCCANN: You're not certain about that?

MR. LIPPY: -- thirty, thirty-three acres up there. It's an easement too. It may be a section right here, couple acres there, might not be an easement that my brother owns.

MR. MCCANN: But that's his, that his property?

MR. LIPPY: Yeah.

MR. MCCANN: Not yours?

MR. LIPPY: No.

MR. MCCANN: Okay. What about the buildings on the property? And by that, I mean, I understand there's no buildings on the 6.4 acres, but is there any other buildings on any of this area to the west of Route 30?

MR. LIPPY: No, no buildings on any of it. Now, if you go back far enough, I live back there.

MR. MCCANN: Okay. In Carroll County?

MR. LIPPY: Yes.

MR. MCCANN: Okay.

MR. LIPPY: But it's not shown on that map, none of those maps.

MR. MCCANN: Okay. So, farther west?

MR. LIPPY: It might be shown on --

MR. MCCANN: Is there, is there, there appears to be a building, I'm looking at 4-C, what appears to be a building on the other side of Carroll County line, the west side, to the west of that line, on Carrollton Road, is that where you, your house is?

MR. LIPPY: No.

MR. MCCANN: No?

MR. LIPPY: That's not really --

MR. MCCANN: That's not it?

MR. LIPPY: Oh, wait a minute. That's, no, that's not really a building. (inaudible) yeah, I was thinking, I

don't know what that is. It's not a building.

MR. MCCANN: Okay. But your house is farther west?

MR. LIPPY: Yes.

MR. MCCANN: Okay. Any other buildings on all this contiguous property other than your house?

MR. LIPPY: There is a building, there is a new house on the back part of this property.

MR. MCCANN: So, can you see that on the, on 4-C? That's the farthest back, (inaudible) be on that one or not.

MR. LIPPY: That maybe it. I don't know. That's fairly new.

MR. MCCANN: Okay. So, let me just, just again, describe it for the Board and tell me if I'm correct, I'll hold it up. So, this, to the west of the Carroll County line, this building, that's off of Carrollton Road on the very edge of the, the exhibit, which is 4-C --

MR. LIPPY: Yes.

MR. MCCANN: -- that may be a relatively new residential structure?

MR. LIPPY: Yes.

MR. MCCANN: Okay.

MR. LIPPY: But I don't own it, it's not --

MR. MCCANN: Who owns that?

MR. LIPPY: I don't know.

MR. MCCANN: You own the property?

MR. LIPPY: I own, I, I own the property, yeah.

MR. MCCANN: And you lease --

MR. LIPPY: I don't own that acre there, acre and a half.

MR. MCCANN: Oh, you don't?

MR. LIPPY: No.

MR. MCCANN: Okay, that simplifies it. Okay. All right. You mentioned that, and I know you're not an attorney so I'm not going to hold you to it, but you mentioned that your ag easements only allow ag uses, is that correct?

MR. LIPPY: Yes.

MR. MCCANN: That's your understanding?

MR. LIPPY: Yes.

MR. MCCANN: But you also testified that it's your understanding that they don't, the easements that is, don't allow solo, solar panel arrays?

MR. LIPPY: Only, I think you can if you on your own use, you know? If you have a house or farming operation and you can, you can put, am I right? I think --

MR. SCHMIDT: You can't ask him. Just what, tell us what you think.

MR. LIPPY: I don't know this for sure but I am pretty sure that you can use it, you can have a barn and an operation there, you can put polar panels up if it's only used for that.

MR. MCCANN: Upon the barn itself.
MR. LIPPY: On the, on the --
MR. MCCANN: Building?
MR. LIPPY: -- operation there itself, yeah.
MR. MCCANN: Okay.
MR. LIPPY: I think that's legal in Carroll County.
MR. MCCANN: That's your understanding?
MR. LIPPY: But you can't, no, you can't use it for commercial use or anything.
MR. MCCANN: Is that your understanding of both the Baltimore County easements and the State easements?
MR. LIPPY: I think so.
MR. MCCANN: Okay. So, you could, if you wanted, you could put solar panels on your house, for instance?
MR. LIPPY: Yeah, I think you can.
MR. MCCANN: Okay. You mentioned that the, the 6.4-acre parcel is today and has been farmed?
MR. LIPPY: Yeah.
MR. MCCANN: Okay. So, the, you don't, there's no dispute, I take it, that this, the land on the 6.4 acres is prime, productive soils --
MR. LIPPY: Yeah.
MR. MCCANN: When you said, or you mentioned that part of your reason for wanting to have the solar panels on this parcel is to provide more steady income, correct?

MR. LIPPY: Yeah.

MR. MCCANN: Can you show us, just approximately, how much income the panels will generate?

MR. LIPPY: I, I have no clue. I seen the figures but I can't remember what they are.

MR. MCCANN: Can you give us a rough idea of what those figure were? We talking hundreds of dollars a month or thousands or?

MR. LIPPY: It would be nothing but a wild guess.

MR. MCCANN: Okay.

MR. LIPPY: I'd say a couple thousand a month.

BOARD: I'm sorry, you say a couple thousand a month?

MR. LIPPY: A month.

BOARD: And I understand the first part of your answer.

MR. LIPPY: Yeah and that might be a couple thousand off.

MR. MCCANN: Okay.

MR. LIPPY: I've seen the figures but I don't know for sure what they are. I can't bring them up unless I got them here in front of me.

MR. MCCANN: Right, and how much, how much do you make farming the land per month?

MR. LIPPY: How much do we make farming? Off, off of that field?

MR. MCCANN: Yes.

MR. LIPPY: Oh, --

MR. MCCANN: On average, approximately.

MR. LIPPY: If we had it in corn this year, by the time we get the expenses out, it would be zero.

MR. MCCANN: No money at all?

MR. LIPPY: Very little.

MR. MCCANN: Okay.

MR. LIPPY: The price is cheap.

MR. MCCANN: Is that the same for all your properties, all your farms?

MR. LIPPY: Depends on what year it is.

MR. MCCANN: Okay.

MR. LIPPY: This year there was a little profit but not much.

MR. MCCANN: On this, on this particular parcel?

MR. LIPPY: On all of them.

MR. MCCANN: Yeah, well, how much, how much annual profit on this 6.4-acre parcel, approximately?

MR. LIPPY: Profit?

MR. MCCANN: Yeah. Over the last couple years.

MR. LIPPY: It, it'd probably go from anywhere from $200 an acre to $20 an acre, depending on, a few years ago, corn price was very high and you'd probably maybe get $200 an acre off that thing. This year, I don't know, fifty at the

most.

MR. MCCANN: Okay. Per acre?

MR. LIPPY: Per acre.

MR. MCCANN: And that's per year or per month?

MR. LIPPY: Per year.

MR. MCCANN: Okay.

MR. LIPPY: That's why it's eight thousand acres and not two.

MR. MCCANN: Gotcha. Are you familiar with the, the legislation that's been proposed before the County Council, both last night and, and the last several months?

MR. LIPPY: No.

MR. MCCANN: You're not, you're not aware of it at all?

MR. LIPPY: Well, I knew that, I, the, I, the, last night's, I knew nothing about that.

MR. MCCANN: Right. I understand.

MR. LIPPY: But before, yeah, it was, I know very little about that.

MR. MCCANN: Well, you've, you've attended some of the, the County Council sessions, I take it, right?

MR. LIPPY: I attended one.

MR. MCCANN: Okay and have you met with any Council Council, County Council people?

MR. LIPPY: No, that was with, that was with the one

Councilman that had a work session, that's --

MR. MCCANN: Wade, Wade Koch?

MR. LIPPY: Yes.

MR. MCCANN: Okay. But your attorney has attended them, correct? The work sessions and the County Council meetings?

MR. LIPPY: I, some of them, I guess.

MR. MCCANN: Okay. Is, --

MR. LIPPY: I wasn't there to verify if he was there or not.

MR. MCCANN: Did you get a bill (inaudible). Just kidding. Did you, did you --

MR. SCHMIDT: I'm going to object to that part, Mr. McCann.

MR. MCCANN: I, I'll withdraw it. Incriminating. Did you --

MR. SCHMIDT: It's not incriminating. I'm happy to (inaudible).

BOARD: You need to object to that.

CHAIR: It's privileged, it's privileged.

MR. MCCANN: Privileged, right.

MR. SCHMIDT: Thank you. Thank you, Mr. Alston. As a fellow member of the Bar, thank you so much.

MR. MCCANN: Did you, did you support any of that legislation?

MR. LIPPY: No, I didn't, I didn't get involved in it at all, the legislation.

MR. MCCANN: Did you, you don't know if you supported it or not?

MR. SCHMIDT: He answered he didn't get involved.

MR. LIPPY: Yeah. Really, it, we weren't involved in it.

MR. MCCANN: Okay.

MR. LIPPY: According to the previous legislation, we were exempt because we filed before the legislation.

MR. MCCANN: Right, but you asked for that exemption.

MR. LIPPY: Before July 1st, so.

MR. MCCANN: You asked for that exemption, correct?

MR. LIPPY: Pardon me?

MR. MCCANN: You asked for that exemption, correct?

MR. LIPPY: Yes.

MR. MCCANN: You met with Wade Koch about it. So, I take it you supported that bill, whatever bills there are that are out there that have that exemption in them (inaudible) from this, you, you supported those bills, correct?

MR. LIPPY: I don't know enough about the bills to know whether I support it or not. I never sat down and read the bill. I heard about them, hearsay. But that's not too good of a, a gauge of what, what, what they were.

MR. MCCANN: No, I understand, I'm not asking, I'm

not asking whether you attended the sessions and actively --

MR. LIPPY: I just attended the one work, work session.

MR. MCCANN: Right, my question wasn't, my question wasn't, wasn't whether you actively lobbied for the legislation.

MR. LIPPY: I didn't, no.

MR. MCCANN: My question is more general --

BOARD: Please, one at a time. Just so we all know.

MR. MCCANN: Yeah, sorry.

BOARD: We can only speak one at a time because --

MR. LIPPY: Okay.

BOARD: -- this is being recorded and, therefore, it gets convoluted otherwise.

MR. LIPPY: All right. All right.

MR. MCCANN: Thank you. So, put aside active lobbying, I'm just asking you, did you support the bills that granted you an exemption?

MR. LIPPY: Well, I supported the exemption.

MR. MCCANN: Okay. That is all I have, thank you.

CHAIR: Ms. Demilio?

MS. DEMILIO: I have (inaudible). Yeah, Mr. Lippy, do you, do you have any other buildings on your properties other than your house? Do you have barns or do you just deal with silos?

MR. LIPPY: Other buildings on --

MS. DEMILIO: Any of the properties that you own?

MR. LIPPY: Any of our properties?

MS. DEMILIO: I mean, do you have barns, I guess is what I'm asking.

MR. LIPPY: Well, I, we have some houses on them but, my brother lives at one, I live at one, my son-in-law lives in one and he's got a barn. I got a little barn and my mother-in-law lives in the house next to me. It's my mother-in-law's house, she's dead but, my son lives in it now so.

MS. DEMILIO: So, there's several houses and a couple of barns (inaudible)?

MR. LIPPY: Yes. But it's not on the, really not on the properties we looked at. It was on properties next to it.

MS. DEMILIO: So, I mean, I assume you have some sheds because you have farming equipment you have to keep in a garage (inaudible) as well, for your equipment?

MR. LIPPY: I didn't catch all --

MS. DEMILIO: Yeah, I'm sorry, do you have sheds or garages for your farming equipment?

MR. LIPPY: Yes.

MS. DEMILIO: Okay. Do you know how many of those you have, either sheds or garages?

MR. LIPPY: Well, we're all located at one, one location at 334 Leesmill Road and we have grain tanks,

buildings, equipment and everything is there. That is Lippy Brothers Farms.

MS. DEMILIO: What's that address, I'm sorry? Three three --

MR. LIPPY: Pardon me?

MS. DEMILIO: 334?

MR. LIPPY: Leesmill Road. That's where we operate out of as, as Lippy Brothers Farms.

MS. DEMILIO: Right, right. (inaudible) so you own your own farm equipment, (inaudible)?

MR. LIPPY: It's all there.

MS. DEMILIO: It's all there, right.

MR. LIPPY: Yeah.

MS. DEMILIO: So, you have to store all of that in big buildings, you --

MR. LIPPY: I got a barn with a few cows, that's my barn.

MS. DEMILIO: Okay. But no other livestock, just crops?

MR. LIPPY: Not, no.

MS. DEMILIO: Okay.

MR. LIPPY: My son-in-law has sheep where he lives.

MS. DEMILIO: (inaudible) well, they stay out most of the time (inaudible).

MR. LIPPY: No, they're in and out.

MS. DEMILIO: I mean, we kept ours out, so I assume (inaudible). And do you own any other properties in the area, say Carroll County or Baltimore County, or lease any other properties with buildings on them that you didn't mention, is there anything else?

MR. LIPPY: Not really. I don't, Lippy Brothers has a chicken complex in Carroll County, which is, which is four buildings, sixty by six hundred feet long, so.

MS. DEMILIO: Now, --

MR. LIPPY: But that's in Carroll County near Westminster.

MS. DEMILIO: Now, the solar panel company that's, sorry, I forgot the name of it, that you are involved with here, did they approach you or did you go to them looking for, setting up this facility?

MR. LIPPY: I have trouble hearing you, I'm sorry.

MS. DEMILIO: I'm sorry. The solar panel company that you are dealing with and these six acres --

MR. LIPPY: Yes.

MS. DEMILIO: -- did they approach you or did you look for them?

MR. LIPPY: Well, they done work for us before.

MS. DEMILIO: In Carroll County?

MR. LIPPY: Yeah, it's all in Carroll County. We had, the chicken complex has an acre of solar panels that he

did. I have solar panels at my house that he did. My son-in-law has solar panels at his house that he did and his, his father has, my son-in-law's father has solar panels that Ken did so, we've had plenty of experience with the company.

MS. DEMILIO: It's the same company that --

MR. LIPPY: Yes.

MS. DEMILIO: Okay. And then the amount of electricity that's generated for the solar panels on the six and a half acres, that is not all going to be used by you, as I understand it, or your operations?

MR. SCHMIDT: He can answer it --

MR. LIPPY: No.

MR. SCHMIDT: -- but Mr. Donithan, who is the expert, knows how it works.

MR. LIPPY: He would answer it much better than I can.

MS. DEMILIO: Right, but why aren't you using all of the electricity that's generated? You don't need it or you just don't want to or --

MR. LIPPY: Off of the 6.4 acres?

MS. DEMILIO: Yes.

MR. LIPPY: It's more than we probably use.

MS. DEMILIO: So, that this operation --

MR. LIPPY: It can, it can support our farm plus several more.

MS. DEMILIO: Okay. So, I, I guess I can assume that you, you can use, you can create a solar facility on less acres just for your own use, but the additional acres is because you're selling it to somebody else, is that correct?

MR. LIPPY: Yes.

MS. DEMILIO: I have no further questions.

MR. SCHMIDT: I don't have anything further --

CHAIR: Any re-direct?

MR. SCHMIDT: -- of Mr. Lippy.

CHAIR: Okay. It's, it's five minutes of twelve. Seems like it's a natural time to take a lunch break before we go to the next witness. We do have one bit of housekeeping news and that is Ms. Rosen has to leave here at 3:00. So, say at 12:45 we all return, is that okay?

MR. SCHMIDT: That's fine.

CHAIR: Okay.

(RECORDING PAUSED - 11:52:09 AM)

(ON RECORD - 12:44:35 PM)

MR. SCHMIDT: I think it's on there. It's on the, it should be on the right-hand side.

VOICE: Oh, there it is. Okay, gotcha.

MR. SCHMIDT: Okay.

CHAIR: Okay. I think we left off --

BOARD: We're back on.

CHAIR: Yeah, we're back on. Okay. Mr. Schmidt, we

last left Mr. Lippy.

MR. SCHMIDT: Okay.

CHAIR: So, go ahead and call your next witness.

MR. SCHMIDT: Next witness is Chris Batten. Chris, if you could come on up?

CHAIR: Okay.

BOARD: All right. Do you swear and affirm under the penalties of perjury, that the testimony you are about to give is true and correct to the best of your knowledge and belief?

MR. BATTEN: Yes.

BOARD: Please state your name.

MR. BATTEN: My name is Chris Batten, B-A-T-T-E-N.

BOARD: And what is your work address?

MR. BATTEN: My work address is 3907 Old Taneytown Road, Taneytown, Maryland.

BOARD: And what is your, is that your work address, right?

MR. BATTEN: Yes.

BOARD: And what is your position?

MR. BATTEN: My position is, I am a proprietor, proprietorship, landscape architect, sole practitioner.

BOARD: And the name of the company?

MR. BATTEN: It's just my name.

BOARD: Okay, thank you.

MR. BATTEN: Um hm.

MR. SCHMIDT: Okay. Mr. Batten, you can be seated for a minute. As you indicated, you are a landscape architect?

MR. BATTEN: Correct.

MR. SCHMIDT: And Mr. Batten, are you registered as a Maryland landscape architect by the State of Maryland?

MR. BATTEN: Yes, I am.

MR. SCHMIDT: When were you registered?

MR. BATTEN: Nineteen eighty-two.

MR. SCHMIDT: Okay and is your registration in good standing?

MR. BATTEN: Yes, it is.

MR. SCHMIDT: You indicated you presently own a company called John Christopher Batten Landscape Architecture?

MR. BATTEN: Yes.

MR. SCHMIDT: And that's a sole proprietorship?

MR. BATTEN: It is.

MR. SCHMIDT: Okay and you were retained in this case, were you not, to prepare a landscape plan for the proposal?

MR. BATTEN: Yes, I was.

MR. SCHMIDT: Okay. In addition, how long have you been practicing landscape architecture, since 1982 or even before that?

MR. BATTEN: Nineteen seventy-five.

MR. SCHMIDT: Okay and I'm going to hand you a copy

of your resume, which I pre-marked as exhibit number six. And does that fairly and accurately depict your experience, education and background?

MR. BATTEN: Yes, it does.

MR. SCHMIDT: And I, I assume, sir, you have prepared landscape plans for a variety of different kinds of commercial and residential projects over the years?

MR. BATTEN: Absolutely, yes.

MR. SCHMIDT: Okay. Have you prepared them in Baltimore County, or for Baltimore County before?

MR. BATTEN: I have.

MR. SCHMIDT: Okay and you're familiar with the requirements of the County Landscape Manual?

MR. BATTEN: Yes, I am.

MR. SCHMIDT: Okay. You're also familiar with the requirements of the Comprehensive Manual Development Policies as it relates to scenic views, you've reviewed that as well?

MR. BATTEN: Yes. Yes, I have.

MR. SCHMIDT: Okay. I would offer this as Petitioner's exhibit number six, which is Mr. Batten's resume, and I would offer him as a registered landscape architect. He is obviously going to testify about the landscape plan that he prepared in this case, which is on the board.

CHAIR: Any voir dire?

MR. MCCANN: No, thank you.

CHAIR: Any objections?

MS. DEMILIO: No.

MR. SCHMIDT: Okay and Mr. Batten, there came a time where you were hired by the applicants in this case to prepare a landscape plan?

MR. BATTEN: Correct.

MR. SCHMIDT: Okay. Drawing your attention, I, I will mark these as Exhibits 7-A and 7-B, and let me do that now. I think that's the best thing to do. I'm going to make 7-A the, where do you want me to mark this?

BOARD: Is that already 2-B?

MR. SCHMIDT: No.

BOARD: It's something different?

MR. SCHMIDT: It's, it's similar but, it's similar but it's a landscape plan.

BOARD: Okay.

MR. SCHMIDT: It's, it's got a lot of the same information on it. Oh, thank you. I'm going to make 7-A the actual landscape plan and 7-B the aerial rendering as well. And I've got one other exhibit. Can I have a 7-C as well, Ms. Rosen?

MR. MCCANN: Thank you. This is eight?

MR. SCHMIDT: No, 7-C.

CHAIR: 7-C.

MR. MCCANN: I'm sorry.

MR. SCHMIDT: And what this is, and I'll give an extra copy to the Board. Ms. Rosen, I marked one as an exhibit and there are two other copies for Mr. Garber and Mr. Alston and, members of the Board, this chart, which you can't see, is that Exhibit 7-C. It's just a blow-up of this chart so you can, you all can see it.

BOARD: The chart that's now 7-C, is the same as the one that's 7-A?

MR. SCHMIDT: Yeah, what, what you're holding in your hand is this chart on the top left-hand corner of 7-A.

BOARD: Right.

MR. SCHMIDT: Okay. Now, Mr. Batten, there came a time, I think you indicated that you were hired to prepare a landscape plan?

MR. BATTEN: Correct.

MR. SCHMIDT: And I, did you review, have you been to the site?

MR. BATTEN: Yes, I have.

MR. SCHMIDT: Okay and are you familiar with the area?

MR. BATTEN: I am.

MR. SCHMIDT: And have you reviewed photographs of the site?

MR. BATTEN: I have.

MR. SCHMIDT: What else did you do to prepare a

landscape plan to sort of familiarize yourself with what you were trying to do?

MR. BATTEN: Typically, when I prepare a landscape plan, the first thing I do is check the requirements and with Baltimore County projects, it's typically something in the landscape manual but it became apparent that there wasn't anything that specifically referred to this application so I got in touch with Jim Herman, who is the County landscape architect and my understanding was that he needed to approve the landscape plan, that it was a, basically a discretionary application of landscaping guidelines and so I had a meeting with Jim to get a better feeling for what he was looking for and he showed me an example of a project that was down, I believe, in Baltimore, or in Howard County and he said this is what he was looking for. I had a subsequent meeting with him where I presented a plan that was similar in nature. He asked me for some additional plant material on the plan and subsequently, we were able to get his approval, which was just acquired yesterday.

MR. SCHMIDT: Okay. Now, I think you indicated that there's nothing in the County's landscape manual per se, or directly about how one would landscape a solar farm, what I'm going to call a solar farm or a public utility nature, as we call it in this case?

MR. BATTEN: Correct.

MR. SCHMIDT: Okay. There are requirements for other uses in the landscape manual, like parking lots and things like that?

MR. BATTEN: Absolutely.

MR. SCHMIDT: Okay.

MR. BATTEN: And then there are more specific requirements having to do with the number of plant size and all that.

MR. SCHMIDT: Okay. So, because there's not, as, as Mr. Herman told you to, that he would have to approve it based on his feelings and, and direction?

MR. BATTEN: Correct.

MR. SCHMIDT: Okay. Is Exhibit 7-A the approved landscape plan that Mr. Herman has approved?

MR. BATTEN: Yes, that's the approved plan.

MR. SCHMIDT: And, in fact, does, is there a signature under the writing approved final landscape plan, Baltimore County, Department of Permits, Approvals and Inspections and a signature of James Herman on this plan?

MR. BATTEN: Yes, correct.

MR. SCHMIDT: Okay. I'm going to ask you to step up to the exhibit, if I can --

MR. BATTEN: Sure.

MR. SCHMIDT: -- Mr. Batten, and this is a question and answer, but I think the easiest way to do it is just, if

you can explain to the Board what landscaping is proposed and the arrangement of it and I'd also ask you to, if you can, incorporate Exhibit 7-C in your explanation, which is this chart that's on the top left.

MR. BATTEN: Correct.

MR. SCHMIDT: Which is the separate chart.

MR. BATTEN: Okay. Always in a landscape plan, you have a plant list and it specifies the plants and the sizes and so forth and so in this case, I've added a little bit of information, including (inaudible) height and a cost estimate, which was required by Mr. Herman and I, I would, you know, like to point out that the number of major deciduous trees is, is provided on the left-hand side. There are thirty-seven major deciduous trees on the plan and those major deciduous trees are the ones that are in green. So, you can see they're kind of sprinkled along the entire perimeter and especially concentrated here along Maryland Route 30. Again, this was the direction I was given by, by Mr. Herman. And that's what he was looking for. Those are significant trees and they're also backed up by shrubs and we have a total of a hundred and fifteen evergreen trees proposed. We have twenty-three minor deciduous trees, which are flowering trees, to kind of add a little bit of variety and color. The sixty-six evergreen shrubs and the, the amount of area that we had to plant these was, was pretty significant. We had fifty-five feet on the

front and side and then thirty-five feet all the way around. So, we had plenty of room to do some nice landscaping. Now, inside of that landscaping is the fence that was mentioned earlier and so the fence is six feet high and that does go around the entire installation of solar panels and the landscaping then is set outside of that to soften the view of the fence as well, so this is the plan again that was evolved by, by working with the Baltimore County landscape architect.

MR. SCHMIDT: Mr. Batten, if you know, how high are the actual solar panels that are in the rows inside of the fence?

MR. BATTEN: My understand is they're six feet high.

MR. SCHMIDT: Okay and how tall is the fence?

MR. BATTEN: The, the fence is six feet high.

MR. SCHMIDT: Okay and is the fence slatted or treated in any way?

MR. BATTEN: It is slatted.

MR. SCHMIDT: Or can you see through it?

MR. BATTEN: Yeah, I've indicated here, it's an opaque fence.

BOARD: Please, one at a time.

MR. SCHMIDT: I'm sorry.

BOARD: Mr. Schmidt was asking a question and you started answering, you need to keep it one at a time.

MR. SCHMIDT: Yeah, just --

MR. BATTEN: Sorry.

MR. SCHMIDT: -- so the tape can hear. I think my question was, can you just describe the fence and, and what that'll look like?

MR. BATTEN: Right. Yeah, this is a six-foot-high chain link fence but it has green slats that will make it opaque so that it's, you're not going to be able to see through the fence.

MR. SCHMIDT: Okay. Mr. Batten, given the landscaping, all the plants that you've described and are shown on there and the fence, is any, is anybody going to, what, what, if anything, are people going to be able to see in terms of the solar panels themselves, say from Route 30?

MR. BATTEN: From Route 30, I'm sure that when these get established, and even initially, it's going to be very limited. I can't say specifically what they're going to see but, but not, not much.

MR. SCHMIDT: Okay. So, you're not going to, the, the, these will effectively screen the solar panels so they're not --

MR. BATTEN: Over, over time, it'll be a hundred percent screen.

MR. SCHMIDT: Okay, okay and the chart further describes not only the height of the trees at the time of planting but also the height that they would be expected to

reach, is that shown in your chart?

MR. BATTEN: Correct. I have an extra column for ultimate size.

MR. SCHMIDT: Okay. Okay. Now, you mentioned the County landscape manual, which you said doesn't specifically have language insofar as solar farms. How about the comprehensive manual of development policy? What, if anything, is the rel, relevance of, of that section as to this project?

MR. BATTEN: You mean, for scenic routes?

MR. SCHMIDT: Yes.

MR. BATTEN: Yeah, well, a lot of the, it's a very, it's a very nice document and then I'd speculate it was developed by somebody with a landscape architecture background and it's all the things that I learned in school about, you know, protected views and so forth. And I, and it, but it, but it tends to be very broad guidelines, not specific requirements as you would find in the landscape manual.

MR. SCHMIDT: Okay. Now, Route 30 is a scenic route as designated by the County, is it not?

MR. BATTEN: Yes.

MR. SCHMIDT: Okay and the guidelines, and I think they are guidelines for projects on a scenic route are found in the comprehensive manual development policy, correct?

MR. BATTEN: Yes, they are.

MR. SCHMIDT: Okay and those are what you indicated

are fairly general guidelines?

MR. BATTEN: They are, you know, it's talking about preserving viewscapes and, you know, that's a, a kind of a, an amorphous thing, actually. We are not blocking a lot of viewscapes here. Here's Route 30. There's an existing house with, or an existing residential lot here with a number of buildings and trees and so forth. So, I'd say at least a large portion of the site is not going to be that visible, you know, from, from Route 30. But we have also beefed up the landscaping along Fringer Road here too so that, you know, ultimately, there's going to be a, a pretty solid appearance of mixed vegetation there.

MR. SCHMIDT: Okay. Did you discuss the impact of the scenic route with Mr. Herman when he was telling you about the type of landscaping and the species and so on and so forth?

MR. BATTEN: Only that he mentioned that it was on a scenic route.

MR. SCHMIDT: Okay. So, --

MR. BATTEN: And his, his, some of his decisions were based on that.

MR. SCHMIDT: Okay and you followed his directive?

MR. BATTEN: Yes.

MR. SCHMIDT: Okay. Okay. I don't have any other questions. I would offer, if I could, Exhibits 7-A and, A, B and C as they've been identified by the witness. Again, the

colorized version, the signed and approved scenic and then the chart, which is just the blow-up of, of, of what's on 7-A.

CHAIR: Any objections?

MR. MCCANN: No objection.

CHAIR: Okay. Cross examination?

MR. MCCANN: Yes, thank you. Good afternoon, Mr. Batten.

MR. BATTEN: Good afternoon.

MR. MCCANN: You can sit down.

MR. BATTEN: Okay.

MR. MCCANN: If you'd like. I'm not going to be that long and, do you have 7-C in front of you, that is the plant list? Okay, great. So, the column on the far right, or near far right that says ultimate size, that is the size, at some point in time, in the, in the distant future, of these plantings, correct?

MR. BATTEN: Correct.

MR. MCCANN: Okay. But, let's just start with the, one or more of the major deciduous trees. The, the first one, plant i.d. A. At planting, it's going to be the size, all these plantings will be the min, the size indicated in the minimum size column, correct?

MR. BATTEN: Correct.

MR. MCCANN: So, that first plant A, that major deciduous tree, will be at, will be two-inch caliper when it's

planted, correct?

MR. BATTEN: Correct.

MR. MCCANN: And tell us all again, if you would, what caliper means?

MR. BATTEN: Yeah, caliper is the diameter of the trunk about four inches off the ground.

MR. MCCANN: Okay.

MR. BATTEN: So, yeah, it varies but a two-inch caliper tree can be anywhere from eight feet tall to twelve feet tall. Typically, that would be the, the, the height range.

MR. MCCANN: At planting?

MR. BATTEN: At planting.

MR. MCCANN: Okay.. For all of these major, major deciduous trees?

MR. BATTEN: Yes.

MR. MCCANN: They will be eight to twelve feet when they are planted?

MR. BATTEN: Yes.

MR. MCCANN: And the same with the evergreen shrubs? I'm sorry, the, the minor deciduous trees?

MR. BATTEN: Minor deciduous trees --

MR. MCCANN: One-inch caliper.

MR. BATTEN: Yeah, the, the caliper is a one-inch caliper and a tree that size, a minor deciduous tree, would be

in the, you know, six to eight-foot range.

MR. MCCANN: Okay.

MR. BATTEN: Height wise.

MR. MCCANN: And I, we don't have photographs of these plantings but am I correct with respect to all these deciduous trees, all six of them, that is, at planting, they will not be, they'll be the height you, you indicated but they will not be fully bloomed, that is, they won't provide the coverage necessary at planting to --

MR. BATTEN: Well, it depends on when they're planted, of course. If they're planted when the leaves are off the trees, no, they don't provide as much screening and that's, that's why I've gone heavy on the evergreen screening and in a lot of cases, most cases, the evergreens are in combination with the deciduous trees.

MR. MCCANN: Okay. But they're not going to be fully bloomed, no matter when, no matter when you plant them, winter or summer or spring, they're not going to be fully formed trees?

MR. BATTEN: No, they will be, I'm not sure what you mean by fully formed trees, but.

MR. MCCANN: Fully bloomed, is that what I, I think I --

MR. BATTEN: Bloomed? Some of it will be blooming.

MR. MCCANN: I'm not sure, I'm not sure if that's the

word.

MR. BATTEN: No, I understand foliage. Okay? So, you mean that the foliage won't be full.

MR. MCCANN: Yeah, in other words, they won't --

MR. BATTEN: It takes a while to fill out.

MR. MCCANN: This is, this is an odd way of putting it, but they won't be miniature versions of what they will be twenty-five, thirty years from now, they won't be, they'll have less foliage?

MR. BATTEN: Correct, yes.

MR. MCCANN: Okay and how long does it take an eight to twelve foot, two-inch caliper deciduous tree to get to thirty feet high?

MR. BATTEN: Well, that is one of those, you know, sixty million-dollar questions. I mean, the, you know, the, the growth rates on different trees varies. The pin oak, the cue is a, a fairly fast-growing tree. Actually, the, so is the honey locust, the, and the hedge maple maybe medium growth, yeah, so, and, and what that means is that they'll put on, you know, the first year, they sleep, second year they creep and the third year they leap. They, you know, they don't, they don't start out growing fast but they'll be cooked, you know, they'll, they'll catch up.

MR. MCCANN: Okay. But it'll take, for those three trees in particular, the major deciduous trees, to get to

thirty feet, forty-five feet and seventy feet, respectively, we're talking about a couple decades, is that fair, twenty, thirty years?

MR. BATTEN: I, --

MR. MCCANN: At least?

MR. BATTEN: I'd say, yeah.

MR. MCCANN: And then the same --

MR. BATTEN: The ultimate height, yeah.

MR. MCCANN: Yeah. And the same with respect to the, the minor deciduous trees for a one-inch caliper tree to get to twenty-five feet, eighteen feet and twenty-five feet, respectively, we're talking twenty, --

MR. BATTEN: Correct.

MR. MCCANN: And the same answer with respect to the evergreens? That is a six-foot evergreen tree will take approximately that same amount of time to get to the heights indicated here, correct?

MR. BATTEN: It's interesting because, I mean, I know, for instance, eastern red cedars, which is the one that I've used the most of.

MR. MCCANN: Yeah.

MR. BATTEN: It's a tree that I've seen it grow two feet per year, three feet per year, so, I mean, it depends on the, the soil and, and the, you know, the, the climate and whatnot, but I, you know, I think those are pretty quick

growing trees.

MR. MCCANN: Okay. Is, is any part of this landscaping plan call for, I didn't look on the plan itself, call for re-plantings if trees fail or --

MR. BATTEN: Yeah, that's part of the maintenance agreement that the, is required by the County.

MR. MCCANN: Is that indicated on the plan somewhere?

MR. BATTEN: It is indicated right here, minimum landscape maintenance requirements.

MR. MCCANN: Okay.

MR. BATTEN: I'm sorry it's small print, but it's in there.

MR. MCCANN: And is this consistent with what the County requires?

MR. BATTEN: That is actually from the County manual.

MR. MCCANN: Okay. Yeah, if I recall, that manual does, this particular excerpt of the manual on 7, --

BOARD: A.

MR. MCCANN: -- A, doesn't talk about re-planting any plants that fail, does it? In other words, what if these trees fail? In other word, die or prematurely don't make it twenty, thirty years?

MR. BATTEN: Well, I am --

MR. MCCANN: This is just about maintenance, right?

MR. BATTEN: Yeah.

MR. MCCANN: Okay. Nothing in the, in the agreement for that, right? Well, it says what it says.

MR. BATTEN: Yeah.

MR. MCCANN: Okay and then you said over time when the plants are established you won't be able to see that much. You're talking about, the time period that you're talking about is the twenty, thirty years (inaudible), correct?

MR. BATTEN: Well, sure.

MR. MCCANN: Okay.

MR. BATTEN: But, I mean, with this much plant material, you're going to have an instant effect, believe me. I mean, it's, it's, it's going to be a lot.

MR. MCCANN: Okay. But you'll still be able to see it?

MR. BATTEN: Yeah, you'll, you'll be able to see some of the fence and, and maybe a glimpse of a (inaudible).

MR. MCCANN: Well, what's the, are you familiar with the topography as you head north on Hanover Road, just say just south of its intersection with Fringer? What is the topography of this portion of Route 30?

MR. BATTEN: It's rolling hills, it's coming, it's coming up the hill, I believe, and it's, yeah.

MR. MCCANN: Let me ask it this way. Isn't the topography such that as you're, as you're coming up Hanover Road, Route 30, Hanover Pike, I'm sorry, Route 30, before you

get to Fringer Road, this area, that is the 6.4-acre parcel at issue, is sort of, is not level, in fact, --

MR. BATTEN: It is a slight rise.

MR. MCCANN: -- it's a slight rise.

MR. BATTEN: Yes.

MR. MCCANN: So, that you can see more, I know the record is not going to reflect what my hands are doing.

MR. BATTEN: Sure. Sure, no, no, no, I agree.

MR. MCCANN: But you can see, you can see more of this area heading up this road than if it was completely flat?

MR. BATTEN: Yes.

MR. MCCANN: Okay. Sorry, one second. And I, I asked this I think of, of a previous witness, but the, the, the landscaping in this thirty-five-foot setback area, that that area will not be available for farming either, correct?

MR. BATTEN: Oh, no.

MR. MCCANN: Okay. Okay. Is part of the landscaping plan to maintain that area underneath the panels, is that part of the plan?

MR. BATTEN: I did not address that. I, I think that might be something that Mr. Donithan can answer.

MR. MCCANN: All right. Okay, thank you. No other questions.

MS. DEMILIO: Mr. Batten, is your contract to install these plants with Mr. Lippy or with the solar panel company?

MR. BATTEN: I, I am only the landscape architect designer so I'm not being, I'm not going to be installing any of these. Is that, was that your question?

MS. DEMILIO: So, that nobody's hired you yet to, to put these in, you're just designing them, you're not supervising the --

MR. BATTEN: No.

MS. DEMILIO: So, --

MR. SCHMIDT: He's not a landscaper, he's a landscape architect.

MS. DEMILIO: I know, I understand that. But, so, there's no, you're not aware of any contract between any of the parties (inaudible) with the landscaper?

MR. BATTEN: Oh, no. Oh, no, no.

MS. DEMILIO: (inaudible).

MR. BATTEN: I mean, I, I think the plan has to be approved before they go that, go to that next step.

MS. DEMILIO: So, do you know the extent of any warranties or lifetime warranties on these plants? Do, will these plants be subject to a life, a hundred percent lifetime warranty? You don't know?

MR. BATTEN: I don't know. I mean, I know that, typically, any contract will require a one-year replacement and I believe that the County and I am going to have to look again to see where it is but I'm, I'm, I'm sure that the County

requires a one-year replacement warranty.

MS. DEMILIO: Just one year?

MR. BATTEN: Yeah.

MS. DEMILIO: And after that, what happens? It's up to the property owner to call and have it replaced at their expense? Do you know or you don't know?

MR. BATTEN: I, I don't know.

MS. DEMILIO: (inaudible).

MR. SCHMIDT: Just a couple questions on re-direct, if I can.

CHAIR: Sure.

MR. SCHMIDT: Mr. Batten, is there any requirement under the Baltimore County landscape manual, that one, when doing landscaping, needs to put fully grown trees around the perimeter of a property?

MR. BATTEN: No.

MR. SCHMIDT: Okay. I mean, have you ever seen anybody transplant a hundred-year-old tree or bring a sequoia in from California and plant it here so it's more than twelve feet tall or eight feet tall?

MR. BATTEN: No, and, and actually, the larger the tree, the longer time it takes for it to adapt, so they found that putting in larger trees, they, they, you know, smaller trees will often time catch up and pass them.

MR. SCHMIDT: Okay and is it, in fact, the landscape

manual talk about the species and the type and the height and the, and the character of the tree? I mean, that's why Mr. Herman wanted these specifics, because they would be effective immediately?

MR. BATTEN: Exactly.

MR. SCHMIDT: Okay. Plus, you have a six feet high fence, right?

MR. BATTEN: Yes.

MR. SCHMIDT: Okay.

MR. MCCANN: Can we ask non-leading questions? He is an expert witness.

MR. SCHMIDT: I'm sorry.

CHAIR: Okay.

MR. MCCANN: Yeah.

CHAIR: Mr. Schmidt?

MR. SCHMIDT: Is there any requirement that you're aware of, Mr. Batten, that the landscaping be designed in such a matter, manner so that the site would be invisible from an adjacent public road? Is there a requirement Mr. Herman made or in the landscape manual that you should not be able to see anything in here?

MR. BATTEN: No, no.

MR. SCHMIDT: Okay. Now, is there a certification on the prop, on the landscape plan and I'm going to draw your attention to the lower right-hand corner, that is called the

final landscape plan owner certification form that requires and sets forth the certain maintenance schedule that the owner is required to abide by under the County landscape manual?

MR. BATTEN: Yes.

MR. SCHMIDT: And has that been signed in this case? You can come over --

MR. BATTEN: Yes.

MR. SCHMIDT: -- and look if you want.

MR. BATTEN: Yes.

MR. SCHMIDT: And doesn't the landscape manual also require that a letter of credit or other security be posted so that if trees do not survive, the County can come out and execute on that letter of credit?

MR. BATTEN: A, a bond, yes.

MR. SCHMIDT: Yes, okay. I have no other questions.

CHAIR: Any?

MR. MCCANN: No, thank you.

CHAIR: Ms. Demilio?

MR. SCHMIDT: Thank you, Mr. Batten.

MR. BATTEN: Thank you.

MR. SCHMIDT: I would call Ken Donithan.

BOARD: Do you swear and affirm under the penalties of perjury, that the testimony you are about to give is true and correct to the best of your knowledge and belief?

MR. DONITHAN: Yes.

BOARD: Please state your name.

MR. DONITHAN: Ken Donithan.

BOARD: And spell your last name.

MR. DONITHAN: D-O-N-I-T-H-A-N.

BOARD: And what company are you with?

MR. DONITHAN: Earth and Air Technologies, LLC.

BOARD: And your title?

MR. DONITHAN: I'm the owner and chief power engineer.

BOARD: And what is the work address?

MR. DONITHAN: 60 Elron Court, number four, Westminster, Maryland 21157.

BOARD: Thank you.

MR. SCHMIDT: Mr. Donithan, you can be seated. Mr. Donithan, you indicated that you're the principal at Earth and Air Technologies, LLC, is that correct?

MR. DONITHAN: Yes.

MR. SCHMIDT: Can you tell us just kind of an overview, what is the business of Earth and Air Technologies, LLC?

MR. DONITHAN: We are a design, build, installer, developer of renewal energy systems, specifically solar energy systems.

MR. SCHMIDT: Okay. How long have you been associated or when did you establish Earth and Air

Technologies?

MR. DONITHAN: Legally, 2009.

MR. SCHMIDT: Okay.

MR. DONITHAN: When I say legally, I mean, we were in the process in 2008. Not that we were doing anything illegal.

MR. SCHMIDT: Okay, okay. Prior to that, did you have any other experience or previous experience in that area?

MR. DONITHAN: Yes, I, for the past thirty-five years have been in the power engineering industry, loss control industry, overseeing, operating, maintaining, constructing power plants, universities, hospitals, mainly operation and maintenance.

MR. SCHMIDT: Okay and can you tell us a little bit about what is your specific, you, personally, what is your role and job with Earth and Air Technologies?

MR. DONITHAN: Well, I oversee, you know, the day to day operations of everything, from, you know, payroll to accounts payable and receivables, building, designing, the engineering, developing of the systems.

MR. SCHMIDT: Okay. Can you tell us a little bit about your educational background?

MR. DONITHAN: After high school, I went in the Navy for four years. I was in the power, obviously, the power part of the ships where the steam turbines, boilers, engines, pumps, equipment of that sort where we operate and maintain, rebuilt,

tore down and I received an honorable discharge after four years. Went to work with a couple insurance companies for twenty some odd years in the loss control industry and went back to school in the evening, night school, and got a degree in electrical engineering from Johns Hopkins University. Started Earth and Air, actually, I started a previous company training inspection staffing for the power plant industry in 1995. In 2008, 2009 time frame is when we put together Earth and Air Technologies, specifically wind. We started out wind and, you know, I experimented in my backyard with wind and that's how I got started with Earth and Air Technologies and that grew into where we are today as far as ninety-nine percent of what we do renewable wise is solar. Wind really is not, and when I say wind, small wind really isn't, I guess, the paybacks, you're, you're not going to get in wind in this area, in Maryland, unless it's a utility scale. So, turning down nine out of ten customers, everybody thinks they have wind when the wind is blowing in the wintertime but not the wind you need to sustain the energy and the paybacks that, that wind give you. So, on a small scale, wind doesn't really work in Maryland. So, I realized I wasn't going to make any money turning nine out of ten customers away so we started into the solar industry, which one of our suppliers was continuously asking me to do that and eventually that's, that's how we got into the solar side of things.

MR. SCHMIDT: Okay. Do you hold any kind of professional licenses or registrations from the State or elsewhere?

MR. DONITHAN: We carry a contractor's, construction license, MHIC license, home improvement license for Maryland and Pennsylvania, power engineering certifications, EPA certifications, a bunch of different non-destructive examination certifications and registrations.

MR. SCHMIDT: Okay. Now, you indicated, I think, when you said before that you are a, a power engineer. What is a power engineer and is that something that you get an approval or recognition or a license or something from the State of Maryland to be a power engineer?

MR. DONITHAN: Well, the power eng, the power engineering certification that I have is with the National Institute for the Uniformed Licensing of Power Engineers, which is a national organization. I also carry, you know, similar power engineering license. They don't refer to them in Maryland as power, they refer to them as a stationary engineer or a steam engineer. But that is a national license that, that I carry.

MR. SCHMIDT: Okay and --

MR. DONITHAN: And that, and that's basically, I'm sorry.

MR. SCHMIDT: Being a power engineer, what does that

enable you to do or what a, what a power, if you can explain to me and the Board, what power engineers, the kinds of things that that allows you to do or, or the area, the subject matter that you deal with?

MR. DONITHAN: Well, I transitioned out of the Navy kind of doing a similar, from a power engineering into power plants where you're operating steam turbines, boilers, engines, pumps, motors, transformers, electrical switch gear that is powering a facility and/or generating power to supply to a grid for consumption, whether it's on site, facility on site, or exported off site.

MR. SCHMIDT: Okay and Earth and Air Technologies is a Maryland company?

MR. DONITHAN: Correct.

MR. SCHMIDT: Okay and where are you headquartered?

MR. DONITHAN: Westminster, Maryland.

MR. SCHMIDT: Okay. Have you designed or developed, built other solar, what I'm going to call solar farms or solar community facilities in the Maryland area?

MR. DONITHAN: Yes.

MR. SCHMIDT: How many?

MR. DONITHAN: I, I would say roughly a hundred.

MR. SCHMIDT: Okay.

MR. DONITHAN: In the Maryland/Pennsylvania area.

MR. SCHMIDT: Okay. Any in Baltimore County?

MR. DONITHAN: Yes.

MR. SCHMIDT: Where?

MR. DONITHAN: In White Hall, Reisterstown, Sparks recently, we have another off of, another one in White Hall, Hampstead, which is Baltimore County, Hampstead. I think there's about four or five recently, we've done a couple and we got some in the, in the hopper, so to speak.

MR. SCHMIDT: Okay. Mr. Alston, I would offer the witness as a power engineer. I'm going to be asking him questions about sort of the technical aspects of how this proposed facility works in terms of the power and its, its function in terms of the production of energy and how that energy is distributed, which I, I do believe is within his purview and expertise as he's the designer, so it's a, I don't know if you've ever had anyone ask to be qualified as a power engineer. It was a new term as far as I'm concerned, but as he's indicated, that is a national recognition for the, the type of things that he's described.

CHAIR: Any voir dire?

MR. MCCANN: No.

CHAIR: Any objections?

MR. MCCANN: No, nothing that I can't handle on cross, (inaudible).

CHAIR: Okay. Ms. Demilio? Okay. So qualified.

MR. SCHMIDT: Okay. Mr., Mr. Donithan, let's, let's

go back and I guess start maybe at the beginning with this property. Did there, Mr. Lip, you've been here all day and heard the testimony. Mr. Lippy indicated that he had worked with you on some solar facilities on his property or properties of his relatives?

MR. DONITHAN: Yes.

MR. SCHMIDT: Tell us just a little bit about that background, what you did.

MR. DONITHAN: I, I want to say that it was in 2010, we approached Mr. Lippy to do wind. And, you know, over the months, we kind of transformed into solar because of the incentives and everything that came along with solar and their site really wasn't a, a real good site for wind in the sense that they had a lot of trees that the wind would block, whereas, from a solar aspect, they had a lot of sun that was hitting down on the field that would make it a good site for solar. They had, and that was on their chicken farm up in Westminster, Maryland and we did a site analysis assessment of the site in regards to performance and financial to determine, you know, performance wise, is it a good site and also financially, if it is a good site and what type of energy it would be able to offset for the chicken houses.

MR. SCHMIDT: Okay and did you eventually install solar equipment there or else, and/or elsewhere on the Lippy property?

MR. DONITHAN: Yes, we did. We did a two hundred kilowatt solar array, which is a little over, probably about an acre, somewhere around there, of solar panels on that site, electrically connected to the transformer on site and that supplied about thirty percent of the energy uses for the chicken, for the chicken coops.

MR. SCHMIDT: Okay. So, the, the work that you've done for Mr. Lippy is, is it, I'm just trying to put it into laymen's terms as I would understand it, that, was that to provide power to the Lippy property itself?

MR. DONITHAN: Correct.

MR. SCHMIDT: Okay and exclusively the Lippy property itself?

MR. DONITHAN: Correct.

MR. SCHMIDT: Okay.

MR. DONITHAN: Although there is a net metering, you know, this all came about in 2007 and net metering (inaudible) where there would be times when this system potentially could generate or, generate more than the facility could use and then your meter spins backward, goes out into the grid and you get credit that, when, whenever you need it during the day, let's say.

MR. SCHMIDT: Okay.

MR. DONITHAN: Or night.

MR. SCHMIDT: Okay. So, that facility at the chicken

farm generally serves the Lip, the Lippy property but could in some occasions provide power into the, into the grid, into the public grid?

MR. DONITHAN: That's correct.

MR. SCHMIDT: Okay. Did you do anything else on the Lippy property in terms of solar panels on houses or buildings or anything like that?

MR. DONITHAN: Yes, we, we did do his house, his farm house.

MR. SCHMIDT: And what'd you actually do?

MR. DONITHAN: We put a ground mounted system on his site to offset close to one hundred percent of his energy uses for, for the residence.

MR. SCHMIDT: Okay. Just for the residence?

MR. DONITHAN: Just for the residence, yes.

MR. SCHMIDT: Okay. Now, turning to this particular property, did there come a time that you had discussions with Mr. Lippy about this six and a half acres?

MR. DONITHAN: Yes.

MR. SCHMIDT: And tell us how that came about and what you were looking at, the determination here as to what, how this site may be used from a solar standpoint.

MR. DONITHAN: Well, I mean, Donald, Donald Lippy is my neighbor and I, I would guess we're friends as well. I can look out my deck and I can see his farm operation from my deck.

So, he's that close and from time to time, you know, we talk or, you know, check to see how his systems are going and we have conversations. He knew that I was involved in the community solar energy generating program that the State initiated back in 2015 and one thing led to another and he asked is that something that could be done on, you know, that he could himself on one of his properties. And I said, possibly, and that's, that's how we got started to take a look at some of the properties that he had to see if it was feasible.

MR. SCHMIDT: Okay. Did there come a time that this particular property was considered?

MR. DONITHAN: Yes.

MR. SCHMIDT: And is it feasible here?

MR. DONITHAN: Yes, it is.

MR. SCHMIDT: Is this a good site, bad site, average site for solar?

MR. DONITHAN: It's very good.

MR. SCHMIDT: Why is that?

MR. DONITHAN: One of the main objectives of, of, of solar site that we look at is is sun going to hit the modules. So, you have to have sun and that's probably paramount to any site is to make sure that we have a site that doesn't have a lot of trees on it, which this had no trees on it other than the perimeters and secondly is how to, how do we tie in

electrically our solar system into the grid. So, we have to have access to a, you know, electrical interconnection point and also the lay of the land. You want to make sure that, you know, you're not dealing on a hill or unless the hill is, is facing or slanted or tilted perfectly, like you want to make sure you have a half way decent site that you can't mount a ground mounted solar array on.

MR. SCHMIDT: Okay and did this site meet those characteristics of exposure and proximity to the grid and the topography and so on and so forth, things you've just described?

MR. DONITHAN: Yes. We did a, you know, analysis, a shade analysis to see how much sun was going to be hitting on certain points of the property and yes, it did, you know, pass our kind of muster.

MR. SCHMIDT: Okay.

MR. DONITHAN: Or go, no go.

MR. SCHMIDT: I think we've all seen these before and Mr. McCann, those were offered below, but I'm going to show you and I'll hand these up so they just have a copy. Ms. Rosen, if I can approach, you can give one to all the Board members. But, Mr. Donithan, I'm going to show you two photographs. Now, these are not taken from the subject property, at the property, correct?

MR. DONITHAN: Correct.

MR. SCHMIDT: Okay, because obviously there is no solar facility there at the present time.

MR. DONITHAN: Correct.

MR. SCHMIDT: But can you tell us what these photographs are just demonstrating?

MR. DONITHAN: What you're looking at here is basically a solar farm or a solar array where you have a strong of solar modules that are mounted on a ground mounted structure that is designed, stamped designed, for wind and also for the, the specific ground source to make sure that they can handle the loads for that particular area.

MR. SCHMIDT: Okay. Now, those solar arrays you call them, or I think I've been calling them panels, is, is that what proposed on the subject site in this area within the setback line and all these vertical lines?

MR. DONITHAN: Yes.

MR. SCHMIDT: Okay and just, if you can give us any kind of estimate, how many panels would you be looking at in, in an area like this or how much acreage are we talking about to give us a sense of scale?

MR. DONITHAN: You're looking anywhere from, you know, six thousand to seven thousand modules. We call them modules just from an electrical standpoint, to distinguish between an electrical panel. But the industry, most of the industry, does refer to them as panels, by the way.

BOARD: Just real quick. On Petition Exhibit 8, the module you're referring to is that one that is bounded by the white frame?

MR. DONITHAN: Correct. That is correct.

MR. SCHMIDT: So, six to seven thousand of those?

MR. DONITHAN: Correct.

MR. SCHMIDT: Okay and there are actually two photographs, but I think they show, essentially, one's just a little bit of a close up?

MR. DONITHAN: Yes.

MR. SCHMIDT: Okay and I would offer that as 8-A and 8-B. Again, that's not this property, but just representative. Mr. Donithan, just before we leave the arrays, how tall are they? How far do they come off the ground?

MR. DONITHAN: Anywhere from four to maybe seven feet.

MR. SCHMIDT: Okay.

MR. DONITHAN: And that's at their height when if you want to dump snow, that would be at the height of seven feet where you can dump snow off of them.

MR. SCHMIDT: Do they, do they pivot?

MR. DONITHAN: The particular ones that we were, are looking at are single axis tracker that track with the sun, so, yes, they do move, they are movable.

MR. SCHMIDT: So, okay, so they're movable and how,

how, one particular array, just to give the Board a sense of scale, how big is that in terms of the dimension wide and height? You said it's four to six feet tall about how big is the actual array?

MR. DONITHAN: The, the module itself is three, three feet by maybe six feet four inches.

MR. SCHMIDT: Three feet wide and six four --

MR. DONITHAN: Correct.

MR. SCHMIDT: -- deep or tall, okay.

MR. DONITHAN: And technologies is changing and that's kind of what the industry is moving towards, is smaller. The smaller we can get these, the better.

MR. SCHMIDT: Okay.

MR. DONITHAN: By the time we're, we're done, who knows what size they'll be?

MR. SCHMIDT: Okay. I'm not a power engineer and if you need to come up to this map or plan to answer this question, Mr. Donithan, please feel free to do so. But I think the simplest thing is if you can, tell, tell the Board, if you can describe how this works, how, how does this energy system work? You put these modules out here and the sun comes out and shines on them? What happens? So, I'm just going to ask you to kind of explain it.

MR. DONITHAN: Sure, sure. Well, they're, they're mounted on, which basically is a removable structure, the

ground mounted system, so after the useful life of these, by the way, you can pull these ground mounted structures out and restore the farm to its original structure. So, these modules are sitting on this ground mounted system as if, if you think of a module as a battery and basically that's what a module is. It's a battery, except it doesn't have chemicals in it. It's just a photo (inaudible) effect that shines on the silicon an it generates a certain voltage. Just like a battery generates a certain voltage. The more batteries you have in series, the more voltage you generate, the more power you generate. That's the same thing that's happening with these modules. The more modules we string together, the more voltage we can produce, the more power we can produce. Once we get to the power level that we can supply the electrical grid, is when we tie and it's just like Legos, really. You're just connecting wires, you're plugging one wire from one module to the other till you get to the end and then you take those two ends and then you just connect it to an inverter, which is kind of the brains of the systems, that converts the direct current, which is its battery power, a DC voltage, to an alternating current voltage, which is your house power.

MR. SCHMIDT: Okay. Now, let me just stop you there. So, on this plan, there's a little rectangular box which says 2MW inverter station. I'm pointing to it here. And what actually is that?

MR. DONITHAN: Yeah, that, that is the inverter, like I said, the module strings, so to speak, the wires, are connected electrically. I mean, there's other, you know, boxes or combiner boxes that you combine a bunch of these strings together, then you can run just one string to these inverters, that convert the power to house power, your alternating current power. But with this particular, it's going to convert it to, again, alternating power, but it has to be voltage level that can tie into the utility grid.

MR. SCHMIDT: Okay. So, let me stop you there and make sure I understand. So, the sun shines, sun shines down on the, these batteries, as you've called them, the arrays, the panels and creates a direct current energy, correct?

MR. DONITHAN: Yes.

MR. SCHMIDT: And then that is transported or hooked up to this inverter station box in the, in the middle of the field?

MR. DONITHAN: Correct.

MR. SCHMIDT: Okay and then when that power or current goes there, it is converted into alternating current, correct?

MR. DONITHAN: Correct.

MR. SCHMIDT: And alternating current is the type of current we have in our houses when we plug in our toasters?

MR. DONITHAN: Correct.

MR. SCHMIDT: Okay. Once it, once that power, once this energy is accumulated, in effect, and then sent here and then converted, where does it go from here? Where does the power go? What happens?

MR. DONITHAN: Well, that inverter station, again, converts that power to utility scale power that we can supply to the interconnection point of the transmission, distribution line, in this particular case, is Baltimore Gas & Electric.

MR. SCHMIDT: Okay. So, you're, and why don't you go up to the plan, if you will, stand on this side so the Board members can see, if you will, Mr. Donithan. And --

MR. DONITHAN: This side?

MR. SCHMIDT: Yeah. And, and so, if you, if you can show us just schematically on either one of those plans the inverter box is shown on both of these here and here. This might be the easiest one to see from a distance. Where is the BG&E, quote, grid or network or whatever you call it?

MR. DONITHAN: Yeah, the utility power is running parallel with Hanover Pike.

MR. SCHMIDT: Okay. So, there's transmission lines. Are they above ground or below ground?

MR. DONITHAN: They are above ground.

MR. SCHMIDT: Okay and that's the BG&E line that's giving all these folks who live up and down Route 30 power?

MR. DONITHAN: Correct.

MR. SCHMIDT: Okay and you're going to tie into that somehow?

MR. DONITHAN: That is correct.

MR. SCHMIDT: How so?

MR. DONITHAN: Well, it really, we're at the mercy, once we submit our interconnection application, we're at the mercy of BGE for them to tell us, okay, this is how you're going to interconnect to our utility. So, basically, if, you k now, basically, what we do is we tie this to an electric meter, they come in and run their electric feeders and tie it to the line side of the meter and we feed back into the grid through a meter, fundamentally.

MR. SCHMIDT: Okay.

MR. DONITHAN: Again, there's all kind of requirements that they may have us to put a selective relay, to make sure when we switch, when the power is switching on and off, connecting to the grid, it's in sync with their grid.

MR. SCHMIDT: Okay. All right. I think I understand that. Hopefully, the Board does. It's, it's, you're talking to non-engineers here. So, you're essentially tying it, is there a, a physical connection between this inverter and this trans, trans, and the, and the grid system here?

MR. DONITHAN: Well, there's, there, there will be a physical connection between the inverter and the meter, wherever the utility says we got to put the meter here, we got

to put there meter here, we got to put the meter here, that's up to them. We will physically tie to the meter and then the utility actually comes in and they do the final connection and tie our meter in, when I say tie, they run their, their feeders, to this meter to connect us.

MR. SCHMIDT: Okay. So, they'll tell you where to put the meter, you connect to the meter and then BG&E connects to the meter?

MR. DONITHAN: That's correct.

MR. SCHMIDT: And so, then the circuit is complete by having those connections through that common meter?

MR. DONITHAN: That's the interconnection point, correct.

MR. SCHMIDT: Okay.

MR. DONITHAN: Fundamentally, yes.

MR. SCHMIDT: Now, is, is the, is the line an underground line to get to the meter?

MR. DONITHAN: Yes.

MR. SCHMIDT: Okay. So, there won't be a transmission wire line running across the top of this?

MR. DONITHAN: No, there will be no overhead lines.

MR. SCHMIDT: Okay. So, it'll go to the meter and then into the line. Okay. Let me ask you a little bit about the amount of power that this project, a project like this, this particular project would produce. Can you quantify the

amount of power that is going to be produced here?

MR. DONITHAN: The maximum power that we can generate under the community solar energy generated program is two megawatts.

MR. SCHMIDT: Okay.

MR. DONITHAN: So, the maximum power at any one time to connect is two megawatts, and just to give you a, a something to kind of, you know, visualize, Calvert Cliffs has two nine hundred megawatt nuclear generators, two nine hundred megawatts, eighteen hundred megawatts. This is going to be two megawatts.

MR. SCHMIDT: Okay.

MR. DONITHAN: Which is capable of supplying maybe up to three hundred and fifty houses. We're going to be supplying farms, businesses and residential so we're thinking somewhere in the realm of about two hundred, maybe two, at the most, two hundred customers.

MR. SCHMIDT: Okay. Will the Lippy property, now, I know, well, the chicken coop is up Hampstead?

MR. DONITHAN: Yep.

MR. SCHMIDT: How, if, if any way, is the Lippy property, property going to be served by this?

MR. DONITHAN: Let me back up. I'm sorry, I said two, two hundred. The Lippy Brothers, there's two properties, they're going to be using sixty percent of this energy. So,

we're going to significantly being supply, supplying, you know, less than a hundred additional customers, subscribers, to the energy of this generator.

MR. SCHMIDT: So, when you said the Lippy, and you were here for Mr. Lippy's testimony, he and his brother own a number of properties.

MR. DONITHAN: Yeah.

MR. SCHMIDT: And, and all the ones that are in proximity to this will be served by this facility, is, is that correct?

MR. DONITHAN: That is correct. The feeder, the feeder that we're connecting to is connected along the same (inaudible) utility bus as the grain dryer and the chicken coops.

MR. SCHMIDT: Okay. So, so, this facility will serve the Lippy property, and when I say that I mean the farms owned by Donald Lippy and Donald and Kathleen and the Lippy Brothers, all the acreage that Mr. Lippy described, correct?

MR. DONITHAN: Correct.

MR. SCHMIDT: And it will pro, will it provide their residential use for those properties, for their houses?

MR. DONITHAN: It could but they already have solar so.

MR. SCHMIDT: Okay. Will it provide power for their farming operation in terms of the electrical, any electrics

that's needed in barns or any equipment that they use?

MR. DONITHAN: Not the residential, no, not the, but on their grain dryers and their chicken coop, or, or I guess you call it chicken coop, the chicken houses, it will supply sixty percent of both the grain dryer and the chicken houses.

MR. SCHMIDT: It'll apply sixty percent of the power that they need?

MR. DONITHAN: That this is generating.

MR. SCHMIDT: Okay. So, it'll, but it'll supply all the power that those business operations require?

MR. DONITHAN: That is correct.

MR. SCHMIDT: Okay. So, the Lippys then will be, I'm not going to use the, the word dependent, but the Lippys will, will be able to utilize this facility to essentially run their farms?

MR. DONITHAN: Correct.

MR. SCHMIDT: From a power standpoint?

MR. DONITHAN: Correct.

MR. SCHMIDT: Still got to go out there and --

MR. DONITHAN: Gas and, you know.

MR. SCHMIDT: Gas up the tractor and all that stuff.

MR. DONITHAN: Yeah.

MR. SCHMIDT: But any power, electric power, would be supplied by this?

MR. DONITHAN: Correct.

MR. SCHMIDT: Okay. Now, you indicated then that other power will be to the, in the, in the grid and possibly power another hundred homes offsite?

MR. DONITHAN: Potentially, yeah.

MR. SCHMIDT: Okay. In terms of those folks, do they ask to get on this system or how does that work?

MR. DONITHAN: Well, a lot of the potential subscribers to this energy, we've already had looked at their sites, let's say, in the past and for whatever reason, they didn't have a site that was feasible to put solar on. Whether they didn't have the roof space or they didn't have the property or it wasn't, the roof wasn't facing in the right direction, or trees or a number of things that prevented them from putting solar. So, what they essentially can do is they can buy into solar energy from this facility, so we know already they want solar energy so we have approached them and we have a lot of customers already that said, hey, yeah, we're ready to, to sign up whenever this system gets up and running.

MR. SCHMIDT: Okay and where, generally, from a proximity standpoint, where are those folks located?

MR. DONITHAN: In town, you know, right in town, locally.

MR. SCHMIDT: When you say in, in town, what town is that?

MR. DONITHAN: Hampstead.

MR. SCHMIDT: How far is that from here?

MR. DONITHAN: Well, Hampstead is right on the other side of the line, the town is probably a couple miles at the most.

MR. SCHMIDT: Okay. How about, are there any folks up and down Route 30 here that you've approached or are interested in tying into this system?

MR. DONITHAN: Yeah, there are some other farmers that have expressed interested, expressed interest in Baltimore County, yes.

MR. SCHMIDT: Okay.

MR. DONITHAN: And with BG, they, the requirement is that whoever purchases electricity from this system has to be on the BGE grid, so they have to be in BGE service territory. It can't be Potomac Edison, it can't be Pepco, unless a system is built in Pepco.

MR. SCHMIDT: Okay. So, your system is designed and will attach to the BG&E system?

MR. DONITHAN: That's correct.

MR. SCHMIDT: Okay. From, from that standpoint, is this facility, is your operation, regulated by any government agency or quasi-government agency?

MR. DONITHAN: Yep, we're, the Public Service Commission is the ent, is the regulatory body for this system. We have to go through the Public Service Commission in order to

be issued a license or a registration number in, in order to build this and they have to approve this system to make sure that it meets their requirement of this community solar energy generating system. So, they have to approve this site. So, we have several steps that we have to go through other than here, getting approval from the County, we have to get approval from the Public Service Commission that says hey, okay, this is a site that, this is what we're looking for in a community solar energy generator and we approve that and we will subscribe a registration or a license for you to build this system. And then the third is the interconnection. Is the utility going to let us interconnect here? You know, so we have to jump through several hoops in order to get this system interconnected.

MR. SCHMIDT: Now, I understand that the, sort of in a sequence, getting the County zoning approval to do this is the first step, is that correct?

MR. DONITHAN: That's correct.

MR. SCHMIDT: And have you at least done some investigation to determine whether you believe that you are, will be a successful candidate to tie into the system through the PSC and through BG&E?

MR. DONITHAN: I guess, I don't know if this is a good analogy but the marijuana law, where there's X amount of licenses that are available in order to grow or to be eligible for a license. I wouldn't say we're to that extent, but it's

kind of similar. You, you, there's a limited number of these generators and there's only twenty, if you do, I'm sorry, if you do two megawatt systems, there's only a hundred of these that are going to be allowed in Maryland. Only two hundred megawatts total that the community solar energy generator program is going to allow in this State. So, we are limited, so we're kind of making sure we have the right system, it's at the right location, it meets the State's, the regulatory requirements for a community solar energy generator and we feel we have a real good chance for this particular location just in the, where it's located, where the utility, the feeders that are on Route 30 and so we feel we have a really good chance to, to be approved in that respect.

MR. SCHMIDT: But, but you need the zoning approval first?

MR. DONITHAN: Yes, yes.

MR. SCHMIDT: Okay. Now, you've talked a lot about the, the community solar program, I think you've called it, if I've got the right name, Mr. Donithan. If you can, you're, as someone who is involved in this field, I assume you're familiar with the State of Maryland's efforts and regulations and process as it relates to the development of non-renewable, i.e., not, not fossil fuel and not nuclear energy, is that right?

MR. DONITHAN: Yes.

MR. SCHMIDT: Can you tell us a little bit about how that plays into the State's requirements and how that had any impact, if any, on your selection in moving forward with this site?

MR. DONITHAN: Yeah.

MR. SCHMIDT: Give us a little history lesson on that.

MR. DONITHAN: So, net metering became law in 2007.

MR. SCHMIDT: What's that mean?

MR. DONITHAN: Net metering means that you can put a meter, they call a net meter, that goes forward and backwards and you can tie electrically to that wind, a renewable source, solar, let's talk solar, you can put solar on your roof, tie it to this meter, the meter can spin forwards and backwards. That's net metering.

MR. SCHMIDT: So, you can, so, you can take power from the grid or you can put power into the grid?

MR. DONITHAN: Exactly.

MR. SCHMIDT: Okay.

MR. DONITHAN: So, and net metering law, they allow you to generate up to two hundred percent of your usage, to offset your electric and then maybe for future expansion, that's why they say two hundred. So, any excess energy goes back to the grid, your meter spins backwards and at night, when the sun is not out, you know, your, your meter is spinning

forward, so you're using basically, you're using the utility as a battery. So, it's really a battery bank that's storing energy, so to speak, for you until you need it, when you're putting it on your home, let's say, for instance. So, that's the net metering law that came in in 2007, which limited you to you can't sell power to just anybody. Now, here we have, in 2015, a community solar energy generating law came into effect and I don't, I can't tell you word for word, but basically there's several parts of that and part of it is to meet the renewable energy portfolio standard which started in 2007, which says twenty percent of your electricity has to come from renewable energy by 2020.

MR. SCHMIDT: Okay, so the State of Maryland has, has passed a law saying that by 2020 twenty percent of this State's power has to come from renewable sources?

MR. DONITHAN: Electricity has to come from renewable sources.

MR. SCHMIDT: Okay and that's a State require, that's going to be a State requirement?

MR. DONITHAN: Actually, last week they bumped it up, it's now twenty-five percent. Twenty-five percent of all our electricity has to come from renewable energies.

MR. SCHMIDT: Okay and that --

MR. DONITHAN: And that was kind of overrode and put into law last week.

MR. SCHMIDT: Okay. There, there was a governor's veto that we might have read about, is that correct?

MR. DONITHAN: Yes.

MR. SCHMIDT: Okay. So, by twenty, the year 2020, in three years from now, twenty percent of the electricity used in this State has to be from renewable energy?

MR. DONITHAN: Correct.

MR. SCHMIDT: Just if you can tell us, how much energy today in this State is used, is generated by renewable energy?

MR. DONITHAN: Well, if I can just back up a minute and, you know, twenty percent from renewable and there's a specific carve out for solar.

MR. SCHMIDT: Okay.

MR. DONITHAN: Two percent. So, all the other renewables there isn't a carve out, solar there is. They're saying two percent has to be from solar.

MR. SCHMIDT: Okay. So, at least --

MR. DONITHAN: Now, it's 2.5, by the way, so that got bumped up last week too.

MR. SCHMIDT: All right and that's not a maximum, 2.5?

MR. DONITHAN: No, that's, --

MR. SCHMIDT: That's a minimum?

MR. DONITHAN: Yeah, that's a minimum, correct.

MR. SCHMIDT: So, you got to have twenty percent non-renewable and of that twenty percent, at least two and a half have to be solar?

MR. DONITHAN: Twenty-five percent, yes.

MR. SCHMIDT: Okay. I mean, twenty-five percent from renewable.

MR. DONITHAN: Renewable.

MR. SCHMIDT: And at least two and a half percent of that --

MR. DONITHAN: Two point five.

MR. SCHMIDT: -- has to be from solar?

MR. DONITHAN: Correct.

MR. SCHMIDT: Okay. So, if you know, how much is today solar and how much is renewable, if you know?

MR. DONITHAN: Well, it's, right now we're less than one percent of solar in the State of Maryland and that's with, you know, we had a big hundred and fifty megawatt system built down on the eastern shore and some, eastern shore, Somerset County, which practically doubled our capacity here. So, and it's still less than one percent in the State right now, solar.

MR. SCHMIDT: How about, if you know, so you got a little less, you got something less than one percent solar. How about other renewable? I see the big wind turbine when I drive down to Ocean City by, whatever the name of that college is down there.

MR. DONITHAN: Yeah, that's not producing much energy.

MR. SCHMIDT: Okay.

MR. DONITHAN: I put one of those in, two of those in.

MR. SCHMIDT: Okay.

MR. DONITHAN: Again, with, with wind is, solar is where the bang for the buck is in renewables. I mean, that, you can quantify how much energy a solar system is producing. With wind, not so much. Now, with water, like Conowingo Dam, that's another renewable so that falls into the same realm of renewable energy. Biogas and there's some others that all tie into the bunch of renewable energies.

MR. SCHMIDT: Okay.

MR. DONITHAN: I mean, we do have a lot of big wind turbines out in Western Maryland they're pretty daggone big. Now, those utility scale wind turbines do produce a lot of energy but I understand the State is kind of, you know, they're not looking too favorably at wind right now.

MR. DONITHAN: Is that just because of the visual impact of those things?

MR. DONITHAN: Well, it's, it's a number of things and, you know, with wind, you, it's a dynamic, you know, moving parts, things fail on it. I can tell just from my experience. You're constantly having to maintain a rotating component,

versus with solar, it's static, for the most part everything is static. It's a graveyard, you know, you're, what you're looking at here is a graveyard. That's what that is, a graveyard. If you want to really, it doesn't move, nothing, other than you don't have the creepiness that goes along with it.

MR. SCHMIDT: Okay. Let, let me ask you about that, Mr. Donithan, in terms of the operation. Is this a, is this a manned facility? I mean, is somebody there every day doing something?

MR. DONITHAN: No, that's, that's the great part about it, you know, we can monitor this remotely. This will be tied in communication wise to monitor it remotely anywhere in the world.

MR. SCHMIDT: Okay.

MR. DONITHAN: So, we know, we look at it, we can tell, you know, I can pull up on my I-Phone and look at a site and say something isn't right here, we need to go out and check it and that's basically how we look at these systems. It's not manned, I mean, there's going to be, you're going to get the bugs out of the first month or two. You're going to be, you're going to have to get the bugs out of the system, so to speak, to make sure everything is working properly. After that, it's, you're not going to be doing a lot of visits to this site.

MR. SCHMIDT: Okay.

MR. DONITHAN: Other than in the summertime maintaining mowing.

MR. SCHMIDT: Okay. We'll get to that. But, so, there's, is there any traffic, automobile traffic, that's generated to and from this site by people coming out there to, to work on it or anything like that on any kind of regular basis?

MR. DONITHAN: No.

MR. SCHMIDT: Okay and you indicated that the, the panels are about six or seven feet tall, correct?

MR. DONITHAN: Correct.

MR. SCHMIDT: Okay.

MR. DONITHAN: Well, four, they go from four to, to about seven.

MR. SCHMIDT: Okay. So, they're, they're of a height, given the setback, they wouldn't be casting any shadows onto any adjacent property, would they?

MR. DONITHAN: No.

MR. SCHMIDT: Okay. How about noise? Is there any noise associated with this where people across Hanover Pike are going to be able to hear anything from these arrays?

MR. DONITHAN: No. I mean, you got traffic there. I think the, the inverter, if I'm not mistaken, gives off maybe sixty decibels, which is a conversation that we're having right here, that's about sixty decibels.

MR. SCHMIDT: Okay. But other than the inverter, what's it give off, like a hum or a, electrical kind of --

MR. DONITHAN: Yeah, yeah.

MR. SCHMIDT: Okay. Other than that, the arrays, the panels give off any kind of noise?

MR. DONITHAN: Minimum, very little.

MR. SCHMIDT: Okay. Now, you touched on this, tell us about, and I think we have the photos, but tell us about under the panels, what's that look like? How's that maintained? What, what is that all about?

MR. DONITHAN: Well, yeah, this will basically all be hydro seeded, so you'll have grass and, just grass.

MR. SCHMIDT: Okay and is that maintained?

MR. DONITHAN: Yes.

MR. SCHMIDT: Okay. At the other sites and this site, does, what, somebody come out and mow it when it's growing?

MR. DONITHAN: Well, we might talk with the owner's son-in-law, he has a bunch of sheep, we might want to graze in there and so that's something that we're looking at as well. If we can potentially get some sheep out there to graze around the arrays, to maintain it, that's something that has been done in the industry.

MR. SCHMIDT: Okay.

MR. DONITHAN: So, we would, we're going to look at

that.

MR. SCHMIDT: Okay. In, in terms of the, the arrays there, can you tell us about how they're attached to the ground? Is it a, is that all going to be like an asphalt surface or are they, or how's that --

MR. DONITHAN: No, we're looking at, I'm going to say less than two thousand square feet of disturbed surface from the, both the housing, the foundation for the inverter and the actual piers for the ground mount system.

MR. SCHMIDT: Okay. In the photograph, you can see that there's, it's almost like a sign where there's a post in the ground and the array is mounted on it.

MR. DONITHAN: Yes.

MR. SCHMIDT: Is that how it works?

MR. DONITHAN: Yeah, it's just like, you know, a guard rail type beam that's kind of hammered into the ground and/or you can screw a helical screw in the ground that can also be unscrewed. Again, that goes to the portableness of the systems where twenty-five years down the road, we can come in here and take this system out and restore it to its original farm use.

MR. SCHMIDT: Okay. In terms of the, so there, this area will not be paved?

MR. DONITHAN: No, not at all.

MR. SCHMIDT: Okay. So, is there any, if, if it

rains, when the water runs off the panels into the ground, there will be ground there to absorb just like there is today the water?

MR. DONITHAN: Correct.

MR. SCHMIDT: Okay. How about cleaning these panels or arrays? Is, do you, do you need chemicals or do you go out there with Soft Scrub or what do you do in terms of cleaning, if at all?

MR. DONITHAN: Well, the, the great part about Maryland, although we haven't had a lot of rain this summer, or year for that matter, last year, but rain is enough to wash these panels. That's all you need. And then, if you get a little bit of snow, the snow actually acts as a scrub brush and kind of scrubs any debris that falls off of the modules as they're tilted, the snow will slide off of them.

MR. SCHMIDT: Okay. Is there like a maintenance schedule where people come out and clean these off or do anything on any type of regular schedule?

MR. DONITHAN: No, no. Like I said, we're in an area where you do not have to clean these modules. Cleaning comes into play when you're in, where this all, you know, the silicon valley, California, the desert, yeah, you need to clean them out there. You don't need that in Maryland.

MR. SCHMIDT: Okay, because --

MR. DONITHAN: We may not have the sun that they have

out there, but we have other, you know, qualities about this area that you don't need to clean the modules. You're not having, unless it's, you know, we did one, only one time have we ever cleaned modules off and that was at the chicken farm when they were cleaning the chicken coops and the wind was blowing twenty, thirty miles an hour and all the chicken feathers and dung collected on the modules and the reason I knew that is I pulled my phone out and I could see the, it was a bright sunny day out and we're only producing X amount and that's, so that's the only time we had to clean it and with that water. Just a water hose.

MR. SCHMIDT: Okay. How about, how about glare? Now, we talked about landscaping but if I'm driving up and down Route 30, am I going to see glare, be blinded by glare or have reflection off these panels?

MR. DONITHAN: No, the, these put off, the idea of a solar module is to absorb sunlight, not to reflect it. If we're reflecting, we're not getting the energy that this technology needs to generate power. There's anti-reflective material that is designed, both within the glass that encases the silicon cells, so these are encased and they are treated or I shouldn't say treated but they are designed with an anti-reflective material in them. So, there's very little reflection. Everything has reflection. A black top has reflection. This actually gives off less reflection, believe

it or not, than a cornfield or a wheat field.

MR. SCHMIDT: Really, how, well, it's metal, but how can that be?

MR. DONITHAN: Because they're, they're, the, well, the, it's glass, it's just like a, your windshield. So, your windshield is on a car, you know, you drive down the street, the street, do you see glare coming from a windshield? Rarely, right? Maybe at certain times of the day you may, but most of it is from the sun that's at an angle that it, you know, the sun's the issue more than the glare coming off it. So, it's treated just like a windshield is. And then underneath it, the silicon itself, the cells, which are your little batteries in these modules, they're treated as well with an anti-reflective material, you know, it's all, you know, a chemical material that's encased in this glass that, the same type of chemical material you have in your windshield.

MR. SCHMIDT: Mr. Donithan, are there any kind of, you, you mentioned the silicon and the glass and the, sort of the composition of these. Are there any type of chemicals or dangerous hazardous materials that these arrays are made of that could somehow leach into the groundwater or wash out into the public street or anything like that, any type of hazardous type material that would be generated by any of these?

MR. DONITHAN: None at all. None at all. These are, again, silicon that are coming from, you know, the silicon that

you, you know, it's in the periodic table, you know, we get it from the earth. Everything is chemically, everything is made out of chemical. These are encased silicon cells that are encased in glass that have no leaching effect at all, no chemicals that are going to leak out, it's encased in a frame, in a glass frame.

MR. SCHMIDT: Okay. Now, you talked about the, the light and you've talked about the chemicals and underneath. How about, do these make, do these produce any kind of odor that would be disruptive from anybody, somebody else across the street would smell?

MR. DONITHAN: No.

MR. SCHMIDT: Okay. Okay and no, you said no, no sounds?

MR. DONITHAN: Well, other than you, again, the, the inverter that gives you --

MR. SCHMIDT: The humming of the inverter. Okay. Obviously, these don't impact public schools or public parks or any type of other public facility in any way in terms of any type of impact on them?

MR. DONITHAN: No.

MR. SCHMIDT: Okay and you indicated they don't, they wouldn't cast any shadows. Is there any lighting proposed here that at night you'd have bright lights shining or like a parking lot or anything like that?

MR. DONITHAN: Not at all. There may be like a small little LL, LED light that you may have on the inverter that shows that it's off or on, just like on a, you know, maybe the size of like your alarm clock, like a.m./p.m., that kind of.

MR. SCHMIDT: Okay. Okay and is there any kind of signage proposed here?

MR. DONITHAN: No.

MR. SCHMIDT: Okay. Mr. McCann, I want to show him some pictures. Mr. McCann advised me that he's got a witness who has to leave.

MR. MCCANN: Look, I appreciate it, but he had to leave, so.

MR. SCHMIDT: Oh, I'm sorry. I was going to suggest we take, --

MR. MCCANN: That's okay. I appreciate it. I didn't want to interrupt you.

MR. SCHMIDT: -- I, I apologize. Yeah, okay. I have some photographs. These are in, these are below and I think, Mr. McCann, and again, my numbering, Ms. Rosen, is hopelessly off because of the fact that --

BOARD: We're up to nine.

MR. SCHMIDT: Yeah, I had these marked as four but I got totally out of order. So, good intentions of pre-marking things. But I have three copies that the Board can maybe look at and then you can mark one of those with nine, as 9-A. And,

Mr. Donithan, I'm going to show you a series of photographs. I think you were, you were present when these photographs were taken of the subject property?

MR. DONITHAN: Yes.

MR. SCHMIDT: And I'm going to just generally, if, and if you can refer to them as A, B, C. They're self-explanatory but maybe if you can just tell the, the Board what, what they're looking at in those photographs.

MR. DONITHAN: 4-A as you're looking south down Hanover Pike, that's Hanover Pike and Fringer Road, Carrollton Road is, you know, right there as we're standing, taking the photograph. 4-B is on Fringer, Fringer Road looking east towards Hanover Pike.

MR. SCHMIDT: And the houses in the distance are on the other side of Hanover Pike?

MR. DONITHAN: They're on the other side of Hanover Pike, correct.

MR. SCHMIDT: Okay, just to orient the Board.

MR. DONITHAN: And then to the left is the property, the proposed property for the solar.

MR. SCHMIDT: And the trees that are, that are shown, the mature trees, maybe you could show where they are on, on, on the site plan?

MR. DONITHAN: Yeah, you got existing trees here. The, the mature trees that you see to the left are north east.

MR. SCHMIDT: And C?

MR. DONITHAN: 4-C is, we're at Fringer Road, taking a picture of the prop, the pros, the proposed solar site with, this is the trees that you're seeing here, the existing trees.

MR. SCHMIDT: And that's, and --

MR. DONITHAN: And that's the property taking it from looking at.

MR. SCHMIDT: Okay and that's, that's the property, obviously, those were taken during the summer, last year, but that was when the subject, 6.4 acre site, was being cultivated by Mr. Lippy?

MR. DONITHAN: Correct.

MR. SCHMIDT: And you can see the plants, or whatever that is, whatever, I'm not a farmer, whatever crop that is. 4-D/

MR. DONITHAN: Four, four, 4-D is, you know, at Fringer, from Fringer Road looking east towards Hanover Pike, property is to the left, obviously the vehicle to the right and the houses on the other side of Hanover Pike and you can see the utility feeders, the electrical feeders, that make this site a very good site for a community solar project because you have feeders right there that you can tie into. If you have to go a mile, two miles, three miles, it's just, it's not feasible.

BOARD: And just for the record, you're referring to

9-D?

MR. SCHMIDT: Yes. He's saying four.

MR. DONITHAN: I'm sorry.

BOARD: Yes.

MR. SCHMIDT: But I had mismarked them.

MR. DONITHAN: Okay, all right.

MR. SCHMIDT: So, the record is clear, it's 9-A through M, I believe.

BOARD: That's what, right, the photos we're referring to are all Exhibit 9.

MR. SCHMIDT: Yes, sir.

BOARD: (inaudible) reference to four.

MR. SCHMIDT: Yeah, thank you, Mr. Garber. Yes, sir.

MR. DONITHAN: So, E is a similar photograph as, I want to say C, maybe.

MR. SCHMIDT: Again, of the subject property.

MR. DONITHAN: Yeah, C, yeah.

MR. SCHMIDT: Okay.

MR. DONITHAN: Almost identical to C. F is the property, I want to say this is to the left of the proposed or west to the proposed property from Springer, Fringer Road.

MR. SCHMIDT: That's the other Lip, Lippy farm.

MR. DONITHAN: Over here.

MR. SCHMIDT: Yeah, okay.

MR. DONITHAN: And you're looking, I guess, I would

say north west. G is another little further away on Fringer Road, taking a picture with the property on the left, Hanover Pike straight ahead with your electrical feeders along Route 30. H is looking north from Fringer Road, Hanover Pike, you're looking at the Route 30, Hanover Pike north, going north. And the property is, goes to the corner there, to the left. A little, a little further back, you, we're looking at the property, kind of the shoe, if you look at this as a boot, I guess kind of this portion of the boot here, the property, with existing trees, you can see there's the houses, there's a couple houses that are behind those trees there, that's the property, we're looking north from this photograph. J is a photograph of Hanover Pike south, this is on, I would say, the other side of Fringer Road looking south on Hanover Pike. This is Hanover Pike and it's a picture right on the corner, I would say, on Fringer Road on the other side of the road of the property. Right here I would say we're looking southeast and you can see the vehicles going north there. This is a very heavily traveled, Hanover Pike is pretty heavy there, you can see every picture you have vehicles there. Here we are looking east.

BOARD: What photo is that?

MR. DONITHAN: L, did I skip one?

MR. SCHMIDT: No, I think that's right.

MR. DONITHAN: And I would say we're on the other

side of Fringer Road, on the corner across from the property, taking a photograph of the houses that you can see have a lot of trees in front of them, kind of, you know, protecting them, I guess, from the view of the street there. M is another photograph, now we're on the property, corner of the property, looking north. And you can see the crop a bit and some vegetation on the outskirts of the crop picture there. And that's it.

MR. SCHMIDT: I would offer those collectively as Exhibit 9.

MR. MCCANN: No objection.

MR. SCHMIDT: I didn't ask you one other question, Mr. Donithan. We all hear about the Samsung phones all catching fire and those kinds of hazards with things, did, can these things, are they flammable, are there any flammable parts to them or any danger of fire or any other type of impact like that from these things?

MR. DONITHAN: Well, all of these modules have to be built to UL standards and NFPA standards, National Fire Protection Association and IEEE standards, which is the Institute of Electrical and Electronic Engineers. So, all of this equipment has to meet certain standards, which NFPA, your National Electrical Code and it's basic, anything can catch fire. My experience on ground mounted systems, I have never seen a ground mount on fire. Not to say that there hasn't been

any, but, you know, have, this is silicon, these are what chips are made of so.

MR. SCHMIDT: Must be Mr. Belt skateboarding to his car. Go ahead.

MR. DONITHAN: So, yeah, so, again, these are all built to national standards and the utility will not let us interconnect unless they're built and meet those specific standards.

MR. SCHMIDT: Okay. In conclusion, Mr. Donithan, is there any type of impact that you're aware of that would cause a negative sights, smell, noise, traffic, chemicals, on any of the adjacent properties in your view as a power engineer?

MR. DONITHAN: None that I'm aware of, no.

MR. SCHMIDT: Okay. I have no other questions for the witness.

CHAIR: Cross?

MR. MCCANN: Great, thank you.

MR. DONITHAN: Can I sit down?

MR. MCCANN: Sure, absolutely.

MR. DONITHAN: Okay. I'm presuming you're going to take a while, that's why I wanted to sit down.

MR. MCCANN: (inaudible) hopefully not too long, but. First off, a little bit about your company, Mr. Donithan. Earth and Air Technologies, that, that is a privately held corporation, correct?

MR. DONITHAN: Correct.

MR. MCCANN: It is a, it is an LLC, in fact?

MR. DONITHAN: That is correct.

MR. MCCANN: Okay and the members of that LLC are whom, yourself and?

MR. DONITHAN: Just myself.

MR. MCCANN: Okay. So, it's not publicly traded, obviously.

MR. DONITHAN: No.

MR. MCCANN: Just quickly, I'd like, I guess we're at our Exhibit 1, is that right, Ms. Rosen?

BOARD: Um hm.

MR. MCCANN: Okay. Quick look, here you go.

CHAIR: Thank you.

BOARD: Thank you.

MR. MCCANN: If you would, Mr. Donithan, take a quick look at Exhibit 1, which is, I'm sure you'll recognize these documents and there are actually three separate documents. The first is a printout and the second and third are, are separate documents, all, all three of which I obtained from SDAT. Do, do you recognize these documents as information regarding your company with the State Department of Assessments and Taxation?

MR. DONITHAN: Yes.

MR. MCCANN: Okay and for instance, the, the Articles of Organization, which is the third page in the exhibit,

identifies the, the purpose for which your LLC was formed was to engage in the business of construction services. Is that, is that an accurate statement?

MR. DONITHAN: Yes.

MR. MCCANN: Okay. I would move Protestant's Exhibit 1 into evidence.

MR. SCHMIDT: No objection.

MR. MCCANN: You mentioned, Mr. Donithan, that you have a contractor's license, an MHI, MHIC license, correct?

MR. DONITHAN: Yes.

MR. MCCANN: Okay and that's, but you also mentioned your certification as a power engineer with the National Institute of Uniformed License of Power Engineers. Without getting to, into what exactly that institution is, the only license you need in Maryland to do what you do is the contractor's license, correct?

MR. DONITHAN: Correct.

MR. MCCANN: Okay.

MR. DONITHAN: Yes.

MR. MCCANN: So, there's no other, any other certification and I note the term certification probably doesn't, maybe license is a better word, there's no other required license that the State or Baltimore County issues to you in order to engage in the business that you, that you're engaging in, other than MHIC, correct?

MR. DONITHAN: MHIC and construction, yes.

MR. MCCANN: Okay. Well, those are two separate things.

MR. DONITHAN: Correct.

MR. MCCANN: Okay. Quickly, some of the existing projects that you mentioned, you mentioned in Baltimore County, White Hall, Reisterstown, Sparks and Hampstead as, I think the question to you was, was whether or not you had other farm, solar, solar farms and am I correct with respect to each of those four projects that I mentioned, those were, those involved solar panels on existing buildings, correct, but not farms?

MR. DONITHAN: Some were on the ground and some were on a building, on, on a barn for, for a farm.

MR. MCCANN: Which ones were on, on the ground?

MR. DONITHAN: Greenland Farms in White Hall.

MR. MCCANN: Okay.

MR. DONITHAN: I don't know if the, if you have the one we just did for Bonner.

MR. MCCANN: In Sparks?

MR. DONITHAN: On Sparks, in Sparks, that was on the ground.

MR. MCCANN: Bless you.

MR. DONITHAN: We had, Hampstead was on a residential house, which they have small little farmette, I would say.

MR. MCCANN: Okay.

MR. DONITHAN: And then the other one was on a barn, which was for a farm.

MR. MCCANN: And that's the, the --

MR. DONITHAN: Butler Road in Reisterstown.

MR. MCCANN: Reisterstown, okay. And the two farm on the ground ones you mentioned, those are not (inaudible)?

MR. DONITHAN: That's correct.

MR. SCHMIDT: I, I'm sorry, I didn't hear you, not what?

MR. MCCANN: The size of (inaudible).

MR. SCHMIDT: Oh, not the size of these.

MR. MCCANN: I meant the, the subject proposed, proposal. And then you also mentioned you've done some work for Mr. Lippy himself and/or his brothers. You mentioned a two hundred kilowatt array on the chicken farm in Westminster. That system is on the chicken house itself, correct?

MR. DONITHAN: No, it is not. That's on, that's on the ground.

MR. MCCANN: It is, okay.

MR. DONITHAN: I mean, we were looking to do it on the chicken houses but it's, you have too, when the fans are running, you have too much dirt and dust and dung that foul the panels up so we would love to use chicken houses, a lot of space, but you just practically can't, it's just too dirty.

MR. MCCANN: So, you would, you would in general prefer to put solar panels on houses rather than (inaudible)?

MR. DONITHAN: Would, I'd prefer to put them on the ground.

MR. MCCANN: Why --

MR. DONITHAN: I'm, I'm getting too old to climb up on rooves any more.

MR. MCCANN: Well, I'm not talking about the physical --

MR. DONITHAN: No, I, I know. This size, it's going to be tough to put on the roof, just for the simple fact you're not going to find a lot of buildings that have that much roof space so it's not, not, I don't want to say not practical, but it's, it's few, it's few and far between.

MR. MCCANN: Well, there's buildings on the Lippy, Lippy properties other than this chicken farm in Westminster upon which there are solar panels, correct? You put solar panels on his house, for instance, right?

MR. DONITHAN: Again, that was on the ground. Just the, the house was not conducive for, there were trees, if I recall, wasn't facing the right direction. I mean, the whole idea with solar, you want to make sure that they're facing the right direction. If they're not, you, you could lose half of the energy that, that could be generated from this and it's just not cost effective.

MR. MCCANN: This solar array that's indicated in Petitioner's Exhibit 8-A and 8-B, that photograph Mr. Schmidt showed you?

MR. DONITHAN: Yeah.

MR. MCCANN: Any idea, is that, 8-A, is that representative of this six and a half acres, or is that going to be larger than what this is?

MR. DONITHAN: Yeah, I mean, I don't, I can't really get a gauge on that. I don't know if that's six and a half acres, but I would say it's representative just physically, just the single module and string size --

MR. MCCANN: I meant the, I meant the scope of the, the arrays. Will there be that many, you think, or approximately that many?

MR. DONITHAN: Oh, yes, absolutely, yes.

MR. MCCANN: Okay and I'm jumping ahead a little bit and I'll get back to this, but the, you, you mentioned that sixty percent of what will be generated from the proposed arrays will be used on site, I mean, not on site, but rather by Mr. Lippy himself on, on his farms, correct?

MR. DONITHAN: The, the Lippy Brothers, yes.

MR. MCCANN: Lippy Brothers, okay. How, if, if this solar panel array was to address only that need or use, would it be sixty percent of the size of what's being proposed roughly?

MR. DONITHAN: I think that's a good estimate, yes.

MR. MCCANN: The public utility in this area, that is, the area of the subject site, is BG&E, correct?

MR. DONITHAN: Correct.

MR. MCCANN: Your company itself, Earth and Air Technologies, is not a public utility, we agree with that, correct?

MR. DONITHAN: Correct.

MR. MCCANN: And you're not an electric company, like BG&E, correct?

MR. DONITHAN: Correct.

MR. MCCANN: An electric company, in fact, that's a defined term, is it not, in State law?

MR. DONITHAN: Yes.

MR. MCCANN: Okay. So, you don't file, and you also, strike that. And you're also not a, what's called a public service company under State law, correct?

MR. DONITHAN: Not today, no.

MR. MCCANN: Okay.

MR. DONITHAN: But that's the whole idea of this community solar energy generating project is we will be under the util, Public Service Commission's regulations.

MR. MCCANN: I understand, we'll get to that. But are you, are you contending that under that program, you will be a public service company, is that, is that term as defined

in State law or did --

MR. DONITHAN: I'm not, I'm not sure of the definition but I would say we're supplying electricity to the public so I would say yes.

MR. MCCANN: Okay. Do you recognize public service company as a defined term in State law? Do you recognize that as such? Have you heard of that term?

MR. DONITHAN: Yes.

MR. MCCANN: Okay. But right now, as, in the business that you're engaging in now, even with other customers you have, you don't file annual reports with the Public Service Commission, like a electric company or a public service company does, correct?

MR. DONITHAN: I'm not sure what they file, but we do have to submit forms that are part of the Pennsylvania/Jersey/Maryland interconnection, yes. And that has to be on a monthly basis.

MR. MCCANN: Okay and who do you submit those to?

MR. DONITHAN: That would be, I don't know what the acronym, EIS?

MR. MCCANN: Right, but it's not the Public Service Commission itself. You don't have to file, just like BG&E does, just like Potomac Electric does, Washington Gas does, Elkton Gas does, Delmarva Power does, you don't have to file annual reports that companies like that have to file with the

Public Service Commission, correct?

MR. DONITHAN: Correct, just initial filings, we, we file initially, yes.

MR. MCCANN: What do you mean, initial filings?

MR. DONITHAN: All of our customers have to be registered with the Public Service Commission, so they have to be certified as a renewable energy generating facility.

MR. MCCANN: Okay. Well, and again, we'll get to that in a, in a moment. Let's talk a little bit about the system, you know, the parts of it. You testified in response to Mr. Schmidt's questions about panels themselves, the inverter and then there's a line from the inverter to the meter, correct?

MR. DONITHAN: Correct.

MR. MCCANN: So, let's just deal first with the panels, the inverter and those lines that I just mentioned. Those are all, those are all parts that are, be owned by you or Mr. Lippy, correct?

MR. DONITHAN: Correct.

MR. MCCANN: And specifically how will it work? Will you own them and lease them to Mr. Lippy or will he own, will he own them --

MR. DONITHAN: In this particular case, Mr. Lippy will be the owner, yes.

MR. MCCANN: So, he's purchasing those --

MR. DONITHAN: Yeah, we're the developer, EPC, for the project.

MR. MCCANN: Okay and that meter, that, so, panels, inverter, lines, that meter that those lines will connect to is BG&E's meter, correct?

MR. DONITHAN: That is correct, yes.

MR. MCCANN: Okay and that --

MR. DONITHAN: Well, let, let, let me back up. We had to pay for it. I'm not sure. We had to pay for the, just like your home meter, who owns that? I guess BGE owns it, we have to pay for it.

MR. MCCANN: All right.

MR. DONITHAN: There is a charge on your utility bill that you're paying for that meter.

MR. MCCANN: Right, you, you pay for it because BG&E requires you to pay for it?

MR. DONITHAN: Yeah, pretty much.

MR. MCCANN: As part of your, your deal with them, correct?

MR. DONITHAN: Correct.

MR. MCCANN: Okay and then there's the, I guess, the next part of the system is the transmission lines themselves and you already described those. I think you also call them feeders.

MR. DONITHAN: Feeders, or transmission lines, yes.

MR. MCCANN: Yeah, and that's, as we saw in some of the photographs, that is the actual, (inaudible) look like a telephone line on the east side of Hanover Pike, correct?

MR. DONITHAN: Correct, yes.

MR. MCCANN: And those transmission lines obviously are not owned by you or Mr. Lippy, correct?

MR. DONITHAN: Correct.

MR. MCCANN: And right now, in terms of the, the lines that are clearly offsite, do we know where right now the BG&E meter will be?

MR. DONITHAN: We don't. I mean, that's a function of when we submit our interconnection. They may put it right on the pole.

MR. MCCANN: On the transmitter --

MR. DONITHAN: Then we have to transmit our energy over to the meter, to the pole.

MR. MCCANN: So, you'd have to --

MR. DONITHAN: Or they could put the meter on the property. So, it's, the utility pretty much dictates that. You know, they don't want to be getting out, let's say, when they're reading the meter with a bunch of traffic. So, they have to take all that into consideration.

MR. MCCANN: Okay.

MR. DONITHAN: Where the meter reader --

MR. MCCANN: Well, you, you connect to the meter, you

pay for that?

MR. DONITHAN: Correct.

MR. MCCANN: Okay. So, if that, if they put the meter on a telephone pole on the east side of Hanover Pike, you're going to have to, or Mr. Lippy, depending on your agreement with him, are going to have to pay to put that, that line under the ground to get to the meter, correct?

MR. DONITHAN: Correct.

MR. MCCANN: Okay. Once you transmit the energy, the power, the electricity, from the panels to that meter, on that telephone pole, what happens next is BG&E is the one that physically, if that's the right word, transmits or distributes that electricity to the retail customers on, on the grid, as you called it, right?

MR. DONITHAN: Yeah, they take the electrons that we produce from the system, that we generate from the system, the electrons --

MR. MCCANN: Right.

MR. DONITHAN: -- are generated from the system and we feed it into the utility like an independent power producer would do and those electrons then are distributed on their transmission line, yeah.

MR. MCCANN: So, once it, once it gets to those transmission lines, it gets mixed in with all the other that's, again, if that's the right way to put it, energy, power,

electricity, and it's BG&E that gets it to a house a mile away, gets it to anywhere else in the grid, correct?

MR. DONITHAN: That is correct.

MR. MCCANN: So, it's not your company and it's not Mr. Lippy that's physically transmitting or distributing the electricity to John Smith five miles down the road, correct?

MR. DONITHAN: We're, we're distributing it, the utility is transmitting it.

MR. MCCANN: Well, you're --

MR. DONITHAN: You have a generation, transmiss, generation, distribution, transmission function.

MR. MCCANN: Right.

MR. DONITHAN: We're doing a generation and we're distributing it into their utility feeder, which they in turn distribute or transmit to whoever is on that service link.

MR. MCCANN: So, you distribute or transmit to BG&E and BG&E transmits or distributes to the customer?

MR. DONITHAN: Correct.

MR. MCCANN: So, it's not like you or Mr. Lippy is literally sending power, electricity to any individual homeowner in any ind, independent way aside from all the other customers, no, so let's say, well, strike that. I'll get to that in the program. But, in terms of your relationship with BG&E, you have to get permission from BG&E to connect to their meter and to their transmission lines, correct?

MR. DONITHAN: Initially, we have to get permission from the Public Service Commission, even before we go to the utility.

MR. MCCANN: Okay. I think you're not answering my question, but what are you talking about when you say that? What are you getting permission for? Are you getting, are you getting permission from the Public Service Commission, not to engage in business, but to connect to BG&E's meter and transmission lines?

MR. DONITHAN: We are getting their permission to build a generating station here. Public Service Commission has to give us permission, authorization, licensing, to be a community solar energy generator in the State's program.

MR. MCCANN: Again, you're talking about the State program again, right? This community solar energy pilot program, correct?

MR. DONITHAN: Correct.

MR. MCCANN: Okay and again, we'll get to that in a minute. You mentioned already that you're not an electric company. It's PSC that licenses, gives license as an electric company to BG&E, correct? Public Service Commission grants a license to BG&E to be an electric company or electric supplier, correct?

MR. DONITHAN: I believe so, yes.

MR. MCCANN: Okay. You don't have that license,

you're not a licensed electric company or electric supplier, correct?

MR. DONITHAN: At, today, no.

MR. MCCANN: Well, you, and again, when you, when you say that, you're, you're suggesting that you will be one under this community solar energy pilot program?

MR. DONITHAN: Correct.

MR. MCCANN: Okay. So, this is two. And could I show him that copy, I don't have another one, Ms. Rosen, if you, you don't mind?

BOARD: (inaudible).

MR. MCCANN: Let's take a look, if you would, at Protestant's Exhibit 2, and these are just several pages that I, for the record, pulled off of PS, Public Service Commission's website, and, and do you recognize at least the first four pages as part of Public Service Commission's website where you can go in and see if a certain company is or is not an electric, electricity supplier, do you recognize these documents?

MR. DONITHAN: I mean, I, it isn't something that I deal with on a day by day basis, but it does look familiar.

MR. MCCANN: Okay and then the last page is, I typed, I typed in Air and, Earth and Air Technologies and the response I got back from the PSC is that you are not, you are not licensed in the State of Maryland to be an electricity

supplier.

MR. DONITHAN: Correct.

MR. MCCANN: You agree, you agree with that?

MR. DONITHAN: Yes.

MR. MCCANN: Okay. I would move Protestant's two into evidence.

CHAIR: Any objections?

MR. SCHMIDT: I just don't know if this is complete or, I mean, it's something that Mr. McCann said that the witness said he wasn't really familiar with. To the extent that I don't know that it's been authenticated or has a foundation, I guess I would object.

MR. MCCANN: The only thing I would add in terms of its completeness, Mr. Alston, is I, this is the entirety of what that screen showed, there's nothing else to print. I just clicked on print. You can type in the --

CHAIR: Yeah, I don't, I don't see any, I mean, we know that he's not an energy supplier, we know that.

MR. SCHMIDT: Yeah, that, that's what he said.

CHAIR: We know these people are. I mean, this is not, --

MR. SCHMIDT: Okay.

CHAIR: -- this is not harmful.

MR. SCHMIDT: Okay.

CHAIR: I'm going to admit it as, yeah.

MR. SCHMIDT: I'm fine, I just don't know if there's more or less, that's all, but.

CHAIR: Yeah, I understand. Yeah, I'm, I'm going to overrule (inaudible).

MR. SCHMIDT: Okay.

MR. MCCANN: Thank you. Okay. You mentioned the renewable energy portfolio standard, and you may have mentioned it quickly and I know that's a mouthful, renewal energy portfolio standard, or REPS, as it's sometimes referred to, correct?

MR. DONITHAN: Um hm.

MR. MCCANN: Yes?

MR. DONITHAN: Yes, sorry.

MR. MCCANN: And so, that's, REPS is this thing we've been reading about in the paper about this, the standard that the State is trying to achieve to have, as you said, twenty-five percent renewable energy by the year 2020, correct? That is this, REPS is --

MR. DONITHAN: Correct.

MR. MCCANN: -- REPS is that standard, correct?

MR. DONITHAN: Yeah, I, I'm familiar with it as RPS but.

MR. MCCANN: Oh, I'm sorry, okay. Well, you certainly know better than I. But the, the standard itself is one that the State has imposed on electricity and energy

suppliers like BG&E, correct?

MR. DONITHAN: That's correct, yes.

MR. MCCANN: So, for instance, here's another, this is a complete printout of this portion of the website. This will be Protestant's three. (inaudible). Bless you.

BOARD: Bless you.

MR. SCHMIDT: Excuse me.

MR. DONITHAN: Thank you.

BOARD: Bless you.

MR. SCHMIDT: Excuse me.

MR. MCCANN: So, you have Exhibit 3, a copy of it in front of you and this is just frequently asked questions on PSC's website and there's a reference in the first paragraph about this renewable portfolio standards, bless you.

MR. SCHMIDT: I'm sorry.

MR. MCCANN: RPS, and as it says in the first paragraph, third sentence, quote, the RPS program requires electricity suppliers to meet a prescribed minimum portion of their retail electricity sales with various renewable energy sources and it talks about tier one and tier two (inaudible). Do you recognize that as being (inaudible)?

MR. DONITHAN: Yes.

MR. MCCANN: Okay. So, again, you and, you and Mr. Lippy and his brothers aren't required to meet these standards, it's BG&E?

MR. DONITHAN: Correct.

MR. MCCANN: Okay. You don't need to, like BG&E does, file reports to show that they're attempting to meet or meeting RPS, correct? You don't have to do any of that, do you?

MR. DONITHAN: No.

MR. MCCANN: And you don't, you, your company, won't have to pay a penalty if the RPS is not met?

MR. DONITHAN: No.

MR. MCCANN: Okay. Let's talk about the community solar energy program that you mentioned. And basically, that's a program that requires electric companies, like BG&E, to establish, to establish themselves, to establish a program to accept and administer solar, solar projects over a period of three years, correct?

MR. DONITHAN: Yeah, yes, that's correct.

MR. MCCANN: Okay. So, so the program is actually one that doesn't require companies like yours directly to establish solar programs, it requires BG&E to establish these programs, like this community solar energy program, in order to meet RPS, correct?

MR. DONITHAN: No, a utility cannot be a community solar energy generator.

MR. MCCANN: I'm not saying that the BG&E is the community solar energy generator. What I'm saying is, BG&E has

the responsibility to establish the program to, to administer projects, solar projects.

MR. DONITHAN: Yeah, the Public Service Regulation requires them to do that, yes.

MR. MCCANN: Requires BG&E?

MR. DONITHAN: Correct.

MR. MCCANN: Not you, not companies like you?

MR. DONITHAN: No.

MR. MCCANN: Your company is what's called, or Mr. Lippy, would, is what's called the subscriber organization, correct?

MR. DONITHAN: That's correct.

MR. MCCANN: Okay.

MR. DONITHAN: I mean, not today but again, that's --

MR. MCCANN: You, your, you will apply?

MR. DONITHAN: Correct.

MR. MCCANN: Is what you talked about in response to Mr. Schmidt's questions.

MR. DONITHAN: Yes.

MR. MCCANN: You, your company, Mr. Lippy, whomever, will apply for admission to this program, this pilot program to become a subscriber?

MR. DONITHAN: To become a subscriber organization, yes.

MR. MCCANN: Right.

MR. DONITHAN: Through the Public Service Commission, yes.

MR. MCCANN: Right. You, that's an application?

MR. DONITHAN: That's correct.

MR. MCCANN: But you, once you're a subscriber organization, you then apply to BG&E to actually construct the system that you're proposing. It's an application to BG&E, correct?

MR. DONITHAN: Yeah, three, three parts and I think I mentioned one is, you know, we have to get approval through the County, permits process.

MR. MCCANN: Right.

MR. DONITHAN: The second is we have to be approved as a community solar energy generator through the Public Service Commission. They give the approval.

MR. MCCANN: A subscriber organization?

MR. DONITHAN: As a subscriber organization. Once we have that, then we can apply to the utility for interconnection, to interconnect at wherever we, you know, are looking to interconnect electrically.

MR. MCCANN: So, --

MR. DONITHAN: And then, that's all part of the law where the utility, per the Public Service Commission regulation, has to accept us if we meet the criteria.

MR. MCCANN: As a subscriber organization.

MR. DONITHAN: Correct.

MR. MCCANN: As some, as someone capable or able to construct a system with BG&E?

MR. DONITHAN: That is correct.

MR. MCCANN: Okay. So, really, the only, the only connection between your company and the Public Service Commission, as far as it relates to this community solar energy program, is just to submit an application to become a subscriber organization?

MR. DONITHAN: That's correct.

MR. MCCANN: Okay. You mentioned that, this concept of net metering?

MR. DONITHAN: Yes.

MR. MCCANN: You recall that testimony?

MR. DONITHAN: Yes.

MR. MCCANN: And I, and I, I think I understood what you said only because I read a little bit about it is you described it as the meter going back and forth. Basically, what, what a net metering allows is allows a customer who has solar panels on his or her house, to, if they end up generating more electricity or power than they need, they sort of get a credit, the meter goes back a little bit, they don't owe because they generated more than they need, correct?

MR. DONITHAN: Yes.

MR. MCCANN: Because that, that, that delta, that is

the amount that they produced more than they need, is taken by BG&E and then sold as part of the general power on the grid, correct?

MR. DONITHAN: Correct.

MR. MCCANN: Okay and that, and, and, I guess in a sense, that's really no different than what we're doing here, that is Mr. Lippy is proposing to take sixty percent of what he's generating, use it on site, the other forty percent, and this is just, by the way, this, that's just an estimate on your behalf, correct?

MR. DONITHAN: Yes.

MR. MCCANN: You don't know what he will actually use but it's an estimate.

MR. DONITHAN: Correct.

MR. MCCANN: The other forty percent will be taken by BG&E and used to provide to other customers, correct?

MR. DONITHAN: No, not, no, not correct. It's different. Net metering and community solar energy generation is different.

MR. MCCANN: I, I, I meant in concept, they're the same.

MR. DONITHAN: No, because we have subscribers that we have to send bills out to in order to, as they are subscribers, to pay for the electricity that our system is going to generate. So, basically, we're acting as a utility

for those individuals and sending them bills to pay for the electricity that they subscribed to.

MR. MCCANN: Are you talking about net metering or are you talking about the program, the pilot program?

MR. DONITHAN: The pilot program.

MR. MCCANN: Okay.

MR. DONITHAN: So, you, you said it's the same but it isn't, that's, that's why I was --

MR. MCCANN: So, you're saying that if twenty customers want to participate in this program, want to purchase electricity through the program, the community solar energy program, how is it that you're sending a bill to those folks?

MR. DONITHAN: Invoicing. So, they sub, if I can explain and it's all, this is all new. We're still, need to, the utility, the Public Service Commission still has to send the form specifically to what we need to do but basically, in a nutshell, a customer says I'm paying $100 a month, that's how much electricity I want to buy from you. But they're only paying $80 for the same amount of electricity that they're paying $100. So, they're saving $20. So, we send them a bill for $80. We send BGE our list of subscribers on, just a spreadsheet, on a monthly basis, that says these are our twenty subscribers, this is how much they subscribed to, this is how much you credit them and then they pay us based on that credit. So, it's no, really no different than like a third party

supplier. If you ever had a third party supplier, except with this community, the great thing about this community energy solar program, you can offset, not just the generation portion of your bill, but the distribution and transmission, all the kilowatt hour, so that's a significant, you know, we're, you're talking fourteen cents versus nine cents. So, third party suppliers, they're only, you're, you're paying in the generation portion. This system offsets everything. So, that's one of the great benefits of community solar, because you're offsetting the transmission and distribution.

MR. MCCANN: So, customers are paying you, literally send you a check?

MR. DONITHAN: That's correct.

MR. MCCANN: Okay. Where is that in, I didn't see that anywhere in the program, anywhere in the legislation, in the regulations, in the description online, where are you getting that from?

MR. DONITHAN: That's, again, part of the community solar energy generated regulation.

MR. MCCANN: But where, where though, where, where do you get that from? Where do you get that, considering you don't currently participate in the program, so where do you get that?

MR. DONITHAN: I, I don't know if they specifically spell out in there how we send invoices out but if you go to, I

think it's Title 2062.

MR. MCCANN: Yeah, no, I've been there.

MR. DONITHAN: Yeah.

MR. MCCANN: Where, it doesn't even say you sent invoices out, what, is that what you're saying?

MR. DONITHAN: Yeah, that, I mean, that's not part of the Public Service Commission, that's our, that's our, how do we as subscriber organization collect our cost for generating electricity for them. So, that's not part of, you know, of course, we have to meet OPC requirements.

MR. SCHMIDT: What's OPC, so the record is clear?

MR. DONITHAN: The Office of People's Counsel who is deeply involved in this process of how all that collection is being made. So, the intricacies of, you know, what they're going to come up with finally, I, I'm not aware of that. All I know is that we have to invoice, it's not the utilities that are invoicing, we are the utility.

MR. MCCANN: And you're, you're basing that understanding on the regulations?

MR. DONITHAN: That's correct.

MR. MCCANN: On COMAR, it says in there that you are to invoice subscribers?

MR. DONITHAN: I don't know if it specifically says anything in there about the invoicing.

MR. MCCANN: Well, that's what I'm asking you, where

do you, where do you get this information about you invoicing as opposed to getting paid somehow else?

MR. DONITHAN: Again, this is not finalized, so we're still waiting on specifics from the Public Service Commission.

MR. MCCANN: My ask, my question was where did you get the information that you just conveyed to us? Where did it come from?

MR. DONITHAN: Just, that's an assumption that, you know, just a business assumption that is being made, that we have to bill customers as a subscriber. If I sell you something, I'm going to send you an invoice.

MR. MCCANN: That doesn't necessarily have to be the way it works. Why couldn't, why couldn't forty percent that Mr. Lippy is, is getting from selling to un, customers, wherever they are, he doesn't know, he's not connecting to their house.

MR. DONITHAN: Yeah.

MR. MCCANN: Why, why doesn't, why wouldn't it work out that BG&E would simply give him a credit on his, on his bill?

MR. DONITHAN: Yeah, but the credit --

MR. MCCANN: That's one way it could work, correct? That's one way it could work?

MR. DONITHAN: Well, BG&E isn't going to send an invoice to them, we have to invoice them. I mean, they have to

pay us.

MR. MCCANN: But wait, you keep on saying that but where do you get that from? I didn't see any reference anywhere, anywhere in COMAR, or in the public utilities statutes, State of Maryland, or anywhere on the website or anywhere in the pilot program description, anywhere about you doing invoicing. You said it's a business assumption.

MR. DONITHAN: Yeah.

MR. MCCANN: But I'm asking you, based on what did you make that assumption?

MR. DONITHAN: Well, part, as part of the working group for the community solar energy generation system, this is kind of what the utility has come up with is that we have to submit to them how much energy we're supplying to a specific subscriber.

MR. MCCANN: I understand that.

MR. DONITHAN: And then the utility credits them that particular amount of energy that --

MR. MCCANN: I understand that.

MR. DONITHAN: Right, right, so.

MR. MCCANN: So, you, you're involved in some work group that's discussed these issues but it hasn't been worked out yet exactly.

MR. DONITHAN: That's correct.

MR. MCCANN: Okay.

MR. DONITHAN: Correct.

MR. MCCANN: Excuse me, I'm sorry.

CHAIR: Excuse me, just a reminder. At 3:00 we have to break, so.

MR. MCCANN: Okay. One more exhibit and then I think I'm done. This will be four, another print out from the PSC website.

MR. SCHMIDT: This is number four, I believe?

BOARD: Yes.

BOARD: Thank you.

MR. MCCANN: So, Mr. Donithan, I'll show you another printout and I'll represent this as the entire document that was printed from the website and this is just a list of gas and electric companies. Do you recognize these, including BG&E as, as public utility companies?

MR. DONITHAN: Yes.

MR. MCCANN: Nothing else. Thank you.

CHAIR: Ms. Demilio?

MS. DEMILIO: (inaudible).

CHAIR: I have one question. You, you testified that the inverter station, that thing will make about sixty db of noise?

MR. DONITHAN: Yes.

CHAIR: That's the noise level you predict? The solar panels themselves, you said they track the sun?

MR. DONITHAN: Yes.

CHAIR: Will they have motors on them?

MR. DONITHAN: They will have a, a small motor, one small motor for about five hundred, up to five hundred (inaudible).

CHAIR: Okay. So, how much noise --

MR. DONITHAN: With a (inaudible).

CHAIR: -- how much noise is that going to make?

MR. DONITHAN: I'm not exactly sure but I, I know that they don't make anywhere near what the inverter makes. If, if any, just as they're tracking. I mean, if they, they're a (inaudible) so, you know, they do require periodic greasing and that so.

CHAIR: But there will be about twelve of them, you think? Six thousand --

MR. DONITHAN: It depends on the, the layout really, how we can connect shafts to, to the particular, but they can, one (inaudible) horsepower motor can move about --

CHAIR: They all, they all going to engage at the same time to move, to track?

MR. DONITHAN: For the most part, yes.

CHAIR: That's it.

MR. SCHMIDT: Just a couple questions and I'm mindful of your deadline. So, just to make it clear based on Mr. McCann's questions, I understand that you're not Baltimore Gas

& Electric or Delmarva or any of these other gas or electric or water companies but Mr. Donithan, you, you will apply to be a subscriber organization under these new rules that the State is promulgating, correct?

MR. DONITHAN: Correct.

MR. SCHMIDT: And you will be a community solar energy generator, correct?

MR. DONITHAN: Correct.

MR. SCHMIDT: And so that the energy that you are generating will then be transmitted in part, or supplied in part, to the public power system that serves this area of Baltimore County?

MR. DONITHAN: Yeah, just, just to be clear, Mr. Lippy is also a community, he will also be applying for that.

MR. SCHMIDT: When I say you, I mean, you and Mr. Lippy, this operation?

MR. DONITHAN: Yeah, right, correct.

MR. SCHMIDT: So, that this, this actual use will be supplying power to be used by the public?

MR. DONITHAN: Correct.

MR. SCHMIDT: And the conduit to get to other, other public users will be the BG&E line, correct?

MR. DONITHAN: Correct.

MR. SCHMIDT: Okay. But, nonetheless, you were suplising, sur, supplying the power and transmitting it,

distributing to the line, correct?

MR. DONITHAN: Correct. Much like a lot of the utilities that are listed in a couple of these, they tie in and use the transmission and distribution feeders as well, where they're a co-op --

MR. SCHMIDT: Who owns Calvert Cliffs?

MR. DONITHAN: I'm not sure if that's Exelon, but I think Exelon.

MR. SCHMIDT: Okay. The energy that's produced there, is that then transmitted to any Potomac Edison, Baltimore Gas and Electric, Chesapeake Utilities, any of those entities, do they get the energy, the power that's trans, that's produced by the Calvert Cliff's plant?

MR. DONITHAN: I believe about fifty percent of the electricity used in, in Maryland is from Calvert Cliffs, close to it.

MR. SCHMIDT: Okay and that's owned by Exelon, is the name of the company?

MR. DONITHAN: Don't quote me on that, they change periodically.

MR. SCHMIDT: Okay. Well, I don't see them listed on any of these lists of gas and electric companies. But they're still producing the power, are they not?

MR. DONITHAN: Yes.

MR. SCHMIDT: Okay and Baltimore Gas and Electric and

Delmarva, they are not governmental agencies, they are private corporations, correct?

MR. DONITHAN: Who is that again?

MR. SCHMIDT: Baltimore Gas and Electric, Delmarva Power, they're not government agencies, they're private corporations, are they not?

MR. DONITHAN: I believe so, yes.

MR. SCHMIDT: Okay. They have stockholders but they are business entities, not government organizations, correct?

MR. DONITHAN: Correct.

MR. SCHMIDT: Just like Earth and Air is private business, correct?

MR. DONITHAN: Correct.

MR. SCHMIDT: I don't have any other questions.

CHAIR: Any other questions?

MR. MCCANN: Yeah. Mr. Donithan, you mentioned, or Mr. Schmidt asked you a question using the term community energy generator as if that was a term of art or define term somewhere. That's, would you agree with me that that is, unlike subscriber organizations, which is what the law defines as someone participating in this community program, there's no such thing as a community energy generator?

MR. DONITHAN: Absolutely there is. Community solar energy generator is defined by the Public Service Commission and the public utilities COMAR.

MR. MCCANN: It is?

MR. DONITHAN: Yes.

MR. MCCANN: That term? Okay. So, being defined in COMAR?

MR. DONITHAN: Yes.

MR. MCCANN: No other questions.

CHAIR: No other questions? Ms. Demilio, nothing? Okay. Well, I guess we're finished with you, sir. Thank you very much.

MR. DONITHAN: Thank you.

MR. SCHMIDT: Thank you, Mr. Donithan.

CHAIR: Mr. Schmidt, is that your case in chief?

MR. SCHMIDT: Yes, I believe it is, yes. And I know it's 3:00 anyway.

CHAIR: Yeah.

MR. SCHMIDT: I would want to talk to Mr. Donithan to make sure there's nothing else, but I believe it is.

CHAIR: Okay.

MR. SCHMIDT: So, I guess, I'm sure we're going to have to come back for Mr. --

CHAIR: (inaudible).

MR. SCHMIDT: And I'll, if I have any other witnesses, other than rebuttal, I'll let him know and let you know.

CHAIR: Okay.

MR. SCHMIDT: But I don't believe so now. I would like to talk to my client and Mr. Lippy as well.

CHAIR: I understand. So, you're, you're still open, you --

MR. SCHMIDT: I don't want to officially close my case and then have a problem with it.

CHAIR: I understand.

MR. SCHMIDT: But I will just tell the Board for scheduling purposes, I believe I'm done.

CHAIR: Okay.

MR. SCHMIDT: Save rebuttal.

CHAIR: Okay. Well, I guess what we have to do is get a second day and I guess we all can check with Sunny to see when that is doable.

MR. MCCANN: Okay.

CHAIR: And with that, that's it.

MR. SCHMIDT: Okay, thank you.

CHAIR: Thank you, all.

MR. MCCANN: Thank you, folks.

MR. SCHMIDT: We're off the record. Ms. Rosen, I'm going to hand you these exhibits --

(OFF THE RECORD - 02:55:07 PM)

CERTIFICATE OF TRANSCRIBER

I hereby certify that the hearing in the matter of Donald and Kathleen Lippy, case number 16-355-SPHX, heard before the Board of Appeals of Baltimore County, February 7, 2017 were recorded by means of audiotape.

I further certify that, to the best of my knowledge and belief, page numbers 1 through 196 constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In witness thereof, I have affixed my signature this 30th day of August, 2017.

Christine R. Leary

Transcriber

Ref 4B

IN THE MATTER OF:

DONALD AND KATHLEEN LIPPY
CASE NUMBER: 16-355-SPHX

Hearing Date: March 16, 2017

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, commencing at 10:00 AM.

PANEL PRESIDING:

BENFRED B. ALSTON, CHAIRMAN

MERYL W. ROSEN, BOARD

JASON S. GARBER, BOARD

PRESENT ON BEHALF OF THE PARTIES:

LAWRENCE E. SCHMIDT, ESQUIRE

MICHAEL MCCANN, ESQUIRE

CAROL DEMILIO, PEOPLE'S COUNSEL

Christine R. Leary
8200 Featherhill Road, #204
Perry Hall, Maryland 21128

Petitioner
CBA Exhibit
4B

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(ON RECORD - 10:00:49 AM)

CHAIR: Good morning, everyone. We're here for day two of Donald Lippy and Kathleen Lippy, 16-335-SPHX and the last time we were here, Mr. Schmidt had just finished up with Mr. Donithan and I believe he had concluded his case in chief.

MR. SCHMIDT: That is correct.

CHAIR: If that is correct, then I guess we can identify ourselves and move on. Would the parties identify themselves, please?

MR. SCHMIDT: Good morning, Chairman Alston, members of the panel. I'm Lawrence E. Schmidt with the law firm of Smith, Gildea & Schmidt, representing Mr. Lippy, the property owner and Mr. Ken Donithan of Earth and Air, who is the solar company, would actually install the proposed solar farm.

MR. MCCANN: Good morning, everyone. Michael McCann on behalf of the Protestants.

MS. DEMILIO: Carol Demilio, Deputy People's Counsel for Baltimore County.

CHAIR: Okay. I guess the Protestants are going to start?

MR. MCCANN: We are.

CHAIR: Okay.

MR. MCCANN: Great.

CHAIR: Go ahead.

BOARD: Do you swear and affirm under the penalties

of perjury, that the testimony you are about to give is true and correct to the best of your knowledge and belief?

MR. JAKUBIAK: I do.

BOARD: And please state your name?

MR. JAKUBIAK: Chris Jakubiak.

BOARD: And spell your last name.

MR. JAKUBIAK: J-A-K-U-B-I-A-K.

BOARD: And your work address, please?

MR. JAKUBIAK: 100 West Pennsylvania Avenue, Suite 102-G, Towson, Maryland 21204.

BOARD: Thank you.

MR. MCCANN: Good morning. Mr. Jakubiak, tell the Board, if you would, what you do for a living?

MR. JAKUBIAK: I am an urban planner and I work with municipalities, primarily, counties, non-profit organizations and sometimes developers on land planning, zoning regulations and related community planning activities.

MR. SCHMIDT: Mr. Alston, I, I would stipulate that Mr. Jakubiak is a land planner. He recently testified before this Board and was accepted as such.

CHAIR: Well, we don't know what exactly area of expertise that Mr. McCann intends to offer him.

MR. SCHMIDT: Okay.

CHAIR: Although, we'll, we'll, I guess we'll get to that. I mean, because --

MR. MCCANN: Yeah, in light of that, I'll, I'll be brief. Just ask a couple questions, but he'll be offered not only as a planner but in the area of zoning as well, because we are here today for, for zoning issues. So, I'll just ask him some questions.

CHAIR: Sure.

MR. MCCANN: I'll introduce his resume and then we'll move on.

CHAIR: Sure.

MR. MCCANN: Assuming the Board accepts him. So, your, again, your clients are municipalities, counties, developers you said in some instances.

MR. JAKUBIAK: Yes.

MR. MCCANN: Community organizations as well?

MR. JAKUBIAK: Yes.

MR. MCCANN: Okay and specific to zoning ordinance, or zoning regulations, explain what your experience has been in that area.

MR. JAKUBIAK: For the past twenty-five years, I've written multiple zoning ordinances, entire zoning regulations or sections of zoning codes. I've worked as zoning administrator in multiple jurisdictions, requiring that I interpret zoning codes. I've worked with communities in, in trying to resolve zoning conflicts and I, and am frequently involved in reviewing development plans and land use plans and

bringing a prospective of the communities, public interest, to bear on development projects.

MR. MCCANN: Okay and when you say zoning administrator, I think you indicated that you've worked in that capacity in other jurisdictions, I take it, right?

MR. JAKUBIAK: Yes.

MR. MCCANN: And, and just, that's a generic term, what do you mean by that?

MR. JAKUBIAK: Well, zoning administrator is actually an official term within many local governments, county and municipal, so I have a official, I work in an official capacity to interpret zoning development projects, or development projects, interpret the zoning code, issue permits, testify before Boards of Zoning Appeals, my decisions are often appealable to the Board of Zoning Appeals, so in many respects I operate as the administrative officer for the planning and zoning function within local governments.

MR. MCCANN: Okay and that's separate and apart from your consulting aspect of your business?

MR. JAKUBIAK: Well, that is part of my consulting business. In fact, I am frequently retained as, to serve that capacity so many of my clients are long term clients that retain me as their official zoning administrator.

MR. MCCANN: Okay and just briefly, mention, mention if you could, a couple of the jurisdictions for whom you do

work?

MR. JAKUBIAK: The town of Centreville, Churchill, the city of Westminster, the city of Annapolis, town of Crisfield, all of the towns in Garrett County. I'm not working with all these towns right now but I've served in that capacity, many of them. The town of Mt. Airy in Carroll County, Frederick County, the town of Thurmont, I'm actively involved as their town planner and zoning administrator, the towns of Chesapeake Beach, frankly, many dozens of towns here in Maryland.

MR. MCCANN: Okay. Let's turn, let's talk specifically of, about Baltimore County. Have you had the opportunity to work on projects and also in, in review and apply and interpret the Baltimore County zoning regulations?

MR. JAKUBIAK: Yes, I, I have been retained by a number of organizations, just last year during the comprehensive rezoning process to advise on the rezoning of, of properties, the up zoning or the downzoning of land. I've assisted and appeared before this Board and the Administrative Law Judge in multiple cases involving special exceptions or other special hearings or development plan reviews and several years ago I also assisted as a subcontractor on a planning project team, the County, preparing a, a plan for, reviewing a plan for the Pulaski Highway corridor, where I prepared some zoning analysis for the staff, the County Department of

Planning.

MR. MCCANN: Okay. I'm going to go ahead, I forgot, Ms. Rosen, where we are in exhibits. My notes are --

BOARD: Up to, starting with five.

MR. MCCANN: Five, okay. While you're doing that, can I look at the first four exhibits? Just --

BOARD: Do you have copies for the Board, copies of Exhibit 5?

MR. MCCANN: Yeah.

BOARD: Thank you.

MR. MCCANN: Okay, great. Thank you. With that, Mr. Alston, I would offer Mr. Jakubiak as an expert in planning and zoning, those two broad areas.

CHAIR: Objections or voir dire?

MR. SCHMIDT: No objection. I'll say, I have some questions. I'll save them for cross examination.

CHAIR: Okay. So admitted.

MR. MCCANN: And move five into evidence if I could. Thank you. Okay. First of all, Mr. Jakubiak, did you sit through the prior phase of the hearing in this case?

MR. JAKUBIAK: Yes, I did.

MR. MCCANN: Okay and are you also familiar with the testimony before the Administrative Law Judge?

MR. JAKUBIAK: I am because I reviewed the, the, the testimony, the, sorry, the record on that, so.

MR. MCCANN: So, you weren't present for that hearing though?

MR. JAKUBIAK: I was not.

MR. MCCANN: Okay. Well, let's cut to the chase. I wanted to direct you to the RC-2 zoning regulations and, in particular, the special exception provisions of the RC-2 zoning regulation and I take it you're familiar with those regulations?

MR. JAKUBIAK: Yes, I am.

MR. MCCANN: Okay and you're familiar with the section of 1-A-0-1.2 under which the Petitioner in this case seeks special exception relief?

MR. JAKUBIAK: Yes.

MR. MCCANN: Okay. The, do you, Mr. Jakubiak, have an opinion as to whether or not the proposed solar farm, solar array, in this case is one of the enumerated uses in the RC-2 regulations, specifically the special exception portion of those regulations?

MR. SCHMIDT: Objection.

CHAIR: Basis?

MR. SCHMIDT: There's no foundation for that in terms of what the man has done, whether he has any expertise in solar farms, public utilities or anything of that nature. Moreover, I believe that that's ultimately a legal question for this Board to decide, it's not a planning question. It's a legal

question as to whether this use falls within any of the enumerated uses that are permitted by special exception. The man's not a lawyer, it's the ultimate issue in the case, from a legal perspective.

CHAIR: Yeah, he's been qualified as an ex, I'm sorry, --

MR. MCCANN: I was just, really it was a factual question at this point. Is it one of the enumerated special exceptions or not. I'm not going to ask him --

CHAIR: The basis --

MR. MCCANN: -- really, really, at the end of the day, I'm not even going to ask him whether this is a, well, I, I guess I --

CHAIR: So, basic, basically, what you're asking him to do is to, he's reviewed the regulations.

MR. MCCANN: Yeah.

CHAIR: And he's going to opine whether or not a solar farm is contained within that regulation.

MR. MCCANN: Yes.

CHAIR: Okay.

MR. SCHMIDT: Whether it, I'm sorry, I didn't mean to interrupt, Mr. Alston.

CHAIR: Yeah, I'm just trying to get through --

MR. SCHMIDT: Yeah, I'm just trying to understand, so the question is, do the words solar farm appear in 1-A-0-1.2?

MR. MCCANN: That's the first question, really a factual one.

MR. SCHMIDT: Okay. Well, I'll stipulate --

CHAIR: Yeah, that's a factual --

MR. SCHMIDT: -- that the word solar farm --

CHAIR: Right, that's a factual question --

MR. SCHMIDT: -- did not, did not appear in that part of the regulation.

CHAIR: -- it, okay, does not. Okay, we got that.

MR. MCCANN: Okay. Okay.

MR. SCHMIDT: That those words --

CHAIR: So, I guess he can testify as to whether or not it is there in the regulation or not, so Mr. Jakubiak, you, you can answer the question.

MR. JAKUBIAK: I'm happy to agree with Mr. Schmidt, it is not in the list of the enumerated uses.

MR. MCCANN: Okay.

CHAIR: Okay.

MR. MCCANN: The next question, what, in your opinion, is the, is the import or the significance of that fact?

MR. SCHMIDT: Objection. I think it's the same thing. Then that becomes a legal conclusion as to what that means and that's up for this Board to decide, not, not a, somebody who is an expert in planning and zoning.

MR. MCCANN: I think it's a common, common misunderstanding of expert opinion testimony that experts cannot testify as to legal conclusions. People say that all the time and it's simply not what the law provides. If, the, the basis for the admission of expert testimony is, even on legal conclusions, I've got a case going on right now in the Circuit Court where the issue is does a covenant in a Deed run with the land? That is a legal question and our expert was acc, was accepted in that area. It happens all the time, particularly in, before this Board on zoning issues. We ask zoning experts all the time, does this or does this not comply with the zoning regulations? So, --

CHAIR: Well, Mr. Schmidt, I, I've, yeah, I've heard, I'm, I'm going to let him testify. I mean, we, we are, this Board will make the ultimate decision of whether or not this qualifies or (inaudible). An expert, quite frankly, is supposed to be helpful to the Board. So, we're going to let him testify to that.

MR. SCHMIDT: And I'll just, as you can appreciate, protecting the record in the case.

CHAIR: Yes, sir.

MR. SCHMIDT: And I'll just note a continuing objection if I can and that way you won't hear from me.

CHAIR: You got it.

MR. SCHMIDT: Thank you.

MR. MCCANN: Thank you. Again, Mr. Jakubiak, the question is, what, in your opinion, is the significance or import, if any, of the, the lack of any reference to solar farm or solar array panel in the RC-2 regulations, specifically the special exception provisions of those regulations?

MR. JAKUBIAK: Yeah, answering your question, may step back a bit.

MR. MCCANN: Okay.

MR. JAKUBIAK: I have held, had direct experience with this very issue. For the past year or so, I've been retained as the town planner for the town of Centreville, which is Queen Anne's County, during a time where their employed planner has been on extended sick leave. During my tenure there, and I'm still engaged there, an applicant has come to the town seeking to develop a solar farm in the town, in a residential district, an R-2 district. I looked at the enumerated uses and I didn't see that the, the, the town had contemplated that particular use. Therefore, it couldn't anticipate what the impacts would be or how it could be regulated. So, I advised the, the, the, the town council, you must go to the amendment procedures, amend your zoning ordinance, structure it such that it recognizes this use and decide whether it ought to be permitted or special exception, develop the conditions that are necessary to properly regulate it in the public interest and only then can we act on the

applicant, applicant's proposal. In fact, that's what they did and they went through that process, through public hearing and they actually engaged with the, this company, Solar City, to craft regulations that met their interest as well as the public interest. And so, the, the fact that a use is not listed in enumerated uses means that no one has really contemplated what the potential impacts would be and after all, the zoning ordinance is structured to, to, to address the impacts related to uses. How could one apply the zoning ordinance if any use could go into any zone and so that list of enumerated uses is an important direction as to what ought to be allowed and, and what is allowed. So, that, Mr. McCann, I, that's, would be my response.

MR. MCCANN: Okay. Let me ask you more specifically, I want to direct you and I apologize, I don't have a copy for the Board but I'll, I'll cite that this is the special exception provision in the RC-2 zone uses permitted by special exception is the title, Subsection C, of 1-A-0-1.2 and the, the introductory phraseology of Subsection C, if you could just read it to yourself and then tell us if, if you would, if there's anything in that, sort of introductory phraseology that supports what you just said?

MR. JAKUBIAK: I'm sorry, Item C, Mr. McCann?

MR. MCCANN: Yes.

MR. JAKUBIAK: Uses permitted by special exception.

MR. MCCANN: Just in that introductory.

MR. JAKUBIAK: Well, I think it's informative, if I might just read it. It says, the following uses only may be permitted by special exception in the R-2 zone. It says only the following uses, comma, only, comma. It's definitive. It says special exception is a, is a special process by which we judge the impacts on that location of a use. These are not permitted by right, free and clear. So, the, the caveat is only these uses and it's a direction to the, the, the administrative bodies to think very carefully about what uses slip in as somehow permitted or a special exception and clearly it says only and I, I (inaudible) applying this code, would look to that list and say, are there any here that are, are, does that use that's being proposed match? Is it recognized, is it listed in that special exception list?

MR. MCCANN: Okay. I direct you to another provision in the, in the zoning regulations, and that is 102.1, entitled conformance with regulations. Are you familiar with that section?

MR. JAKUBIAK: Oh, yes, I am.

MR. MCCANN: Okay and, of course, you can read it but go ahead and, it's, it's a short provision but tell us what, if any, import, that section has on, on your testimony thus far?

MR. JAKUBIAK: For the benefit of the Board, this section basically says that the use of land has to conform with

the regulations. You can't build or occupy or use land except, except when it's, except for if it's in conformity with the regulations.

MR. MCCANN: Okay and it applies to uses as well, correct?

MR. JAKUBIAK: Yes, it certainly provides uses.

MR. MCCANN: Okay.

MR. JAKUBIAK: So, this, this basically sets the, the game plan, development of land, use of land has to conform with the regulations.

MR. MCCANN: Okay. (inaudible).

MR. JAKUBIAK: If regulations don't anticipate the use, they're not, you can't make a stretch and say they confirm.

VOICE: What was that cite?

MR. MCCANN: 102.1. Okay. This will be six, Ms. Rosen?

BOARD: Yes.

MR. MCCANN: Okay and I don't have a copy for the Board. I, I'm just, not going to spend long with this exhibit but I'd like to show you what I've marked, what is being marked, Mr. Jakubiak, as Protestant's Exhibit 6. If you could tell us what that is, first of all?

MR. JAKUBIAK: This is a, this is the bill introduced or adopted by the County Council, Baltimore County, in 1979.

It's Bill number 178-79.

MR. MCCANN: Okay and what, if any, relevance does that have to your testimony thus far?

MR. JAKUBIAK: This bill dealt with the RC districts, more specifically, the RC-2 area, among other things and it, it enumerated the, the uses that were to be allowed by right and special exception in the R-2, RC-2 zone.

MR. MCCANN: Okay. So, this bill created the RC-2 zone, is that your understanding?

MR. JAKUBIAK: Yes.

MR. MCCANN: Okay and is, is there, with regard to the special exceptions, is the special exception that was in place back then, in the late 1970's, the same special exception that is present today and under which the Petitioner seeks relief?

MR. JAKUBIAK: Yes, the, the, they're, they're the same.

MR. MCCANN: Okay.

MR. JAKUBIAK: As, as are in code now. And I guess the importance is that back in 1979 when this ordinance was written, it didn't call out as a special, allowable special use, exception use, solar arrays or solar farms.

MR. MCCANN: What is the significance --

MR. JAKUBIAK: And how, and, well, (inaudible), how could they have? I mean, this was 1979. We're seeing the,

really the first application for a solar farm here in 2017. Back in the seventies, these things weren't common. It's quite realistic to, to presume, I think, that the County Commissioners didn't anticipate that use, didn't create a line item for that use, they didn't create any regulations for it. So, the, the, the code simply doesn't make room for this particular use that's being proposed now.

MR. MCCANN: Okay. Are you familiar with that provision in the zoning regulations that directs us to the Webster's Third New International Dictionary when something is not defined?

MR. JAKUBIAK: Yes, it's in the definition, terms and definition section, the first part of the regulations, first article.

MR. MCCANN: Seven.

BOARD: Thank you.

MR. JAKUBIAK: Which says is when a term is not otherwise defined in the list of definitions, one must turn to this dictionary for the customary meaning of the word.

MR. MCCANN: Okay. I did not make an extra copy so I'll give you, to use mine. This is Protestant's Exhibit 7, which is a single page from the Webster's Third New International Dictionary and I'd like to refer you to the definition of public utility and if you would, tell us what, if any opinion you have, regarding whether the proposed use in

this instance, in this case, meets that definition of public utility?

MR. JAKUBIAK: Well, there are various elements of this definition. Public utility is a business organization deemed by law to be vested with the public interest, usually because of a monopoly power or privileges, subject to public regulation, related to rates and, and, and service and provision of facilities. This definition speaks to those public utilities that we're all familiar with.

MR. SCHMIDT: Objection. I'm sorry, Mr. Alston, but I, I think, you've heard testimony in this case as to what Mr. Donithan, my client, Earth and Air, is going to do. I understand that this witness is an expert in zoning and planning and you've accepted him as such. But I don't believe the man has any expertise as to the business of solar farm providers. So, unless he has some level of expertise that allows him to answer whether Earth and Air, in this case, for example, is regulated, subject to public regulations such as the fixing of rates, standards of service and provisions of facilities, how would he be able to answer this question? I think this is beyond the scope of his expertise. This, this question can be answered by someone who knows how Earth and Air works and whether, indeed, they meet the requirements. This isn't a planning and zoning question, it's a question about whether this is a public utility under this definition and if

you're not an expert and understand how this business works, I don't know how he could answer the question.

MR. MCCANN: A couple points, by that analysis, the Board isn't qualified to answer the very question before it. Is this use a public utility? Is it or is it not? So, you don't need to be an expert in that to make that decision. The Board is not an expert. The Board heard the testimony. Mr. Jakubiak heard the very same testimony. At the end of the day, the standard for the admission of his testimony, including his answer to this very question, is whether or not it will assist you in, in rendering your decision and that's it. Very minimal threshold for his testimony to be introduced. So, I don't think he needs any expertise to do that. We, we can argue this in briefs certainly, but at the end of the day --

CHAIR: Yeah, and, and we certainly will, but Mr. Schmidt, I'm going to allow him to testify and you can put, you can continue your objection. I mean, we, we let it in, I mean, I'm going to allow him to testify.

MR. SCHMIDT: Okay.

CHAIR: And, of course, you have a right to put on a rebuttal witness to rebut anything he says, but we, we all have a notion of what a public utility is. We all have a notion what Baltimore Gas and Electric is, we all have a notion and, I would assume at this point --

MR. MCCANN: Bless you.

CHAIR: -- Mr. Jab, Mr. Jakubiak would have a right to opine, we, we let him in as an expert, to give, give his interpretation of the RC-2 zone and what it has and now that we're in, we're just going to allow it and you'll have an opportunity to put some rebuttal testimony on and, of course, you can argue that in a brief.

MR. SCHMIDT: That's, that's fine and I didn't mean to at all suggest in response to what Mr. McCann said, that the Board doesn't have the authority to answer this question. Obviously, Judges hear sophisticated product liability cases, for example, and that doesn't mean they're an expert in automobiles, if the product liability is about that. People who are in a judging capacity are required to make those decisions. I think they're, in my judgment, there's a significant distinction between testimony from a witness and what the role of the Board is. Obviously, you'll make a determination as to whether this is a public utility.

CHAIR: Yeah, we'll, we'll, we'll --

MR. SCHMIDT: And I didn't mean to suggest otherwise.

CHAIR: It's no problem. We'll evaluate his testimony and give it the weight that it, that it has earned.

MR. SCHMIDT: Thank you. I appreciate it, thank you, Your Honor.

MR. MCCANN: Go ahead.

MR. JAKUBIAK: One of the imports of this definition

relates to that list of uses under special exceptions, the allowable special exceptions. It actually says, doesn't say public utility, it says public utility uses and it says public utility uses not, I think it says otherwise permitted by right. So, if you go to the list above the special exceptions and you see the uses and look at the by right uses, there are some that are clear public utilities. I mean, they're, without a doubt, I think it's number six in the list. It talks about transmission lines for electrical, electricity. It talks about telephone and cable lines. It talks about pipelines. All these things are clearly, in my view, public utilities, uses, public utility uses. And that's why I, I safely say that the use that is before you today, this solar farm, doesn't square with this definition of public utility uses. The public utilities that were anticipated in the code and they're regulated are, are ones that are typically about transmitting something from the utility to a customer and, in a physical way, with a wire or cable and, and that's what is being proposed, or that's what is, is contemplated, I believe, by this definition. I mean, I'm sorry, transmitted by an entity that meets these, these, you know, very clear terms in the definition, something with the monopoly power, the business organization that's vested with certain public interest requirements and regulations.

MR. MCCANN: Is it your understanding or do you have

an understanding, Mr. Jakubiak, whether or not, for instance, (inaudible) definition, the, the rates that will be charged if Petitioner is allowed to, to construct this solar array panel, will be, the rates themselves, will be subject to regulation by the PSC?

MR. JAKUBIAK: What I heard when I sat through the testimony was that, what I'm familiar also with the, the other application we looked at, is the, the, the generated power from solar goes into the system and then individuals can virtually tap into it, you know, it goes into the supply of energy generally and then individuals can make use of that by signing a form. So, I'm not aware and I didn't hear any testimony that the current, the proposed organization, sets rates. I think BG&E sets rates or, or Exelon or the, the State government through its Public Service Commission sets rates. So, I don't, I don't believe that this organization is setting rates by, on this particular proposed use.

MR. MCCANN: Okay. I'll move on. Let me direct you back to sort of the introductory language of the special exception provision in the RC-2 regulations and I'll just read it to you and ask you whether you have an opinion about, about it. The following uses only may be permitted by special exception in any RC-2 zone, provided that in each case, the hearing authority empowered to hear the Petition finds that the use would not be detrimental to the primary agricultural uses

in its vicinity. Are you familiar with that language?

MR. JAKUBIAK: Yes.

MR. MCCANN: Okay. Do you have an opinion, Mr. Jakubiak, whether or not the proposed use in this case, would or would not be detrimental to the primary agricultural uses in its vicinity?

MR. JAKUBIAK: Yeah, so let's, I'd like to break this into two parts. If you look at the, the public utility uses that are allowed and are permitted by right, they are regulated in the listing of permitted uses. It says, you know, transmission lines of electricity and power and pipelines. It says they all, provided they are buried underground. You can't just build a big powerline through the RC-2 area. It says provided they are buried underground. So, it's a signal, it's clear, it's in the minds of the drafters of, of this code, that these uses ought to be, they ought to conform to the, the rural character of the RC-2 area and the preservation of farmland. And it should have a minor, almost negligible, impact on farming. These public utility uses that are clear and allowed, have to be buried unless they're an international pipeline and that's the only exception. In the present case, the, the use is not buried. You certainly couldn't bury a, a solar array and its detriment, it's detrimental to the agricultural uses in the vicinity because it sets up a, a, a, the possibility, clear, for the fragmentation of the farm agricultural base,

which is what the RC-2 district is designed to prevent. Agricultural and I've, I've written agricultural preservation plans, I've been in this field for quite a while working in Queen Anne's County and Calvert County on the farm preservation programs. We don't want to see uses introduced into an agricultural zone that fragments it, that makes it less likely to, to produce farm goods and services in an efficient way and, and also, those areas become less likely and more difficult to preserve and protect in the future. So, yeah, this, this does allow a use that's not allowed by code, the, I'm sorry, the proposal would allow a use that's not specifically allowed by code in an agricultural area that will have detrimental impact on the, the agriculture landscape. It will introduce as a use of land that is inherently easy to develop on a nice open farm field and these areas are well suited to solar arrays. They're open, they're expansive and you can imagine if they start popping up everywhere within the RC-2 area, the whole purpose of the zoning code would be, the RC-2 district, would be watered down.

MR. MCCANN: What about taking the farmland itself out of production?

MR. SCHMIDT: Objection.

CHAIR: Basis?

MR. SCHMIDT: It's not the standard. It says, particularly, will not be detrimental. He just read it, to the

primary agricultural uses in the vicinity. The impact is on the uses in the vicinity, not the subject property. This argument was made in the Hayfields case, which is a reported decision at the Court of Special Appeals, where the Protestants there contended that the proposed special exception would remove the Hayfields farm from active agricultural production and the Court of Special Appeals said it's not the impact on the subject property, the fact that Hayfields is now a golf course and not a farm is not an issue. The issue is, does the proposed special exception use impact the vicinity. I, we will stipulate that Mr. Lippy will not be able to plant corn on the six acres where the solar farm is. But that's not the criteria. The criteria in 1-A-0-1.2-C says the use will not be detrimental to the primary agricultural uses in the vicinity, not the subject property. That's the question that was asked of the witness.

MR. MCCANN: Well, that is not the question. I didn't ask him at all about --

MR. SCHMIDT: That's exactly what you asked, that's what he was answering, Mr. McCann.

MR. MCCANN: No, that's not what he answered, first of all, I'm sorry. It's not what he just answered. He talked about vicinity and the, the impact this would have elsewhere.

MR. SCHMIDT: And then you moved --

MR. MCCANN: Hold on, hold on --

CHAIR: Well, he moved on to the underground (inaudible) detrimental to the existing farmland, you won't be able to do certain things with it, it takes it out of farming.

MR. MCCANN: I think he can, he, I'll let Mr. Jakubiak speak for himself, but I think what he was referring to, Mr. Alston, I know Mr. Schmidt is exactly right. Mr. Jakubiak had this very conversation, so I wasn't intended to ask him about that. I think he can clarify and hopefully he will, that he was talking about if the Board allows such uses in RC-2 zones, this will be the, this will be the impact on other properties that are, just like this one, that are prime and productive soil bearing --

CHAIR: So, in other words, the, what, if I'm hearing you right.

MR. MCCANN: Yeah.

CHAIR: This solar farm will encourage other solar farms, is that, is that what you --

MR. MCCANN: Well, not encourage. I think a ruling by the Board that says it's legal would absolutely allow for it and would be detrimental because these other farms in the vicinity, production will be taken out of those farms, among other reasons that he's already articulated but I, my specific question was just about in the vicinity, taking prime and productive soils out of the farming industry and whether that would be detrimental and he can clarify it for himself if

that's what he meant. If I'm wrong, I'm wrong.

CHAIR: Mr. Schmidt, we're going to allow this. We got Hayfield, we understand and for that part of the testimony that involves the detriment to the surrounding vicinity farms, we're going to take that into consideration and I'm sure that in your brief, I'm sure this is going to be a large part of the briefs, you will clarify what Mr. Jakubiak is trying to (inaudible). For now, we're just going to allow it and yes?

BOARD: (inaudible) I think it speaks to a larger point because we're talking about what happens in the future, that we also have legislation coming out of the County Council that's going to impact what's going to happen in the future.

MR. MCCANN: Right. Right now there's, right now there's no legislation. Just so the Board is aware.

BOARD: Right.

MR. MCCANN: There is no legislation, it's been, the most recent iteration has been withdrawn so there's nothing pending right now.

BOARD: Right. Well, in the event that that comes up, that would have an impact on this as well.

MR. MCCANN: True.

MR. SCHMIDT: It'll have an impact, Mr. Garber, potentially on other uses. It may not impact this proposal.

BOARD: Not this particular proposal, but the --

MR. SCHMIDT: Because this one may very well be

grandfathered, we don't know.

BOARD: That's what I'm saying, is that the notion that there are future issues that will develop if this is granted, it sounds like the County Council and/or the State legislature is already addressing some of the issues that may touch on things that are arising in this case.

MR. SCHMIDT: That's true. And not only that, Mr. Garber, but assuming arguendo that sol, assuming arguendo that there is a bill, for example, that comes out of the Council which is similar to the three bills that have been introduced that have all been withdrawn.

BOARD: Yes.

MR. SCHMIDT: Which requires solar farms in the RC-2 zone to be considered special exceptions. Then a subsequent solar farm next year, Mr. Donithan finds another property 2018, he'll have to go through a special exception for that property. In other words, each case is going to be adjudged on its own. So, to say that this case somehow means something for the next case, it's like saying that, as I found out, Hunt Valley Baptist Church ruling from this Board, just because a church was approved in the RC-2 zone, or in the RC-4 zone, next door to the subject property, doesn't mean that the property next door is going to be approved. I mean, each case has to rise or fall on its own merits. So, this case has got nothing to do with what's going to happen in the future.

MR. MCCANN: Well, I disagree. If, if we believe, and let's, let's assume that Mr. Jakubiak, Jakubiak is entirely correct, that there is no provision in the zoning regulations right now that allows for this use. In fact, I would point the Board to every single one of the bills that's been introduced. Each of these bills say that solar array farms are not currently regulated under the Baltimore County zoning regulations. Each of them say that solar array farms are not a public utility. They each say that. So, given that, given Mr. Jakubiak's testimony, my point is, this Board's decision, given no pending legislation or no passed legislation right now, much less pending, this Board's decision will absolutely have an impact on, on prime and productive soils outside of this property because it'll allow those prime and productive soils to be taken out of production. Not this, on this property, I understand that, but elsewhere.

BOARD: I, I guess my point was really about we're getting, we're really getting into the weeds on what's happening for future.

MR. MCCANN: Yeah.

BOARD: And there, there's, at least there was legislation, three attempts in this County in the last what, six months? To regulate this kind of activity, this use in the RC, I don't think it's just RC-2 but, you know, certainly at issue here. I know that there's been discussion at the State

legislature, at least some people have suggested that there needs to be a better plan, and so I think by focusing on future things, we're getting lost in what needs to happen here, is only my point.

MR. MCCANN: I, I don't disagree with that. I, I, I, there's the question, the specific question before the Board is, is whether or not a decision in this case will or will not have the impact that this --

CHAIR: (inaudible).

BOARD: Okay.

MR. MCCANN: Yeah, that this, that this specific sentence speaks to.

CHAIR: Right, I, yeah, I understand and, --

MR. MCCANN: And, and it is, it is, I admit it is, it is a potential --

CHAIR: Mr. McCann, we've, we've gone way down the rabbit hole on this one.

MR. MCCANN: Okay.

CHAIR: So, let's, let's, we're going to allow the testimony, we're going to allow Mr. Jakubiak to, to give his opinion on that and we will give it the weight that it deserves.

MR. MCCANN: Okay. So, I'll move on. I, I just want to make, maybe make the record clear. Mr. Jakubiak, was your testimony intended to be towards the vicinity or for this

particular property specifically?

MR. JAKUBIAK: It was about the vicinity of the, of the site.

MR. MCCANN: Okay.

MR. JAKUBIAK: Yes.

MR. MCCANN: Okay. One more question about this issue about detrimental to the primary agricultural uses, the, the argument was made, or has been made and was certainly picked up on in Judge Beverungen's decision, that because Mr. Lippy will make money off of this solar farm, that that will assist the primary agricultural use and I'm referring to page five of, of, of Judge Beverungen's decision. It would allow Mr. Lippy to continue farming in, in this area, not just on this farm, but in this area.

MR. JAKUBIAK: Since he owns, excuse me, since he owns, or operates farming within the vicinity of the site.

MR. MCCANN: Right. Do you have an opinion about that?

MR. JAKUBIAK: Well, it very well, very well may, I don't know his farming operations but the logic is ridiculous. To suggest that a use ought to be allowed so that someone can make money to continue something else. If that were the case, why not allow a restaurant on the site or any other use that's otherwise not contemplated in the RC-2 district? It falls on its face and I, I could never imagine presenting that opinion

or direction to any client that I work with.

MR. MCCANN: Does it beg the question of whether it's allowed in the first place?

MR. JAKUBIAK: Yeah, it's clearly not allowed.

MR. MCCANN: Okay.

MR. JAKUBIAK: With all due respect to the, the hearing officer, I don't know that evidence was presented with a different point of view at the time.

MR. SCHMIDT: Objection. There's no question being presented right now.

CHAIR: Right, sustained.

MR. MCCANN: Are you familiar, Mr. Jakubiak, with the special exception standard itself, that is, the one set forth in the common law in Maryland (inaudible)?

MR. JAKUBIAK: Yes.

MR. MCCANN: Impacts unique to this property?

MR. JAKUBIAK: To the location, yes. Be greater than otherwise outside of the site.

MR. MCCANN: Let me go ahead and mark this as Exhibit 8.

BOARD: Yes.

MR. MCCANN: Give you a copy, Mr. Jakubiak. And this question, I guess, is based on the, the assumption that this use is a public utility use and the, I guess the first question with respect to Exhibit 8 is what is that and what does it tell

us, if anything, relevant to these --

MR. SCHMIDT: Can we have --

CHAIR: Yeah, Mr. McCann, could you properly identify this document for us?

MR. SCHMIDT: Yeah, can you tell us what this is?

MR. MCCANN: Sure.

CHAIR: Before we allow him to testify. I don't even know what it is and where it came from.

MR. MCCANN: I was going, I, I, I was just going to ask, I was asking the same question.

CHAIR: Okay.

MR. MCCANN: But it's three pages from the master plan dealing with rural legacy, the rural legacy program. And Mr. Jakubiak, are you familiar with this provision of the master plan?

MR. JAKUBIAK: Yes, I am.

MR. MCCANN: And are you familiar with the royal legacy program?

MR. JAKUBIAK: Yes, I am.

MR. MCCANN: I think the first page speaks for itself, but can you, can you tell us what it is (inaudible)?

MR. JAKUBIAK: It's a program designed to, I'd like to say, it's to protect the rural character of rural neighborhoods, if you will. We can't really define, it's different in the rural area, but large areas of land that have

the same economic and cultural and natural features, to identify those and to set forth policies that seek to protect them against incompatible land uses, for example, or development activities.

MR. MCCANN: Okay. So, the second page in that exhibit identifies the rural legacy areas in Baltimore County, correct?

MR. JAKUBIAK: Yes.

MR. MCCANN: Is, is this, the subject property in one of those rural legacy areas?

MR. JAKUBIAK: Yes, and on the map, Board members, it's the rural legacy area to the left, Piney Run rural legacy area, the RLA rural legacy area.

MR. MCCANN: Okay.

MR. JAKUBIAK: The, this proposed site is located within that area.

MR. MCCANN: Show you a copy of what's being marked, Mr. Jakubiak, as Protestant's Exhibit 9. Can you identify that document for us?

MR. JAKUBIAK: This is a, an aerial photograph from the County's My Neighborhood digital mapping site that shows the conservation easements on the, the adjoining land, the land that adjoins the present site.

MR. MCCANN: And how does it show that?

MR. JAKUBIAK: With a hatched pattern the color of

orange.

MR. MCCANN: All right and the subject property is shown as not being hatched?

MR. JAKUBIAK: Correct.

MR. MCCANN: Okay. I think the Board is familiar with where it is, so.

MR. JAKUBIAK: Yes.

MR. MCCANN: Okay. Can I have both of those exhibits, please? And lastly, Mr. Jakubiak, I think there's been mention already in this hearing, but are you aware of whether or not this stretch of Hanover Road is, in front of the site, is a scenic route as designated by Baltimore County?

MR. JAKUBIAK: Yeah, it's designated a scenic route on, in the 2020 County master plan.

MR. MCCANN: Okay. Given the, that the property is surrounded by land and conservation, it's in the Piney Run rural legacy and it's on the scenic route, do you have an opinion regarding whether or not the impact at this particular property, of this proposal, would have an impact greater here than would inherently be associated with the use?

MR. JAKUBIAK: Well, the, the RC-2 area extends throughout the County, it's just not located in this area. So, the R, the rural legacy area is a specialized district within the entire County and many rural, RC-2 areas outside of it. So, the development of this type of use is clearly not

agricultural or even regulated, does work to the detriment of the purposes of the rural legacy area by allowing uses that are not contemplated by depleting the prime agricultural land base and by introducing a new economic activity that's not related to agriculture in the rural legacy area.

MR. MCCANN: Okay. The, there's also been a Petition for Special Hearing filed in this case that seeks approval of a solar farm as an accessory use. Are you familiar with that, that request?

MR. JAKUBIAK: I'm sorry, (inaudible)?

MR. MCCANN: There's also been a Petition for Special Hearing filed in this case that's before the Board, asking that the Board deem this use to be an accessory use.

MR. JAKUBIAK: Oh, yes, right.

MR. MCCANN: And let me show you, I don't have a copy for the Board, but I'm sure the Board is familiar with the definition, this is in 101.1 of the zoning regulations. If you could, if, referring you to accessory use or structure, if you could just, with reference to that definition, tell us whether or not you believe that the proposed solar farm would be accessory.

MR. JAKUBIAK: The key elements of the definition of accessory is customarily incidental or subordinate to the principal use. In the present case, the, the parcel is, is farmland and the proposal would cover that farmland almost

exclusively with solar array, so (inaudible) words, ever a principal use, that principal use is extinguished, so there's no subordination here, there's no incidental standard that's being met. I don't think that you could consider this a, an accessory use, given it doesn't match the definition.

MR. MCCANN: I think just two more specific questions about that standard. It says customarily incident and subordinate to. Do you believe a solar farm is customarily incident and subordinate to, at least in this area of Baltimore County?

MR. SCHMIDT: Objection. Asked and answered. I think he just said that, didn't he?

CHAIR: Sustained.

MR. MCCANN: Okay. Okay. Those are all the questions I have. I want to make sure all the exhibits are in evidence, I think we're up through nine.

MR. SCHMIDT: And just so I'm clear, have they all been offered and accepted, Ms. Rosen?

BOARD: One or two have.

MR. MCCANN: Well, that's what I was just doing. I was moving through nine into evidence, and particularly eight and nine, which were the last two. And if they've been admitted, then that's all I have.

CHAIR: Okay. Well, Mr. Schmidt, if People's Counsel has questions, would you rather People's Counsel ask their

questions --

MR. SCHMIDT: Sure, absolutely.

CHAIR: -- and then you can cross.

MS. DEMILIO: I have no questions.

CHAIR: Oh.

BOARD: That makes it easy.

CHAIR: Yes.

MR. SCHMIDT: Makes life easier.

CHAIR: Okay.

MR. SCHMIDT: Thank you, Chairman Alston. Mr. Jakubiak, you are not a lawyer, correct?

MR. JAKUBIAK: Correct.

MR. SCHMIDT: You're not a member of the Maryland Bar?

MR. JAKUBIAK: No.

MR. SCHMIDT: Okay and you indicate that you had written some zoning regulations in your background, correct?

MR. JAKUBIAK: Yes.

MR. SCHMIDT: You have never written any zoning regulations in Baltimore County, have you?

MR. JAKUBIAK: No.

MR. SCHMIDT: Okay. You've never served as a hearing officer in Baltimore County?

MR. JAKUBIAK: No, I have not.

MR. SCHMIDT: You've never been an employee or

consultant to the zoning office in Baltimore County?

MR. JAKUBIAK: No.

MR. SCHMIDT: You've never been an employee or consultant to the Department of Planning in Baltimore County?

MR. JAKUBIAK: I was a sub-consultant. Sub-consultant to the Planning Department.

MR. SCHMIDT: You were a consultant to, you were a consultant to an agency which the Department of Planning had retained to do a study of Pulaski Highway?

MR. JAKUBIAK: Correct.

MR. SCHMIDT: Okay. So, you were one, one entity removed from consulting the Office of Planning, okay. You testified, sir, in Baltimore County, on a case involving a Royal Farms Store, did you not, in northern Baltimore County?

MR. JAKUBIAK: Yes.

MR. SCHMIDT: You testified in a case in Baltimore County regarding the Hunt Valley Baptist Church, did you not, sir?

MR. JAKUBIAK: Yes.

MR. SCHMIDT: I believe you also testified in a case involving a synagogue in Baltimore County, correct?

MR. JAKUBIAK: Yes.

MR. SCHMIDT: Other than those three cases, have you testified in any other cases in Baltimore County?

MR. JAKUBIAK: Yes.

MR. SCHMIDT: Which other cases?

MR. JAKUBIAK: I testified in a case involving a, a development plan with regard to a synagogue.

MR. SCHMIDT: That was the synagogue case I was referring to.

MR. JAKUBIAK: Was that it?

MR. SCHMIDT: Yes, sir.

MR. JAKUBIAK: Okay. I testified in a case in Owings Mills which we have not mentioned yet, concerning the development of a housing project through the planning and development procedures. I, (inaudible) proposed for employment use.

MR. SCHMIDT: What was the name of that project?

MR. JAKUBIAK: I think it went by the name of Red Run Boulevard, planning and development. I may not have that specific applicant's name down correctly but it's essentially it.

MR. SCHMIDT: It was located off of Red Run Boulevard in Bal, in Owings Mills?

MR. JAKUBIAK: Yes, yes.

MR. SCHMIDT: Okay. Other than those four cases, are there any other cases that you've testified in Baltimore County on?

MR. MCCANN: Before this Board or before the ALJ?

MR. SCHMIDT: Before this Board or the ALJ.

MR. JAKUBIAK: I believe there, there have been a few more. I, I just can't recall them right now. They seem to take a life of their own and have multiple hearing dates so I, but I can stipulate that it's probably four or five as you mentioned.

MR. SCHMIDT: Okay.

MR. JAKUBIAK: I suspect there might be one more.

MR. SCHMIDT: You can't remember any other cases you've testified on, by name or subject?

MR. JAKUBIAK: I've been prepared to testify in another case where the case was closed right before the hearing. I showed up to offer testimony on a setback variance case. I came to present, testify on another matter and the, the attorney for the opposing side didn't show up so my services weren't required. So, there, you know, --

MR. SCHMIDT: So, you didn't testify?

MR. JAKUBIAK: Didn't necessarily testify, no.

MR. SCHMIDT: Okay. Have you ever testified on any, other than this case, on any solar farm case in Baltimore County?

MR. JAKUBIAK: No.

MR. SCHMIDT: You ever testified on any solar farm case anywhere else in the State of Maryland?

MR. JAKUBIAK: Not in an adminis, well, yes, actually, in Centreville, but in that case, I was --

MR. SCHMIDT: You actually testified? You were sworn in before an administrative body or Court of law and offered testimony?

MR. JAKUBIAK: No, I offered testimony as a staff person of the jurisdiction.

MR. SCHMIDT: You were, you were giving consultation to the town of Centreville?

MR. JAKUBIAK: Yes.

MR. SCHMIDT: Okay. Do you understand, just so we're clear, Mr. Jakubiak, when I use the testimony, I don't mean if I talk to Mr. McCann about where he's going to lunch today, that's not testimony. Testimony is when you've been presented as a witness, as you've been doing today, and offer testimony before some type of tribunal. Did you do that in Centreville? Were you sworn in, qualified as an expert witness?

MR. JAKUBIAK: I wasn't qualified but it's my practice when, even as a staff and the expert, or the witnesses are sworn in, I stand up too and raise my right hand and say I'll tell the truth so in the case of Centreville, I did do that. In the case, because it was a special exception case that went to the, the Board of Zoning Appeals.

MR. SCHMIDT: And you testified?

MR. JAKUBIAK: Sure, yeah. To the extent that testimony rings with your definition, yes.

MR. SCHMIDT: Okay. You were sworn in, took the

witness stand and offered testimony in that case?

MR. JAKUBIAK: I, there, there was every procedures, every jurisdiction operates differently. There's no witness stand in most jurisdictions, but I sat there in front of the Board of Zoning Appeals, at a table, and offered my opinion about why that application met the standards and ought to have been approved by the Board of Appeals.

MR. SCHMIDT: So, you testified in favor of the special exception for a solar farm?

MR. JAKUBIAK: Yes.

MR. SCHMIDT: Okay. On that Centreville case, sir, let me ask you, because you, you mentioned, as I understand it from your direct testimony in this case today, that when, there was an application filed with the town of Centreville, correct?

MR. JAKUBIAK: Yes.

MR. SCHMIDT: And what County is Centreville located in?

MR. JAKUBIAK: Queen Anne's County.

MR. SCHMIDT: Okay and at the time the application was submitted to the town of Centreville, there was no defined use of a solar farm in the zoning regulations, is that correct?

MR. JAKUBIAK: Yes, that's correct.

MR. SCHMIDT: Now, were these the zoning regulations for Queen Anne's County or for the town of Centreville?

MR. JAKUBIAK: The town of Centreville.

MR. SCHMIDT: Okay. Did the zoning regulations for Queen Anne's County apply?

MR. JAKUBIAK: No, they don't. They don't, they do not apply in the town.

MR. SCHMIDT: For, for properties in the town of Centreville?

MR. JAKUBIAK: Yes.

MR. SCHMIDT: Okay. So, there was no definition of solar farm in Queen Anne's, I'm sorry, in the town of Centreville's zoning regulations?

MR. JAKUBIAK: Yes, at that time, there was not.

MR. SCHMIDT: At that time.

MR. JAKUBIAK: Right.

MR. SCHMIDT: Okay. So, your advice was to the town of Centreville or to somebody in Centreville, that they better adopt regulations because if they didn't, the case couldn't go forward, is that what I understood, understood you to say?

MR. JAKUBIAK: I, essentially, yeah. I said, this person has a right to reasonable consideration of their use and since it's not allowed by, by the code, the zoning ordinance ought to be amended to address this use.

MR. SCHMIDT: Okay. Are you familiar, sir, you've given what I consider a lot of legal opinions here and I understand the Chairman, the Chair's rulings and is going to sort all this out but since the questions have been asked, I

feel compelled to ask you during a cross, my cross examination, are you familiar with the, the case from the Court of Appeals called *Kowalski v. Lamar*, have you ever heard of that case?

MR. JAKUBIAK: I'm not familiar with it.

MR. SCHMIDT: Okay, you don't know what that says?

MR. JAKUBIAK: No.

MR. SCHMIDT: Okay. Have you ever heard of zoning regulations being written in the exclusive, that concept?

MR. JAKUBIAK: No.

MR. SCHMIDT: You don't know what that is?

MR. JAKUBIAK: I don't know.

MR. SCHMIDT: Okay. Have you ever heard of zoning regulations being written in the inclus, inclusive, not exclusive, inclusive? You ever heard of that legal concept?

MR. JAKUBIAK: Either concepts I have not referred, I'm not familiar with the, the way you phrased it but I can speculate --

MR. SCHMIDT: Okay. So, you're not familiar with those. Okay. All right. Your, your testimony here today, in answer to some of Mr. McCann's questions, you cited, for example, the section in the RC-2 zoning regulations which says, and I'll paraphrase, that the following uses only are allowed in the RC-2 zone, correct?

MR. JAKUBIAK: Right.

MR. SCHMIDT: And you placed great emphasis on the

fact that, that the regulation used the word only to say only these uses can be used, correct?

MR. JAKUBIAK: Yes.

MR. SCHMIDT: I'm assuming the town of Centreville's regulations were written similarly, that they said that in order to be allowed, you have to be, you only, you're only allowed if you're one of the following uses, correct?

MR. JAKUBIAK: Yeah, yeah, and it's generally how we, we interpret the code as well.

MR. SCHMIDT: Okay. So, what would have happened then if the town of Centreville had not followed your advice and not adopted regulations as to solar farms?

MR. JAKUBIAK: I think that they would have excluded use.

MR. SCHMIDT: So, that no one could put a solar farm anywhere in the town of Centreville, is that correct?

MR. JAKUBIAK: That would be the effect.

MR. SCHMIDT: Okay.

MR. JAKUBIAK: Which would be problematic.

MR. SCHMIDT: So, then as an expert planner and zoning authority, a municipality, for example, the town of Centreville, can prohibit, de facto prohibit, solar farms anywhere in its jurisdiction by not naming them as a use in its zoning code?

MR. JAKUBIAK: No, I didn't say that.

MR. SCHMIDT: Okay. Well, how, how did you not say that? I think I just asked you if the town of Centreville did not take Chris Jakubiak's advice.

MR. JAKUBIAK: Right.

MR. SCHMIDT: Didn't adopt an ordinance allowing solar farms, then the result of that would mean that nowhere in Centreville could there be a solar farm, right?

MR. JAKUBIAK: Yes, and I said that would be problematic.

MR. SCHMIDT: It would be a prohibition on solar farms, would it not be?

MR. JAKUBIAK: It would be a prohibition that would be unfair and probably unjustified and I think that the applicant would have a case to be made in front of the, whatever judicial body resolves such matters.

MR. SCHMIDT: Let me ask you this. Would it be illegal?

MR. JAKUBIAK: Probably.

MR. SCHMIDT: Okay. Are solar farms permitted anywhere in Baltimore County under the County zoning regulations? Is there any zone under the present zoning regulations today, that solar farms are permitted, under any circumstances?

MR. JAKUBIAK: They are not permitted.

MR. SCHMIDT: Okay. So, they're not permitted in any

zone in Baltimore County by right, correct?

MR. JAKUBIAK: They're not enumerated, they're not permitted.

MR. SCHMIDT: Okay. They're not permitted by any, any zoning, in any zone by special exception, correct?

MR. JAKUBIAK: Right, and the County has an ordinance that is out of date and needs to be addressed.

MR. SCHMIDT: Right. So, that your opinion today is that no one can put a solar farm legally anywhere in Baltimore County because it's not authorized by the Baltimore County zoning code?

MR. JAKUBIAK: And it's incumbent upon the, I would agree, and it's incumbent upon the County Council to adopt a, an amendment to its zoning regulations to provide for it.

MR. SCHMIDT: Okay. Would you agree that in the absence, Mr., you would, would you agree that, I think you said you agreed with me, that such a situation would be illegal, would it not?

MR. JAKUBIAK: In my view, yes.

MR. SCHMIDT: Okay. So, because a jurisdiction, for example, if it didn't want what are typically referred to as undesirable uses, methadone clinics, tattoo parlors, adult stores, and didn't want any of those in its boundaries, it would just not regulate them and not allow, just, just ignore them, not put them anywhere in the code.

MR. MCCANN: Objection.

MR. SCHMIDT: And that way the County could, can I finish my question?

CHAIR: Yeah, over, overruled.

MR. MCCANN: (inaudible).

CHAIR: Overruled.

MR. SCHMIDT: Okay. That, that way the County could prohibit any, quote, undesirable land use, by not allowing it anywhere within the zoning code, correct, by just not naming it? Just don't put it in there and since it's not one of the, quote, only uses listed, it wouldn't be allowed anywhere, is that correct?

CHAIR: Mr. Schmidt, is there a question in there somewhere?

MR. MCCANN: Yeah.

MR. SCHMIDT: Yeah, the question is, can that, can a jurisdiction do that? Can a jurisdiction, by failing to regulate de facto prohibited a, a use of land within its borders?

MR. MCCANN: May I be heard on, on my objection?

CHAIR: Sure.

MR. MCCANN: I understand your ruling but I just want to be heard (inaudible) maybe it won't change your mind. But that question, number one, I think it's beyond the scope. I asked him, is this use a public utility use. Is it or is it

not. That is a legal question --

MR. SCHMIDT: Geez, Mr. McCann.

MR. MCCANN: -- hold on, hold on, hold on. Hold on.

CHAIR: Mr. McCann, before I let you go.

MR. MCCANN: Yeah.

CHAIR: Mr. Jakubiak did testify that the zoning regulations in Centreville were exclusive.

MR. MCCANN: Yeah.

CHAIR: And that opened up a whole broad category that Mr. Schmidt can walk into so, (inaudible).

MR. MCCANN: Well, the, the questions he's posing now are about the, they're hypothetical, which --

MR. SCHMIDT: He's an expert witness.

CHAIR: He's an expert.

MR. MCCANN: Oh, okay. I didn't say you couldn't ask, of course, you can ask hypothetical questions but now we're asking hypothetical, purely legal questions, not factual questions that have any relevance to this case, but purely legal, what is or is not legal under different factual circumstances. That is beyond the scope of direct and it's also beyond the scope of his, his expertise, frankly.

CHAIR: I think you opened that --

MR. SCHMIDT: Mr. McCann, you've been asking him legal questions all along.

MR. MCCANN: No, no, don't, don't twist my words,

don't twist my words.

CHAIR: Yeah, hold on a second, Mr. McCann. I think the door got opened up when we, went down this rabbit hole with inclusive versus exclusive. That should have been the objection right there. But that's --

MR. MCCANN: Well, I don't think he knows the difference, I didn't hear him testify to that.

CHAIR: Well, he, he did. He said that the, the, the regulations in Centreville would be exclusive, which means they're going to be prohibited by zoning regulations, so, which means they're lawful or not lawful. So, I'm, I'm going to let Mr. Schmidt continue his line of questioning.

MR. MCCANN: Okay, thank you.

MR. JAKUBIAK: So, in answer, if the jurisdiction, my view, my experience, actively or failed to regulate a use, failed to enumerate it, failed to respond to the need to have it in the code, then they would be excluding it for the jurisdiction and that may, in fact, be, be illegal and I've consist, consist, consistently advised elected officials in the jurisdictions where I worked to allow for uses, even if they're noxious or not desirable, but to do it in a way that makes sure that their impacts associated with them are dealt with. But to bury your head in the sand and ignore the fact, creates an unfair situation to a person that wants to develop a use.

MR. SCHMIDT: And Mr., Mr. Jakubiak, are you familiar

with the tattoo parlor regulations in Baltimore County?

MR. JAKUBIAK: I'm not, no, no.

MR. SCHMIDT: Okay. So, you don't know how the County has regulated them?

MR. JAKUBIAK: I don't know.

MR. SCHMIDT: Okay. But the County could allow, well, strike that. You're familiar with Judge Beverungen's decision in this case?

MR. JAKUBIAK: Yes, yes.

MR. SCHMIDT: Okay and you're familiar with he observed that there is no solar farm, the word solar farm did not appear in the zoning regulations, correct?

MR. JAKUBIAK: Right, right.

MR. SCHMIDT: And you're aware that because of that, he then did an analysis as to whether this, what we would all call, as laymen, solar farms could be classified or should be properly classified under another use that is addressed in the Baltimore County zoning regulations?

MR. MCCANN: Objection. That's not what he said at all. He said, did not say that they're, they're not defined. In fact, his analysis was whether or not this is a public utility. He was fitting this use in that box. He didn't say--

MR. SCHMIDT: That's, that's where I'm going, Mr. McCann.

CHAIR: Well, let him rephrase the question. Yeah,

rephrase the question.

MR. MCCANN: I, I heard a different question, I apologize.

MR. SCHMIDT: Okay.

CHAIR: I gotcha.

MR. SCHMIDT: Mr. Jakubiak, your, you, you read Judge Beverungen's decision, correct?

MR. JAKUBIAK: I did, but I will say that I read it before the last hearing so I haven't read it, I didn't read it yesterday or this morning.

MR. SCHMIDT: Okay, okay. Well, it speaks for itself.

MR. JAKUBIAK: Yeah.

MR. SCHMIDT: But you're aware of the fact that at the time Judge Beverungen issued his decision, like today, there were no regulations and the words solar farms did not appear in the Baltimore County zoning regulations, either today or when Judge Beverungen wrote his decision, correct?

MR. JAKUBIAK: Correct.

MR. SCHMIDT: And because of that, Judge Beverungen did an analysis as to whether this use might be considered a use which is set out in the zoning regulations, i.e., a public utility use, correct?

MR. MCCANN: Objection. That's, that's the problem I have with the question. Because of that. He didn't say the,

the first part of that question, that is, it's not defined and, therefore, that, that because, number one he doesn't know what's in Judge Beverungen's mind and it assumes that, you know, the reasons or the motives why he did so. I, I would ask, if he has a specific question about Judge Beverungen's decision, then refer him to that section, which is fair, I did the same thing essentially.

CHAIR: Yeah, I'm going to, I'm going to sustain that objection.

MR. SCHMIDT: Okay.

CHAIR: I don't, I don't want to get into what Mr. Beverungen was thinking.

MR. SCHMIDT: Judge, Judge Beverungen determined this to be a public utility use, correct?

MR. JAKUBIAK: Yes.

MR. SCHMIDT: And public utility uses into the RC-2 zoning regulations are classified as two different types of public utility uses, correct?

MR. JAKUBIAK: Could you, I need more --

MR. SCHMIDT: Okay. Certain public utility uses in the RC-2 zone are permitted by special, permitted by right, correct?

MR. JAKUBIAK: Yes.

MR. SCHMIDT: Those include what you were discussing, the underground pipes, above ground gas lines, etcetera?

MR. JAKUBIAK: Yes, right.

MR. SCHMIDT: Okay. Those are automatically allowed, permitted by right, correct?

MR. JAKUBIAK: They are, yes, they are.

MR. SCHMIDT: In a special exception. Then the regulations say, other public utility uses are also permitted in the RC-2 zone by special exception?

MR. JAKUBIAK: Exactly, yes.

MR. SCHMIDT: Okay. Okay. Any other solar farms been permitted in Baltimore County other than this one by Judge Beverungen, if you know?

MR. JAKUBIAK: I'm not certain.

MR. SCHMIDT: You don't know. Let me ask you, Mr. Jakubiak, do you have an opinion whether this will, this solar farm will create congestion in the road, streets or alleys in this locale?

MR. JAKUBIAK: Yes, I do.

MR. MCCANN: Objection.

CHAIR: Basis?

MR. MCCANN: I didn't ask him about the 502.1 factors.

MR. SCHMIDT: He's an expert witness.

MR. MCCANN: It doesn't matter. It's still beyond the scope of direct examination.

MR. SCHMIDT: You asked him about special exception

(inaudible).

MR. MCCANN: You can't ask him about anything in the world, I mean, it's --

CHAIR: Yeah, I'm going to have to sustain. It was outside of direct. He never did ask him anything about, there's no 502.1 --

MR. SCHMIDT: Okay. Mr. Jakubiak, you, have you, you've not been asked to render any opinion, sir, as to the requirements in Section 502.1 of the Baltimore County zoning regulations?

MR. JAKUBIAK: I answered the, the question that were presented to be here.

MR. SCHMIDT: Okay. Let me ask you this. Do you know what Section 502.1 of the zoning regulations discusses?

MR. JAKUBIAK: Yes, I do.

MR. SCHMIDT: What does it discuss?

MR. JAKUBIAK: Standards --

MR. MCCANN: Objection. What difference does it make if he can't testify about it? I mean, --

CHAIR: I'm going to overrule. He's a land use expert. I'm, I'm going to overrule, so --

MR. MCCANN: Just ask him what, what is 502.1. Okay, that's fine.

CHAIR: Yeah.

MR. MCCANN: That's fine.

MR. SCHMIDT: What's 502.1? How's that, Mr. McCann?

MR. JAKUBIAK: It's a listing of standards that must be reviewed prior to or as a condition of granting a special exception.

MR. SCHMIDT: Okay and were you asked to make any assessment of those standards as they relate to this proposed special exception?

MR. JAKUBIAK: No, I was asked to answer some questions and I think I've asked them.

MR. SCHMIDT: Okay. So, you weren't, so this is a special exception case, correct?

MR. JAKUBIAK: Well, I think it's more than that. I mean, it's --

MR. SCHMIDT: Well, at least part of it is a special exception, it's a Petition for Special Exception, is it not?

MR. JAKUBIAK: I've been in cases like this before and you have to, clear threshold before you get to that. Or at least in my experience, there's a threshold about whether use is allowed or not and so, it's both.

MR. SCHMIDT: Okay.

MR. JAKUBIAK: But it certainly is a threshold that (inaudible) question that has to be resolved.

MR. SCHMIDT: I understand that.

MR. JAKUBIAK: Yeah.

MR. SCHMIDT: But assuming that this was filed as a

Petition for Special Exception.

MR. JAKUBIAK: Right.

MR. SCHMIDT: And assuming the threshold was, was cleared, as you said, then the provisions of 502.1 would be applicable for this Board to apply, correct?

MR. JAKUBIAK: Yes.

MR. SCHMIDT: Okay and you have no opinion, as an expert land planner or expert in zoning in Baltimore County, as to the application of those sections, those requirements?

MR. JAKUBIAK: My only opinion is that this particular use of land, if allowed in the RC-2 district, would have consequences that are greater here because it's in a rural legacy area. So, there's a, you know, there's, there's that standard I'm looking at. I, I didn't think through the 502.1 standards.

MR. SCHMIDT: Okay. You didn't apply them?

MR. JAKUBIAK: I did not.

MR. SCHMIDT: Fair enough, fair enough, you didn't apply them. Mr. Jakubiak, you're aware that Mr. Lippy owns adjacent property, are you not?

MR. JAKUBIAK: Yes, I am.

MR. SCHMIDT: Okay and, indeed, on your exhibit number nine, the property that's shown on the west side of Hanover Pike, which is in the hatched area, is Lippy property, is it not?

MR. JAKUBIAK: I do recall that from the, the testimony that was given --

MR. SCHMIDT: I'm showing you the exhibit, that's the Lippy property?

MR. JAKUBIAK: Oh, okay, thank you. Yes.

MR. SCHMIDT: Okay. So, Mr. Lippy has the property on the west side of, much of the property on the west side of Hanover Pike in conservation, correct?

MR. JAKUBIAK: Yes.

MR. SCHMIDT: This property is not in conservation?

MR. JAKUBIAK: Correct.

MR. SCHMIDT: Okay. If this solar farm is installed here, if the Board were to approve it, would that have any direct, would Mr. Lippy for any reason be prohibited from continuing to farm the balance of his property, if he put a solar farm on this six acres, in your opinion?

MR. MCCANN: Objection. On the, the farm in the hatched area?

MR. SCHMIDT: Yes.

MR. MCCANN: Okay. I'll object on relevance. That's, that's not the impact --

MR. SCHMIDT: It's the vicinity.

CHAIR: Over, overruled, overruled.

MR. MCCANN: Okay.

MR. SCHMIDT: It's the vicinity. Would he, would he

not be able to farm the rest of his twenty-two hundred acres if he puts solar panels on six, that's what I'm asking you?

MR. JAKUBIAK: I don't think solar panels in six will prevent him from farming on the remaining.

MR. SCHMIDT: Right. As a matter of fact, no other farmers in the locale or vicinity will be prohibited from farming if this solar panels are installed here, will they?

MR. JAKUBIAK: No, no, no direct prohibited, prohibition on farming.

MR. SCHMIDT: All right. You were here, Mr. Jakubiak, for Mr. Donithan's testimony, were you not?

MR. JAKUBIAK: Yes, I was.

MR. SCHMIDT: And you heard his explanation as to how the energy and the power produced by the proposed solar farm would then go into the public energy grid, power grid, correct?

MR. JAKUBIAK: Power grid, yes.

MR. SCHMIDT: Okay and, and that power grid is within, I guess, what I would call the public sector, this isn't a, it would go into the power grid which serves the public, is that your understanding?

MR. JAKUBIAK: (inaudible).

MR. SCHMIDT: Okay and would that provide any type of public benefit to people who use power in this area of Baltimore County?

MR. MCCANN: I'm going to object. Beyond the scope.

The other questions were beyond the scope and this certainly is. I didn't ask him anything about the, (inaudible) --

MR. SCHMIDT: This is cross examination.

CHAIR: Yeah, but it has to be from the scope of direct.

MR. MCCANN: Yeah, there's a limitation to it and I didn't ask him anything about the --

MR. SCHMIDT: He's offering all kind of testimony about it's not a public utility.

CHAIR: Yeah, but he didn't offer anything about the financial benefits of the solar --

MR. MCCANN: Or --

MR. SCHMIDT: I, I didn't ask him about the financial benefits.

MR. MCCANN: -- hold on, hold on, or the facilities themselves, anything about the, what comp, what comp, comprises what they're proposing specifically, what is or is not public or how it fits into the grid and all those kind of questions. My --

MR. SCHMIDT: Mr. Alston, he went --

CHAIR: I'm going, I'm going, I'm, I'm going to allow it. Just --

MR. SCHMIDT: Okay.

CHAIR: -- I'm going to allow it. It was overruled for, for, for a moment.

MR. JAKUBIAK: You have to repeat, please.

MR. SCHMIDT: I believe the question was, you were, you looked at the definition of public utility, which is what I'm asking you about, and I'm asking you, you said that the, the, that the power supplied by this facility would, would indeed, go into the public grid or public sector, correct?

MR. JAKUBIAK: I said the power grid, I didn't say public.

MR. SCHMIDT: The power grid.

MR. JAKUBIAK: Yes.

MR. SCHMIDT: Well, that power grid is, serves the public, correct?

MR. JAKUBIAK: It serves anyone who's connected to it, right.

MR. SCHMIDT: But it's not, and that could be anyone who has potential connections to that grid and that transmission line?

MR. JAKUBIAK: Fair enough.

MR. SCHMIDT: Fair enough?

MR. JAKUBIAK: Sure.

MR. SCHMIDT: I'm not trying to trick you. And, and for those people, it would provide a, a public benefit, would it not? Because it's providing power to people who choose, chose to tap into it from a public standpoint, correct?

MR. JAKUBIAK: Those people --

MR. SCHMIDT: It's not a private, people can tap into it, from your understanding, correct?

MR. JAKUBIAK: People that tap into it don't obtain a public benefit, they obtain a benefit in the sense that they're able to get electricity. But, they're able to get electricity whether they're tapped into electricity generated from solar or coal or nuclear, that's part of the grid.

MR. SCHMIDT: But that's, the grid is available to everyone in the public?

MR. JAKUBIAK: The grid is available to the public, yes.

MR. SCHMIDT: Okay. Does that impact at all, sir, whether, how this Board should view whether this, assuming this is a public utility, how this Board should view this special exception, the fact that it's a public --

MR. MCCANN: (inaudible) what?

MR. SCHMIDT: -- it's used by members of the public?

MR. MCCANN: Because he said it wasn't a public benefit, so the fact that it's not a public benefit, does that --

MR. SCHMIDT: Mr. McCann, can you please stop testifying?

CHAIR: Yeah, but he did --

MR. MCCANN: I just want to know what the question is. What should impact the Judge's, the Board's decision?

MR. SCHMIDT: What I'm asking the witness is I believe the witness has testified that the energy produced by this proposed solar farm would enter the public grid and would be available to members of the public. Is that correct, Mr. Jakubiak, or did I twist your words?

MR. JAKUBIAK: I, I keep saying the power grid, you know, I think it would enter the power grid and be available to anyone that's connected to it, it flips a switch.

MR. SCHMIDT: That flips a switch, that wants to get connected to it.

MR. JAKUBIAK: Right.

MR. SCHMIDT: Right. The public. It's not restricted to anyone, is it, to the best of your knowledge?

MR. JAKUBIAK: No.

MR. SCHMIDT: Okay.

MR. JAKUBIAK: To the best of my knowledge, no.

MR. SCHMIDT: Okay and given that there, that this special exception is available to members of the public, that the service that this provides is available to this, to the members of the public, my question is, does that impact this Board's consideration of the special, of the proposed special exception?

MR. JAKUBIAK: How do I say this? This use is a, is not a, a public utility use as meeting the definitions of the code, as provided for in the code. So, whether benefits are

provided to the general public seems immaterial to the case in front of the Board this morning. I guess is the best way I can answer that, Mr. Schmidt.

MR. SCHMIDT: Okay. So, that when you testified in a prior case, that when uses which provide public benefits are to, quote, be given a pass as it relates to special exceptions, that was incorrect?

MR. JAKUBIAK: You mean, in a prior case? I'd have to clarify that.

MR. SCHMIDT: Okay.

MR. JAKUBIAK: What, what case?

MR. SCHMIDT: I'll withdraw the question. Let me ask you, Mr. Jakubiak, there are no zoning variances requested in this case, correct?

MR. JAKUBIAK: Correct.

MR. SCHMIDT: And you indicated that this is on a scenic route, a Baltimore County scenic route, correct?

MR. JAKUBIAK: Yes.

MR. SCHMIDT: Is it on any kind of State scenic route?

MR. JAKUBIAK: No.

MR. SCHMIDT: Okay. Horses and Hounds Route?

MR. JAKUBIAK: No, it's not.

MR. SCHMIDT: Okay.

MR. JAKUBIAK: Not on that (inaudible).

MR. SCHMIDT: Near it, but not on it, correct?

MR. JAKUBIAK: I believe you're right. I, I --

MR. SCHMIDT: I know I'm right. How, how does Baltimore County, how, or let me ask you this, strike that. Where does Baltimore County, what document is Baltimore County regulate proposed uses on scenic routes? Where do I find those regulations, if any?

MR. JAKUBIAK: They're not, they're set forth in policy in the comp, or the master plan, where they say special exceptions and variances ought to be granted sparingly for uses along these routes.

MR. SCHMIDT: And that's in the County master plan?

MR. JAKUBIAK: Yes.

MR. SCHMIDT: Do you know what page?

MR. JAKUBIAK: I don't.

MR. SCHMIDT: Okay. Do you know what section of the master plan?

MR. JAKUBIAK: Yeah, it's in the, the land use section, the section that deals with land use matters. I forgot the name of that title, it might be Section 3, or Article 3, of the, of the master plan.

MR. SCHMIDT: Okay. Other than, other than the master plan, is there any other County regulation or doc, or document which regulates proposed uses on scenic routes, proposed development on scenic routes?

MR. JAKUBIAK: Not that I can recall, no.

MR. SCHMIDT: Okay and so the regulation that you rely on in formulating your opinion that because this is on a scenic route, that this, that this proposal should be denied, assuming it's a public use and I know that's your threshold question, comes from the master plan and, and the language that you just gave us?

MR. JAKUBIAK: I was thinking more of the, forgive me, but the common law standard of special exceptions that the use has, the special exception use has, impacts greater that location than otherwise in the zoning district, the Board can deny it and that's, that's what I was thinking of. Not of a particular regulation in the County code.

MR. SCHMIDT: Board's indulgence for just a minute. I may be done, I just want to look through my notes, if I may, Mr. Alston? Thank you. No other questions. Thank you, sir.

CHAIR: We're going to take a five minute break before you, you got re-direct, right?

MR. MCCANN: Okay, great.

CHAIR: We're going to take a five minute break.

MR. MCCANN: Okay.

(RECORDING PAUSED - 11:27:02 AM)

(ON RECORD - 11:37:57 AM)

BOARD: We're on.

CHAIR: Okay. We are back on the record and Mr.

McCann?

MR. MCCANN: Thank you. Just a couple follow-up questions, Mr. Jakubiak. Mr. Schmidt asked you about your, your work as a subcontractor for the, for Baltimore County. Just want to clarify, although you may have been a step removed in terms of the way the contract is worked out, did you actually meet with and advise County staff?

MR. JAKUBIAK: Yes, I did. I met with them and advised them on zoning matters.

MR. MCCANN: Okay. The Centreville case in which you testified in favor of the solar farm, particular case down there, correct?

MR. JAKUBIAK: Yes.

MR. MCCANN: And that was, as you explained, I think, that was after you recommended that the, the folks down there adopt some legislation that addressed the issue?

MR. JAKUBIAK: Yes.

MR. MCCANN: Okay. When you made the determination that there was no allowable enumerated use, what were, are there public utilities in Centreville?

MR. JAKUBIAK: Oh, yeah, there, it said, there are public utility facilities, I believe was a use allowed by special exception and maybe some other public utilities type of category.

MR. MCCANN: Okay and you determined it didn't fit

into that?

MR. JAKUBIAK: Yes.

MR. MCCANN: Okay and then you, and you acknowledged to Mr. Schmidt that if, if a jurisdiction were to outright prohibit solar panels, that that might, in fact, be illegal, correct?

MR. JAKUBIAK: Yes, I did.

MR. MCCANN: And that it would, I think in your word, it would be incumbent upon the legislator to address the issue?

MR. JAKUBIAK: Yes.

MR. MCCANN: Okay. Would you agree with me that, while it may be incumbent upon the legislator to address the issue, the, the legislator has the ability to decide, for instance, where the use could go, in which particular zones and under what circumstances?

MR. JAKUBIAK: Absolutely. That's what I meant to imply by saying address the issue, to regulate in the context of the zoning board ordinance.

MR. MCCANN: So, would there, in your opinion, would there be anything illegal if a jurisdiction were to prohibit solar farms in rural zones?

MR. SCHMIDT: Objection. Just getting --

MR. MCCANN: Solar panels?

MR. SCHMIDT: -- so speculative at this point.

CHAIR: Overruled.

MR. SCHMIDT: Okay.

MR. JAKUBIAK: There would be nothing illegal about that, no.

MR. MCCANN: And you, you discussed with Mr. Schmidt about, I think your testimony was that you did not believe that the sub, the subject use was not providing a public benefit, the public had access to it but it was not providing a public benefit, is that an accurate --

MR. SCHMIDT: Objection. That's not what he said. I don't, I don't think he said that. And it's, I mean, it's leading. I don't think that's what he said. It was, it would provide --

CHAIR: Is the objection that it's leading?

MR. SCHMIDT: Yes.

CHAIR: I'll go with that.

MR. SCHMIDT: Okay.

CHAIR: Yeah, okay.

MR. MCCANN: All right. Did you or did you not testify that the, the proposed use would not provide a public benefit?

MR. SCHMIDT: Objection. I mean, asked and answered.

CHAIR: It's still leading, yeah, and but --

MR. SCHMIDT: And it's leading.

MR. MCCANN: Yeah, is it --

MR. SCHMIDT: Asked and answered. He said what he

said already.

MR. MCCANN: Is, is the, okay, but I can ask him a threshold question before I follow-up.

MR. SCHMIDT: But you can't try to rehabilitate him by seeing if you can get him to change his answer.

MR. MCCANN: That's not what I'm doing. I'm, I believe that's what he said. Let me ask you this way --

CHAIR: Just ask a direct question, okay?

MR. MCCANN: Does, does the proposed use provide a private or a public benefit?

MR. SCHMIDT: Object. I'm, I'm still going to object for the record.

CHAIR: Okay. Overruled.

MR. JAKUBIAK: My intent was to make a distinction between the public and the power grid. The notion of public grid was, was being asked and I, I said it's going to the power grid. And when the topic came up about whether the public generally obtains a benefit from it, I directed my answer to the, the people that turn on the switch, that the individual receives the benefit from being able to turn on the switch because there's power in the grid. That's, that's what I meant to convey and I think that's what I did convey. I don't know if --

CHAIR: I don't know if that was responsive to his question, but.

MR. JAKUBIAK: It may not be but, I --

CHAIR: What was your question again?

MR. MCCANN: I'm just, I'm trying to ask it without asking a leading question but Mr. Schmidt, I think you acknowledge that when the subject use, if approved, is provided, there won't be any restrictions as to who in the public may use it.

MR. JAKUBIAK: Okay.

MR. MCCANN: It's not restricted to only (inaudible), right?

MR. JAKUBIAK: Right.

MR. MCCANN: But it is restricted as to who enters into a contract with this gentleman to provide it, correct? And that would be a private contract, is that your understanding?

MR. JAKUBIAK: Well, that's my understanding of the solar, this, as described by the testimony that I sat through. That the company goes and contacts individuals and they sign up to get the service. The service is provided but they sign up to, to benefit from that generation or, or that, I can't really, I can't piece it all together but it, certainly that the, the individual can sign up with the, the, the, the company.

MR. MCCANN: Okay. So, let me ask it this way, getting back to my original question. Is the benefit that's

provided to that person who signs up, is that a private benefit, specific to that person, or is it a public benefit that everybody --

MR. JAKUBIAK: It just seems like a private benefit, clearly, to the, the people that have in their own wisdom negotiated a contract with the company that's, I --

MR. MCCANN: Okay. Is it sort of like a convenience store may, it provides a private benefit to people that actually go in and buy its items, would you agree with that?

MR. JAKUBIAK: Yes, yeah, the same way, I see the parallels.

MR. MCCANN: A convenience store doesn't provide a public benefit in this, would you agree with that?

MR. SCHMIDT: Objection. I, you know, --

MR. MCCANN: I'll withdraw, I'll withdraw it.

CHAIR: Yeah, I'm going to sustain.

MR. SCHMIDT: We can talk about 7-11's or Royal Farm Stores, as he testified in that case.

MR. MCCANN: Okay. And I, I have no other questions.

CHAIR: Any re-cross?

MR. SCHMIDT: Just very brief. I just want to make sure because Mr. McCann asked about it. The Centreville case, as I understand it, an application was filed by an applicant for a solar farm.

MR. JAKUBIAK: Yes.

MR. SCHMIDT: And there was no solar farm regulation in the town of Centreville at the time?

MR. JAKUBIAK: Right.

MR. SCHMIDT: You told Centreville better adopt a regulation?

MR. JAKUBIAK: Yes.

MR. SCHMIDT: They adopted a regulation.

MR. JAKUBIAK: Yes.

MR. SCHMIDT: And that applicant's case was heard pursuant to that new regulation?

MR. JAKUBIAK: Yes.

MR. SCHMIDT: Okay and that regulation, how did it permit a solar farm, by special exception or by right?

MR. JAKUBIAK: By, because of its size, by special exception in the residential zone, in the residential zone, as an accessory use. And so, it had to be accessory to the principal use.

MR. SCHMIDT: Okay. So, in that case, then you testified in support of that special exception?

MR. JAKUBIAK: Yeah, I, I was the staff and I recommended and suggested and advised that they, in fact, approve --

MR. SCHMIDT: Approve it.

MR. JAKUBIAK: -- that, that case.

MR. SCHMIDT: As an accessory use in a residential

zone?

MR. JAKUBIAK: Yes.

MR. SCHMIDT: Under the Centreville legislation that had been adopted.

MR. JAKUBIAK: And the reason in part was the, it was on a large expansive, fifty acre parcel shared by a middle school and an elementary school situated in between. It was far removed from the road and it met all the standards and the power, gave power to that, the school, the schools, yeah.

MR. SCHMIDT: Okay. Was it on public property?

MR. JAKUBIAK: Yes.

MR. SCHMIDT: Okay. Okay. Okay. Well, that leads me to a question, Mr. Jakubiak, if, if this was on, if this was a County facility, if this was a County solar farm, would this, would your opinion change? Would it be allowed as a County, if it were, if it was on County property and maintained and operated by Baltimore County?

MR. JAKUBIAK: No, I don't think so. I think it would remain a use that's not allowed by the code.

MR. SCHMIDT: Okay and because of that, the use, then it would not be allowed?

MR. JAKUBIAK: Until the, the code is administered or, I'm sorry, until the code is amended, either by force of lawsuit or by foresight of the elected officials.

MR. SCHMIDT: Is, is the County bound by its own

zoning regulations?

MR. JAKUBIAK: You know, I don't know, actually the answer to that question.

MR. SCHMIDT: Well, you answered that question when I asked you in another case under oath that the County was, indeed, bound by its zoning regulations. Have you changed your opinion?

MR. JAKUBIAK: I don't think I --

MR. SCHMIDT: Do you remember that?

MR. MCCANN: Hold on, let him answer.

MR. JAKUBIAK: You might have to refresh my memory.

MR. SCHMIDT: I asked you in the Hunt Valley matter, I said to you, Board's indulgence for just a second. I'm referring to page 253 of the transcript from the Hunt Valley Baptist Church case where I was cross examining you and the question I asked you was, quote, so, so, the County, the County has to abide by those zoning classifications, those zoning requirements, just as Hunt Valley Baptist and other property owners do, end of quote. Mr. Jakubiak, answer, yeah, I believe it, I don't believe Baltimore County exempts itself from its zoning laws, end of quote. Is that your still, is that opinion, is that your opinion today?

MR. JAKUBIAK: Yeah, I think that's accurate.

MR. SCHMIDT: Baltimore County, so, when you just sad you didn't know, now you do know. Baltimore County exempts

itself from its own zoning ordinance.

MR. JAKUBIAK: No, I, I, I think what I said there is that I didn't believe that Baltimore County exempted itself from its own zoning ordinance, right? That's what I said.

CHAIR: Mr. Schmidt, I guess the old Carolina rule, let, let him read your transcript.

MR. SCHMIDT: Sure.

CHAIR: Let him, let him see what you're speaking of and (inaudible) impeach him with it, you know, let him see it.

MR. MCCANN: Can I see it first, please?

MR. SCHMIDT: Sure.

MR. MCCANN: Yeah, I'm going to object on the basis of relevance, but.

CHAIR: I'm, I'm, we've, we've already gone down here so and there was no objection to the early question, which is--

MR. MCCANN: You can, you can show it to him, I'll, I'll, I'll look at it afterwards.

MR. SCHMIDT: Starting on line sixteen. So, so, the County, the County has to abide by those zoning classifications, those zoning requirements, just as Hunt Valley and other property owners do? Answer, yeah, I believe it, I, I don't believe Baltimore County exempts itself from its zoning laws. So, Baltimore County, in your opinion, is subject to its own zoning ordinance?

MR. JAKUBIAK: Well, I think so. I mean, it doesn't

exempt itself.

MR. SCHMIDT: Okay. Okay and there's no case law or anything that says the State government and local municipalities are exempt from their own zoning ordinances, you're not aware of any of that?

MR. JAKUBIAK: I'm aware of the topic but I, I just don't know it well enough to answer the question.

MR. SCHMIDT: Okay. That's a fair answer. We agree, that you don't know it. No other questions.

MR. MCCANN: Nothing.

CHAIR: Ms. Demilio, do you have anything for this witness? Okay. Mr. Jakubiak, you are excused.

MR. JAKUBIAK: Thank you.

MR. MCCANN: I do have a couple witnesses that'll be brief I'm sure.

CHAIR: Sure.

MR. MCCANN: So, if you want to take them before lunch, we can do that or we can take them after lunch.

CHAIR: How long do you think you're going to, are these your only witnesses that (inaudible)?

MR. MCCANN: Just, just these two, just two gentlemen, yes, and I'd imagine short, you know, ten minutes.

CHAIR: Short? Is that it, and that would conclude your --

MR. MCCANN: Yes, it would. Yes, it would.

MR. SCHMIDT: I may put Mr. Donithan back on, but I think he'll be fairly short.

CHAIR: Well, why don't we just try to go straight through.

MR. MCCANN: Okay.

CHAIR: (inaudible) let's try to get this finished.

MR. MCCANN: Okay, great.

CHAIR: Then we'll take lunch.

MR. MCCANN: Okay.

BOARD: Please remain standing.

MR. MIRABILE: Sure.

BOARD: Raise your right hand. Do you swear and affirm under the penalties of perjury, that the testimony you are about to give is true and correct to the best of your knowledge and belief?

MR. MIRABILE: Yes, I do.

BOARD: And please state your name.

MR. MIRABILE: Santo Mirabili.

BOARD: Can you spell your last name, please?

MR. MIRABILE: Sure, M-I-R-A-B as in boy-I-L-E.

BOARD: And your address?

MR. MIRABILE: 4312 Windy, W-I-N-D-Y, second word is Hill, Road.

BOARD: Sorry, W-I-N-D-Y?

MR. MIRABILE: Yes.

BOARD: And then what was after that?

MR. MIRABILE: Hill.

BOARD: Hill. Okay, thank you.

MR. MCCANN: Okay, thank you. Mr. Mirabile, tell us where the address is that you just identified for the record?

MR. MIRABILE: That is my current and temporary residence.

MR. MCCANN: Okay, which is, where is that?

MR. MIRABILE: That is in Randallstown.

MR. MCCANN: Okay.

MR. MIRABILE: In Baltimore County.

MR. MCCANN: And when you say, why do you say temporary, are you moving somewhere?

MR. MIRABILE: Yes, we own a seventy-seven acre farm in the Upperco area.

MR. MCCANN: Okay.

MR. MIRABILE: That we have owned for over ten years.

MR. MCCANN: Okay.

MR. MIRABILE: And we have a, my wife and I, have a master plan to move over there in the next several months.

MR. MCCANN: Okay.

MR. MIRABILE: Once we finish up the new home.

MR. MCCANN: Okay and where is that seventy-seven acre property in relationship to the subject property?

MR. MIRABILE: It is on the same byway, it's on Route

30, has a Route 30 address.

MR. MCCANN: Yeah.

MR. MIRABILE: And it's approximately a mile or so, mile and a half away.

MR. MCCANN: Okay and what is the specific address of that property?

MR. MIRABILE: It's actually two parcels, first parcel is 14517 Hanover Pike and the second is 14525.

MR. MCCANN: Okay. So, you don't live on that property?

MR. MIRABILE: Yes.

MR. MCCANN: You're building a house?

MR. MIRABILE: Yes.

MR. MCCANN: Okay. What, if any, affiliation do you have with the Hanover Road Association?

MR. MIRABILE: I am the current President of the Hanover Association and I've been a member of their board for the past three years. I've been a member of the association for the past seven.

MR. MCCANN: Okay. Did, did you live somewhere else other than in your, your temporary residence? Why is it that you've been a member of the Hanover Road Association for seven years if you currently live in Randallstown?

MR. MIRABILE: I purchased my first parcel, 517, approximately seven or eight years ago and upon that time,

immediately became aware of the Hanover Road Association, felt I was in agreement with their charter and became a member and an active shortly after.

MR. MCCANN: Okay and when you say 517, do you mean 517 Hanover Pike?

MR. MIRABILE: Yeah, 14517 Hanover Pike.

MR. MCCANN: Oh, 14517. Oh, okay, I understand. Okay. Are, are both you and the Association familiar what's been proposed in this case?

MR. MIRABILE: We are.

MR. MCCANN: Okay and how is that? How are you familiar?

MR. MIRABILE: We have met with the Appell, applicants. We have met with several other applicants that are applying for similar type of installments in the area. We have been given material by them, we've reviewed their proposed installations and we have, as a group, taken a position and we have been one of the initial organizations that have worked with local council people in and out of our district to work on a bill and we worked very closely with Wade Cash and Almon, Vicki Almon, on all previous bills.

MR. MCCANN: Okay and when you say we, you mean you and the Association?

MR. MIRABILE: I'm sorry, Wade, yes, we, meaning the Association, yes, and, and, and I personally representing the

Association and our solar committee as a member of that as well.

MR. MCCANN: Okay.

BOARD: If I may, just so I'm clear, are you here testifying as an individual or testifying as President of the Association or is there a combination?

MR. MIRABILE: Combination.

MR. SCHMIDT: Do we have the (inaudible)?

CHAIR: Yeah, is there, is there a document you're supposed to give us, yeah (inaudible)?

MR. MCCANN: We do not, so --

MR. SCHMIDT: Well, then I would move to strike.

MR. MCCANN: Well, that's, my, my questions are going to be directed to him, when I ask him about the project, are going to be directed to him as an individual.

MR. SCHMIDT: Well, then, I mean, this is completely and totally improper for Mr. McCann to ask a series of questions about this gentleman's role in the Hanover Road Association when then he has no ability to testify as affiliated with that Association pursuant to Rule 8. The inference that Mr. McCann is trying to create is that he's here on behalf of the Association. That's what he said in answer to your question, Mr. Garber. This tactic is entirely inappropriate, Mr. McCann. I respect Mr. McCann a great deal, --

CHAIR: Yeah, I --

MR. SCHMIDT: -- but to give some kind of inference that he's here on behalf of Hanover Road Association, if he's here on behalf of himself, I would even question his standing to be here. He lives in Randallstown for God's sake, and is, and he, and I believe his wife testified at the first hearing, they were going to move in a couple months from that, but be that as it may, as an individual, unless he complies with Rule 8, he clearly cannot testify on behalf of the Association and to give any inference that he's a President of that Association, I would ask the Board to disregard it. It's improper.

CHAIR: Yeah, I'm having, I'm having a little problem with --

MR. SCHMIDT: Completely improper.

CHAIR: -- with no Rule 8 document, no certification.

MR. MCCANN: Listen, I understand, I understand Rule 8, I understand in order for him to testify on behalf of the Association, --

CHAIR: Right.

MR. MCCANN: -- he needs to have those papers.

CHAIR: Right.

MR. MCCANN: Or there needs to be no objection to those papers. They're just a procedural --

CHAIR: Well, he's, he's raised it now.

MR. MCCANN: He's raised it, I understand that. But there's nothing improper about me asking who he is, what his affiliation is with the Association, how he's come about learning about this, what involvement --

CHAIR: But he can't answer anything about what the Association feels about the project.

MR. MCCANN: I was not going to ask him, because we, to be honest with the Board, we had trouble getting the Rule 8 papers together.

CHAIR: Okay.

MR. MCCANN: But, again, I, I, I view that as a procedural issue. I don't, in the absence of an objection, I think he's allowed to testify on behalf of the, of the Association, just like he would in a, in a Court, if he has the authority and I think --

CHAIR: Well, we don't know if he has the authority. We don't know that, that's what Rule 8 provides us, correct?

MR. MCCANN: Well, I would, I would proffer that he does.

CHAIR: Well, I --

MR. SCHMIDT: Objection. I'd object to the proffer. The Rule 8 is clear. This is just entirely inappropriate, Mr. Alston.

CHAIR: Okay, Mr. Schmidt. I tell you what, we, we know that he is a member of the Hanover Road Associate, or

Hanover Pike or Hanover Road Association, we know that, we know that he's the President. He can testify as to what this particular solar farm will do to him individually, but we're not going to allow any testimony as to what the Association thinks about what this solar farm should or should not be or allowed or not allowed.

MR. MCCANN: Okay.

CHAIR: Okay?

MR. MCCANN: Very well. I understand.

CHAIR: Okay.

MR. MCCANN: Mr. Mirabile, I think I've already asked you but, again, tell the Board if you would how it is that you're familiar with what's proposed. You've said some meetings you had Have you seen, for instance, the plan that's proposed?

MR. MIRABILE: I've seen the plan, I've seen the public postings.

MR. MCCANN: Okay.

MR. MIRABILE: I'm aware of the previous hearings through my wife and I also attended a meeting, again, with the applicants and heard what they were proposing from them.

MR. MCCANN: And you attended the first day of this hearing, correct?

MR. MIRABILE: I did not.

MR. MCCANN: Before the Board?

MR. MIRABILE: My wife did, I'm sorry, the first day of this, yes, yes.

MR. MCCANN: Before the Board.

MR. MIRABILE: I sure did.

MR. MCCANN: You did not appear before the Administrative Law Judge, correct?

MR. MIRABILE: No.

MR. MCCANN: The first level, but you appeared on the first day of this hearing?

MR. MIRABILE: That is correct. I was here the whole day.

MR. MCCANN: Okay. So, then tell the Board, if you would, what concerns you have about the proposal?

MR. MIRABILE: My concerns is that it's a, a non-conforming use with what I believe, personally, that RC-2 was intended for. As I mentioned, my wife and I have owned the property for several years and it's been our lifelong intent to move into an RC-2 area, because of the benefits that it prov, that it affords us and what we believe, the protection that it affords us. We own a large parcel. We intend to invest a large amount of our life savings and we intend to create a homestead for our two children and our grandchildren and we are in complete disagreement that what we see as a, at least as a commercial and we feel possibly on an industrial level, given its production and its main use, that this is not what we, in

fact, signed up for in plain layman's terms, to expect out of RC-2 zoning. We feel and we know that our property value will be adversely effected. There's been statements made at all of the work sessions that I've attended by real estate agents. One of our neighbors has gone --

MR. SCHMIDT: Objection. Hearsay.

CHAIR: Sustained.

MR. MIRABILE: Our, our neighbors have also reached out to certified --

MR. SCHMIDT: Objection. Hearsay.

MR. MCCANN: He hasn't said anything yet.

MR. SCHMIDT: He's saying our neighbors.

MR. MCCANN: (inaudible) hearsay is allowed on this Board all the time.

MR. SCHMIDT: Here's where it comes.

CHAIR: Yeah, I understand but, you can continue.

MR. MIRABILE: Sure, and if I may clarify, we have personal real estate agents as personal friends and we have reached out to them and they have told us that it will be --

MR. SCHMIDT: Objection.

MR. MIRABILE: -- negatively affected and that was our personal investigation of the matter because we are affected by it.

CHAIR: Sir, you have to, you have to stop when he says objection.

MR. MIRABILE: Sure.

MR. MCCANN: Just his own belief as to what --

CHAIR: Yeah, that's what he believes.

MR. MCCANN: Yeah.

CHAIR: Okay, go ahead.

MR. MIRABILE: Sure. So, our concern is that if this is, this project is allowed to go through and future projects in our area, that we will be negatively impacted by it.

MR. MCCANN: Okay and what is it specifically, I know you used the term non-conforming use. You're not a zoning expert, are you?

MR. MIRABILE: No.

MR. MCCANN: You're not a lawyer?

MR. MIRABILE: No.

MR. MCCANN: Did you mean that term in any legal way?

MR. SCHMIDT: Objection. Leading. Come on, Mr. McCann, he said non-conforming use.

MR. MCCANN: Did you mean it --

CHAIR: Let's, let's try to stick to direct, direct questions. Let's, let's try not to lead if we can.

MR. MCCANN: Okay, okay.

CHAIR: Okay, go ahead.

MR. MCCANN: What did you mean by non-conforming use?

MR. MIRABILE: Well, I, I meant the use of that word as it, as defined in the American Dictionary. I've done my

personal research with the County Code. I've done my research with what I believe RC-2 was intended for. I sought out because of what was written and I, there are specific uses that are listed. There are specific uses that are not listed. There are specific uses that are allowed by special exception. And I don't believe that this conforms to anything that I, I read.

MR. MCCANN: Can you be a little more specific, what it is, what is it specifically about the proposal that doesn't conform or that you object to?

MR. MIRABILE: As I understand it, as a special exception, it needs to have a public use. There's been a lot of research that I have undergone and from my understanding, utility companies, as I was told by the utility company --

MR. SCHMIDT: Objection.

MR. MIRABILE: That it is considered private.

MR. MCCANN: Okay. So, you have a problem with it fitting in?

MR. SCHMIDT: Mr. Alston, would you mind advising the witness that if I say the word objection, he's supposed to stop.

CHAIR: Yeah, he's supposed to stop.

MR. MIRABILE: Okay.

MR. SCHMIDT: And the, and you're supposed to rule on the objection and then he can either continue or not. I'd

appreciate it. Thank you, sir.

CHAIR: Okay, fine. Ask your next question.

MR. MCCANN: And the, and I, I guess what I'm looking for beyond what you just said is more specifically about what it is about solar power --

MR. SCHMIDT: Objection. Asked and answered. You keep asking him and leading him and he said what he said, Mr. McCann.

CHAIR: Sustained. Go ahead, next question.

MR. MCCANN: Let me show you a plan that's already been introduced into evidence as Petitioner's 7-B. Have you seen this before?

MR. MIRABILE: Yes, I have.

MR. MCCANN: Okay and I, you've, what is it about this plan that you object to as opposed to, what is it about the plan that you object to, let me ask it that way?

MR. MIRABILE: I object, the, to the proximity of a County byway. I object to the ineffectiveness of what I believe is attempted to be covered by the screening and I object, probably primarily, on the fact that the entire parcel is being, one hundred percent of the parcel, is being used for something other than agricultural uses.

MR. MCCANN: Okay. Okay. Any other concerns that you have that you have not expressed?

MR. SCHMIDT: Objection. I mean, how many more times

is he going to ask the same question?

MR. MCCANN: That's the first time I asked that question.

CHAIR: Mr. Schmidt, overruled. Go ahead.

MR. MCCANN: Just any other concerns that you have, Mr. Mirabile, that you haven't already expressed?

MR. MIRABILE: I think that's it.

MR. MCCANN: Okay. Thank you.

MR. MIRABILE: Um hm.

MR. MCCANN: No other questions.

CHAIR: Any cross? Or, should I say, Ms. Demilio, do you have --

MS. DEMILIO: (inaudible).

MR. SCHMIDT: So, you live in Randallstown?

MR. MIRABILE: Yes.

MR. SCHMIDT: Okay. Your property here was, is a mile and a half away?

MR. MIRABILE: Approximately, I've never --

MR. SCHMIDT: Are you going to be able to see it from your property?

MR. MIRABILE: Depending on the elevation, it's potentially possible, yeah.

MR. SCHMIDT: You think you'll be able to see this from your property a mile and a half away?

MR. MIRABILE: Yeah, I've, I've reviewed a lot of

those, the My Neighborhood's topography.

MR. SCHMIDT: Um hm.

MR. MIRABILE: And one of my, my parcel is one of the highest in Baltimore County. We have a several mile sight distance that we can see, which is what we like about it and I believe that it's, there's a potential for it, yeah.

MR. SCHMIDT: Okay. So, you'll be able to see six foot high solar panels from a mile and a half away?

MR. MIRABILE: Six acres of a consistent color contrary to what is prevalent around it, I think there's a high potential for it, yeah.

MR. SCHMIDT: Okay. Are you a landscape architect?

MR. MIRABILE: I am not, however, I am in the construction industry. I've worked with landscape architects, I've worked with all types of civil matters. I am educated in the mechanics of topography and of sight distance and it's one of the things that we kept in mind when we designed our house, we designed our living space and its elevation.

MR. SCHMIDT: Okay. No other questions of this witness.

MR. MCCANN: Nothing further, thank you.

CHAIR: Okay. Thank you.

MR. MIRABILE: Thank you.

CHAIR: Next witness?

BOARD: Please raise your right hand. Do you swear

and affirm under the penalties of perjury, that the testimony you are about to give is true and correct to the best of your knowledge and belief?

MR. COULS: Yes, I do.

BOARD: Please state your name.

MR. COULS: John Couls.

BOARD: And please spell your last name.

MR. COULS: C-O-U-L-S.

BOARD: And your address, please?

MR. COULS: 15708, 15712 and 15714 Hanover Pike.

BOARD: Thank you.

MR. COULS: Thank you.

MR. MCCANN: Same question, essentially, to you first, sir, where are those properties that you had just identified in relationship to the Lippy property that is the subject of this case?

MR. COULS: Immediately adjacent to two sides of the proposed field.

MR. MCCANN: Okay. Let me show again Petitioner's Exhibit 7. Is your property or properties shown on here?

MR. COULS: Yes, it is.

MR. MCCANN: And tell the Board where that is?

MR. COULS: All this.

MR. MCCANN: Okay. So, immediately north of the L, I guess?

MR. COULS: Yes.

MR. MCCANN: This is all yours?

MR. COULS: Yes, sir.

MR. MCCANN: Okay and, and how many parcels is it again?

MR. COULS: It is one parcel.

MR. MCCANN: Okay. Are there more than one house on the parcel?

MR. COULS: It, the, the houses were built in excess of a hundred and thirty years ago, so when they changed the zoning back seventies, I guess, they were pre-existing.

MR. MCCANN: And are these, these are outbuildings, these are barns or what are they?

MR. COULS: Yes, yes, sir.

MR. MCCANN: Okay, okay. Same thing --

MR. COULS: Barns, sheds, garages.

MR. MCCANN: Okay and what's the total acreage?

MR. COULS: I want to say 3.006 to be accurate.

MR. MCCANN: Okay and who else, if anyone, lives on the properties with you?

MR. COULS: My, my entire family.

MR. MCCANN: Which is?

MR. COULS: That would be, myself, my two daughters and my brother.

MR. MCCANN: Okay and how long have you lived there?

MR. COULS: Seventeen years, bliss.

MR. MCCANN: And you've sat through the testimony today, correct?

MR. COULS: Yes, I have.

MR. MCCANN: And are you otherwise familiar with, with, with what's been proposed?

MR. COULS: Excuse me?

MR. MCCANN: Are you, are you familiar with what the plan is?

MR. COULS: Yes.

MR. MCCANN: Okay and how, how are you familiar? How'd you learn about it all?

MR. COULS: Well, despite the questioning of it, the president of the homeowners' association for, or Hanover Pike Association, who just testified, brought it to the attention of my daughter while I was away on a trip.

MR. MCCANN: And have you seen, have you seen the plans for it?

MR. COULS: Not, not to this extent, but I've seen smaller sketches of it, yes.

MR. MCCANN: Okay. So, you know what's coming --

MR. COULS: What hopefully will not come, but yes.

MR. MCCANN: Okay and tell the Board, if you would, what your concerns are about it, the proposal, that is?

MR. COULS: I'm trying to, well, first of all, the,

the, we bought our house seventeen years ago. The rural nature of the area and what's being proposed here is nothing less than, in my opinion, industrial in nature, not even commercial. What's being proposed is wrapping two sides of not just my house, but look, look at all the houses on the other side of the street. How is this in any way farming related? This is, this is, in, in my opinion, a way for the landowner, Mr. Lippy, to generate additional funds that goes way beyond his original use, the use that is supposed to be here, which is, which is, which is of a farming nature. Why, why would this in any way fit within? I mean, this is not even commercial, this is taking it to a whole nother level in that, that's the first part. The second part that we can be looking at is the, the hazardous nature of something to this extent so close to people's houses. Why, why would that even be remotely considered is beyond me but. I'm, I'm, I'm just really concerned about the, the, the changes. And changes are good, I get changes are good, but when they're not clarified, when they're, this is, this is not, who's going to maintain the property after all this is installed? You got these little shrubs being put in, you got this big green fence wrapping around two sides of my property facing all of the landowners on the other side. So, we're going to have these little tiny shrubs, are, are they going to come over and maintain the property or are we just going to let it go to rot while we

yield a profit? We asked the question of is this a public utility, is this, is this something that's going to benefit the public? Come on. I own a business, a handyman business. How is this going to benefit the community or are, is, is the electric bills going to be less, you know, say per kilowatt hour? No, it's not going to benefit the community in that sense. If we were trying to benefit the community, we wouldn't have this all the way up on a scenic route, we'd have it backed off, away and we wouldn't care so much about the minute amount of, of power that we would lose by having to go a little bit further to get up to the road. We wouldn't be worried about the profit range, which is what we're here for, in my opinion, because otherwise it wouldn't be up on a scenic route, it wouldn't be up by people's houses. I'm concerned about the noise this is going to make. I just married my twenty-one year old daughter off on this property, I want to say, more like 6:00, if you're looking at my property, big shindig, four by four trucks, out there with a little bonfire having a blast. Could I do that with this solar panel around, buzzing around like cicadas? No, I can't. I've got a fourteen year old daughter, probably going to be marrying her off pretty soon too. Am I going to be able to have the same enjoyment? No. So, you would, you talk about the land use surrounding this property, you talk about the, the, the property being, supposed to be used for, for agricultural reasons. Well, RC-2 zoning is

not just agricultural, it's obvious, I mean, we've got houses on it so RC-2 zoned residential as well. So, you talk about the effects that it's going to have on the community as a whole, it's going to have a devastating effect on my property. I mean, if, I, I just wish that you guys would not be behind the desk, that you would actually be in my backyard and see the view of the sunset. Not that, not that I can, okay, it's Lippy's field, I get that, but to be able to see the sunset in the evening is to die for. But for me to not sit here and be opposed to an industrial set being put around half of my property, how, how could one not be opposed to that? Would you be opposed to it if your child owns the same property? Shouldn't we set a precedence today that, not to allow large businesses to take over? Just because I can't afford a million dollar lawyer to come in and represent me and, and drag this on and on and on and on, whereas the solar companies have that, the Lippys have that, I mean, this just seems, I want to say, unconstitutional but I can't say that because, you know, efforts can be made to move in a commercial direction, you know, and requesting an exception. But --

CHAIR: Okay. Mr. McCann, you going to ask --

MR. MCCANN: I am, I am.

MR. COULS: Apologies. I'm sorry. I'm going on and on.

MR. SCHMIDT: I, I didn't want to cut him off but it

should be a question at some point.

CHAIR: I understand.

MR. MCCANN: I was about to, yeah.

MR. COULS: Apologies.

MR. MCCANN: That's okay. So, just before I let you go, I just wanted to ask a little bit about what's on the border of your property, that is the southern border that joins the, the northern border of this, of the subject property. There are some trees indicated on here, but are, is that, is that an accurate description of where trees are? In other words, there's no trees along the property line except, well, here and here, correct?

MR. COULS: That's actually very close to accurate, yes.

MR. MCCANN: Okay and are they full grown mature trees?

MR. COULS: I want to say there's about forty full grown trees altogether in the entire property. But they're, they're trimmed down so I'm able to see, you know, through and through.

MR. MCCANN: And the canopies are, are not on the ground, they're --

MR. COULS: Correct, correct.

MR. MCCANN: Okay. So, there's no, there's nothing about these trees that are, if you're standing on, right here

or right behind it, would prohibit you from seeing into the property?

MR. COULS: Absolutely.

MR. MCCANN: Okay and the same thing as, with respect to the western side of your property, that is, the canopies are high up and there's nothing --

MR. COULS: Very much the case.

MR. MCCANN: And how is it, just one last question, I'm sorry. How is it that you use this portion of your property? In other words, this is behind the houses, so how do you use it other than having a wedding for your daughter, how is it that you use the property?

MR. COULS: It is for my personal enjoyment.

MR. MCCANN: Okay.

MR. COULS: And the enjoyment of my children and my family.

MR. MCCANN: Okay. All right. No other questions. Thank you.

CHAIR: Cross?

MR. SCHMIDT: I'm going to show him some photos. I think you have them, if you can show him to the Board members, Ms. Rosen, 4-M? Petitioner's 4-M.

BOARD: I got 4-A through C.

BOARD: I think you're thinking nine.

MR. MCCANN: Nine. Larry, is this it?

BOARD: This one?

BOARD: This is four.

MR. SCHMIDT: Yes. I'm sorry, I must have them mis, mismarked on my copy.

BOARD: I have these down as Petitioner's 9-A through M, you're talking about the last picture?

MR. SCHMIDT: Yeah.

BOARD: That's this right here.

MR. SCHMIDT: If I can approach? Yes, I must, I, I'm sorry, my four, my nine looks like a four.

BOARD: It could, you know what, I, I think they were actually pre-marked as four and then they --

MR. SCHMIDT: And then they came in as nine before Mr. Beverungen. I think you're right. Well, I'm going to refer, if I can just show the Board members, this, this photograph.

MR. MCCANN: Okay.

MR. SCHMIDT: Okay. Mr. Couls, am I pronouncing it correctly?

MR. COULS: Yes, um hm.

MR. SCHMIDT: Mr. Couls, this picture was previously submitted. Can you identify what that's showing? I want to make sure I understand what that is.

MR. COULS: That looks like a very distant view from Fringer Road, as a matter of fact. It looks like it's been

pictured in just a way so that it doesn't look like I can see out the side of my property, whereas if you were standing in my property, you would see differently.

MR. SCHMIDT: Okay. The way this works is I ask you a question and you answer it.

MR. COULS: Understood.

MR. SCHMIDT: Okay? So, is this a picture, are, are the trees that are shown here on your property?

MR. COULS: Yes.

MR. SCHMIDT: Okay and the buildings that are behind the trees that are partially visible, those are the houses on your property, is that correct?

MR. COULS: Yes.

MR. SCHMIDT: Okay and the, obviously this was taken during the summertime, or when the leaves were on the trees. Have the trees been changed since that time? I understand that today we don't have any leaves on trees because we just had a snow storm and we're still in winter, but the trees, these trees are still here, they haven't been cut down or removed or anything like that, is that correct?

MR. COULS: Trimmed, but not cut down, yes.

MR. SCHMIDT: Okay. Do they accurately show what the trees around your property look like when they are in season and in bloom?

CHAIR: Which, which is the exhibit that you're

referring to?

MR. SCHMIDT: M.

CHAIR: You said 4-M.

MR. SCHMIDT: M.

CHAIR: Okay. That's the only one you're referring to?

MR. SCHMIDT: At this point, yes, sir.

CHAIR: Okay.

MR. SCHMIDT: Is that accurate or conditions have changed?

MR. COULS: Conditions have changed.

MR. SCHMIDT: When, when did you cut the trees down from when this was taken?

MR. COULS: About twice a year I get out there and prune them.

MR. SCHMIDT: When was the last time you did it?

MR. COULS: It would have been twice this year.

MR. SCHMIDT: In 2017?

MR. COULS: Excuse me, in 2016. So, of course, it's too cold right now.

MR. SCHMIDT: Okay. Again, I'm just, I think I put, I show this one, I had it marked as I. This one, I believe, Mr. Couls, I'm not trying to confuse you, the Fringer, Fringer, excuse me, Road is in the foreground and it shows those same trees around your property, correct? To the right hand side of

the photograph?

MR. COULS: Yes, sir.

MR. SCHMIDT: Okay and then additional trees are shown on the left side of the photo which I guess are further back in your backyard, is that correct?

MR. COULS: Interesting picture, but, yes.

MR. SCHMIDT: Okay.

BOARD: Can you please keep your voice up too for the record?

MR. COULS: Yes, apologies.

MR. SCHMIDT: And those trees are all still here, correct?

MR. COULS: Yes, sir.

MR. SCHMIDT: Okay. Do you know, sir, did you appear and testify at the hearing before Judge Beverungen?

MR. COULS: I don't think so, no.

MR. SCHMIDT: Okay. Did any member of your family testify at that time?

MR. COULS: Forgive me, which hearing is this?

MR. SCHMIDT: This was a hearing when this matter was considered by the Administrative Law Judge, Mr. John Beverungen.

MR. COULS: I did not (inaudible).

MR. SCHMIDT: Okay. Is there any reason you did not, your or your family did not appear at that hearing?

MR. COULS: I was unaware of the caliber of the situation that was about to take place.

MR. SCHMIDT: Didn't see the zoning sign giving public notice of that hearing?

MR. COULS: It was a very small sign to be completely honest with you? But, yes.

MR. SCHMIDT: But you didn't see it then?

MR. COULS: No, I did not.

MR. SCHMIDT: Well, how do you know it was a small sign?

MR. COULS: No, no, forgive me.

MR. SCHMIDT: I --

MR. COULS: I know it was a small sign, yes. So, the question was?

MR. SCHMIDT: What, the question was, knowing it was a small sign, did you read it?

MR. COULS: I did read it.

MR. SCHMIDT: And did, and you, but you, nonetheless, decided not to come to that hearing and testify?

MR. COULS: I did not realize the caliber of the situation.

MR. SCHMIDT: Okay. Have you reviewed, are you familiar with the landscaping that is proposed around the solar farm?

MR. COULS: I can see the picture, yes.

MR. SCHMIDT: Okay. Other than that schematic, have you actually looked at what's called the approved County landscape plan for the proposed solar farm? Let me ask it this way, do you know if there exists a document called an approved County landscape plan for the proposed solar farm?

MR. COULS: Not that I know of.

MR. SCHMIDT: Okay. So, if you don't know it exists then you have not seen it, correct?

MR. COULS: There you go.

MR. SCHMIDT: Okay. Okay. Now, you mentioned that there would be noise. Were, were you here for the first day of the hearing in this case at the Board of Appeals in this room a couple months ago?

MR. COULS: No, sir.

MR. SCHMIDT: Okay. Did you hear the testimony that was offered at that time about the noise that was --

MR. SCHMIDT: Objection.

CHAIR: He just said he wasn't here.

MR. SCHMIDT: Okay.

CHAIR: Sustained.

MR. SCHMIDT: Well, let me ask you this, you indicated that the solar panels will make a buzzing sound like cicadas, I think you said, is that correct?

MR. COULS: Based on my information off of the internet, yes.

MR. SCHMIDT: Okay. You got that information off of the internet, okay. Was the information that you got, was it about the solar pan, the, the type of solar panels and the project that is proposed in this case?

MR. COULS: I do not know what type are suggested in this case.

MR. SCHMIDT: Okay. Okay. Well, if I told you that Mr. Donithan, who is the guy who runs the company and installs these, said that the panels don't make any noise at all --

MR. MCCANN: Objection, objection.

MR. SCHMIDT: -- would that surprise you?

CHAIR: Sustained.

MR. COULS: Yes.

CHAIR: Sustained.

MR. MCCANN: Okay.

MR. SCHMIDT: All right. You also used, I think, the word hazardous, Mr. Couls. In terms of hazardous, can you explain, is there noxious fumes that you're concerned of that might be given off or some type of environmental impact that this, that these panels will give off that you're aware of that is causing you concern?

MR. COULS: I would think that it would go without saying but if we're generating power and feeding it into a grid, I would imagine that there is going to be some form of concern for safety, absolutely.

MR. SCHMIDT: Why is that, sir?

MR. COULS: Just like, I mean, you're generating power, don't you think that there is some concern for safety? Yes, I do.

MR. SCHMIDT: Okay. Okay. So, it's the, it's because it's the generation of power you, you believe that would cause a public safety hazard?

MR. COULS: Yes, sir, in comparison to a combine running a field, absolutely.

MR. SCHMIDT: Okay. Okay. Thank you, sir. I have no other questions.

CHAIR: Any other?

MR. MCCANN: Briefly. Mr. Schmidt was asking you about the two photographs and asked you whether or not they accurately reflect, to be honest with you, I don't recall the latter part of that, and, and I think you made the point but do these photographs, and this is 9-I and 9-M, I believe. Do these photographs accurately reflect or indicate or show what it is that you believe you will see from your property looking towards, south towards the, the subject property?

MR. SCHMIDT: Objection.

MR. COULS: Absolutely not.

MR. MCCANN: Okay and why is that?

CHAIR: Well, hold on a second, he's got an objection. What is it?

MR. SCHMIDT: I'll withdraw the objection. I'll withdraw the objection.

MR. MCCANN: Your answer, I'm sorry?

MR. COULS: It does not.

MR. MCCANN: In what way?

MR. COULS: Depict the visual from inside of my property looking out.

MR. MCCANN: In what way? Why does it not?

MR. COULS: If I may elaborate a little bit, you're showing the property on one side. You're not showing the property out the backside. Out the backside, you have a grand total of two trees, those two trees actually give a pretty nice view with the sunset. In comparison to what looks like, and the cameras been played with a little bit, in the sense of trying to get the best look possible --

CHAIR: You got an objection (inaudible)?

MR. SCHMIDT: No, I don't.

MR. MCCANN: (inaudible).

MR. COULS: Apologies.

MR. MCCANN: It's okay, just base your answers on what you know. One more question, then I'll let you go. To the extent 9-I and 9-M show that the canopy of these trees is somewhere down near the ground, to the extent they, they show that, is that an accurate reflection?

MR. COULS: No, it is not.

MR. MCCANN: And you testified earlier that canopies are high up?

MR. COULS: Yes.

MR. MCCANN: And how high do the canopies begin, approximately, for the trees that are both along the southern border of your property and the western property of your property?

MR. COULS: In excess of eight to ten foot high. As far as I can reach with my loppers, I'm able to mow, I'm able to walk underneath of them, which means, from my property, I'm able to see out.

MR. MCCANN: And that's when the canopies starts, eight to ten feet high, approximately?

MR. COULS: Yes.

MR. MCCANN: Okay. All right. Nothing else. Thank you.

MR. SCHMIDT: Did you bring any pictures of any of this today?

MR. COULS: No, I should have, I apologize.

MR. SCHMIDT: No other questions.

CHAIR: Okay. Any other witnesses, Mr. McCann?

MR. MCCANN: No other witnesses, Mr. Alston.

CHAIR: Ms. Demilio, do you have any witnesses?

MR. SCHMIDT: I'm going to be quick, can I just have a five minute recess to run to the men's room.

CHAIR: Sure, absolutely, sure.

MR. SCHMIDT: And then I'll call Mr. Donithan and we'll be done.

CHAIR: Sure.

(RECORDING PAUSED - 12:28:43 PM)

(ON RECORD - 12:36:11 PM)

CHAIR: Okay. Mr. Schmidt, you had, and we're back, one witness.

MR. MCCANN: Actually, I, I just handed to Mr. Schmidt, Mr. Alston, an exhibit that I, I wanted to introduce and this will be Exhibit 10 and this is, I very well could have attached it to my brief, it's a public record, but I thought I'd just introduce it as an exhibit.

CHAIR: Any objections to this?

MR. SCHMIDT: I do. It's, it's a letter from the Attorney General's Office that's directed to Delegate Christopher West and, and I guess I'm not sure where to start. I've never seen the letter, it's a three page letter, Mr. Alston. But, I, I would just say a couple of things. First of all, it indicates on the very top of it, at the very beginning, that it is a corrected letter. I don't know what that means, but I assume it means it's a subsequent draft --

MR. MCCANN: It was a type, there was a typo and I can introduce the type, the first version as well, if you want to see that?

MR. SCHMIDT: I'd like to see that, know what it is. And I would also, I believe that since this is an area that is rapidly evolving, that this letter, which is now three months old or so, may no longer be accurate under Maryland law. I guess I could address that in the, in the, in my brief. I haven't had a chance to digest it, but I, I mean, I'm, I'm going to object for the record.

CHAIR: Well, we don't know anything about this letter.

MR. SCHMIDT: It's, it's a letter to, from the Attorney General's Office that starts off by saying, you have asked whether a company that constructs solar generation facilities is a quote, public utility or public service company, under Public Utilities Article, Section 101. And then it goes on to purportedly address that question.

CHAIR: Is this an (inaudible)?

MR. MCCANN: It's an AG (inaudible).

BOARD: I, I want to also just throw this in there because now that this has been brought up, I receive Delegate West's newsletter in which he discusses about solar panels and solar farms. I have a vague recollection of it, I remember reading it and I know that this, that this speaks to, is his questions raised in that newsletter, I'm sure, are, are in that letter.

CHAIR: Is there a cite to this AG opinion?

MR. MCCANN: I don't think they typically have cites, or at least not, I, I know they do have cites.

CHAIR: They do.

MR. MCCANN: Correct me, but I don't have it. But it is a formal AG opinion, this is what it is.

CHAIR: Well, I'll tell you what? Rather than us taking it into evidence, why don't you get the formal AG opinion, and use it as authority in your brief?

MR. MCCANN: Okay.

CHAIR: Yeah, that, that, that way that would be a whole lot easier --

MR. MCCANN: I would normally do that, but I didn't want to be --

CHAIR: Right, I understand.

MR. MCCANN: -- accused of doing something that --

CHAIR: Yeah, I understand. Yeah, I understand.

BOARD: But I also, for me, I wanted to put it out there that I have received at least his newsletter, which I, I'm guessing, touches on the subject matter of the letter and that was, I don't know, if I had to take a guess, like six weeks ago.

MS. DEMILIO: Mr. Garber, I don't think that matters because the Board always brings (inaudible) personal knowledge to things.

BOARD: Yeah.

MS. DEMILIO: So, what you know or what you don't know, or what you think you know or you don't know, that's normal for Judges --

BOARD: I just wanted to throw that out there.

MS. DEMILIO: -- or the judiciary, so I don't think that's an issue. In my opinion, that's not an issue and I'll thank you for bringing it up but (inaudible).

CHAIR: We'll just, we'll just wait to see that --

MR. MCCANN: Okay, that's right.

CHAIR: -- AG opinion in your brief.

MR. MCCANN: I'm going to give Larry the original.

CHAIR: Yeah, that's fine.

MR. MCCANN: And it's just a typo, I'll tell you where it is. The word not was left out of there, or does.

MR. SCHMIDT: Okay.

MR. MCCANN: Or after does, that's it.

MR. SCHMIDT: Can I have this copy?

MR. MCCANN: Yeah, that's yours.

MR. SCHMIDT: Okay.

MR. MCCANN: I can attach both if you want, or you want me to attach the formal opinion?

CHAIR: Yes.

MR. MCCANN: And I will do that. Thank you.

MR. SCHMIDT: Okay.

CHAIR: Okay. Mr. Schmidt?

MR. SCHMIDT: Yeah, Mr. Garber, and I'm just trying, so you, you do have some knowledge of this Attorney General's letter?

BOARD: I do not have knowledge of the Attorney General's letter, however, I have knowledge of what Delegate West put into his newsletter regarding his opinions on related subject matter. I don't know that it was specific to this property.

MR. SCHMIDT: And was he opposed to solar farms?

BOARD: He expressed a preference that they be placed on government buildings and on top of office buildings, among other things. And the only reason why I bring it up is I don't know what's in the letter or the Attorney General opinion but the, I imagine they are related, given the proximity in terms of time and subject matter generally. And to the extent that that means anything to anybody, I just want to make sure that everyone is aware of that newsletter and the fact that I (inaudible).

CHAIR: Well, I don't think it's going to color your opinion.

BOARD: No.

CHAIR: It's, it's not going to color your opinion on anything.

BOARD: Right.

CHAIR: Okay.

BOARD: And up until this moment, I wouldn't, I, I did not think that it was necessarily related, because I know that this issue has been percolating in the County generally.

MR. SCHMIDT: Sure.

BOARD: So.

MR. SCHMIDT: Okay. I, I just was trying to, trying to get an understanding, that's all.

BOARD: Right, and I just bring it up just because of what is being discussed here with this letter, I anticipate to, maybe related.

MR. SCHMIDT: Okay.

CHAIR: Okay. Let's call your witness.

MR. SCHMIDT: Okay. Rebuttal, I would call Mr. Donithan.

CHAIR: Mr. Donithan, you've already been sworn in. You understand you --

MR. SCHMIDT: Mr. Donithan, just because it's been, okay.

CHAIR: You want to swear him in?

BOARD: I'll do it again.

MR. SCHMIDT: Okay.

BOARD: We're here, right?

MR. SCHMIDT: Whatever.

CHAIR: Yep.

BOARD: Do you swear and affirm under the penalties

of perjury, again, that the testimony you are about to give is true and correct to the best of your knowledge and belief?

MR. DONITHAN: Yes.

BOARD: Okay and just state your name again, please.

MR. DONITHAN: Ken Donithan.

BOARD: Okay, thank you.

MR. SCHMIDT: And Mr., anything else?

BOARD: No, thank you.

MR. SCHMIDT: Okay. Thank you, Mr., Mr. Donithan, I'll be brief. You had testified at the first hearing before the Board of Appeals?

MR. DONITHAN: Yes.

MR. SCHMIDT: And have been, was there at the hearing all day and have been here all day?

MR. DONITHAN: Yes.

MR. SCHMIDT: Did you hear all the testimony?

MR. DONITHAN: Yes.

MR. SCHMIDT: I think you testified before that you're the principal of Earth and Air, which is the company which is going to install this equipment on the Lippy property?

MR. DONITHAN: Correct.

MR. SCHMIDT: Okay and you, I'm not going to go through it, because the Board already has that, but you are a, I think I qualified you as an expert power engineer, I think was the classification, someone who has worked in this field,

correct?

MR. DONITHAN: Yes.

MR. SCHMIDT: You were here for Mr. Jakubiak's testimony this morning?

MR. DONITHAN: I was.

MR. SCHMIDT: Okay and you heard him discuss the Webster's International Dictionary of public utility and what's described in that definition, is that correct?

MR. DONITHAN: Correct.

MR. SCHMIDT: Okay. Now, you are, Earth and Air and actually the Lippy farming operation are, are business organizations, in effect, are they not?

MR. DONITHAN: Correct.

MR. SCHMIDT: Okay and the business provided by this would be to provide, well, what would, what's going to be provided by this facility?

MR. DONITHAN: This, this again, is a community solar energy generating facility that will be generating power and providing power to the distribution and transmission grid owned, that BGE owns.

MR. SCHMIDT: Okay. So, again, that's a, that's the, I'm, I'm going to call it the public grid that serves businesses, individuals, members of the public who are served by BG&E, correct?

MR. MCCANN: Objection. Particularly on rebuttal,

can we ask direct, I mean, non-leading questions?

CHAIR: Yeah, it is, it is leading.

MR. SCHMIDT: Okay. Okay. The, what's the purpose of the, who, who obtains service from the BG&E grid?

MR. DONITHAN: I'm sorry?

MR. SCHMIDT: Who, what serv, let me start, let's be basic. What type of ser, service does BG&E provide to its customers?

MR. DONITHAN: Well, they provide the electrical distribution grid that supplies power to the public.

MR. SCHMIDT: Okay and it's provided to, to commercial people, correct? Commercial customers?

MR. DONITHAN: Correct.

MR. SCHMIDT: Residential customers?

MR. DONITHAN: Correct.

MR. SCHMIDT: All customers?

MR. DONITHAN: Correct.

MR. SCHMIDT: Anyone who is getting electricity in this area that BG&E has jurisdiction over gets power from BG&E, is that correct? Unless they're generating their own power?

MR. DONITHAN: Yeah, it, they, they receive the distribution power, yes.

MR. SCHMIDT: Okay and this, this facility will feed power into that system, correct?

MR. DONITHAN: That's correct.

MR. SCHMIDT: Okay. Now, is your company and, more specifically, is this proposed oper, operation regulated by anybody?

MR. MCCANN: Objection.

CHAIR: Basis?

MR. MCCANN: Two basis. Number one, this is all stuff that was addressed in his case in chief. Number two, if it's directed to, which I can see Mr. Schmidt has in front of him, the definition of public utility, which is essentially a zoning regulation because we take that and we put it into the zoning regulations, then we're asking this gentleman to opine about his interpretation of a zoning regulation, which is beyond the scope of his expertise. But, primarily, --

CHAIR: I (inaudible), I don't think you got that far yet.

MR. MCCANN: Okay.

CHAIR: But, but if he gets that far, then redo your objection.

MR. SCHMIDT: I'm not, I promise not to ask him about any zoning regulations.

CHAIR: Right, if he gets that far, then, then renew your objection and, and we'll deal --

MR. MCCANN: Okay. The primary reason is this is all stuff that --

CHAIR: This is, yeah, a lot of this has been

rehashed.

MR. SCHMIDT: Well, I'm just trying to get through it quickly because it's been a month.

CHAIR: Okay.

MR. SCHMIDT: Are you regulated as, is there, is this facility going to be regulated by anyone?

MR. DONITHAN: Yes, all community solar energy generators will be regulated by COMAR 2062.

MR. SCHMIDT: Okay and the administration of that is COMAR is a law or a regulation, correct?

MR. DONITHAN: Code of Maryland regulation, yes.

MR. SCHMIDT: Okay and who administers that? What individual people or group or organization?

MR. DONITHAN: We have to be approved through the Public Service Commission. They are the regulators for the community solar energy generators.

MR. SCHMIDT: Okay. As part of their regulation, do they regulate your rates?

MR. DONITHAN: They do.

MR. SCHMIDT: Do they regulate how you produce energy here, the, the, the logistics of how this works and feeds into the public grid?

MR. DONITHAN: Yes.

MR. SCHMIDT: Okay. Do they regulate, are, do they regulate the, the standards of your service, meaning how your

service is provided and how it is to be implemented and installed into the grid?

MR. DONITHAN: Yes, that's all spelled out in the COMAR 2062.

MR. SCHMIDT: Okay. I have no other questions.

CHAIR: Okay. Just confine to --

MR. MCCANN: Absolutely, yes.

CHAIR: Okay.

MR. MCCANN: Absolutely. Good afternoon, again.

MR. DONITHAN: Good afternoon.

MR. MCCANN: We're back, déjà vu. You said that your company is regulated by COMAR 26?

MR. DONITHAN: Twenty sixty-two.

CHAIR: Twenty sixty-two.

MR. MCCANN: And that PSC regulates your rates, that's your testimony?

MR. DONITHAN: Correct.

MR. MCCANN: And that the PSC regulates how it is that this energy gets to the public, so called public grid?

MR. DONITHAN: Yeah, --

MR. MCCANN: Okay.

MR. DONITHAN: -- the Public Service Commission, you know, oversees BGE, who we in turn, --

MR. MCCANN: Okay.

MR. DONITHAN: Yeah.

MR. MCCANN: All right. Well, you, you hit the nail on the head right there. The Public Service Commission regulates BG&E, isn't that true?

MR. DONITHAN: As well as community solar energy generators, yes.

MR. MCCANN: Okay, but, okay. You use the term regulate. You're not a lawyer, right?

MR. DONITHAN: I am not.

MR. MCCANN: When you use the term regulate, there is a specific provision in COMAR 2062, that deals with some community solar programs.

MR. DONITHAN: Correct.

MR. MCCANN: So, any, any regulation that you're, that, you use the term regulate, but any regulation you say a regulatory authority that PSC has over your company, not over BG&E, but over your company, if I were to look for it in the law, it would be in 2062?

MR. DONITHAN: Correct.

MR. MCCANN: So, the Board can look at it itself and, and make its own determination, but it's your tes, right?

MR. DONITHAN: Yes.

MR. MCCANN: Okay and then there are also, you didn't mention, there's also State law, is there not, on, not, not regulation, but statutory law in the Maryland Annotated Code that talks about the community solar program, correct? Are you

familiar with that?

MR. DONITHAN: Say, say that again?

MR. MCCANN: As opposed to COMAR reg, maybe you don't know the difference, but as opposed to COMAR regulations, is there also State statutes, not regulations but statutes, that, that govern the community solar program?

MR. DONITHAN: I believe so, yes. Yeah, I, I'm not sure of the specific term but, yes.

MR. MCCANN: Okay and when you say that PSC regulates rates, it regulates rates that BG&E charges its customers, generically, right?

MR. DONITHAN: Yes, yes.

MR. MCCANN: Okay. But in terms of the rates that you're going to charge, you, if this prog, if this solar farm is approved, that is a matter entirely up to the contract, private contract, between you and Joe Smith that lives twenty miles away? That rate, you can charge Joe Smith $1,000 for a kilowatt, that may not be the right term, but you can do whatever you want in terms of rates when you charge it to Joe Smith, correct?

MR. DONITHAN: I, I believe we are regulated to the full, the full retail rate of the utility. So, if it's in BGE, we are, you know, that rate is, is the full retail rate or the SOS, which is your standard offer service.

MR. MCCANN: When you say, you say you believe, are

you, are you, number one, --

MR. DONITHAN: Yeah.

MR. MCCANN: -- are you telling me that you cannot charge a rate higher than BGE calls, charges Joe Smith, is that what you're saying?

MR. DONITHAN: No, no, that's not what I'm saying.

MR. MCCANN: Is, let me ask it this way.

MR. SCHMIDT: Well, let, let the ans, let the witness answer the question.

MR. MCCANN: You can go ahead, I'm sorry.

MR. DONITHAN: Yeah, so we, yeah, we supply energy into the grid, the BGE utility grid. They, in turn, we are allowed to charge up to full retail rate and in most instances and in all of our instances, in our model that we, you know, we are looking at, there's going to be less than full retail rate. Which, for instance, right now residential retail rate is somewhere around fourteen cents per kilowatt hour and, and, and, for instance, and it could be plus or minus, depending on the time of the year. So, we could charge up to that fourteen cents per kilowatt hour, which this community solar energy generation system, we are charging less than that.

MR. MCCANN: Okay, well, you, well, a lot of things. Is it or is it not your testimony that you cannot charge higher than what you call the, strike that. When you say full retail rate, is that the rate that BGE charges its customers?

MR. DONITHAN: That is the, the, the full retail rate is transmission distribution, transmission, generation --

MR. MCCANN: Again, my question, is the full retail rate the rate that BG&E charges its customers?

MR. DONITHAN: Yes.

MR. MCCANN: It is?

MR. DONITHAN: Yes.

MR. MCCANN: Okay. So, are you telling us that under the community solar program, you said I believe at the beginning of your testimony.

MR. DONITHAN: Yeah, yeah.

MR. MCCANN: Which indicates to me that you don't know for certain. Is it your testimony that you, your company, when you engage, when you enter into these private contracts with these, with these customers, that you cannot charge more, a rate higher, than the rate BGE charges its customers, is that your testimony?

MR. DONITHAN: Yeah, I think that's what the tariff states.

MR. MCCANN: You think?

MR. DONITHAN: Yes, I think.

MR. MCCANN: What the tariff states?

MR. DONITHAN: Yeah, they're, they're, it's still, you know, this, this is still in the certification, so to speak, process.

MR. MCCANN: Okay. Let me just finish my thought because otherwise I'll forget it. When you say tariff rate, and I've heard that term before, that is, that refers to, the tariff is what BGE submits to the PSC, and in this case, what BGE in fact has already submitted to PSC for this community solar program?

MR. DONITHAN: Yes.

MR. MCCANN: Okay and that tariff is actually a document, is it not?

MR. DONITHAN: Yes.

MR. MCCANN: Okay. This would be I think now ten. I'm not going to ask any questions of you other than have you identify it. But this is a multiple page document dated March 2nd, 2017 from BGE to the Public Service Commission. Is that what is known as the tariff, tariff document that, that BGE submitted to Public Service Commission?

MR. DONITHAN: Yeah, the, the following, yeah.

MR. MCCANN: It just came out?

MR. DONITHAN: Yes.

MR. MCCANN: So, this is, this is essentially, to simplify and not use a word like tariff, this is essentially what BGE is proposing for rates for the community solar program?

MR. DONITHAN: Correct.

MR. MCCANN: Okay. So, --

BOARD: Bless you.

MR. MCCANN: Bless you.

VOICE: Thank you.

MR. MCCANN: So, BG, Public Service Commission, it's your understanding, will review these rates that BGE proposes for this program and approve or not approve that?

MR. DONITHAN: Correct.

MR. MCCANN: Okay. So, they're not your rates, they're BGE's rates, correct?

MR. DONITHAN: Correct.

MR. MCCANN: So, again, just to, strike that. I would move Exhibit 10 into evidence. This is a document, actually it has the e-mail at the end of the exhibit, reflects this is a document, a public document, that was sent to me by Phillip Vanderhaven, who is the, the head of the electric, I want to use the word electric department, but he is the chief of the electric department for the PSC.

CHAIR: Any objection to that?

MR. SCHMIDT: No.

MR. MCCANN: And it's a filing with the PSC, so it is a public document and I would move, so that would be Exhibit 10, is that correct?

BOARD: Yes.

MR. MCCANN: And I have, oh, one more thing. We've been, we talked about this program now for two days. Strike

that. No other questions. Thank you.

CHAIR: Is that --

MR. SCHMIDT: Nothing further.

CHAIR: Okay. Thank you, sir. Sorry, Ms. Demilio, did you have any questions?

MS. DEMILIO: (inaudible).

CHAIR: Oh, oh. Does that conclude this matter?

MR. MCCANN: It does.

MR. SCHMIDT: Yes, yes, it does.

CHAIR: All right. I guess we're going to, we're going to need some briefs on this. Do you have any idea, say, --

MR. SCHMIDT: I, I just know because of some other commitments that I have, I'm going to need a little bit of time, Mr. Alston, and I don't want to delay the matter.

CHAIR: Sure.

MR. SCHMIDT: But let me look at my calendar, if, I'm going to try pull it up on my phone, if I may. What are you thinking, Mr. McCann?

MR. MCCANN: I'm in the same boat. I have a horrid, horrid is probably the best way to describe my, my March and then beginning of April, I'm going away from the 6th to the 15th of April, but I can work on this during that break. So, you know, mid-April would be fine. When I get back, ideally maybe a little later. I know you're leaving soon, or may be leaving

soon.

CHAIR: That's right. Yeah, it's, they want to conclude this case completely, you know, by the (inaudible).

MR. SCHMIDT: Are you, I was unaware, you're, you're leaving --

CHAIR: Well, my term is up April 30th.

MR. SCHMIDT: Okay.

CHAIR: But thirty days, do you think thirty days, if you could get this --

MR. SCHMIDT: Yeah, Mar, April 15th, can file my taxes and submit, does that give you all enough time?

CHAIR: Yeah, it, it will have to.

MR. SCHMIDT: Well, I mean, --

MS. DEMILIO: Put a limit on the page numbers.

CHAIR: Oh, no, we can't do that.

MS. DEMILIO: Oh, (inaudible) you can.

MR. SCHMIDT: You, you tell me, Mr. Alston, I'll, I'll, I'll do it, I mean, my schedule is I'm down at the Court of Special Appeals twice in the next three weeks.

CHAIR: Well, I, let's, let's say thirty days (inaudible) the day the briefs are due because we want to get the public deliberation in.

MR. SCHMIDT: Right.

CHAIR: That, that's the key, to get it in as quickly as possible. I think Sunny is looking at a week after you give

this to us, that a public deliberation.

MR. SCHMIDT: Okay.

MR. MCCANN: So, the 17th is actually the Monday.

CHAIR: Yeah, the 17th would be, that's, April 17th?

MR. SCHMIDT: April 17th.

MR. MCCANN: I mean, if you want, I could try to do it before I went away, which is by the 7th of April. That, no?

CHAIR: Well, yeah.

MR. SCHMIDT: I mean, the other thing is --

CHAIR: The 17th?

MR. SCHMIDT: To the extent it would help, the 15th is a Monday, the 13th is Good Friday, is the Board open on Good Fridays? Is the County open on Good Friday?

MR. MCCANN: The 15th is a Saturday.

MR. SCHMIDT: Okay. I knew the 15th was a --

VOICE: The 14th is Good Friday. Let's do the 17th.

CHAIR: The 17th sounds like a good day, yeah, that's approximately thirty days from --

MR. SCHMIDT: Okay. That's the, that's the, the day after Easter. The County is not closed for that or anything, right?

CHAIR: That's Monday.

BOARD: Um hm.

MR. SCHMIDT: Okay.

VOICE: (inaudible).

MR. SCHMIDT: I, I'll get it done whenever you need it done. Just work later at night.

CHAIR: Okay.

MR. SCHMIDT: Is that, you're sure that's okay? I mean, if you want to move it up to the week before, we can, I'll do it.

CHAIR: The 17th is, well, I just, I just want to be able to, you know, ten days after we get this, we really want to have something, let me take a quick recess. Let me get, let me get Sunny --

MR. SCHMIDT: Why don't you talk to Sunny, yeah.

CHAIR: No, she's not here but, let me get her (inaudible).

MR. SCHMIDT: Okay. We're, are we off the record?

BOARD: It's now paused.

(RECORDING PAUSED - 12:58:19 PM)

(ON RECORD - 12:59:33 PM)

CHAIR: I mean, to accommodate everybody's schedule, we'd like to have the public deliberation, public deliberation on April 19th or 20th.

MR. SCHMIDT: Okay.

CHAIR: So, that means if you could give us maybe the week before, because I, I mean, I don't want to short change you all.

MR. SCHMIDT: How about, how about Thursday, April

6th?

MS. DEMILIO: (inaudible).

MR. SCHMIDT: Why not?

CHAIR: Okay. How about, Ms. Demilio, how about the 12th of April, would that accommodate your schedule?

MS. DEMILIO: (inaudible).

CHAIR: That's good? So, April 12th.

MR. SCHMIDT: That, that I think is a Wednesday, correct?

BOARD: Yep.

MR. MCCANN: Well, I'll be away.

CHAIR: You'll be away.

MR. MCCANN: Yeah, I mean, there's, there's --

CHAIR: When do you, when do you return?

MR. MCCANN: I leave on Saturday the 8th and come back on Easter Sunday, so, like I said, I could work, I could do it while I'm away, I just don't have any means to get it to you guys, put it all together --

MR. SCHMIDT: Could you, --

MR. MCCANN: I could e-mail.

MR. SCHMIDT: I mean, can you e-mail it to Ms. Demilio and have her file it for you? I, I'm just trying to come up with --

MR. MCCANN: I'll just try to get it done before I leave, is what I'll do and I'll --

MR. SCHMIDT: And, and Michael, don't send it to me. I'm not going to look at it.

CHAIR: Right.

MR. SCHMIDT: I'm not going to look at it. Give it, give it to Ms. Demilio.

MR. MCCANN: I'll do it before I go away.

MR. SCHMIDT: Give it to her and she can file it with hers.

CHAIR: Okay, that's fine. And --

MS. DEMILIO: What's the date again, the 12th?

BOARD: Wednesday, April 12th.

CHAIR: Yeah, Wednesday, April 12th. Briefs are due and because this is an abbreviated schedule, we're going to try, you'll be back by the 19th or 20th? Okay. Is it possible for us to have a public deliberation on the 19th?

BOARD: Mr. McCann will be here.

MR. SCHMIDT: Yeah, you'll be here.

MR. MCCANN: I will, yep.

CHAIR: Yeah. Ms. Demilio? Mr. Schmidt?

MR. SCHMIDT: I'll be here.

CHAIR: Okay. So, that's April 19th.

MR. MCCANN: Are you in that case, Mr. Garber, I forget, yes?

BOARD: Um hm.

MS. DEMILIO: Can I bring my granddaughter that day?

I usually babysit but that's all right. I'll bring her (inaudible).

MR. MCCANN: Larry will watch her.

MS. DEMILIO: I mean, I don't have (inaudible).

CHAIR: Yeah, okay.

MR. SCHMIDT: Take her over your neighbor and have your neighbor watch her.

CHAIR: Okay, great.

MR. SCHMIDT: That's my daughter.

CHAIR: Well, we've got, okay, April 12th.

MR. SCHMIDT: She'll watch her.

CHAIR: Briefs are due, public deliberation on the 19th. Okay?

MR. SCHMIDT: Thank you.

MR. MCCANN: Thank you.

(OFF THE RECORD - 01:01:56 PM)

CERTIFICATE OF TRANSCRIBER

I hereby certify that the hearing in the matter of Donald and Kathleen Lippy, case number 16-355-SPHX, heard before the Board of Appeals of Baltimore County, March 16, 2017 were recorded by means of audiotape.

I further certify that, to the best of my knowledge and belief, page numbers 1 through 137 constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In witness thereof, I have affixed my signature this 30th day of August, 2017.

Christine R. Leary

Transcriber

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

BALTIMORE COUNTY, MARYLAND

In Re:	:	BEFORE THE OFFICE
PETITION FOR SPECIAL HEARING:		OF ADMINISTRATIVE
AND SPECIAL EXCEPTION	:	HEARINGS FOR
15700 Hanover Pike	:	BALTIMORE COUNTY
4th Election District	:	
3rd Councilmanic District	:	Case No:
Legal Owner: Donald and	:	2016-0335-SPHX
Kathleen Lippy,	:	
Petitioner	:	

TRANSCRIPTION OF PROCEEDINGS
FROM AUDIO FILES

NOTE: Portions of the recording that were unintelligible to the transcriptionist are indicated as U/I.

BE IT REMEMBERED that the above-entitled Cause came regularly on for HEARING before the HONORABLE JOHN BEVERUNGEN, on Wednesday, October 12, 2016, at 9:55 a.m.

Transcribed by:

Paul A. Gasparotti

PETITIONER'S
EXHIBIT NO. 1

APPEARANCES

LAWRENCE E. SCHMIDT, ESQUIRE
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Towson, Maryland 21204
On behalf of the Petitioner

MICHAEL R. MCCANN, ESQUIRE
Michael R. McCann, PA
118 West Pennsylvania Avenue
Towson, Maryland 21204
On behalf of Falls Road Community Association

PROCEEDINGS

JUDGE BEVERUNGEN: At Mr. McCann's request now we're back, and it looks like today we're ready to go with the case; is that right?

MR. SCHMIDT: I believe so. For the record, Judge Beverungen, Lawrence E. Schmidt with the law firm of Smith, Gildea & Schmidt, with an office in Towson at 600 Washington Avenue. I'm here on behalf of the property owners and the petitioners, who are Donald and Kathleen Lippy, in support of the two petitions that we filed.

JUDGE BEVERUNGEN: Good, okay.

MR. MCCANN: Good morning, Judge.

JUDGE BEVERUNGEN: Good morning.

MR. MCCANN: Michael McCann on behalf of John Smith.

JUDGE BEVERUNGEN: Okay.

MR. MCCANN: And I do have a preliminary matter that I'd like to address briefly.

JUDGE BEVERUNGEN: Okay, why don't you

do that.

MR. MCCANN: (U/I).

JUDGE BEVERUNGEN: Okay.

MR. MCCANN: I would ask that the hearing once again be postponed, Your Honor, this time for a different reason, and that is that just yesterday the County Council met in board session to discuss a moratorium on the loopholes regarding the solar panels, I don't know how much you know about it, for the purpose of looking at the issue further, looking at its impacts, et cetera. So I would ask that given the prospect of a moratorium being imposed on any of the loopholes, that all these impacted may be moot, and would ask that we put off until a decision is made on that bill, which is expected to go before the council, I believe next week, and for that reason we ask that the hearing be postponed until that issue is resolved.

JUDGE BEVERUNGEN: Okay. Mr. Schmidt?

MR. SCHMIDT: We would oppose that, and

just a little bit more background. Quite interestingly, after this case was postponed last time, I think you recall, Judge Beverungen, it was somewhat over my objection, but Councilman Kach introduced both a bill and a resolution at the County Council, and I would note that the bill and the resolution was sponsored only by him, by no other members of the seven-person County Council. And the effect of the bill and the resolution was to basically refer the matter of the solar farms, the solar facilities to the County Planning Board for the purpose of study and possible recommendations to the council of zoning regulations to regulate these more so than they are regulated today. And as you know, they are regulated and considered based on at least a prior decision by you as a public utility, at least as they exist here in an RC-2 zone.

My understanding is that that bill is under consideration, it has obviously not been enacted yet, there was a work session yesterday,

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none of us know whether it's going to be passed, what form it's going to be passed. I will tell you that information that I have been told at least from some sources that I have in the County Council is that it would exempt this particular property, either because we are in process and before you, or because of the size of this property which is about, six-and-a-half acres is the size of the proposed solar farm here.

As I indicated when we were here a month ago, my client, Mr. Donithan, seated to my right, who is here on behalf of Earth and Air Technologies, any delay, the delay that we've had is detrimental to him both from a business standpoint and from a regulatory standpoint in terms of this is a technology, which we certainly can and will get into, which is being pushed by the State of Maryland on providers such as him in jurisdictions to provide alternative energy other than fossil fuel energy.

So we would strenuously object to any

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postponement. There is no assurance whatsoever that this legislation will pass by the council and if it does, it may well exempt us anyway. So particularly given the fact that the case has been postponed once, we're here, we're ready to go forward.

JUDGE BEVERUNGEN: Okay. Well, I'm going to do that, I'm going to deny the request and allow the petitioner to go forward. I was willing to grant the request last time to allow Mr. McCann and his clients to gather and look at the petition and discuss it more. I think Mr. Schmidt is right, we have no idea what the County Council will do and if this is all futile, I guess it's your choice to move forward, Mr. Schmidt, so we'll let you do that. Anything else that we need to do?

MR. MCCANN: No.

JUDGE BEVERUNGEN: Okay.

MR. SCHMIDT: If I could make kind of an opening statement and a proffer, I do have some

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witnesses, because Mr. McCann is here and certainly they are available for questions, but if I can sort of give you a presentation and I guess an overview, Judge Beverungen, of why we're here?

JUDGE BEVERUNGEN: Yes.

MR. SCHMIDT: The property that is under consideration is shown on the site plan, but let me before I do that, identify who is here. The property is owned by Donald and Kathleen Lippy, who are actually property owners, Mr. Lippy is seated behind me. Mr. Lippy is a farmer in the Lippy Brothers, he and his brother farm about 2,800 acres, about 2,800 acres in this area of Baltimore County, we're not far from the Carroll County line, and much of their property is in Carroll County. So Mr. Lippy is a family farmer and has been for years.

You may have heard of the Lippy Farms because they are certainly well known and are, I would say a viable important base of the

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agricultural economy as it exists in Baltimore County. In any event, Mr. Lippy owns this property.

My other client who is here who I identified before is Ken Donithan, who is with Earth and Air Technologies, who is the company which actually installs the solar farm which is going to be put on the Lippy property, and he will be able to explain, hopefully, to you and those present about how it works and basically the mechanics of that.

And then my other witness would be John Lemmerman, who is the surveyor who prepared the site plan.

But with all that being said, again, the Lippy's own about 2,800 acres all together, interestingly, about 2,200 of it in preservation, in land preservation that is encumbered by easements with the state and with the various organizations which hold agricultural easements in Baltimore County. This particular property in

Page 10

this immediate vicinity is something over 200 acres but the subject property that we're here on, the area of this special exception is shown on this site plan --

JUDGE BEVERUNGEN: Is that a lot or is it just --

MR. SCHMIDT: It is a separate parcel and it is about six-and-a-half acres. It is one of these properties that if you look at the land records, it describes it as closer to 6.8 acres, but as is common with many agricultural properties and I know you've seen it before, you have the legal description which runs to the center line of the road, which in this case is Hanover Pike, Route 30, so when you talk about the actual area of ground, it's something less than 6.8 acres, it's shown on this plan as being 6.454 acres.

It is not under an agricultural easement at the present time, and I've got some aerials which I can produce which show you a broader area

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of Lippy farm which runs back off of and to the west of Maryland Route 30, Hanover Pike, but this is all agricultural planting, and I think now it's soy beans.

MR. LIPPY: Soy beans and some corn.

MR. SCHMIDT: That was Mr. Lippy talking, and some corn he has indicated.

Obviously it's a fairly agricultural area, some residences on the other side of Hanover Pike. The zoning map would show, you have an exhibit with that, that there are some clusters of commercial uses as you would expect in a sort of rural area of the county. When you go out 30 from Reisterstown you have various, a lot of sort of farming and agricultural related type of businesses which are here.

And so what the proposal is is to install a solar farm here, and although I know you're aware, if you look at the county zoning regulations, and this is probably some of the genesis of the legislation that Mr. McCann was

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talking about, you don't see anything in the regulations that says solar farm per se. The property is zoned RC-2 which you would expect because of the agricultural nature of this property and the area at large.

But there was a prior case that came in before you, I have a copy of it and maybe I can offer it now, I'll give Mr. McCann certainly a copy, as Petitioner's Exhibit Number 1, and it was Case 2016-0086 X, it came before you earlier this year, and basically it was for a property over in the Kingsville area where another solar provider was preparing or proposing a solar farm, and that's what I call generically a solar farm. That property was about 30 acres, a little more than that, and was generally an agricultural property.

And in your decision, which I understand was not appealed and is a final decision, you determined that this type of use was a, quote, public utility as defined in the RC regulations

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and it was permitted by special exception, and after hearing that case you granted a special exception in that matter, so I'm going to give you a copy of that.

JUDGE BEVERUNGEN: Okay.

MR. SCHMIDT: We're following, obviously in view of that precedent, that's how uses such as this have been classified and regulated by the county, we're following the same track. In your case that involved a special exception, that was an RC-5 and this is RC-2, but it's the same approach and the same use.

What we're proposing here is a solar farm and we have some photos which I'll show you, which is basically the panels which I think most of us are familiar with, we may have seen, which will be in this area. There is an area around the perimeter where the panels will not be located, and that is designed in order to provide screening and fencing and so on and so forth. And while I point that out, I'll say that you'll

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notice that there was a comment from the zoning advisory committee and particularly the planning office, I can say, and Mr. (U/I) can confirm that we have had conversations with both Mr. Lippincott in the planning office and Mr. Herman, who is the county's registered landscape architect, and we were willing as a restriction in this case, as Mr. Lippincott asked, that we provide a landscape plan here.

That's somewhat consistent of the order that you've issued in the other case to provide landscaping, and then we're going to do that here obviously. That's all premature, to talk about the species of the landscaping until we have the underlying zoning approval, but what was done in the other case, I actually have a copy of the landscape plan, it was sort of a combination of landscaping and screening. There was a security fence which was designed to sort of blend in, not to be a stark fence but to provide both buffer and security, and visual buffer, and then outside

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the fence a series of bushes, trees, et cetera, and that's we anticipate here.

So again, as a condition of any approval you would grant, we would be agreeable to having the requirement that we get a landscape plan approved by, Mr. Herman is the landscape architect. And that would be particularly appropriate here because Hanover Pike is a scenic highway under the county zoning regulations and obviously those considerations would go into that design as well, and we're certainly agreeable to that.

In any event, this is a solar farm that we're proposing, it's an unmanned facility, it is merely the solar panels with the related equipment. Mr. Donithan can explain the way it works and answer questions. I know a lot of folks aren't familiar with these because it's a newer technology, but essentially as I indicated, it's unmanned, there is periodic maintenance but there's no traffic generated. The panels are six

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to seven feet in height in terms of coming out of the ground. The idea is that they capture the sun and convert it into electricity. There is electric lines, and Mr. Donithan I think is going to explain this, and this is a particularly good site for this because of the electrical infrastructure which is located here immediately adjacent on Hanover Pike, which will allow the electricity which is produced and the energy that's produced by this to serve not only the Lippy farm, but other farms and other properties in the area. And as he will explain, it essentially will allow energy to be, to go into the electric grid, not for the Lippy property.

This is not -- you see around, a lot of folks have solar panels on their roofs and even in an agricultural setting on barns and sheds and so on and so forth, which particularly belong with that property. This is not that, this is a farm which is more of a public utility, again, which generates electricity which will serve not

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only the Lippy farm but other properties in the area, and Mr. Donithan can talk about that in some detail.

As such, we think it's a real benefit to the area and the agricultural community, and certainly a benefit to this particular farmer, who like other farmers is under increased pressure from the development, pressures that are brought from the agricultural base in Baltimore County, that this produces a sort of energy and savings, monetary incentives for Mr. Lippy for his farm. And it takes, as I indicated, of this 2,800 acres that he owns, a very very small portion, six-and-a-half acres out of the agricultural production.

We also believe that there would be no detriment to the health, safety and general welfare of the locale. There's no traffic generated, visual impacts will be minimal, there's no environmental issue in terms of chemical release or toxic release of any type.

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It is simply a very small facility, as we will describe.

So with that being said, I do have those three witnesses to sort of present the plan, and I think Mr. Donithan will probably be my primary witness because he can really explain how this works and how it works as part of the grid system and what it will look like and so on and so forth. Mr. Lippy is also here as the farmer and can explain how his farm operates, so that's where we'll go for our case.

JUDGE BEVERUNGEN: Okay. Mr. McCann, do you have anything?

MR. MCCANN: Nothing in opening.

JUDGE BEVERUNGEN: Okay, so let's get going.

MR. SCHMIDT: Okay. I'd call Mr. Lemmerman, if I could.

JUDGE BEVERUNGEN: Okay. Sir, come on up, and make sure that microphone is on with the green light, please, and remain standing and

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raise your right hand.

Whereupon,

JOHN LEMMERMAN,

being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

JUDGE BEVERUNGEN: Take a seat, tell us your name and business address, and Mr. Schmidt will ask you questions.

THE WITNESS: Good morning. John Lemmerman with RTF Associates, land surveyors and planners. Address is 142 East Main Street, Westminster, Maryland 21157.

DIRECT EXAMINATION

BY MR. SCHMIDT:

Q. Mr. Lemmerman, you work for RTF Associates, which you've indicated are land surveyors and planners, and which are you, a land surveyor or planner, or both?

A. I'm a professional land surveyor licensed in the State of Maryland, and I do some

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planning also.

Q. And your office is in Westminster?

A. Yes.

Q. And you do hold a professional license as a surveyor in the State of Maryland?

A. Yes.

Q. Have you ever testified in either any court or other proceeding as an expert witness as a land surveyor?

A. Yes.

Q. And where was that, sir, if you can tell us?

A. Most of it is in Carroll County zoning hearings, and a couple in District and Circuit Court also.

Q. And in those cases, particularly the ones in the courts of Carroll County, were you accepted as an expert witness as an expert land surveyor?

A. Yes.

MR. SCHMIDT: I would offer

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Mr. Limmerman as an expert surveyor given his credentials and prior testimony in courts of this state.

JUDGE BEVERUNGEN: Okay. Any voir dire or objection?

MR. MCCANN: I can wait until cross.

JUDGE BEVERUNGEN: Okay, so yeah, Mr. Lemmerman will be accepted as an expert in those areas proffered.

MR. SCHMIDT: Okay, thank you.

BY MR. SCHMIDT:

Q. Mr. Lemmerman, why don't you come up and just stand next to the plan, because I'm going to ask you just some general questions about that.

Mr. Lemmerman, did there come a time that you were asked to prepare a zoning site plan in connection with this case?

A. Yes.

Q. And is that plan that you prepared pursuant to those instructions on the board next to you?

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A. Yes, sir.
Q. And that was prepared either by you or under your supervision and direction?
A. Yes.
Q. And it does bear your signature as the registered land surveyor who prepared the plan?
A. Yes.
Q. Okay. Just if you can for Judge Beverungen and those who are here, give us a little idea of what we're looking at in terms of size and maybe the general area, kind of tell us what that's depicting.
A. Sure. This black outline here is an outline of the property. This is Spring Grove Road which is a rural country road. This is Route 30 which was mentioned earlier. There is some residential houses on the opposite side of Route 30. Donald Lippy owns a couple hundred acres that surrounds this property. This is, this area here is located in an agricultural preservation area. There's a large lot here that

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has residences on it and it's overlaid on an aerial photo, and the zoning is RC-2.
Q. Okay. Now, Hanover Pike I think it is, or Route 30, is a public road?
A. Yes.
Q. And the other road you mentioned, I don't know, is that a public road or private road?
A. It is a public road.
Q. It's a public road as well, okay. And Mr. Lippy and his wife own a number of, do you know how many acres approximately that surround this, not part of this property?
A. I believe it's around 200.
Q. Okay. And this particular lot, is that a separate lot?
A. Yes, it is, I believe a third parcel on one of the deeds.
Q. And how big is it acreage wise?
A. Deed wise it is 6.8 acres because of the right-of-ways as was previously explained. What

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you're looking at here without the right-of-ways is 6.45 acres.
Q. And you indicated that much of the Lippy property holdings is in agricultural preservation; is that correct?
A. Yes.
Q. Is this property in an agricultural preservation?
A. This property, the subject property is not.
Q. Is not, okay, so there are no restrictions, lines, deeds which would prevent this from being used as it's proposed?
A. Not that I know of.
Q. Okay. And if you know, Mr. Lemmerman, is this, how would this use be permitted, the proposed farm, under Baltimore County zoning regulations?
A. It would be permitted as a special exception under public utilities.
Q. Okay. And you are familiar, are you

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not, with the prior case that I gave to Judge Beverungen and you reviewed that, where indeed he allowed a similar type facility as a special exception as a public utility?
A. Yes, clearly you may.
Q. Okay. Now in addition to the top page which you've shown, you also have an overlay on the bottom. Can you tell us exactly what that is?
A. Sure. This is the outlines of the property in black. What is red was indicated as a (U/I) arrays. This hatched area surrounding it is dedicated, you know, between the effective minimum setback lines required by zoning, and for, you know, additional space for planting, landscaping and screening.
Q. Okay. And so far as planting and landscaping and screening, did RTF indicate that their has been communication, has there not, with Baltimore County officials about providing a landscape plan for approval, assuming the zoning

variance is approved?
A. Yes.
Q. And does the plan show and accommodate fencing, screening which might be necessary in a plan for that purpose?
A. Yes, there is.
Q. Okay. And do you know, or as a surveyor, would you just kind of describe what you would anticipate the type of screening to be?
A. What we're at this point envisioning is like a chain link fence that has screening on it so it kind of blends in a little bit better than chain link typically does, and a mixed planting, use of bushes and shrubs and all. That would be mainly guided consistent with the, I'm sorry, scenic route guidelines.
Q. Okay, and you have reviewed those scenic route guidelines as well?
A. Yes, sir.
Q. And you believe your landscaping plan is designed to meet the goals of those guidelines in

terms of screening and buffers at this proposed facility?
A. Yes.
MR. SCHMIDT: Okay. I don't think I have any other questions of Mr. Lemmerman.
JUDGE BEVERUNGEN: Okay. Mr. McCann.
MR. MCCANN: Yes, thank you. You may sit down, sir, if it's easier for you.
CROSS-EXAMINATION
BY MR. MCCANN:
Q. A couple questions about your background first of all. You mentioned that you've testified in Carroll County; have you ever testified before this administrative law judge before?
A. I have not.
Q. Have you ever testified before the Board of Appeals in Baltimore County?
A. No.
Q. Have you ever worked on a project in Baltimore County involving solar paneling?

A. No. There's only limited cases of this.
Q. Have you ever worked on a project involving a special exception in Baltimore County?
A. Yes.
Q. And which case was that?
A. Honestly I was more involved in the boundary and the topography aspect of it, so I didn't do specific testimony about the special exceptions.
Q. How many cases were there?
A. It's been a while, but there were probably a couple.
Q. So two over the years?
A. Yes.
Q. How long ago?
A. I'd say six, seven years probably.
Q. So your involvement in that case was strictly as surveying, that is preparing the plan or similar exhibits, but you didn't testify in any of those cases, those couple of cases

involving a special exception from a special exception standpoint, correct?
A. Correct.
Q. So no cases in Baltimore County in which you've addressed the standard for special exception in Baltimore County, correct?
A. Correct.
Q. You mentioned that the subject property is not in a conservation easement, and I thought you mentioned that the surrounding property was; is that your understanding?
A. Yes.
Q. So in other words, if the property depicted on --
MR. MCCANN: Is that Petitioner's 2-A?
MR. SCHMIDT: Yeah. I didn't offer that, maybe I should have, I apologize. I'm going to find it if I can and Mr. McCann, with your indulgence I will mark the one which is the aerial overlays 2-A and the other one which is the grid as 2-B, if I can.

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MR. MCCANN: Okay.
MR. SCHMIDT: I'll certainly do it now.
MR. MCCANN: Okay. So those will be coming in.
BY MR. MCCANN:
Q. So more specifically with reference to Petitioner's Exhibit 2-A, is all the property outside the subject property in conservation easements as far as you know, that is the property to the west of the subject property as well as the property to the south, and south of Spring Grove Road?
A. Certainly this is.
Q. When you say this, you mean the area to the west and northwest?
A. Yes, and I can't be certain whether this parcel --
MR. MCCANN: Mr. Lippy will be testifying about this?
MR. SCHMIDT: He will.
BY MR. MCCANN:

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Q. What about this area where, to the north and northeast?
A. I don't believe that's (U/I).
MR. SCHMIDT: And that's not on (U/I) here?
MR. MCCANN: Oh, it's not, all right. Thank you.
BY MR. MCCANN:
Q. You mentioned that there is room outside of the solar panels themselves on the subject property to accommodate landscaping, correct?
A. Yes.
Q. So that's the area outside the 2-B, or the area outside the grid, correct?
A. It includes that area also.
Q. (U/I).
A. (U/I) understanding outside 75 feet from the center line, 35 feet from all other property lines, would be the area that we use.
Q. Okay, and that would be area that's not occupied by the panels themselves or anything associated with the panels, correct?
A. That's correct.
Q. And not occupied by what, it would be essentially undisturbed?
A. That's correct.
Q. This is a question about 2-B. Is this outer boundary in red on 2-B, is that part of the panels themselves or is that part of the setback?
A. That is part of the setback. The (U/I).
Q. Okay. So why is it that you have that in red?
A. It's just for illustration purposes as the outline. There's no other purpose.
Q. But this, and I know I'm not describing it accurately, but this outline is not going to be used for the actual panels?
A. That's correct.
Q. Other than access to the panels?
A. Right, other than that.
Q. Okay. But again, no one, there is no landscape plan, correct?

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A. Not at this time.
Q. Is there any drafts of any landscape plan that have been prepared?
A. Not that I'm aware of.
Q. Is anybody working on the project other than your firm, like an engineering survey to begin with?
MR. SCHMIDT: Objection. If he knows.
JUDGE BEVERUNGEN: If you know.
THE WITNESS: I'm not aware of any at this time. I believe the intent was to get zoning approval before too much time and money is spent.
BY MR. MCCANN:
Q. And in terms of -- well, (U/I) Carroll County, you've worked on these plans in Carroll County?
A. Yes, I have.
Q. How many?
A. Three large ones that are Carroll County as the developer. One would be the Hampstead

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wastewater treatment plant. There is, half of that property is an agricultural use and they're taking that portion of the property.

Q. Okay.

A. Carroll County Community College is one of the sites, and the third site is a landfill that's been capped over and annexed as well.

Q. And the first two projects were during what period of time?

A. The one is, it was within the past year and a half for all of them.

Q. Am I correct, all three of those projects involved public property?

A. That is correct.

Q. In Carroll County is -- well, is that project allowed by special exception or was it allowed (U/I), do you know?

A. It depends on the zoning, to answer your question.

Q. All right. In any of those, did you testify in any of those three cases you just

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mentioned?

A. No.

Q. Did those go to a hearing?

A. They were in a property zoning, that was the principal piece of the case, but no.

Q. In terms of Baltimore County scenic route guidelines, you said you reviewed those in connection with this case, correct?

A. Yes.

Q. Have you ever reviewed those guidelines in connection with any other project?

A. Yes, I have done similar research in Baltimore County.

Q. You have?

A. Yes, sir.

Q. Where?

A. Mostly rural areas, like Birch Road, Back River, I believe it's called, a few others.

Q. And those involved a scenic route, or indicated scenic routes?

A. Some of -- a couple of the projects I

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have reviewed for those purposes.

Q. You never testified in any case, any subdivision case about conforming with the scenic route guidelines?

A. No.

Q. Did someone else in your firm, or (U/I)?

A. There was no test for that.

Q. Have you had any communications with anybody in the Baltimore County (U/I)?

A. Me personally, no, not at this time.

Q. Anybody from your firm?

A. Not at this time.

Q. Anybody in your firm work on this project other than yourself?

A. I had a draftsman also, yes.

Q. Were you asked -- strike that.

When you were first approached to help with this project, what were you asked to do?

A. Back in May of 2016 we were asked to provide a drawing and survey as an exhibit for this purpose.

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Q. For this particular property?

A. Yes, sir.

Q. And were you asked to do anything with this other portion of the property?

A. Not -- no.

Q. You were not asked to put solar panels anywhere else on the property?

A. No, that would be probably inconsistent with that.

Q. So you agree that solar panels would be inconsistent with an agricultural preservation?

A. In this particular situation I do.

Q. And I think I heard Mr. Schmidt say, I'm not sure if you did, the total acreage is 200 acres, but in this area, do you know how many parcels there are, I think he said two or three, or two in addition to this property?

A. I mentioned that the parcel that we're referring to is the third parcel on one of the title deeds for the property.

Q. Okay, and that's three, and it's

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approximately 200 acres, right?
A. I would have to look at the deed to tell you how many exact units are there specifically.
Q. Did you work on the residential stuff on any of the property?
A. Yes.
Q. And where was that?
A. That was Baltimore and Carroll County.
Q. In Baltimore County, or Carroll County, was it connected with this subject property in any way, is it part of that 200 acres?
A. It's possible on the other side of the county line, in Carroll County, that we built some residential lots, or that was excluded from the (U/I) at the time.
JUDGE BEVERUNGEN: Wait. You said in Carroll County?
THE WITNESS: I believe so.
BY MR. MCCANN:
Q. What was the name of that property, do you recall the name or the address?

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A. I don't recall the exact name.
Q. But you're pretty sure there were in Carroll County and not Baltimore County?
A. Yes. They were minor, we're talking about two lots (U/I).
Q. I saw something about five lots (U/I) as well. Did you work on that property?
A. You would have to be more specific.
Q. I don't know if I can. In 2012 there was five lots that were subdivided.
JUDGE BEVERUNGEN: In Carroll County?
MR. MCCANN: No, in Baltimore County.
BY MR. MCCANN:
Q. And I was wondering if I'm correct on that.
A. It doesn't ring a bell.
Q. But the one you did work on that you mentioned earlier, it took a while?
A. Yes, there were several small lots, so a modern subdivision in Carroll County.
Q. But none in Baltimore County?

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A. No, not that I can recall.
Q. (U/I).
A. Yes.
Q. Along the (U/I) Road?
A. I don't recall.
Q. (U/I) Baltimore County?
MR. SCHMIDT: Objection. I just don't see what the relevance is.
JUDGE BEVERUNGEN: Overruled. You can answer.
THE WITNESS: Not that I can recall.
BY MR. MCCANN:
Q. The one on (U/I) is not connected to this property?
A. No, it was not.
Q. This isn't Carroll County?
A. No, it's not.
MR. MCCANN: Okay. That's all I have, thank you.
MR. SCHMIDT: Just a couple questions on redirect.

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BY MR. SCHMIDT:
Q. I think you indicated this, but are there any variances required for this proposal?
A. Not that I'm aware of, no, other than the setbacks that we're providing.
Q. And insofar as the setback requirements the facility does meet the relevant setback requirements from both the public road and from the property line, does it not?
A. Yes, it does.
Q. And although you haven't yet done a detailed landscape plan, you are a surveyor and you've done landscape plans or had landscape plans that you've done for other subdivisions or other projects in the past; is that correct?
A. Yes, for residential and commercial.
Q. And the area that you show outside of where the panels are going to be, in your judgment, is that a sufficient area to install a landscaping to buffer this site adequately under the scenic road documents?

A. Yes.
Q. How much area do you actually have, I guess in terms of width, that you could landscape and put trees and fences and bushes and all, from where the panels are to the property line?
A. From the property line itself is a 35-feet setback, which is more than enough for a landscaping buffer, and along the road frontage it's 75 feet from the center line.
Q. Okay. Did you see the landscape plan that was approved in the other case, have you seen it?
A. I don't believe I have.
Q. Okay. Now insofar as just this property or this immediate property, the Lippy's own as I understand it, something like 2,800 acres of land in Baltimore and Carroll County; is that right, to the best of your knowledge?
A. Yes.
Q. Okay. And so insofar as the holdings they may have associated with this, this

particular parcel has never been subdivided, correct?
A. Correct.
Q. And in fact if this property wasn't used for this purpose, it could be developed to single family houses on it, couldn't it?
A. To the best of my knowledge, yes.
Q. And the Lippy property in the immediate area goes into Carroll County, this is fairly close to the Carroll County line, is it not?
A. It is.
Q. Okay. And you said the subdivisions there were child lots?
A. To the best of my knowledge they were.
Q. Okay.
A. They were approved by the preservation.
MR. SCHMIDT: I don't have any other questions.
JUDGE BEVERUNGEN: Okay. Any followup?
FURTHER CROSS-EXAMINATION
BY MR. MCCANN:

Q. Sir, would you be the one to design the landscape plan when it is prepared?
A. I would have a licensed landscape architect perform the design.
Q. Someone in your department?
A. Yes.
MR. MCCANN: Thank you.
JUDGE BEVERUNGEN: Good. Thank you, sir.
THE WITNESS: Thank you.
(Witness excused.)
MR. SCHMIDT: I would next call Ken Donithan.
JUDGE BEVERUNGEN: Okay. Good morning, sir. Remain standing and raise your right hand.
Whereupon,
KEN DONITHAN,
being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:
JUDGE BEVERUNGEN: Take a seat, tell us

your name and business address please.
THE WITNESS: Ken Donithan, Earth and Air Technologies, 60 Aileron Court, Suite Number 4, Westminster, Maryland 21157.
DIRECT EXAMINATION
BY MR. SCHMIDT:
Q. Mr. Donithan, what's your relationship with Earth and Air Technologies, LLC?
A. I'm the owner.
Q. Okay. And I guess as the owner, briefly, what do you do for the company? I guess everything, but tell Judge Beverungen what your role is.
A. Well, we're a certified small business. When you're a small business, you pretty much do everything, but mainly the engineering, design, oversight of the operation and installation of renewable energy systems.
Q. Okay. Tell us a little bit about your educational background.
A. I was in the United States Navy, I was

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discharged in 1980, honorably discharged. Went to work in the field that I was in in the Navy, which is power engineering, and became a loss control inspector for several -- well, two insurance companies, and basically loss control, inspecting power plants, equipment, machinery, generating facilities. And I went back to school and got my degree in electrical engineering from Johns Hopkins University.

Q. And when did you start Earth and Air Technologies, how long has the company been around?

A. 2008-2009 time frame.

Q. Do you have any kind of licenses or registrations with the State of Maryland, either you or Earth and Air as a company?

A. I do.

Q. What are those, sir?

A. We have a contractor's license, construction license in the state. We have an MHIC license, a contractor's license in the

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state. I'm also a certified power engineer, i nationally carry various certifications, licensing in the power engineering field.

Q. And what's a power engineer, what is that?

A. Basically, you know, a utilities engineer that would operate power plant, generating station, heating, cooling, commercial industrial system, and the auxiliary equipment that go along with that for a university or a hospital, and the electrical components for basically site support systems.

Q. Okay. And you actually have a registration or certification as a, quote, power engineer?

A. I do.

Q. Who gives that to you?

A. That's a national license that is issued through the National Institute of Uniform License of Power Engineers.

Q. Okay. Now Earth and Air Technologies,

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if you can, tell us a little bit about specifically in the years that the company has been in operation, what does Earth and Air Technologies do?

A. Well, we started out doing strictly wind installations, and after turning about nine out of ten people down, everybody thinks they have the wind, but they don't have the wind you need to sustain, to get the payback for these systems, and so we got into other renewable energies, geothermal and solar mainly, which is 99 percent of what we do.

We go out and take a look at a site, we do an analysis, a site analysis to see if it's, you know, a good site for solar. If it meets all the requirements of the applicable jurisdictions' requirements as well as the utility requirements, so there's several oversight authorities that have, it has to meet certain requirements before we can actually submit documents and paperwork and applications to install.

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Q. Okay. And you said you look to see if a site is a, quote, good site for solar. What makes a site a good site for solar, what kinds of things do you look at?

A. Well, it's open, it has good sun, you have to have sun, that's number one, make sure you have a good, you know, energy source from the sun, and that you can electrically connect to a viable electrical feeder or meter or panel in order to tie this system into, whether it's a home, a business, or you're going back into the utility.

Q. Okay. So you have to have a good site in terms of good sun, and then the proximity of the grid over something that can actually tie into it?

A. Absolutely.

Q. Okay. How many solar systems have you developed or installed since you have been doing this, Mr. Donithan?

A. Well, with renewable, including wind and

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solar, geothermal, I would say a hundred.

Q. How about just for the solar?

A. Probably a hundred. Very few wind cells.

Q. Very few wind or geothermal?

A. Yeah.

Q. And any in Baltimore County?

A. Several, yes.

Q. Can you tell us a little bit about where they were, what kind of facilities?

A. Butler (U/I) Farm. We did another farm on, in the Hereford area, a small farmhouse on a residential farm.

MR. SCHMIDT: Judge Beverungen, in light of his background and credentials, I would ask that he be accepted in the field of, as a power engineer and in the field of alternative, and particularly solar energy systems.

JUDGE BEVERUNGEN: Mr. McCann, do you have voir dire on that?

MR. MCCANN: Nothing that I can't do on

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cross.

JUDGE BEVERUNGEN: Okay. Yeah. Well, Mr. Donithan has degrees from Johns Hopkins, and he indicated that he was licensed by the National Association for Power Engineers, so because of his training and background, he's got sufficient ability to express opinions in this case. Go ahead.

BY MR. SCHMIDT:

Q. Let me, Mr. Donithan, if I can, turn to kind of this particular property. I assume there came a time that you entered into, identified this site and entered into an arrangement with the owner, Mr. and Mrs. Lippy regarding the potential exploration of a solar farm here; is that correct?

A. Yes.

Q. And when was that, if you can tell us kind of how that came about, how did you identify the site, et cetera?

A. I want to say we were looking at sites

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towards the end of 2015, so we had looked at several sites, and this particular site was the best site for this installation in that one of the important components of this, you have to have a transmission or a distribution feeder in order to tie in a system of this size.

Q. Okay. And you approached Mr. Lippy after identifying the property about putting a solar farm here, I'm going to call it a solar farm, I don't know if that's the proper technical name, but that's how it was described; is that correct?

A. Yes.

Q. What, can you tell us a little bit about, I guess this particular six-and-a-half acre property, not only its proximity to the feeder system, but the site itself, is there anything that makes it particularly attractive for this use?

A. Absolutely. It's not an ag preserve, which is a reason for using the site. It does

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fall under the guidelines for conditional approval under special exceptions. And it has plenty of sun and it's open, it's not flat but it doesn't have significant slopes, which makes it important when you're doing an installation of this type, that you don't have a lot of hills or slopes where you're installing the equipment. And paramount is the high voltage tension lines that run along 30 that you would be tieing into.

Q. All right. Tell us, if you can, explain in a little more detail as to how that connection would be made, how is that done, Mr. Donithan?

A. Well, we would tie the system into a utility meter, and that meter would be tied directly to the transmission feeder that runs along Route 30.

Q. Can you point on that plan as to where that is located on Route 30?

A. The high tension lines are running along the side of the road.

Q. And that's where you would actually make

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the connection?

A. Well, the connection would be made off of these feeders; we would be connecting at the meter that's, that is (U/I) on the electricity that the system is producing.

Q. Okay, you can be seated. I'm going to show you a photograph that you actually just, you actually provided me two of them. I'll give one to Mr. McCann and I'll mark these as -- your indulgence for just a second. I want to make sure I give Mr. McCann exactly what I'm giving you. I've pre-marked these Petitioner's 3-A and 3-B, and I'll give you the original ones to make sure they're exactly the same ones I'm giving to the witness, a couple of photographs.

Mr. Donithan, I'm going to show you two photographs that I've marked as Petitioner's 3-A and 3-B. I think you actually provided those to me, did you not?

A. Yes.

Q. And if you can, hand those up to Judge

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Beverungen so he can look at them. What is it that we're actually looking at, what does it show?

A. These are the actual solar modules, which is the meat of this system. That is where the energy from the sun is collected. Those modules are connected in a series pattern and we use an inverter that ties the modules to the inverter.

Q. Okay. Now where is that facility, if you know, those panels, do you know where that picture was taken?

A. I do not.

Q. Okay. Are those the type of panels, though, that you would see and that are proposed out here?

A. Correct.

Q. Okay. Could you describe the panels, and the photograph speaks for itself, but how tall are they, how big are they?

A. Well, the modules that we'll be using

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will be 72 cell, which are approximately three feet by six feet.

Q. Okay. And how tall are they?

A. They're six feet by three feet.

Q. Oh, six feet tall by three feet wide?

A. Yes.

Q. Okay. And they will be in essence installed in sort of a pattern that's shown on that Exhibit 2-B?

A. Correct.

Q. And just give us a sense of scale. How many of those panels would you have installed in this kind of arrangement, approximately?

A. About 6,500.

Q. About 6,500, okay. And again, because we're not all power engineers, tell us how it works scientifically or practically, the sun comes up, shines down, what happens?

A. Well, if you think of the solar modules as a battery, that would be a good analogy, and then the more batteries you put together the more

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powerful that battery is. So these solar modules are direct current, the sun hits the cells, there are 72 cells in there and just think of the cells as a battery, so you have 72 batteries in each one of these cells. So you know, the more batteries you put in there, the bigger brighter light you can shine. However, something like this will probably have the power to shine the lights of a stadium, so to speak. So it's a direct current that is being generated from the sun, the photo array of the sun, and then the energy that, the direct current energy flows in the wires, the wires are connected to an inverter, which basically converts that direct current to a house power, so to an alternating current that can be used, you know, anywhere, commercially, residentially, industrial.

Q. So the sun provides the energy to create in essence the direct current, which then is inverted or converted into the alternating current which is used by all of us when we plug

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anything in in our house?
A. Yes.
Q. Okay. In terms of the amount, if I'm asking this correctly, and let me just reduce it down to layman's terms. What's the amount of power or measure of power which is produced by a facility like this?
A. Well, you're looking at about two megawatts of power.
Q. Okay.
A. And just to give, you know, an idea of that, Calvert Cliffs nuclear power plant is 1,800 megawatts, so this is two megawatts.
Q. Okay. And in terms of -- now, this current, this energy will be fed into the system, the grid as it were, of the public grid; is that correct?
A. Correct.
Q. And so this power will be able to be used by, first of all, the subject property, the Lippy's, correct, in the operation of their farm?

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A. Yes.
Q. So their lights, their machinery, anything that they use electrically will be obtained, or can be obtained from this; is that correct?
A. Yes, correct.
Q. How about other uses, will there be other users up and down Hanover Pike who will be able to benefit from this?
A. We have gotten, you know, commitments from some of the business owners along Route 30, as well as farmers in the area, that expressed interest in regards to utilizing electricity that's generated from the system.
Q. Now, how will that actually work? I mean, how does the electricity get to them, and how are you saying that they're using this electricity?
A. I mean, it's similar as if you had it on your house. I mean, there's not really a big difference. You're tieing into a feeder and

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whether the electrons from that solar go directly into your home or go back out onto the grid, that's what this does, the electrons flow into the transmission lines and those electrons are then distributed along that feeder system to whoever is on that feeder system, which the Lippy's are, along with some of the other farmers and businesses along the corridor there.
Q. Okay. Can you tell us, you said that the power generated here would light a stadium, for example.
A. Yes.
Q. In terms of residents, or residences or businesses, if you can give us an idea, how many individuals or individual properties or farms, however you would quantify it, will be able to use the power that's generated here?
A. Probably about 200 to 250 residential customers would, from a size standpoint, that's how much electricity would be generated.
Q. And obviously a business would probably

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consume more electricity than a residence would?
A. Correct.
Q. So if you had a mix of businesses and houses taking electricity, that would be a lesser number overall than 250 properties?
A. Correct.
Q. Okay. And you indicate that you have had several adjacent property owners, businesses and farms who have expressed an interest in tieing into this system and utilizing this system?
A. Correct.
Q. If I can, Mr. Donithan, let me ask you about the state regulations and the State of Maryland viewpoint on this alternative energy and how that plays into your decision to come here. Does the state have any regulations, incentives or programs related to solar power?
A. Yes, they do.
Q. Can you tell Judge Beverungen about them and how they work?

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A. Well, the state has a net energy (U/I) that allows homeowners, businesses, anyone can connect to the utility grid through a net meter. Recently that has been extended by the governor who signed into the law a community solar energy generating pilot program, which this is going to be a part of. That allows any individual, any business, company, what have you, to be able to install a community solar energy generating system and supply power from that system to anyone on the grid.

So, this will be in the BGE territory, so any energy that's generated from this would be allowed to go to any customer in the BGE service area. Now the reasoning for this pilot program is to increase the renewable portfolio standard that the state has, two percent solar by 2020.

Q. So the state is requiring two percent of our energy be solar by 2020?

A. Correct.

Q. Okay.

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A. And right now we're at about .5, .7, somewhere around there in the latest figures, plus or minus, so it, in addition to this, it also allows businesses that may not have the right roof space or the right property for their leasing, it allows them the opportunity to purchase clean green solar energy from the community solar system. And you have residences also that may not have the roof space, or may be renting or don't have the property. And we have a lot of them when we go out, and one of the things, we want to make sure they have (U/I), so we've had a lot of customers in the past that we, you know, would love to have solar energy supplying their property, so it gives them the advantage too to be able to purchase electricity at a cheaper rate than what they're paying now from a community solar energy generating system.

Q. So this system will actually be consistent or, I guess I'll ask it as a question, will it be consistent to further the goal of the state program that you've described, so that public utilities can be operating more efficiently and in accordance with the state guidelines?

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A. Yes.

Q. And it will be part of that program to get to the two percent?

A. Correct.

Q. Okay. And I think you did indicate that the public utility which is actually in this area is BGE?

A. Correct.

Q. Okay. Let me ask you, if I can, Mr. Donithan, a little bit more about the actual facilities and I think some of the considerations that Judge Beverungen has to consider. First of all, you described the panels in terms of their dimension, and you've also heard the testimony from Mr. Lemmerman. If the plan is approved and zoning approval given, is it your intention to prepare or have Mr. Lemmerman's office prepare a landscape plan in order to buffer and shield the facility?

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A. Yes.

Q. And in fact, you have met with Mr. Lippincott to discuss landscaping issues, have you not?

A. Yes.

Q. And have provided him, have you not, with some photographs and details of fencing and landscaping that you have done for other projects or used for other projects, have you not?

A. Yes.

Q. And is there any reason to believe that you cannot (U/I) this facility in the areas shown within the buffer created by Mr. Lemmerman on this plan to satisfy the county's landscape architect?

A. Yes.

Q. Now with that being said, take us through this. If the approval was granted, then the solar panels would be installed here

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obviously, correct?
A. Correct.
Q. How long does that take on a site like this to do the installation?
A. Depending on weather and the timing, but three months to four months.
Q. And other than putting those panels out there, what other, if any, infrastructure, is there any other building or any other thing that needs to be done other than the panels that are put out there?
A. The panels and the inverters, and that would basically be it.
Q. Now the inverter, what's that, can you describe physically what that is?
A. That is probably the size of a commercial reaching cooler or freezer that converts the, again, the direct current into alternating current.
Q. Okay. And is that the little structure in the middle of Petitioner's Exhibit Number 2

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down there?
A. Yes.
Q. And the inverter that you described as about the size of a commercial freezer, is this the inverter?
A. Yes.
Q. Okay. All right. So what you would see or what would be here would be the panels which we've done the pictures of, and then a structure about the size of a commercial freezer?
A. Correct.
Q. The lines that are going out to the utility on Hanover -- Maryland Route 30, I keep saying it wrong, are they above ground, below ground?
A. Below ground, they would be buried.
Q. Okay, they would be buried, so you're not going to see any electric lines above ground coming out from here?
A. No.
Q. Okay. And no other construction or

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nothing else above ground that you could see, no tall buildings or wind turbines or anything like that?
A. No.
Q. Okay. Is this a manned facility, is there anybody working on this once all this is done?
A. No.
Q. Okay. Is there any kind of maintenance that's done on these panels daily, monthly, yearly or anything like that?
A. No, other than just the landscaping aspect of it, you know, the mowing and that around the modules.
Q. But nobody works here, I mean there's no employee out here or anything like that?
A. No.
Q. Do you have to come out and maintain these panels or check them every so often?
A. Well, we monitor, this will be monitored remotely, so we will know of any issues that

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occur through remote monitoring, Internet monitoring.
Q. And that's based on, I assume, it's not producing power or there's a disruption of the power, you would have to send somebody out there to see what's going on?
A. Correct. I mean, for the first few months, it's always, we make sure we get the bugs out of things, so there will be more visiting the site than it would after the system, the bugs have been taken out of the system, so to speak.
Q. Okay. And so there's no traffic really, vehicular traffic produced by this facility of people coming and going?
A. No.
Q. Okay. How about the maintenance of the area around the facility? Do you have to mow that, or how is that controlled?
A. Yeah, that will be, you know, grass and that.
Q. So it will be grass under the panels,

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which would be maintained?

A. Correct.

Q. Now the panels are actually above ground, right, so they're not sitting on the ground creating an impervious surface on the ground; is that correct?

A. Correct.

Q. So, do you have any kind of runoff or anything like that when it rains, from these panels?

A. No.

Q. In terms of the panels themselves, is there any maintenance required, washing, cleaning or anything like that?

A. No.

Q. Okay. I assume they're cleaned when it rains?

A. Absolutely. That's one good thing about the rain in this area.

Q. Okay. Insofar as, these panels are designed to absorb the sun's energy, I think you

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said, correct?

A. Yes.

Q. So, and I think it's shown on the photograph that we've submitted, but is there any kind of reflection that might shine into somebody's eyes caused by these panels?

A. Well, the design of these panels is to absorb the energy, absorb the sun, the energy from the sun, not reflect it, so very little reflection develops.

Q. Okay. Have you ever done panels at any facilities where, or any sites where a glare would be an issue?

A. I have -- well, yes, I have, out by the airport in Carroll County. We did an installation which, we had to go through the Federal Aviation Administration process because of planes flying in and --

Q. You don't want things reflecting in their eyes.

A. Correct, and so there's no, there was no

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issues with that.

Q. And is it the same kind of panels and facility here that you did up near the Carroll County airport?

A. Similar, yes.

Q. Okay. And you indicated that there's no chemicals or anything used to clean the panels or maintain the panels?

A. No.

Q. I know you went to a community meeting that the Hanover Road Association sponsored regarding this facility and generally solar farms generally, correct?

A. Yes.

Q. And I'm just trying to think, but were there any issues? I know we have some folks here who were identified there. Any concerns or issues that you can address at this hearing in terms of the potential impact of this solar farm, either on the life, or health, or environmental, or any other kind of issues other than the ones

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that you've discussed?

A. No, I don't recall anything that, from that meeting that would be an issue.

Q. Okay. Mr. Donithan, based on your experience as an expert in the solar system industry, do you have an opinion, or can you give us an opinion from your perspective as to whether this facility would cause any detrimental impacts on the health or the safety or the welfare of its surrounding town?

A. No, sir, I don't.

Q. You can't?

A. No. Actually, it's the inverse of that, there are benefits of solar that offset the electricity that would be produced from coal, which has detrimental effects on the health and wellbeing of individuals, and especially older individuals that have respiratory or asthma problems, so this kind of offsets a lot of the pollutions that are coming from coal fired power plants. So it has an inverse, a beneficial

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effect, versus a detrimental effect.

Q. And you've indicated that this will not produce, I guess other than disruption in the event there's a monitoring issue, it will produce no traffic to the site, people aren't going to come in and out to visit the site?

A. Correct.

Q. So there really won't be any, or is there any impact on the flow of traffic or the volumes of traffic on any of the adjacent public streets?

A. No.

Q. How about, is there any kind of potential in these facilities, and we all read about the Samsung phones, but can these things catch fire or cause any other type of hazard from fire or any other thing like that?

A. These systems are built to be authority of the county, which requires they meet NFPA, National Fire Protection Association standards, as well as UL standards nationally, and utilities

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require that they meet certain standards before we can connect to their grid.

Q. Is there any type of environmentally, any type of material that could be a contamination of any type that could come from these panels? I mean, is there any chemical or anything inside that could escape from the panels and leak into the ground, anything like that?

A. No.

Q. There's no liquid, right?

A. Correct, not that I'm aware of. I have not seen anything like that.

Q. Now you also indicated that the height of the panels in terms of off the ground would be, I think six or seven feet, I'm trying to think of what you said?

A. Depending on, you know, the location and the lay of the land, yes.

Q. Okay. So in terms of any shadow that they cast, it would be restricted to the height that they are; is that correct?

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A. Say that again.

Q. In terms of any shadow, you know, there are big structures that can cast a shadow on adjacent properties and then traffic disruption, view shed up and down Hanover Road or anything like that, but there is just the height of six or seven feet?

A. Correct, there's no shading or flickering or anything like that.

Q. They don't have any lights that are flashing or anything like that?

A. No.

Q. Now insofar as, I think you've answered this, but insofar particularly as to agricultural users or agricultural uses in this area, will they stand to get a benefit, and Mr. Lippy, will he stand to get a benefit from this facility?

A. In terms of?

Q. Costs, anything, is there a benefit of this to the agricultural users up and down Route 30?

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A. Absolutely. I mean, specifically for Mr. Lippy, they're offsetting one of the biggest costs farmers have and that's electricity, so you have the benefit of that, as well as incentives and credits that the federal government has in place right now which, you know, time is pretty critical to, you know, monetize that before they expire.

Q. One other impact that I think I've heard. Do these, will these panels make any noise?

A. No.

Q. Okay. So they're not, people who live across the street or in the area aren't going to hear anything from these panels in terms of noise?

A. Not from the panels, no.

MR. SCHMIDT: Okay. I don't think I have any other questions, Judge Beverungen, at this time.

JUDGE BEVERUNGEN: Mr. McCann?

MR. MCCANN: Thank you.

CROSS-EXAMINATION

BY MR. MCCANN:

Q. Good morning.

A. Good morning.

Q. I'm going to jump around a bit, so let me start with the impression Mr. Schmidt was asking you about with noise. Your response was not from the panels. Is there noise from somewhere else?

A. Well, the inverter does have a slight noise to it, about 60 decibels, which is equivalent to a conversation.

Q. Okay. What do you mean by that?

A. Meaning that the decibel level of 60 decibels is similar to having a conversation with your competitors, like we're talking right now would be a decibel level that you would hear.

Q. Okay. And at what point would you hear that decibel level, at the property border, or where?

A. Well, the only time you're going to hear it is on the site somehow, so when the sun comes up, the inverter starts converting, and when the sun comes down at night, you're not going to hear anything.

Q. What about on a cloudy day? Today is sort of cloudy, but would that have any effect on that?

A. Again, if you're standing, you know, 30 feet from the converter, you could hear it.

Q. But my question is more directed to the time. At any time during the day, whether it's sunny out or cloudy, the converter would be going?

A. That's correct.

Q. And then 60 decibels, I'm sorry --

A. So basically you wouldn't hear that outside the border of that property at all.

Q. Because it's more than 30 feet?

A. Correct?

Q. Even the folks on the adjacent property couldn't hear it?

A. Correct.

Q. Any other noise?

A. No.

Q. Are there studies that have shown -- you mentioned a specific decibel level. Are you relying on a study for that?

A. Well, the manufacturer specifies the decibel levels, you know, and the data.

Q. For this type of inverter?

A. Yes.

Q. What type of inverter is it?

A. When you say what type?

Q. I guess what manufacturer, what model, if that's the right term?

A. Yeah. We are looking at a couple different models of inverters, SMA 2000 CP would be one of them.

Q. Do they come in sizes?

A. Correct.

Q. What size would this inverter have to be?

A. This inverter is going to be about 1.5 megawatts.

Q. Would that have some effect on the physical size?

A. I mean, a two megawatt, 1.5 is not a big difference.

Q. And that, the megawatts I guess is based on the number of panels?

A. Correct.

Q. Mr. Schmidt asked you about what if any benefit there would be to agricultural use and to Mr. Lippy himself, and you mentioned two things. You mentioned the offsetting of the cost of electricity, which you characterized as one of the biggest costs in farming, and secondly credits; what do you mean by credits?

A. Well, you have a federal tax credit for using alternative energy.

Q. And what's the name of that program?

A. That's the ITC.

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Q. What is that?
A. I don't know what the acronym stands for but it's a federal subsidy.
Q. Other than those two things, any other benefits to the agricultural use that you can think of?
A. Yeah, there's (U/I).
Q. Okay. And you mentioned the approximate height of these as being six or seven feet or so. And that, I guess depends on the topography of the property and the way the sun hits the property?
A. Well, it really depends more on the lay of the land.
Q. Right. So we don't know sitting here today, we don't know specifically where theses panels will be placed and how they will be placed, is that fair?
A. Yeah, we do.
Q. You do. Is that an engineering thing you can figure out?

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A. Yes.
Q. So how high will they be?
A. Six to seven feet.
Q. Oh, the varying height.
A. Yes, correct.
Q. And you said there's some maintenance involved such as mowing of the property, I guess around and under the panels; is that right?
A. Correct.
Q. You don't want grass blocking the sun?
A. Well, with -- you don't have a lot of grass that's going to be growing there because the sun's not hitting underneath of it, so that's a benefit. But yeah, that's, we want to maintain it just aesthetically just to make sure that weeds and stuff aren't growing.
Q. And how do you mow it, is it a hand mower?
A. Well, no.
Q. So the land, the property with the panels could not be used for agricultural purposes, you can't plant on it, right?

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A. Correct.
Q. Mr. Schmidt asked you about any chemicals, and you said not that I'm aware of.
A. Well, I'm just saying that, not that I know of. If there are, and I'm not aware of them, there's no issues whatsoever in systems that we've put in. I'm not aware of any study that was done that would indicate otherwise.
Q. But there are no chemicals used in this system?
A. No, none.
Q. And in terms of contaminants, what contaminants other than chemical forms, which are there in this facility?
A. There aren't any contaminants.
Q. What are they made out of?
A. Silicon, glass, and metal.
Q. Where are they manufactured?
A. Well, they're manufactured all over the world, United States.

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Q. Is there any -- you mentioned a couple of products or models that you're familiar with. Is there a particular product that you'll purchase?
A. Well, there are several, and you know, depending on the pricing and the timing of things, I mean, the solar industry is sort of like the farming industry, you don't know what the corn price is going to be from one day to the next.
Q. Right.
A. So it depends, you know, a lot on the pricing of the equipment.
Q. You said that the panels are built to national fire code standards. Can they catch fire, though, is it possible, say for instance a lightning strike, can they catch on fire?
A. You mean glass?
Q. Silicon?
A. I'm sure there is a possibility, but it would be tough if it's glass.

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Q. You've never heard of that happening?
A. No.
Q. All right.
A. Now if they were on a roof, that's a possibility, if the roof catches fire, they could sustain fire damage.
Q. Okay. And then in terms of reflection, you said very little reflection. Where does the reflection come from, is it the panels themselves or the metal around them?
A. Well, the panels are made of glass almost like car windshields. I mean, they're sort of, the reflection is little to none. It's an absorbent, absorbing effect that, these modules are designed to absorb, just like your windshield, you know, of your car. If you're driving down the highway, you know, you don't want that windshield to reflect, and it's a similar kind of design for these modules.
Q. What about the base, I mean the outside, the metals themselves, is it the same thing?

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That's metal, right?
A. Yes, correct.
Q. What kind of metal?
A. Aluminum, typically aluminum, either a dull nonreflective type of design, or black.
Q. So they'd be flat?
A. Yes.
Q. Or black?
A. Or black.
Q. And no washing, in other words, you don't have to wash them down?
A. No, that's -- you know, Maryland is an excellent state for solar, I mean, and one of the reasons is it gets a lot of rain, and sometimes you may say too much, but the rain is enough to wash the panels. And even the snow, we don't like to have snow on the panels, but they also have a scrubbing effect as well to clean these modules, so it's an excellent state for solar.
Q. Rain is dirty, we have to wash our windshields on our cars. You don't think the

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panels themselves won't need cleaning?
A. No, not at all, not in this area. The only time I ever cleaned panels was when they cleaned the chicken houses up on the site when the wind was blowing 20 miles an hour out towards the solar farm, so that's the only time we've ever cleaned a panel. So they're at an angle such that when it does rain, you know, it's not sticking to the panel.
Q. What is the life of these panels, how long do they last?
A. Well, the manufacturer guarantees production, and that's 25 years, but the panels last much longer than that. There's panels that have been installed since the '70s that are still operating and producing.
Q. Now the lines aren't connected to the transmission lines themselves, they're connected to a meter, and that's connected to the transmission lines?
A. Well, that's going to depend on the

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utility, what they have -- they can decide how we have to connect, and I'll just say typically that's what we would do, is bring our feed to the meter, and the utility connects it.
Q. The meter is on the west side of the (U/I)?
A. We're not sure if, we may have to put the meter there or on the property near the inverter, which probably, that's a good way to do it.
Q. So where does the line run, I'm sorry, the line going from the inverter to --
A. Underground to connect to the distribution transmission line along 30.
Q. Under 30?
A. Correct.
Q. And how deep would they be?
A. Well, the requirement by the state requires specific depths, so we have to meet state road requirements.
Q. And how big would the line be?

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A. It will be a conduit, so you're probably talking a maximum of four inches, or two two-inch, depending on the equipment that we use.

Q. But just a single line from the inverter?

A. Correct, three-phase power is used to connect.

Q. You said you are not aware of any runoff from the panels. What about channeling the water, the rainwater will hit these panels and slide down to the soil, right?

A. Correct.

Q. And then won't that create you having to seal that, in systems you've installed generally?

A. Well, what you have is, you're going to have about 15 feet of opening between each array, so you have plenty of land between the arrays that it's negligible, any issues with runoff would be negligible.

Q. So 15 feet between the top of one panel and the bottom of the next?

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A. No, like from center line to center line of the array, so when you're taking a look and see a vertical line, think of that array as one section, and in between each one of those is about 15 feet in spacing between them.

Q. I was talking about the edge, in other words from top of the one panel, that point.

A. To the ground?

Q. To the ground, or to the bottom of the next panel connected to the ground, how far is that?

A. I'm not quite sure I follow you, I'm sorry.

Q. This is 3-A. So for instance this panel right here, if you were to draw a string line to the ground, perpendicular to the ground, draw that distance along the ground to a perpendicular line on the bottom of the next panel, what would be the distance on the ground?

A. (U/I).

Q. Okay, so you're not measuring the panels

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themselves when you say 15 feet?

A. No.

MR. MCCANN: All right, thank you.

EXAMINATION BY THE ADMINISTRATIVE LAW JUDGE

BY JUDGE BEVERUNGEN:

Q. Why do you allow any space at all? In other words, wouldn't you get enough sunlight doing that?

A. Well, you don't want to shade from one array to the other, so you have to have the spacing.

Q. And that's all that you need?

A. Correct.

JUDGE BEVERUNGEN: Okay.

MR. MCCANN: I have a couple more questions.

JUDGE BEVERUNGEN: Okay, go ahead.

FURTHER CROSS-EXAMINATION

BY MR. MCCANN:

Q. Have you ever seen channeling, in other words, water (U/I) channeling?

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A. No, not on any of the installations that we've installed.

Q. And you as the owner of the company, you went back and forth with these installations?

A. Correct.

Q. You mentioned, I think you provided some photos of, am I correct, of the land as well?

A. I'm trying to think what we supplied. I'm not exactly sure what we supplied him with, but we did give him some of the permits, and I believe it was maybe a copy of, from the property.

Q. But Mr. Lemmerman said there has been no landscape plan prepared?

A. No, we're working on that.

Q. Who's working on that?

A. Well, we have contracted, or I should say been in contact with several landscaping, architectural landscaping companies.

Q. Not from Mr. Lemmerman's firm?

A. Yes.

Q. And Mr. Lemmerman's firm?
A. Yes.
Q. Okay. So here's what I don't understand, and I'll be honest with you, meaning power that's generated by these panels, you are suggesting that you would have the ability -- well, strike that.
You're connecting to a meter that's monitored by BGE, correct?
A. Yes.
Q. And BGE will pay, once it's installed, Mr. Lippy for the amount of energy generated by the panels?
A. With the community solar project, what they do is they credit the electric pill. So for instance, if we were to supply electricity to your home and you pay a hundred dollars a month, we would supply enough power to offset your hundred dollar a month bill.
Q. I'm asking, what does Mr. Lippy get directly from BGE (U/I) Mr. Lippy gets paid for

providing this energy to BGE, correct?
A. Correct.
Q. And BGE turns around and sells it essentially?
A. Well, actually, it's like a third party supplier basically.
Q. Mr. Lippy would be the third party supplier?
A. Correct.
Q. He's supplying to BGE, getting paid for that, right?
A. Well, BGE is not paying Mr. Lippy. Mr. Lippy will be charging the subscribers who are getting the electricity from this system.
Q. Directly?
A. Correct.
Q. He would send a bill out to whom?
A. The subscribers, whoever subscribes to the electricity, which would be, 60 percent of the electricity is going to his farms.
Q. Okay. So 60 percent of the electricity

generated by these panels goes to his farms. When you say his farms, you mean this 200 acres, or somewhere else?
A. Well, they have an adjacent farm up in Hampstead in Carroll County, and another one in Westminster.
Q. So with respect to the remaining 40 percent that was generated, how does that work? Does he have to go out and seek subscribers?
A. Correct, whether it's Mr. McVere (phonetic), they hire someone else to do the administrative work.
Q. Okay. And that administrator selects -- or, whoever the subscribers are, they don't have to be in the vicinity of the town, they can be anywhere, right?
A. Correct, as long as they're within the BGE utility area.
Q. Okay. How big is that area?
A. BGE, Baltimore County, Carroll County, Harford County, Anne Arundel County, anyone in

the BGE service area is eligible. That's what the community solar power program, that's the purpose of it.
Q. Is to create a scenario where subscribers can (U/I) solar panels and subscribe to provide them? And you're actually -- so the question is, you're not really providing those subscribers, every single person in Carroll County the actual solar energy itself, but --
A. It's possible. It's very possible.
Q. How? Would you have a line from Mr. Lippy's property all the way to someone in Carroll County, say 20 miles away?
A. Not 20 miles away, but on the same feeder, absolutely, that these electrons can get to that house or that farm or that business.
Q. On that line, through that line?
A. Through the feeder, through the utility feeder. So this is connected to the utility feeder and then that utility feeder supplies electricity to the entire area.

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Q. You say utility feeder, is that (U/I) line?

A. Correct.

Q. So this person will connect in to the feeder?

A. They already are in service.

Q. You may have answered the question and I didn't understand, but the name of that program again?

A. That is the -- it's House Bill 1087, which is, I guess they're referring to it as the community solar energy generating system program, pilot program.

Q. You mentioned 200 what, houses could be served by that 40 percent that Mr. Lippy is not using; is that correct?

A. I believe the question was what, what was the possibility that that system would have served if it was serving residential and that was 250, if it was doing residential. That is a different case, that's not the business plan for

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this.

Q. The business plan is providing 40 percent to other users?

A. Approximately, other farms, businesses, and residential as well.

Q. And is that based on some standard, a standard that talks about usage on average?

A. (U/I).

Q. Is that pretty standard in the industry?

A. As far as?

Q. Those numbers for power usage?

A. That's what the Public Service Commission and the working group that's working on this community solar power program, that's kind of the numbers that they use, which is, you know, it's common.

Q. Okay. This is not regulated by the Public Service Commission, though, is it?

A. It is.

Q. It is?

A. Yes.

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Q. In what way?

A. They have received through the community solar energy generators, it's sort of like the marijuana program, you know, you have to be accepted into this, there's no guarantee. It's not that strict where there's only going to be one license, but you have to apply, an application to be accepted into this pilot program.

Q. Okay. That's what I thought you had said, that is, right now Mr. Lippy is not in the pilot program, you have to apply, correct?

A. Correct, and that hasn't even started yet.

Q. What happens if he's not accepted into the pilot program, what happens then, what's different about this system?

A. If he's not accepted into the system, probably, I guess, I don't know if he will build it or not. That's all part, that's the reasoning behind this, is the community solar.

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Q. So the Public Service Commission regulates or oversees the program, the pilot program, but does it oversee anything beyond that, for instance the rates that are charged, and does it oversee any increase, or decrease?

A. The OPC, Office of People's Counsel, they have the oversight for that, I believe.

Q. But I guess other than overseeing the program itself, administering the program, what oversight does the Public Service Commission have over a six-and-a-half acre facility like this?

A. Other than approving it as a community solar energy generator, I can't think of any other.

Q. And the 60-40 split that you described, how did you reach that figure?

A. Based on the size of the system and the annual usage for the farms.

Q. You had to make some, do some analysis to do that?

A. We basically looked at the annual

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consumption through the electric bills.
Q. Is that work reflected in a report of some sort that you prepared?
A. No, other than, you know, we had them when we looked at this.
Q. So how do you know it's accurate?
A. That's what, we looked at the electric bills for the farms and based on those electric bills and the size of the system, that will consume about 60 percent of the generation of this system, so we have 40 percent, approximately 40 percent left over to supply others other than the farms.
Q. Okay. My question was, the analysis, is that in writing anywhere, not necessarily a formal report you submitted to PSC, but is that in writing anywhere?
A. It may be. I would have to check my computer.
Q. So in followup to Mr. Schmidt's question about what makes a good site, number one, you

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have to have sun, right, and number two, you have to have some opportunity to --
A. Access to transmission, yes.
Q. And then you have to build the other line on your own to connect with that?
A. Correct.
Q. And topography, is that a factor?
A. Yes.
Q. And what about, what, could you describe that a little further, what types of topography will not work, or is there some standard that you go by to see whether the lay of the land is adequate?
A. Well, cost, I mean is a big factor. I mean, you get into areas where the topography is such that, you know, you'd have to brace differently, you'd have to design things to be able to handle, or you may have to, it may have to be bigger if it's, the topography may have to have more panels to produce what a smaller system would produce on flat land.

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Q. (U/I) property would be, correct?
A. Yeah. I mean, in some cases it could work if it's facing in the right direction, you know, if it's facing south, the slope that is.
Q. Any other factors that go into deciding whether the site is good for a solar panel system like this, other than what you just mentioned?
A. Well, I mean, you know, we want to make -- one of the big things we try to do is how can we aesthetically install this system that minimizes any impact to the farm. For instance, if we -- most of the time we do an installation, we look for non-tillable land if we can get it if it's going to be installed on a farm. And you know, that's kind of where we start, where is it hard to farm, where is it not tillable, and you know, that is a big factor. So the location obviously is important, and how do we aesthetically install this so it kind of fits in with the surrounding community.
Q. Well, first of all, is this soil

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non-tillable, this 6.5 acres?
A. No.
Q. It is not non-tillable?
A. It is tillable, yes.
Q. And when you say tillable, what is your understanding of that?
A. In a farm community, that it's easy to grow crops.
Q. And what do you base that on, is that something in your field?
A. No, a farmer, you ask the farmer.
Q. And what is your understanding of how this 6.5 acres is being used currently?
A. It's currently being used for farming, it is tillable.
Q. And in terms of the aesthetic impact, I think that you recognize that there is some effect as a result of this solar farm, and right now it's flat?
A. Yes.
Q. And what if anything did you do in this

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particular case in designing the solar panel system to reduce the aesthetic impact?

A. Well, that's going to be the plan for the screening of, and basically the planting and screening from the surrounding neighborhood.

Q. Would you agree that that (U/I)?

A. Yes.

Q. And you got Mr. Lippy by, you approached him, is that correct, is that your business model, in other words, right now you want to put solar panels on the farm (U/I)?

A. This goes by word of mouth, and this time it was a farmer.

Q. But in this case you sought out Mr. Lippy?

A. I'm not sure what -- we've done other projects for Mr. Lippy and I probably did approach him about the community solar aspect of it, so I would say yes.

Q. What other projects have you done?

A. His house and one other farm.

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Q. What farm is that?

A. That's in Westminster, Sunny Side Farm.

Q. And I should have asked you, but the other solar farms you've worked on in Baltimore County are where?

A. White Hall.

Q. Where in White Hall?

A. White Hall, it's for, I believe Greenland is the farm.

Q. Okay. And any others in Baltimore County?

A. Yes. Butler, on Butler Road, and I don't recall the actual name of that, but the individual, Rufus Williams is the owner.

Q. Any others?

A. We did a residential slash kind of a, they do do farming there, but the panels were put on their roof, and that was for the Hasper's.

Q. Where is that?

A. That is in Hampstead, Baltimore County.

Q. When you mentioned White Hall, Butler Road, Sunny Side, those are all farms?

A. Yes.

Q. Southern Farms?

A. Yes. Well, the Sunny Side is, and Greenland is a farm, Greenland is a farm.

Q. You mean a farm as opposed to a house?

A. Yes, correct.

Q. And Butler Road is?

A. That's on the barn actually, part of the farm.

Q. How do the size of those installations compare to this one?

A. They're small compared to this.

Q. Smaller?

A. Yes.

Q. Is there, are you familiar with the farm buildings on site, that is on the 200 acres?

A. The farm buildings?

Q. Yes, is there a house, barns, out buildings, are you familiar with how many, or do you recall that?

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A. On this parcel there are none.

Q. On the 200 acres, I'm sorry.

A. I am not.

Q. What about the farmhouse, are you familiar with it, that you did already? The farmhouse that you did for Mr. Lippy, is that on this 200 acres or is that somewhere else?

A. Oh no, that's adjacent to one of the properties.

Q. What would you say is the most common complaint you hear from neighbors about solar panel farms?

A. The common complaints that I hear?

Q. Yes.

A. Glare.

Q. Do you know if people complain about the aesthetics, if you recall?

A. Yeah, I have.

MR. MCCANN: Okay. That's all, thank you.

THE WITNESS: You're welcome.

JUDGE BEVERUNGEN: Mr. Schmidt.

MR. SCHMIDT: Mr. McCann, in view of his questions, I was going to have Mr. Lippy perhaps do this, but it might be just as easy now to have him identify those photos that you asked him about. So, I've labeled 4-A through 4-M a series of photographs, and Judge Beverungen, maybe you can just follow along, and I've given them to Mr. McCann.

REDIRECT EXAMINATION

BY MR. SCHMIDT:

Q. But, Mr. Donithan, Mr. McCann asked you some questions about the, you know, about the property and its grade and so on and so forth, and I think these photographs may be helpful in showing Judge Beverungen exactly what this site looks like.

So let's start at the beginning, start with 4-A, just tell us what we're looking at. You're familiar with these photographs, you've seen them, been to the property a number of

times; is that correct?

A. Yes.

Q. Okay. And I believe I actually took these photographs when we were out there together; do you recall that?

A. Yes.

Q. Okay. 4-A, what are you looking at?

A. Excuse me. That's looking at Route 30 looking south from Fringer Road.

Q. And obviously, the Fringer Road intersection is shown by the street sign right in the foreground?

A. Yes.

Q. Okay. 4-B?

A. That's Fringer Road looking east, with the parcel to the left that we're looking at to do the solar.

Q. Now the houses in the background are across Hanover Pike, across Route 30?

A. Correct.

Q. So no neighbors houses across the

street, and the soybeans to the left is where the solar farm would be?

A. That's correct.

Q. Okay. 4-C, is that the same area?

A. That's correct.

Q. 4-D, which is the one with the silver vehicle on the right-hand side, same thing with Fringer Road and the subject property to the left?

A. Yes.

Q. Okay. 4-E is, again, the same property?

A. Correct.

Q. The large trees that are there, are they on our side of Hanover or on the other side?

A. I believe they are on the other -- oh, our side of 30.

Q. Our side of 30, buffering this site right here?

A. Correct.

Q. Owned by Mr. and Mrs. Cowle (phonetic), right?

A. I'm not sure.

Q. The house whose name is shown on the plan?

A. Yes.

Q. Okay. 4-F?

A. Okay, that's looking, I guess, what, northwest?

Q. Sort of going this way?

A. That's correct.

Q. And the Lippy farm is sort of behind, the 200 acres?

A. Correct.

Q. G is, again, Fringer Road?

A. Yes.

Q. Okay. H, what road is that?

A. That's Route 30, and we're looking north now.

Q. So if I was standing there, I'd be looking to my left?

A. Yes.

Q. Okay. And the same view, but more of

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the subject property?
A. Yes, correct.
Q. Okay, that was I. J is from the south?
A. Looking south, correct.
Q. Looking south. K is also from the south?
A. Yes.
Q. Okay. L is some of the houses across the street?
A. Yes.
Q. Okay. And M is, again, northbound?
A. Correct.
Q. And I think those are the photos on the Cowles property of the trees, the large mature trees?
A. Yes.
MR. SCHMIDT: Okay. I would offer them as Exhibits 4-A through L.
MR. MCCANN: A through M.
MR. SCHMIDT: A through M, excuse me.
JUDGE BEVERUNGEN: Okay. No objections?

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MR. MCCANN: No objections.
JUDGE BEVERUNGEN: Okay, so those are received.
MR. SCHMIDT: And if I can as well, I think it might be helpful to you, Judge Beverungen, to have a sense, and I'll put this in while Mr. Donithan is there. These are photographs simply of, taken, these were taken from the Baltimore County website, these are from the website, and I've marked this first one as 5-A.
BY MR. SCHMIDT:
Q. Mr. Donithan, this is a large aerial taken off the county website, aerial photography. The property that is the six-and-a-half acres where the solar farm would be is outlined in blue, is it not?
A. Correct.
Q. And Hanover Pike is labeled, is it not?
A. Correct.
Q. And all of the area virtually

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surrounding that essentially on the west side of Hanover Pike, which is, at the time this aerial was flown was not in active growing season, would be the Lippy farm, parts of the 200 acres of the Lippy farm; is that correct?
A. I believe so, yes.
Q. Okay. Similarly, I'll hand Mr. McCann a copy of this as well. Judge, I marked this as 5-B. Again, it's the same data source, and Mr. Lippy may be able to identify it, but again, our site is in the RC-2, the blue line perimeter, is it not?
A. Yes.
Q. And the agricultural area, the Lippy property is shown surrounding it?
A. Correct.
Q. Okay. I think I have one more which will give you a better idea of the area, and I will mark this as 5-C. And again on 5-C, which is even further out, it shows the Lippy, shows our site outlined in blue as well as the Hanover

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Pike, and the uses immediately surrounding that?
A. Yes.
MR. SCHMIDT: I would collectively offer all those as Exhibits 5-A through C.
JUDGE BEVERUNGEN: Any objections?
MR. MCCANN: No.
JUDGE BEVERUNGEN: Okay, they're admitted.
MR. SCHMIDT: I don't have any other questions of Mr. Donithan.
JUDGE BEVERUNGEN: Mr. McCann, anything else?
MR. MCCANN: No.
JUDGE BEVERUNGEN: Thank you, sir.
MR. MCCANN: You're welcome.
(Witness excused.)
MR. SCHMIDT: I have one more fairly short witness, and that will be Donald Lippy. Mr. Lippy, if you'll make your way up. He has recently had some knee replacement surgery.
JUDGE BEVERUNGEN: All right.

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Whereupon,

DONALD LIPPY,

being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

JUDGE BEVERUNGEN: Okay, take a seat and tell us your name and address.

DIRECT EXAMINATION

BY MR. SCHMIDT:

Q. Mr. Lippy, if you could give us your name and address for us?

A. Donald Lippy, 421 Lee's Mill Road, Hampstead, Maryland 21074.

Q. And Mr. Lippy, are you and your wife the owners of this property which is, I think, known as 15700 Hanover Pike?

A. Yes.

Q. Okay. And you've heard testimony from Mr. Donithan and Mr. Lemmerman, you've been here all morning, correct?

A. Yes.

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Q. Now to the best of your knowledge, this is a, when I say this, the property that's six-and-a-half acres, is a separate parcel that you and your wife own; is that correct?

A. Yes.

Q. But you own other parties both adjacent to this and in the area, right?

A. Yes.

Q. Do you know how many acres you, or you and your brother, or the Lippy Brothers family owns?

A. Total?

Q. Total in this immediate area?

A. In the immediate area, or are you talking down --

Q. Well, in this area.

A. Around 2,600 acres.

Q. Okay. And in this immediate area that this piece is a part of, how much is that property, if you can tell us?

A. Well, this property is a 73-acre farm,

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and then across the road is about a 230-acre farm. It's all adjacent to it.

Q. Okay.

A. Plus, there's another 139 acres that's all tied together with the two.

Q. And I hadn't shown you this before, but I'm going to give you, I think it's 5-D; is that D?

A. Yes.

Q. This is an aerial photo, and to be fair to you, Mr. Lippy, I don't know if I had shown you this before.

A. Yes, you had.

Q. But again, this would be outlined in blue, the six-acre property. What, if you can generally describe to Judge Beverungen, as shown on this, what do you own?

A. This is the farm right here that's 73 acres, and over here there's two farms combined, it's like 230 acres.

Q. Okay. And so that Judge Beverungen can

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see it, the area that is on the north side of Fringer Road is the 73-acre farm, and on the south side of Fringer Road is --

A. 200, I'm guessing 230 acres.

Q. Now of the property that belong to you, and when I say you I mean you and your brothers, I know, it's a family enterprise, is it not?

A. Yes.

Q. How long have you been farming in Baltimore County?

A. Since the beginning of time, but 1965. Well, actually 1952, I'm sorry.

Q. Is that you or --

A. My brother started first, they got out of school in '52 and they ran the farm right near this. No, they rented that farm, they rented that farm first and that was the property in 1952, and then one on the other side of the railroad tracks there, actually they bought it and -- no, they rented it first, about the same time, '55 or something like that.

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Q. And how old are you, if I may ask?
A. 38.
Q. You're 38?
A. 74.
Q. 74. So is it fair to say you've been a farmer most of your adult life?
A. Yes.
Q. And what do you, on this property and the farms right adjacent here, what do you do, what do you grow?
A. Well, we grow corn sidings, string beans, wheat, barley, and it's a little bit of hay on there now, some alfalfa.
Q. And insofar as, you participate with the easements with the state, and you said you have 2,600 acres altogether here in Baltimore County and Carroll County. Do you know how much of your property, that 2,600 is in easement?
A. It's around 2,200-some acres, plus or minus a few acres.
Q. And actually we put together a chart,

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did we not, that -- I'll give a copy to Mr. McCann. This chart basically shows acreage which totals 2,212.8 acres and describes the farm and what county it's located in, and the acreage, and is that the property that you have under your control that's in easement?
A. Yes, me and my brother.
Q. You and your brother?
A. Yeah, I own some, he owns some, and the corporation owns some.
Q. And the corporation being the Lippy Brothers?
A. Yes.
MR. SCHMIDT: I'll offer them as Number 6.
JUDGE BEVERUNGEN: Okay.
BY MR. SCHMIDT:
Q. Needless to say, you're fairly committed to agriculture and being the steward of the land since you've worked all 2,200-some acres into the preservation?

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A. Pretty much so, yes.
Q. Now this particular property is not in preservation, is it, this six acres?
A. No, it's not.
Q. Why are you doing this?
A. Why are we doing this?
Q. Uh-huh.
A. Well, it's, you know, corn prices fluctuate a lot. A few years ago we had $8.00 corn, today we have $3.50 corn, a bushel. Last year, we have a chicken complex, last year we were selling eggs for $2.50, $2.90 a dozen, right now they're 58 cents. So, I've got a son, a daughter, four grandchildren, and they all want to sort of be in the business, and this would be something a little more steadier than the farm economy.
Q. To produce income for you?
A. Yeah.
Q. Also saving money in terms of your own electric bills, right?

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A. Right.
Q. Not only here but on the other farms you operate, right?
A. Right.
MR. SCHMIDT: I don't have any other questions.
JUDGE BEVERUNGEN: Okay. Mr. McCann?
CROSS-EXAMINATION
BY MR. MCCANN:
Q. Good morning, sir, just a couple.
A. Good morning.
Q. On this particular property, the 73 acres and 230 acres, are there any farm buildings on those two properties?
A. No, there's been no farm buildings on any of it. Well, there is 19 acres in Carroll County of this 73, and there is a, there is, the Carroll County part is not an easement, and there is about four lots on it, and somebody's built a house on there. So it's one house, but it's no connection, it's owned by somebody else, but

other than that, there's no structures.

Q. Would you agree with Mr. Donithan's assessment that the soils at this particular 6.5-acre parcel are productive and tillable?

A. Yes.

Q. What do you grow there now?

A. I think there's a (U/I) soy bean. I think we had wheat in there and then we well dropped it with soy beans.

Q. Of these 73 acres, do you lease any of that out to other farmers or do you farm it yourself?

A. No, it's farmed by ourselves, plus we lease a bunch of other acres.

MR. MCCANN: No other questions, thank you.

JUDGE BEVERUNGEN: Thank you, Mr. Lippy.

(Witness excused.)

MR. SCHMIDT: And that would be the petitioner's case.

JUDGE BEVERUNGEN: Okay. Mr. McCann,

what do you anticipate you would like to do?

MR. MCCANN: In about five minutes -- I mean, some of these folks want to speak, and I don't represent all of them.

JUDGE BEVERUNGEN: What I'm trying to wonder is, do you think we're going to continue and not break for lunch and finish the case, or do you think we're going to break for lunch, then come back and finish the case?

MR. MCCANN: I'd just as soon finish, I don't see this taking more than an hour.

JUDGE BEVERUNGEN: All right, well then, is that --

MR. SCHMIDT: That's not objectionable.

JUDGE BEVERUNGEN: Okay, I'm amenable to that. Let's take five minutes, we'll come back at 12:15 and see where we are.

(Recess from 12:00 to 12:08 p.m.)

(Recording started mid sentence.)

MR. SCHMIDT: -- he certainly can ask my witness.

JUDGE BEVERUNGEN: Okay.

MR. MCCANN: And I know you did get a summary advisory committee comment in this case from --

MR. SCHMIDT: Yes. I indicated at the beginning that we had met with Mr. Lippincott, and I have no objection to the first bullet point, which is to install the vegetative screening, which would be the plan to be I think ultimately approved, and I'm not sure how they would do it.

JUDGE BEVERUNGEN: But there was also a comment from Mr. Hurley's group with Mr. Kennedy --

MR. SCHMIDT: Yes, saying the same thing, that they wanted a landscape plan.

JUDGE BEVERUNGEN: Correct.

MR. SCHMIDT: But what I wanted to say, and I apologize that I didn't say this before, and Mr. McCann, if you've got to ask any question, there are two bullet points, one about

the proposed lighting.

JUDGE BEVERUNGEN: Uh-huh.

MR. SCHMIDT: There will be no lighting.

And the third one is proposed signage. There will be no signage, so there is no issue there.

That fourth provision, and I just leave it at your discretion, that's the section of, 426.10 is the section which deals with, I believe with cell towers.

MR. MCCANN: Taking them down.

MR. SCHMIDT: It says you have to take them down if you're not using them.

JUDGE BEVERUNGEN: Yeah.

MR. SCHMIDT: I mean, that's not really germane to this, but that's what planning asked, and I will leave that to your discretion.

JUDGE BEVERUNGEN: Yeah, I really don't -- do you see how that's applicable, Mr. McCann?

MR. MCCANN: No.

JUDGE BEVERUNGEN: I mean, it's actually 426, I had a case yesterday on cell towers, so I don't know how that applies, but I'll see, I'll take a look at it.

MR. SCHMIDT: As did I, I know it's in the Court of Special Appeals, and --

JUDGE BEVERUNGEN: Well, they're very popular issues in the county.

MR. SCHMIDT: They certainly are.

But I just wanted to put that in the record, I neglected to ask Mr. Donithan about no lighting.

JUDGE BEVERUNGEN: Okay, good, so that's, really only one issue from planning is at play, and that's the landscape plan, and as far as that Section 436, I'll take a look at it.

Mr. McCann, I'll turn things to you.

MR. MCCANN: Yeah, I do, there are some individuals who have something to say, but I don't think it will take that long.

JUDGE BEVERUNGEN: Okay, you can do

that.

MR. MCCANN: Go right on up there.

JUDGE BEVERUNGEN: Come on up. Good afternoon.

THE WITNESS: Good afternoon, Your Honor.

Whereupon,

DEBRA MIRABILE,

being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

JUDGE BEVERUNGEN: Okay, take a seat and tell us your name and address, and then you can tell us what you want or Mr. McCann can ask questions, however it's best.

THE WITNESS: Sure. My name is Debra Mirabile, I'm the property owner of two parcels that front Hanover Road, 14525 and 14517.

EXAMINATION BY THE ADMINISTRATIVE LAW JUDGE

BY JUDGE BEVERUNGEN:

Q. Okay, residences?

A. Agricultural farms including residences.

Q. Okay, good.

A. And that was formerly the Cable Farm.

Q. Okay.

A. What wasn't mentioned about yesterday's hearing when there was a discussion about more towers, was that there was a large outbreak from the community regarding a few things about solar farming.

There is admittedly a cost advantage to developing this sort of farm very close in proximity to these large power lines. There has been significant efforts by the community for a number of years to preserve the rural character and aesthetic of this section of Baltimore County and along Route 30. Right now what we're seeing is aggressive targeting by solar utility development companies, three that I can personally attest to, that are looking to develop directly along the frontage on Route 30.

So I would offer the perspective that

the decision for development is not to be done in a vacuum, but larger it should be considered, what is the strategic development along this section of Route 30 when so many companies are finding reasons for cost protection to develop along there, and what is that mean to the future of our community.

I would also ask, what does it mean for the agricultural tax incentives for the properties that were formerly agricultural but now are going to be used in a commercial-industrial manner for utility generation and power generation, and what financial impact that's going to have as well.

Q. You mean whether they would lose those credits, is that your point?

A. Correct.

Q. All right. I understand that. Anything else?

A. No. Just generally the concern of, when we talk about really Section A, the general

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welfare of the community that was formerly of rural character and aesthetic now being completely industrial and commercialized with solar panels in a very concentrated area along the highway.

JUDGE BEVERUNGEN: Okay, got you. Mr. McCann, or Mr. Schmidt, any questions?

MR. SCHMIDT: I don't have any questions.

EXAMINATION BY PETITIONER

BY MR. SCHMIDT:

Q. Ma'am, how much acreage do you own?

A. 70, 76.

Q. How long have you been there?

A. Seven-and-a-half presently, and roughly three years before that.

Q. You mentioned efforts over the years that the county has made to protect, I think you said the agriculture character here, and what efforts?

A. The Hanover Road Association has a very

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long decorated history of preventing development.

Q. I'm not really talking about that, I don't mean to interrupt, but I thought in your testimony you said Baltimore County has made efforts, so I'm trying to understand what those efforts are.

A. No, I said the community.

Q. Oh, the community, okay, the community has opposed development over the years?

A. Correct.

Q. Okay. You talked also -- you understand that this case is only about this six-acre property and not the other larger solar farms that are proposed in the area?

A. I understand.

Q. Okay. Do you know Mr. Lippy, are you familiar with his operation?

A. No, not personally.

Q. Do you understand why he's requesting this after hearing him this morning?

A. I do, and I'll offer that I personally

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am not opposed to solar plants in general, but I think the location of where we put them is important.

Q. And you believe that this one, if screened as we proposed and discussed today, do you think that it would be detrimental to Hanover Road, is that what you're saying, this particular one?

A. I do. I don't know that it can be fully screened, and I also question what the Hanover Road property is going to look like if more and more properties in a concentrated area are to be developed in this manner.

Q. So you're concerned about the domino effect?

A. Correct.

MR. SCHMIDT: No other questions.

JUDGE BEVERUNGEN: Okay.

MR. MCCANN: I do have some, Your Honor.

JUDGE BEVERUNGEN: Go ahead.

MR. MCCANN: I just wanted her to

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identify where her property is in relationship to this property.

JUDGE BEVERUNGEN: Yeah, sure. Can you do it on that plan that's up on the board, ma'am, Exhibit Number 2?

THE WITNESS: If somebody can help me, I'm not sure.

JUDGE BEVERUNGEN: Okay.

EXAMINATION BY FALLS ROAD COMMUNITY ASSOCIATION

BY MR. MCCANN:

Q. Are you familiar with where the subject property is, Mr. Lippy's farm?

A. No, I'm aware it's on Route 30. I'm not sure.

Q. Do you know where Fringer Road is? Now you live along Hanover road, it looks like the 14000 block as opposed to -- do you know how close it is to the subject property?

A. No, I'm not sure offhand.

MR. MCCANN: Okay, thanks.

FURTHER EXAMINATION BY PETITIONER

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BY MR. SCHMIDT:

Q. Let me understand. Do you know how close you are to this?

A. No, I'm not aware.

Q. Okay. Are you within a mile of this property?

A. I'm not aware of the specific location.

Q. So if you drove up Hanover Road, you wouldn't know where this property is?

A. No, I have not actually been to any of the site development plans, I have not seen anything.

Q. And you don't know how far it is from where you live, I mean where your properties are?

A. No, I do not know this is without looking at a map. If I looked at a map, I would know very easily.

JUDGE BEVERUNGEN: Well, your address is 14517, is that right, ma'am?

THE WITNESS: Correct.

BY MR. SCHMIDT:

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Q. And the subject property is 15700, but you don't know how far that is, you're not familiar, you have been there more than seven but you're sure, you don't know how far your property is from the Lippy farm?

A. No, I don't know where this specific lot is.

Q. Okay.

A. It's not a very large area, though.

Q. Okay. Is your property in preservation?

A. It is not.

Q. It is not, so you haven't committed your property to the preservation?

A. Correct, I'm a homesteader so I'm building a house there.

Q. Okay. So you're going to residentially develop your property?

A. No, not develop it.

Q. You don't live there now?

A. No.

Q. Where do you live now?

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A. Randallstown.

Q. Do you lease the property?

A. Currently.

Q. Okay. So you live in Randallstown and you lease the property that you own up on this site; is that correct?

A. Correct.

Q. Okay. That explains why you don't know where the farm is. I thought you lived on the property, I'm sorry.

A. Correct. In the last seven-and-a-half years, my husband and I have made great plans and worked very very hard to get money to build a house so that we can invest and move into our forever home here.

Q. Okay, but that hasn't happened yet, still working on getting the money together?

A. Well, we have the money together at this point. Now our larger concern is how our solar farms are going to impact our area.

Q. How your -- you've got one of these?

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A. How these developments -- actually one of the other projects in the area is adjacent to my property.

Q. Okay. So your concern is if this one's approved, that might mean the one next to you gets approved?

A. And several others. I've also personally been approached for development.

Q. Okay. So --

A. This is a systemic issue rather than just one particular project.

Q. Right. So your testimony is really about the overall effect of a lot of these solar farms, including what's coming very close to your property?

A. Absolutely, that is one concern.

MR. SCHMIDT: Now I understand. Thank you, ma'am. No other questions.

JUDGE BEVERUNGEN: Okay. Thank you.

(Witness excused.)

JUDGE BEVERUNGEN: Okay? Good

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afternoon. Please raise your right hand.
Whereupon,
PAUL JOYCE,
being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:
EXAMINATION BY THE ADMINISTRATIVE LAW JUDGE
BY JUDGE BEVERUNGEN:
Q. Okay, take a seat, tell us your name and address, and than whatever you would like to.
A. Paul Joyce, president, Hanover Road Association. Excuse me. Post Office Box 121, Upperco, Maryland 21155.
I want to validate what Debra just said. We are being inundated by all these different companies calling. It got to the point where we actually had to call a special meeting of the Valleys Planning Council and Hanover Road Association working together at this special meeting. What you're finding when you're talking to these people, last week they may have been

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selling used cars and today they're selling solar panels. And we're concerned, not that we don't agree with like solar power and all, but there has to be some kind of regulations or guidelines trying to put some kind of order to this, and the preservation and rural character.
We're an organization under 501(c)3 that's been in existence for over 50 years, and we've never had anything like this happen ever, where everybody is like the wild wild west trying to get these solar farms all over the place. And using Mr. Lippy's concern too, it's like he said about the price of corn and all. Well, if you're a farmer and you have property along Hanover Pike and it's not in land preservation, and somebody comes up to you and tells you they're going to put all this money in your pocket and you don't have to do anything, and all that, I mean, the farmers are concerned too, the Farm Bureau has been involved in all this.
Everybody is pushing for a breathing

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spell, like a moratorium so we can have some kind of regulations developed, and right now it's really loose as a goose, the regulations. We're not against solar if done properly. Today we did not see the landscaping plan. I can tell you when I visited the site with these folks here, we looked down on Hanover Pike, and if these panels are six to seven feet high and you're already looking down on Hanover Pike, I don't know how they're going to put a screen around that to try to block that to preserve that rural character we have.
Another concern we have is not necessarily with this group perhaps but with some, is what happens if, like say these gentlemen would go out of business? Who's cutting the grass or who pays to take all these solar panels down? You know, maybe there should be a bond or something that would cover that and nothing like that is in existence right now.
So, that's what we're all about, we're

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just trying to preserve our rural character and trying to work with Mr. Lippy, who is an excellent community member with the Hanover Road Association, but we want it done in such a way that everybody wins, and some of these other fly by night outfits are not allowed to just keep growing all the way in.
JUDGE BEVERUNGEN: Okay, I understand that. Mr. Schmidt?
EXAMINATION BY PETITIONER
BY MR. SCHMIDT:
Q. Mr. Joyce, if I told you that Earth and Air does place a bond as part of its contractual arrangement with Mr. Lippy to insure that the site would, or the equipment would be properly removed, would that address your fear?
A. It's not just my fear, it's like hundreds of people that are concerned about this.
Q. Because that's what the contract provides.
A. Yeah, I think that's wonderful, it

sounds very professional.

Q. And you would admit that Mr. Lippy is one of the largest landowners along Hanover Pike?

A. He's an excellent owner, excellent.

Q. And you would like to see his farm remain, I assume?

A. Yes.

Q. And you understand why this would be beneficial to him and his agricultural operation in view of the pressures that farmers are facing?

A. I can see that it would help him offset expenses, sure, I can see that. We're concerned about preserving, help him offset, but kind of preserve the rural character, not just a big field of glass with all of these green hills covered with solar panels, that's what we don't want to happen.

Q. And this is six acres out of over 300 that he's got in this area?

A. Yeah, but it's where it's located, it's right on the pike.

Q. Well, you understand that's right next to the main?

A. Yeah, I understand that, and so do all these other companies that want to do this to, and that's what we're worried about. Like (U/I) and all the others, there's 25 of them. If you go across the Eastern Shore right now, you can drive for like many many miles and it's one solar farm after another and it's kind of sad.

MR. SCHMIDT: Okay. I have no other questions.

JUDGE BEVERUNGEN: Okay. Mr. McCann, do you have anything?

MR. MCCANN: No.

JUDGE BEVERUNGEN: Okay, thank you, Mr. Joyce.

(Witness excused.)

JUDGE BEVERUNGEN: Good afternoon.

Whereupon,

GEORGE HARMAN,

being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION BY THE ADMINISTRATIVE LAW JUDGE

BY JUDGE BEVERUNGEN:

Q. Take a seat and tell us your name and address.

A. My name is George Harman, I'm living at 5429 Weywood Drive, Reisterstown 21136.

Q. Okay.

A. Ready?

Q. Go ahead.

A. I am a past president of the Hanover Road Association from, I think it was the 1990's. I have been three times president of the Reisterstown-Owings Mills-Glyndon Coordinating Council, which includes the Hanover Road Association, so we've had, I have dual interest in this from two community perspectives. I remain on the board of the Hanover Road Association and am currently the zoning committee chair.

I have to complain a little bit about something that's always concerned me, that is the posting of these properties. I have driven up 30, I have not had the time to pull over and see the sign. I did notice that this hearing, today's hearing was not posted on line, and I realize there may be some permissive opportunities for applicants to not repost the property, and the county does not have any obligation to post on line these hearings, but I find it very unsettling that an important hearing like this is not posted where people could readily see it.

I just want to go back to Mrs. Mirabile's question to her about how far away, and she's about a mile and a half south on 30 from, she's at the corner of Frye Road, which is a small private road.

I can attest to the fact that the Hanover Road Association has spent years trying to preserve the agricultural integrity of the

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community. We've tried to minimize the amount of residential development, even fought a significant church in the area, it was a mega church, and were unfortunately unsuccessful. But the whole incentive of the Hanover Road Association at that time and continuing is that we want to see viable agriculture in the area.

There appear to be in the county regulations nothing that restricts the continued assault, as I believe the phrase was used, on the land. And while this may only be six acres out of several hundred, there are several other projects in the mill and there are other opportunities for many more acres to fall, and I know that in the past when development occurred without control, the agricultural industry greatly was diminished.

There's a point in time when you have too much, in this case I call it industrial development of agricultural land, that the contract farmers, which Mr. Lippy is, will sooner

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or later not have enough farms to lease and function, and the whole agricultural business will collapse. I find this is a very questionable precedent setting issue that you need to deal with, and we're looking for a decision from you that would allow for the bills that are before the, and the resolutions, resolution that's before the county council, to consider rules and regulations that should be applied in this type of situation.

I also did not hear anything today on the withdrawal of farmers ability to withdraw from conservation easements, so if it becomes more lucrative for farmers to withdraw from agricultural easements, and I think that's possible, then there could be no limit to the amount of development that could occur. So at this point in time and with the uncertainty of what the county council is doing, I would say that this project should be denied until such time as appropriate regulations are in place

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concerning not just this project but all projects, and that's all I have to say. Thank you.

JUDGE BEVERUNGEN: Okay. Mr. Schmidt, any questions?

EXAMINATION BY PETITIONER

BY MR. SCHMIDT:

Q. Mr. Harman, how far away do you personally live from this site?

A. About two miles south.

Q. And you haven't introduced or offered any position today on behalf of the Hanover Pike Association, you're testifying as an individual?

A. As an individual, because we have not had enough information provided to us on the details to make a rational decision about what to do with this particular area.

Q. And you -- well, you were contacted by me months ago, were you not, via email about this case, you and Mr. Joyce, I reached out to both of you?

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A. That's correct.

Q. To advise you of this matter before it was posted, before it was filed?

A. But I was not involved in the interview on site.

Q. You were invited, were you not?

A. No, I was not.

Q. You were invited by me, you didn't show up but you were invited by me.

A. I don't recall seeing a specific invite from you.

Q. So in other words, your comments about this not being posted, my client and I were at the community meeting, were we not?

A. That's correct.

Q. And we hosted Mr. Joyce and Mr. Lippincott on the site, correct?

A. I was told that.

Q. There hasn't been any attempt to hide this.

A. Well, I just want to emphasize that

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outreach is not just to one community organization, outreach needs to be to all interested community groups, and it should be more widely presented through on line postings, because I as an individual that has some interest and responsibility to Reisterstown, Owings Mills and Glyndon, does not have time to go to all the sites and check the white signs that are posted on the properties. You have to rely on the county for posting, and when they don't post the information on line, it makes it virtually impossible for the average community person like myself who's interested to find out exactly what's going on.

Q. You knew we followed the rules, is all I can tell you.

A. That's all we can do is follow the rules.

Q. And we've followed whatever the rules are.

A. And I've tried to follow the rules as

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closely as I can, but the rules are not adequate to get all the community participation that the county should be seeking for this type of operation.

Q. All I can tell you, and I think you've acknowledged, is that we reached out to the Hanover Road Association, met Mr. Joyce on site before Mr. McCann entered his appearance, attended the community meetings, so when you make reference or make inference that my client is somehow trying to sneak this through --

A. I didn't make any inference of that type, none whatsoever.

Q. -- then I take a little bit of umbrage at that.

A. Well, you can take umbrage, but I didn't do anything to say that it was hidden. I'm saying the county process is inadequate.

Q. Okay. Mr. Lippy is one of the largest property owners and farmers along Hanover Road, is he not?

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A. I don't know the facts, I've heard today, so I'll take what I've heard today and say he's probably one of the larger ones, yes.

Q. And he's one of the bigger farmers in the area, more important farmers in the area, isn't he?

A. That's what you're telling me.

Q. You don't know? I thought you lived there?

A. I do live there, I've lived there for 28 years.

Q. And you don't know how big the Lippy farm is?

A. I just heard the actual acreage today, I never knew the actual acreage. And I know that he, from conversation with him prior to this meeting, he indicated that he rents and leases a lot of additional acreage.

Q. That he farms?

A. That he farms as a, what do we call it, a contract former, I guess you might call it, or

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contract provider of services.

MR. SCHMIDT: Okay. I have no other questions.

JUDGE BEVERUNGEN: Mr. McCann?

MR. MCCANN: No questions.

JUDGE BEVERUNGEN: Thank you, Mr. Harman.

THE WITNESS: Thank you for your time.

(Witness excused.)

JUDGE BEVERUNGEN: Is that it for the protestants?

MR. MCCANN: Yes, it is.

JUDGE BEVERUNGEN: Okay. Nothing else?

MR. SCHMIDT: No rebuttal.

JUDGE BEVERUNGEN: So we're completed?

MR. MCCANN: Yes. I wanted to ask Mr. Schmidt if, I wanted to submit a brief in short order, so if I could have a week or ten days to do that?

JUDGE BEVERUNGEN: Well, I don't normally do that in a --

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MR. SCHMIDT: I don't -- I mean, based on what I heard, I don't know what -- I mean, I didn't hear any testimony about I guess 502.1 or --

MR. MCCANN: If I can respond?

JUDGE BEVERUNGEN: Yeah, go ahead.

MR. MCCANN: We just, Valleys Planning Council just lost (U/I) so in addition to me just being retained and someone not being able to be here today --

JUDGE BEVERUNGEN: Something happened to her?

MR. MCCANN: She left.

JUDGE BEVERUNGEN: Okay, she's gone, okay. I thought you were implying that she was sick.

MR. MCCANN: No, no, no, she departed.

JUDGE BEVERUNGEN: Okay, she's gone.

MR. MCCANN: So I would sort of like, what my client really wants to say about this case, I'm not sure if -- I'm not even positive

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they want to speak since there's nothing in writing, but I mention the possibility for that, and I'm sorry, and I'll let you know if we want to submit something soon enough, but that's the factual reason why I would like the opportunity to submit something later, not additional evidence, that's not what I'm saying, but just the statement of the organization against the project.

JUDGE BEVERUNGEN: Okay.

MR. SCHMIDT: Time is really of the essence for us. We had a postponement of this case, you've heard the case, you're aware of the 502.1. Obviously because this is in the RC-2, there's a requirement that you look at the impact on the (U/I) and agricultural uses, and I think Section 411 is also in play, we've done this in other cases you've had. I mean, the burden of testimony and evidence, I don't know what we can argue. They can file an appeal to the Board of Appeals, which they may or may not do, but I

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mean, I would tell you that because of the state mandates and the business arrangements, there's a variety of reasons that this is important that my client get a decision on this, and I tried to cooperate with them, but I just don't see based on what I've heard here today that's going to be argued. I mean, I'm happy to submit to you, or we can offer oral argument now, but --

JUDGE BEVERUNGEN: Well, the one issue I wanted to ask you about was the special hearing. What --

MR. SCHMIDT: The special hearing was just to confirm your prior ruling in this case as we get it in front of you. But I think we filed that -- again, when we filed this with the zoning office, and you'll look at --

JUDGE BEVERUNGEN: I thought it said special hearing to confirm that --

MR. SCHMIDT: That we're a public utility.

JUDGE BEVERUNGEN: No, to approve the

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solar array as a permitted accessory use to the farm.

MR. SCHMIDT: Oh, wait a minute.

JUDGE BEVERUNGEN: I mean, I don't see how I'd go that route, really, without having any evidence that -- I mean, I know farmers are doing this nowadays, but I don't think it's kind of reached the level where it's habitual, like a grain silo that virtually every farmer has.

MR. SCHMIDT: Yes. I apologize, and I misspoke.

Again, many times, as you know, we file these, and when we get intake from the zoning office, they want us to file a certain way.

JUDGE BEVERUNGEN: Yeah.

MR. SCHMIDT: As that does note, it's in the alternative to a special exception.

JUDGE BEVERUNGEN: I saw that.

MR. SCHMIDT: And I do not think, I'm not really going to argue it here. If you were to find for some reason, for example, your prior

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order, I believe we meet the threshold that you identified in your prior order of one megawatt, or what is it?

JUDGE BEVERUNGEN: One megawatt.

MR. SCHMIDT: One megawatt in order to qualify as a public utility, that's what you said in the prior case. If for some reason we chose to change that and found it's not to be a public utility, we filed this as an alternative.

JUDGE BEVERUNGEN: All right, I understand that. And I'm not saying, I don't see how I would even have enough to rule. I'm just letting you know, I think I'm going to decide it as a special exception.

MR. SCHMIDT: And that's fine.

MR. MCCANN: That's fine.

JUDGE BEVERUNGEN: Because I don't think, my understanding of accessory, the way it's designed, the way it --

MR. SCHMIDT: Well, it has to be on the same lot and all that.

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JUDGE BEVERUNGEN: Yeah, you can have some sort of newfangled thing, it should be some kind of thing that's habitually seen or customarily seen.

MR. SCHMIDT: Customarily or incidental.

JUDGE BEVERUNGEN: And I don't think that it's reached that level. In ten years maybe it will be, if what happens is the community is right about the popularity of this.

MR. SCHMIDT: No. And again, just to give you the benefit of that, when we filed this, obviously when the zoning technician was flipping through the county zoning regulations and saying I don't see a solar farm in the RC-2 regulations, we can say well, Judge Beverungen has ruled that it's a public utility under the special exception criteria in a prior case. And they say well, in order to do everything, we think you also ought to have a special hearing to say no, if it's not a public utility as a special exception, it arguably is an accessory to the farm since it's

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part of the larger farm. So we followed the way they told us to do it, but I certainly understand that, and I would agree with you, but that's why we filed it this way.

JUDGE BEVERUNGEN: All right, I understand that.

MR. SCHMIDT: It does say in there, in the alternative.

JUDGE BEVERUNGEN: I knew that, I just wanted to let you know what I was thinking.

MR. SCHMIDT: Sure.

JUDGE BEVERUNGEN: Mr. McCann, is there anything you want to just kind of tell me that you think is unique about the case other than hundreds of other special exceptions I've ruled on? I mean, the facts of every case are somewhat unique but the laws aren't really, the law is pretty straightforward. Is it as simple as saying that there will be a detrimental impact and that it's a visual blight or aesthetic? You know, that's a fairly familiar argument.

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MR. MCCANN: No, I don't think Mr. Schmidt has been proceeding with that.

JUDGE BEVERUNGEN: Because of what?

MR. MCCANN: Because --

JUDGE BEVERUNGEN: Whose burden is it in a special exception case?

MR. MCCANN: That's a loaded question, and that's one of the things I wanted to think about, and perhaps --

JUDGE BEVERUNGEN: Well, evidently there is a case decided somewhere, Mr. Zimmerman tells me, but the way I read Maryland law and the way I put it in orders, and I've put it in orders for the six years I've done that, I've read the cases, I see the cases saying it's a presumptively valid use, I think I'm using a quote there. So I took that to mean the county council has already put this in the category of an allowed use, it's a conditional use, and the condition is that it not have these impacts that are talked about in Section 502. So that's the

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way I view it, and I view it as well, then I think the table turns for somebody here to show -- the plaintiff, the petitioner isn't going to get up and say they have an adverse impact.

MR. MCCANN: I just think that analysis is, if that's true, they have no, essentially what that's saying is they have no burden whatsoever, they can just show up at the hearing and simply say nothing.

JUDGE BEVERUNGEN: They have to prove that it's a special exception, which in this case it's, you know, it's a little bit of an open issue, you know. I mean, the precedent is --

MR. MCCANN: The precedent for this case is.

JUDGE BEVERUNGEN: So you're not entirely right there, they have to come in and say oh, the zoning code says this is a special exception, I have number of acres, I've met the setbacks. I mean, there are some tests, but I agree with you, I think special exceptions are

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permitted uses. Suppose somebody files one and no one shows up over here. The reality is it's going to be granted but --

MR. MCCANN: I think they would still have the burden of putting on evidence to the case, and the task would be much easier, yeah, but they still have that burden. I just don't think that the (U/I) is they have no burden.

JUDGE BEVERUNGEN: Okay. Well then, shifting back to this case, we've got the testimony they've put on that it doesn't have chemicals, it's not going to cause a hazard or traffic or fire, and the testimony from protestants is they're ugly, that they don't like them, that it's an aesthetic assault, and that there's kind of a long list of applicants going on here, that this is, everybody's pushing this. So, are either of those enough, is there anything else that I should --

MR. MCCANN: Well, we still have the issue of the scenic route impact. There's been

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no testimony really about the scenic route and relative impact, at least (U/I) but I think they have some burden to put on some evidence of relative impact, you know, the balance between what is presumptively valid and what's going to happen in this case, so I think there is a burden on them to make some showing, maybe not showing an approved plan, but I don't think they've done that.

I also think that this is a scenic route, so I think (U/I) elsewhere, and when the factor of, this is a very large farm and could be elsewhere on that very same parcel, and not have that same proposed, you know, because it is so proximate to Hanover Road, and I don't think costs associated with (U/I) that I could understand, it's a part of the way you do the panels, but this very same solar panel system could be moved farther back, potentially anyway, without an effect on the scenic route. And I also, I think Mr. Schmidt and his client were

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saying he recognizes that impact.

JUDGE BEVERUNGEN: I mean, I'm glad he was honest. I mean, who can say that these are attractive, they're not attractive, they're solar panel. Cell towers are ugly, but that's the classic Schultz versus Bratton --

MR. MCCANN: They all look the same.

JUDGE BEVERUNGEN: I understand what it is, and I understand that everyone here today, I don't actually because I don't carry one, bu probably most people have smart phones and we need the cell towers, so is it a necessary evil, you know, I don't know, but frankly I'm glad the gentleman didn't say that he's never heard anyone say these are ugly, because you'd much rather see a hillside than see these, but that's not what my task is, that would be insane.

Certainly that's not my task on this side, is it, for me to agree that these are ugly, and that's enough so we can deny the case?

MR. MCCANN: Well, I think it

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complicates things that are not allowed by special exception. So there is, you know, a feeling, like in your earlier decision which, there really was not a lot of evidence in the case, but --

JUDGE BEVERUNGEN: No, the evidence was a lot of my research, right, and the industry does call it utility level solar. I actually know some folks in the industry. You know, they could have, somebody could have appealed that case if they wanted to, and maybe you'll appeal this one, but I don't think -- that is how it's phrased, it's utility grade solar, as compared to a panel on your house.

And then when this joins the BG&E infrastructure, what else are you going to call it? How is that not -- BG&E is a public utility, right?

MR. MCCANN: They are the public utility but this is no, I would submit this is not a public utility.

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JUDGE BEVERUNGEN: So you think that section of the zoning code means BG&E, C&P, because it was written 50 years ago, do you think so now it couldn't include geothermal, wind, anything like that? If wind became wildly successful and wind turbines generated 80 percent of our electricity needs here, would that be a public utility?

MR. MCCANN: I think the reference to public in that term is not to confuse who uses it, but rather who is providing it.

JUDGE BEVERUNGEN: Is BG&E the public? They're very much private, and now they're owned by a company in France, I believe, so --

MR. MCCANN: But again, that's something I would like to speak to in writing, but that's fine.

JUDGE BEVERUNGEN: Well, I mean, we're doing it here.

MR. MCCANN: Yeah. And then the other thing I would say, Mr. Donithan was also frank in

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saying the aesthetic impact would be less if there were less panels, so there clearly has to be some showing by Mr. Schmidt about, you know, about that, why couldn't you do this with fewer panels. We're talking about impact, relative impact and impact on the scenic route, and we have no landscape plan so we have no idea --

JUDGE BEVERUNGEN: But we never do in a zoning case, do we?

MR. MCCANN: And I would make the same argument, so --

JUDGE BEVERUNGEN: I know, so then you want me to change county policy, and I can't do that.

MR. MCCANN: I don't know that it's -- I don't think there's anything that allows a developer to wait to submit a landscape plan until after permitting, there's nothing explicit that says that.

JUDGE BEVERUNGEN: No, but just practicality, they've done it for 20 years and

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the developers say look, do you want us to spend an extra ten grand and then be denied? Should they design a house all the way down to the gingerbread and the bric-a-brac, and then have the plan disapproved?

MR. MCCANN: Well, I think a development case is different. When you have cases like this that we're taking about, a special exception case with impact on a scenic route, this is not a special exception of that kind, and maybe when you view that particular impact, then no, maybe the costs come down, it wouldn't be $10,000.

JUDGE BEVERUNGEN: I don't know, but it costs some money.

MR. MCCANN: I just don't think it's -- I think, and I've said it before and it's been rejected by you before, I don't think you can approve a plan unless you have some level of, any level of detail. Something, some scratching on a piece of paper saying we're going to put a bunch of trees this tall --

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JUDGE BEVERUNGEN: Well, they've done that, they've shown me where the trees are going to be, they told me the width of the buffer.

MR. MCCANN: But that's just the location.

JUDGE BEVERUNGEN: What else do I need?

MR. MCCANN: What's going to be there.

JUDGE BEVERUNGEN: Isn't that for a landscape architect to determine, won't the county's landscape architect do that?

MR. MCCANN: I just think the impact, there's some burden of Mr. Schmidt to prove scope of impact, and the impact would be greater on this scenic route and on the neighboring properties if it was (U/I) something, how can you make that determination.

JUDGE BEVERUNGEN: Then you could argue for me to put conditions in the order.

Let me ask you, so this public utility would be BG&E. Suppose BG&E were to come out here and put up those hideous transformers; would

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that just be allowed as a special exception? Those ugly transformers with wire fences all around them that you see in a lot of rural areas, would they all be allowed?

MR. MCCANN: I don't know what that would be. (U/I) BGE and we won that case.

JUDGE BEVERUNGEN: Okay, so that's why I asked the question. Cell towers, they sometimes put flags on or they put evergreen trees around them.

MR. SCHMIDT: I think they're permitted as a right.

JUDGE BEVERUNGEN: BG&E?

MR. SCHMIDT: Uh-huh.

JUDGE BEVERUNGEN: How so?

MR. SCHMIDT: Under 1.A.01.2, in which their use is permitted as a right in an RC-2 zone, telephone, telegraph, electric power underground cables are provided to any such (U/I) underground gas, water and sewer mains, so, since they're not underground --

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MR. MCCANN: If you look at all the special exceptions, they're all subject to another section or provided they're underground. But there's none of that here because we just don't know what's going to be done.

Other than that, I don't have anything.

JUDGE BEVERUNGEN: Okay. Anything else, Mr. Schmidt?

MR. SCHMIDT: The only other thing I would say is that, I guess sit down and shut up maybe when you're ahead of the game, but if you look at the scenic route guidelines, there's nothing in there that prohibits this. I mean, they're really geared toward tall structures and tall buildings.

JUDGE BEVERUNGEN: Well, he didn't say they're prohibited. What about his argument, he sets that it meets the special exception test because it's going to be a worse impact here than it would a mile down the road where the scenic district stops.

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MR. SCHMIDT: Well, all of Route 30 is a scenic route.

JUDGE BEVERUNGEN: Well then, make a left turn. His point is, you'll find somewhere else in the RC-2 where there's not a scenic district. Does that meet that Loyola College burden?

MR. SCHMIDT: Yeah, not, because there's nothing in the scenic district regulations that to me really govern this. I mean, yeah, it's on a scenic route, but there's nothing that says -- the scenic route guidelines are designed for large buildings, housing developments, changing the topography of the land. I don't even think they're geared to this type of situation.

JUDGE BEVERUNGEN: Okay. All right. Anything else, Mr. McCann?

MR. MCCANN: No.

JUDGE BEVERUNGEN: All right, thanks everybody.

MR. SCHMIDT: Thank you.

(Whereupon, the hearing adjourned at 12:50 p.m.)

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Notary Public-Maryland
My Commission Expires
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Pet. Ex. 14

My Neighborhood Map

Created By
Baltimore County
My Neighborhood

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My Neighborhood Map

Created By
Baltimore County
My Neighborhood

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My Neighborhood Map

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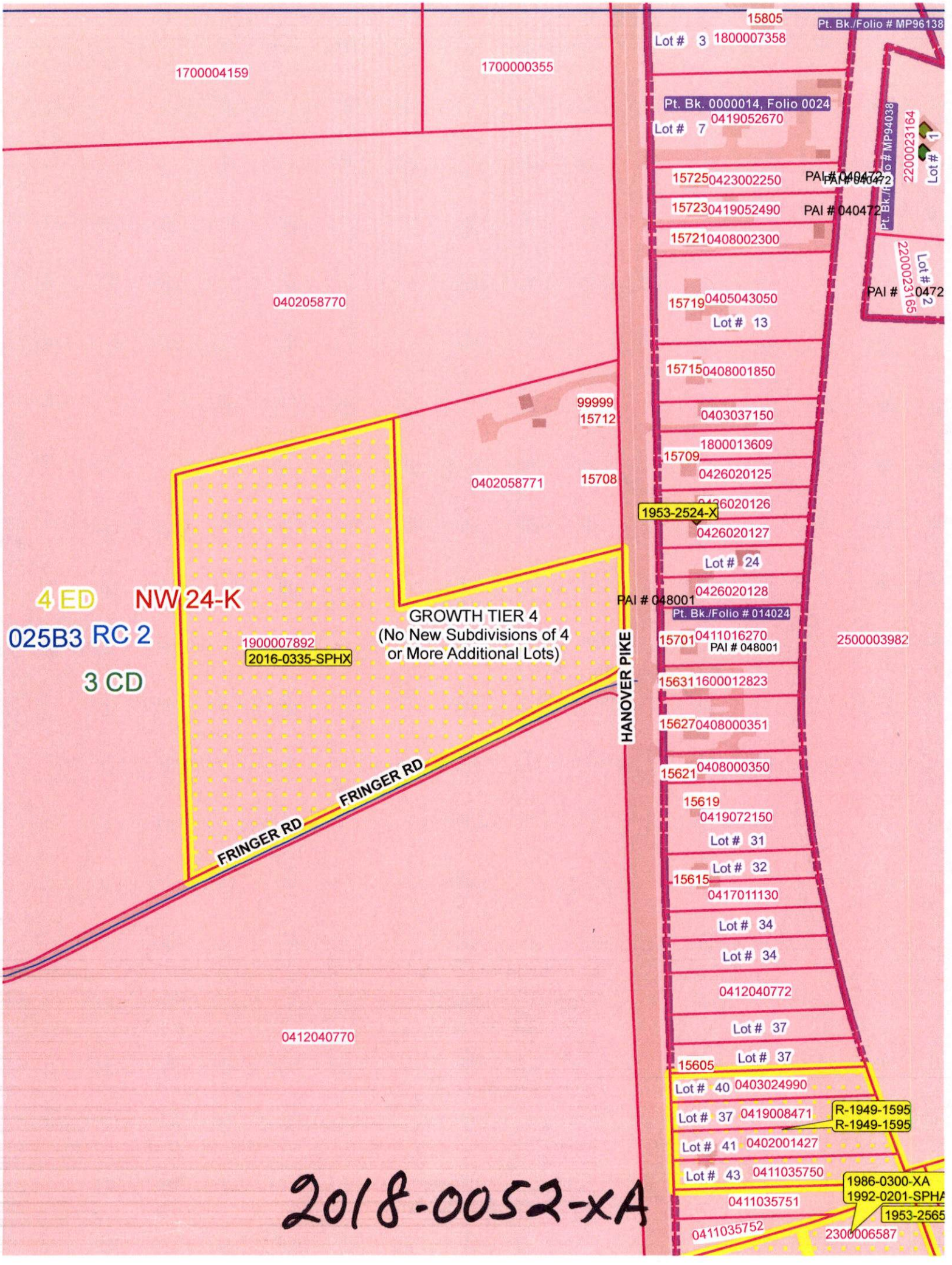
Printed 10/11/2016

Lippy Brothers, Inc.
Agricultural Easements

Farm	County	acres
Hannon(chicken house)	Carroll	214.4
Hering (Keith's house)	Carroll	201.5
Shephard-Myers	Carroll	199.6
W Lippy	Carroll	174.0
Fringer/Sater	Carroll	127.1
Hering	Carroll	209.6
Hering	Carroll	119.1
Hannon(Old Bach Vly)	Carroll	216.5
Gross	Carroll	138.3
Basler	Carroll	69.3
Richards - (application submitted)	Carroll	101.2
Fringer/Bortner	Baltimore	134.0
Howard	Baltimore	78.2
W Lippy/Cullison	Baltimore	102.0
Tillinghast	Baltimore	128.0

2212.8


1700004159
1700000355
15805
Pt. Bk./Folio # MP96138
Lot # 3
1800007358
Pt. Bk. 0000014, Folio 0024
0419052670
Lot # 7
15725
0423002250
PAI # 040472
15723
0419052490
PAI # 040472
157210408002300
Pt. Bk./Folio # MP94038
2200023164
Lot # 1
2200023165
Lot # 2
PAI # 0472
0402058770
15719
0405043050
Lot # 13
15715
0408001850
99999
15712
0403037150
1800013609
15709
0426020125
0402058771
15708
0426020126
1953-2524-X
0426020127
Lot # 24
0426020128
PAI # 048001
Pt. Bk./Folio # 014024
4 ED
NW 24-K
025B3 RC 2
3 CD
GROWTH TIER 4
(No New Subdivisions of 4
or More Additional Lots)
1900007892
2016-0335-SPHX
15701
0411016270
PAI # 048001
2500003982
HANOVER PIKE
156311600012823
156270408000351
15621
0408000350
15619
0419072150
Lot # 31
Lot # 32
15615
0417011130
Lot # 34
Lot # 34
0412040772
Lot # 37
FRINGER RD
FRINGER RD
0412040770
15605
Lot # 37
Lot # 40
0403024990
Lot # 37
0419008471
R-1949-1595
R-1949-1595
Lot # 41
0402001427
Lot # 43
0411035750
1986-0300-XA
1992-0201-SPHA
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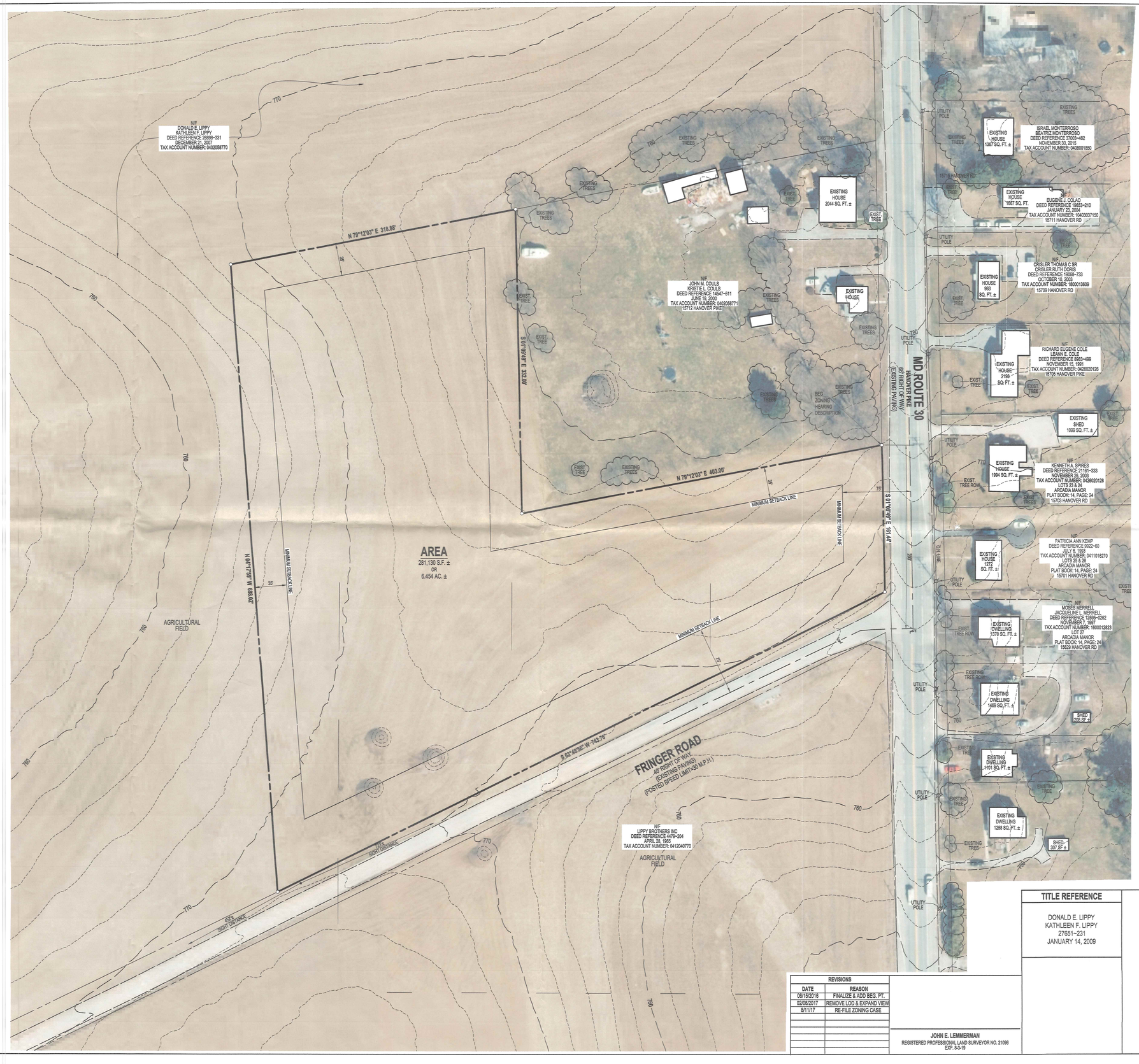
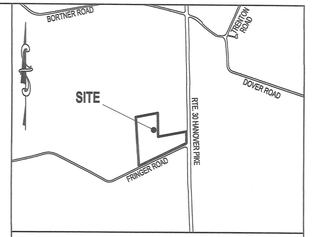
1953-2565
0411035752
2300006587

2018-0052-xA

AX-5200-615

MARYLAND STATE GRID NORTH (NAD 1983/91)





VICINITY MAP

SCALE: 1" = 1000'

GENERAL NOTES:

1. DEVELOPMENT NAME: LIPPY PROPERTY
2. OWNER:
   DONALD E. LIPPY
   KATHLEEN F. LIPPY
   421 LEES MILL ROAD
   HAMPSTEAD, MD 21074
   APPLICANT:
   EARTH AND AIR TECHNOLOGIES, LLC.
   C/O KEITH DONITHAN
   445 HAND COURT
   HAMPSTEAD, MD 21074
   PREPARED BY:
   RTF ASSOCIATES, INC.
   142 EAST MAIN STREET
   WESTMINSTER, MD 21157
   ATTEN: JOHN E. LEMMERMAN
3. 410-848-2040
4. PROPERTY REFERENCE:
   TAX MAP: 25, GRID: 21, PARCEL: 267
   TAX ACCOUNT #: 1900007892
   DEED: 27651~231
   BOUNDARY: RTF ASSOCIATES, INC.
   ZONING: BALTIMORE COUNTY, 200 SCALE ZONING MAP, GIS TILE 025B3
5. FLOODPLAIN: NO IDENTIFIED FEMA FLOODPLAIN ON SITE
6. SITE AREA: 6.454 AC. ± ; ZONED: RC-2
7. PARKING:
   REQUIRED: 0
8. EXISTING USE IS RESIDENTAL AND AGRICULTURAL.
9. SITE HISTORY: NONE
10. THE PROPERTY HAS BEEN HELD INTACT SINCE 1982
11. THE SITE IS NOT LOCATED WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
12. THE SITE IS LOCATED BEYOND THE URBAN RURAL DEMARCATION LINE (URDL).
13. THERE WERE NO COMMERCIAL PERMITS OR ACTIVE ZONING VIOLATIONS FOUND ON FILE WITH BALTIMORE COUNTY.
14. NO SIGNAGE IS PROPOSED.
15. THIS SITE IS NOT IN ANY FAILED BASIC SERVICES MAP AREAS.
16. ALL ADJOINING PROPERTIES ARE ZONED RC2
17. A SOLAR FARM/FACILITY WAS PREVIOUSLY APPROVED ON THIS PROPERTY BY THE ADMINISTRATIVE LAW JUDGE FOR BALTIMORE COUNTY IN CASE NO. 2016-0305-SPHX, THAT APPROVAL IS CURRENTLY PENDING APPEAL AND THE CURRENT PLAN AND PETITION ARE FILED DUE TO THE RECENTLY ENACTED PROVISIONS OF BILL 37-17.

SOILS = GLOUCESTER, +

SPECIAL EXCEPTION RELIEF:

1. TO GRANT SPECIAL EXCEPTION RELIEF FOR A SOLAR FACILITY PURSUANT TO BCZR § 4E-102 (AS ESTABLISHED BY BILL 37-17).
2. FOR SUCH OTHER AND FURTHER RELIEF AS MAY BE REQUIRED BY THE ADMINISTRATIVE LAW JUDGE FOR BALTIMORE COUNTY.

VARIANCE RELIEF:

1. TO APPROVE A MINIMUM SETBACK OF 35 FEET, IN LIEU OF THE 50 FT. SOLAR FACILITY SETBACK REQUIRED TO THE NEAREST TRACT BOUNDARY, PURSUANT TO BCZR § 4E-104.A.4;
2. FOR SUCH OTHER AND FURTHER RELIEF AS MAY BE REQUIRED BY THE ADMINISTRATIVE LAW JUDGE FOR BALTIMORE COUNTY.

Pet No 2

PLAN TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION AND VARIANCE
FOR

LIPPY PROPERTY

HANOVER ROAD AND NORTH SIDE OF FRINGER ROAD
4TH ELECTION DISTRICT, BALTIMORE CO., MD
3RD COUNCILMANIC DISTRICT
TAX MAP: 25, GRID: 21, PARCEL: 267

NOTE:
THIS SURVEY WAS COMPLETED WITHOUT THE BENEFIT OF A TITLE REPORT.

NOTE:
A LICENSEE EITHER PERSONALLY PREPARED THIS BOUNDARY SURVEY OR WAS IN RESPONSIBLE CHARGE OVER ITS PREPARATION AND THE SURVEY WORK REFLECTED IN IT, IN COMPLIANCE WITH REQUIREMENTS SET FORTH IN §09.13.06.12 OF THE ANNOTATED CODE OF MARYLAND.

REVISIONS	
DATE	REASON
06/15/2016	FINALIZE & ADD BEG. PT.
02/08/2017	REMOVE LOD & EXPAND VIEW
8/11/17	RE-FILE ZONING CASE

JOHN E. LEMMERMAN
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 21098
EXP. 8-3-19

TITLE REFERENCE
DONALD E. LIPPY KATHLEEN F. LIPPY 27651~231 JANUARY 14, 2009

RTF Associates, Inc.
LAND SURVEYORS & PLANNERS
142 EAST MAIN STREET WESTMINSTER, MD 21157
410-848-2040 FAX# 443-289-8942 410-876-1222
EMAIL: RTF142@GMAIL.COM WWW.RTFSURVEYING.COM

CHECKED BY: SPJEL DATE: 06/08/2016
DRAWN BY: RMF DATE: 06/07/2016
SCALE: 1" = 50' RTF JOB#: 16-44

MARYLAND STATE GRID NORTH (NAD 1983/91)

NIF
DONALD E. LIPPY
KATHLEEN F. LIPPY
DEED REFERENCE 26898~331
DECEMBER 21, 2007
TAX ACCOUNT NUMBER: 0402058770

MODULE TRACKER

N 79°12'03" E 318.88'

S 01°09'49" E 332.00'

LIMIT OF DISTURBANCE

NIF
JOHN M. COULS
KRISTIE L. COULS
DEED REFERENCE 14547~511
JUNE 19, 2000
TAX ACCOUNT NUMBER: 0402058771
15712 HANOVER PIKE

2 MW INVERTER STATION

BEG ZONING HEARING DESCRIPTION

AREA
281,130 S.F. ±
OR
6.454 AC. ± +

N 79°12'03" E 403.00'

S 01°09'49" E 184.44'

MINIMUM SETBACK LINE

N 44°17'36" W 688.20'

AGRICULTURAL FIELD

S 53°48'56" W 743.76'

13.0'

FRINGER ROAD
40' RIGHT OF WAY
(EXISTING PAVING)
(POSTED) SPEED LIMIT=50 M.P.H.)

NIF
LIPPY BROTHERS INC
DEED REFERENCE 4479~204
APRIL 28, 1995
TAX ACCOUNT NUMBER: 0412040770

AGRICULTURAL FIELD

MD ROUTE 30
HANOVER PIKE
66' RIGHT OF WAY
(EXISTING PAVING)

NIF
ISRAEL MONTERROSO
BEATRIZ MONTERROSO
DEED REFERENCE 37003~462
NOVEMBER 30, 2016
TAX ACCOUNT NUMBER: 0408001850

15711 HANOVER RD

NIF
EUGENE J. COLAO
DEED REFERENCE 19859~210
JANUARY 23, 2004
TAX ACCOUNT NUMBER: 1403037150
15711 HANOVER RD

NIF
CRISLER THOMAS C SR
CRISLER RUTH DORIS
DEED REFERENCE 19099~733
OCTOBER 10, 2003
TAX ACCOUNT NUMBER: 1800013609
15709 HANOVER RD

RICHARD EUGENE COLE
LEANN E. COLE
DEED REFERENCE 6663~499
NOVEMBER 15, 1991
TAX ACCOUNT NUMBER: 0409020126
15705 HANOVER PIKE

NIF
KENNETH A. SPIRES
DEED REFERENCE 21161~333
NOVEMBER 26, 2003
TAX ACCOUNT NUMBER: 0408020126
LOTS 23 & 24
ARCADIA MANOR
PLAT BOOK: 14, PAGE: 24
15703 HANOVER RD

PATRICIA ANN KEMP
DEED REFERENCE 5922~60
JULY 6, 1992
TAX ACCOUNT NUMBER: 0411016270
LOTS 25 & 26
ARCADIA MANOR
PLAT BOOK: 14, PAGE: 24
15701 HANOVER RD

NIF
MOSES MERRELL
JACQUELINE L. MERRELL
DEED REFERENCE 12590~0082
NOVEMBER 7, 1997
TAX ACCOUNT NUMBER: 1600012823
LOT 27
ARCADIA MANOR
PLAT BOOK: 14, PAGE: 24
15625 HANOVER RD

EXISTING TREES
EXISTING TREE ROW
EXIST. TREE
UTILITY POLE
C/H LINE

VICINITY MAP
SCALE: 1" = 1000'

BORTNER ROAD
SITE
FRINGER ROAD
RTE. 30 HANOVER PIKE
DOVER ROAD

PLAN TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION AND ~~SPECIAL HEARING~~
FOR
LIPPY PROPERTY
HANOVER ROAD AND NORTH SIDE OF FRINGER ROAD
4TH ELECTION DISTRICT, BALTIMORE CO., MD
3RD COUNCILMANIC DISTRICT
TAX MAP: 25, GRID: 21, PARCEL: 267
AERIAL PHOTO SOURCE: MERLIN, DATE: 2011-13

TITLE REFERENCE

DONALD E. LIPPY
KATHLEEN F. LIPPY
27651~231
JANUARY 14, 2009

REVISIONS	
DATE	REASON
2-6-2017	FINAL LANDSCAPE DESIGN

RTF Associates, Inc.
LAND SURVEYORS & PLANNERS
142 EAST MAIN STREET WESTMINSTER, MD 21157
410-848-2040 FAX# 443-289-8942 410-876-1222
EMAIL: RTF142@GMAIL.COM WWW.RTFSURVEYING.COM

CHECKED BY: SPJEL DATE: 06/08/2016
DRAWN BY: RMF DATE: 06/07/2016
SCALE: 1" = 50' RTF JOB#: 16-44

PLANT LIST

ID	QUANT	BOTANIC NAME	COMMON NAME	minimum SIZE	ROOT	SPACING	ultimate size	Cost Estimate UNIT COST	TOTAL COST
37	**Major deciduous trees**						Ht/Width		
A	14	Acer campestra 'Stgrezam'	St. Gregory Hedge Maple	2" cal.	B&B	random (see plan)	30' x 30'	$300	$4,200
G	5	Gleditsia triacanthos 'Shademaster'	Shademaster Locust	2" cal.	B&B	random (see plan)	45' x 35'	$300	$1,500
Q	18	Quercus palustris	Pin Oak	2" cal.	B&B	random (see plan)	70' x 40'	$300	$5,400
115	**Evergreen Trees**								
INS	27	Ilex x "Nellie R. Stevens"	Nellie Stevens Holly	6'	B&B	random (see plan)	20' x 10'	$180	$4,860
Jv	54	Juniperus virginiana	Eastern Red Cedar	6'	B&B	random (see plan)	45' x 14'	$180	$9,720
Pf	22	Pinus flexilis 'Vanderwolf'	Limber Pine	6'	B&B	random (see plan)	22' x 12'	$180	$3,960
To	12	Thuja occidentalis 'Techny'	Green Giant Arborvitae	6'	B&B	random (see plan)	20' x 6'	$180	$2,160
23	**Minor Deciduous Trees**								
CW	4	Crataegus viridis 'Winter King'	Winter King Hawthorn	1" cal.	B&B	random (see plan)	25' x 25'	$200	$800
M	13	Malus 'Indian Summer'	Indian Summer Crabapple	1" cal.	B&B	random (see plan)	18' x 24'	$200	$2,600
Py	6	Prunus x yedoensis "Akebono"	"Akebono" Yoshino Cherry	1" cal.	B&B	random (see plan)	25' x 25'	$200	$1,200
66	**Evergreen Shrubs**								
PI	38	Prunus laurocerasus "Schipkaensis	Schip Laurel	24"	#5 cont.	random (see plan)	4' x 8'	$60	$2,280
V	28	Viburnum rhytidophyllum	Leatherleaf Viburnum	24"	#5 cont.	random (see plan)	8' x 8'	$60	$1,680
total =	241							total =	$40,360

Minimum Landscape Maintenance Requirements

1. Lawn areas shall be mowed to a height of 2 to 3 inches and not allowed to reach a height of 4 inches before mowing.
2. All curbs and walks shall be edged as needed.
3. All lawn areas adjacent to building faces or structures shall be trimmed.
4. A slow release nitrogen balanced fertilizer with a 2-1-1 ratio shall be applied at a rate of 2 pounds of nitrogen per 1000 square feet in September, October, and February.
5. Lime shall be applied at the rate determined by a soils report.
6. It is recommended that lawn areas be treated in mid-March to early April with pre-emergent herbicide (Betasan) or equal applied at the manufacturer's recommended rate.
7. A post-emergent herbicide (Trimec) or equal is recommended to be sprayed on lawn areas in the late spring or the early fall. Follow manufacturer's rates and recommendations.
8. Insecticides and fungicides are recommended for insect and disease control.
9. Reseed bare areas of lawn as necessary. Yearly aeration is recommended.
10. All trash, litter, and debris shall be removed from lawn areas, parking lots, and shrub beds as needed.
11. Mulch all shrub and groundcover beds yearly with 3 inches of shredded hardwood bark.
12. Permit shrubs and trees to grow and enlarge to their design size. Consult project landscape architect for details.
13. Prune trees in accordance with *Landscape Specification Guidelines for Baltimore-Washington Metropolitan Areas.*

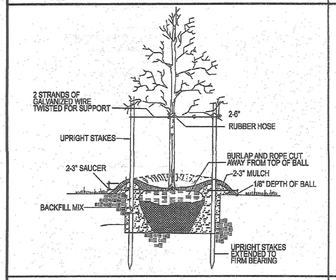
LANDSCAPE SPECIFICATIONS

A. All plants shall be identified in accordance with the latest edition of Hortus Third, by "The Staff of the Hortorium"
B. All nursery stock shall conform to American Association of Nurserymen, Inc. standards as described in American standard for Nursery Stock, current ANSI A-300 specifications.
C. Landscape specifications shall conform to Landscape Guidelines for Maryland, Washington, D.C., and Virginia, latest edition. All nursery stock shall be planted in accordance with the procedures outlined in the guidelines.
D. Three (3) inches topsoil on all disturbed areas to be landscaped, seeded or sodded is required.

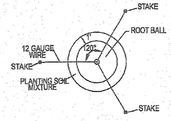
INSTALLATION

A. Standards to conform to the most recent version of the ANSI A300 Standards Part 6 – Transplanting and Landscape Specifications Guidelines of the Landscape Contractors Association for Maryland, Washington, D.C., and Virginia.
B. Planting on individual lots shall be installed upon final grading inspection.
No final grading approval shall be given on the building permit until landscaping is complete.
C. A completed and sealed certification by a landscape architect shall be provided at the initial inspection. The completion form with photographs is required.
D. Acceptable plant survival shall be defined as not more than 1/3 mortality. A 12 month inspection will be performed by the County. No inspections shall be finalized from November 1st to March 1st.

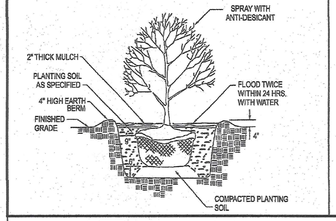
DECIDUOUS TREE PLANTING DETAIL



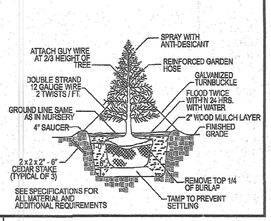
STAKING PLAN (NOT TO SCALE)



SHRUB PLANTING DETAIL



EVERGREEN TREE DETAIL



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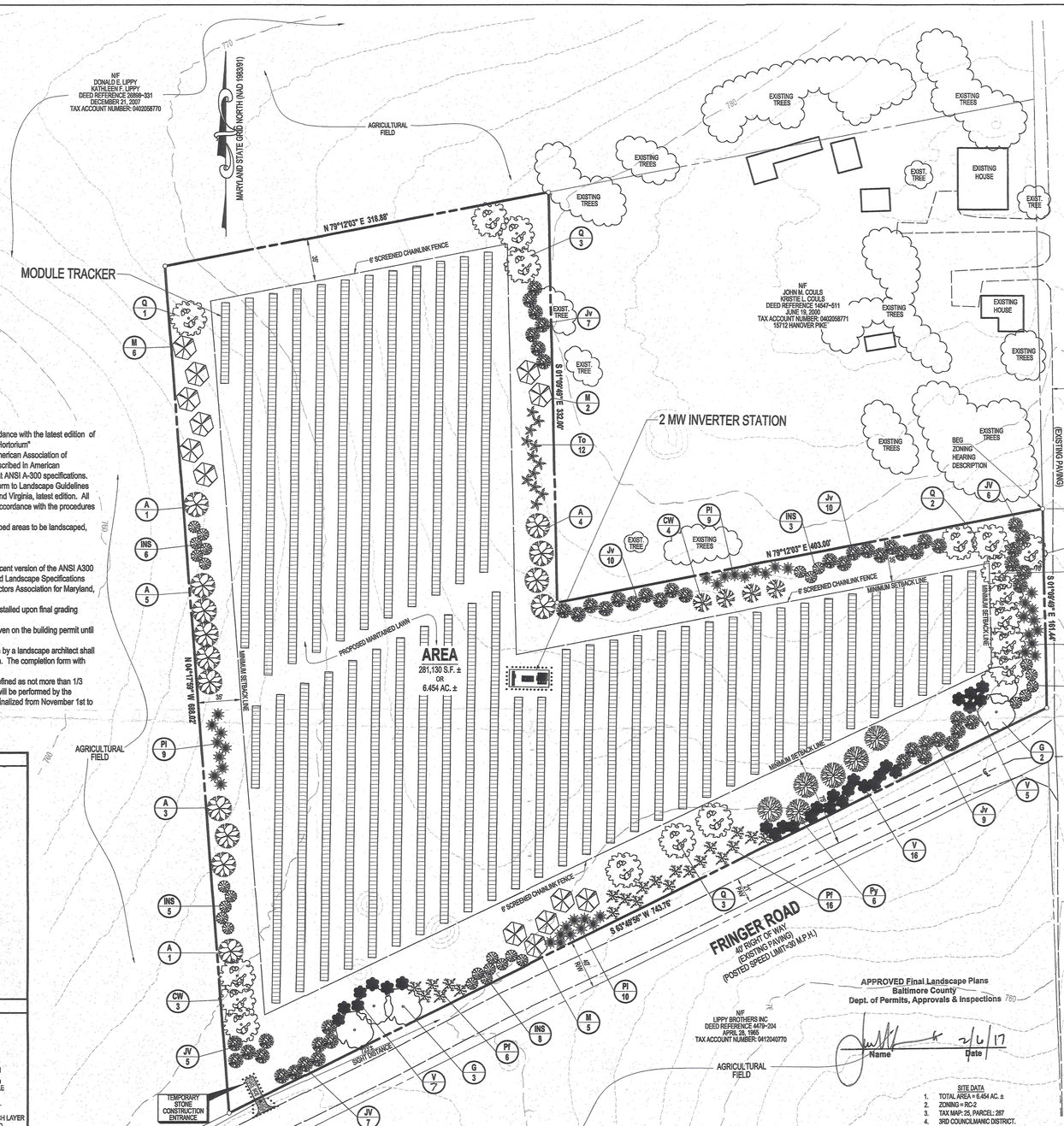
142 EAST MAIN STREET WESTMINSTER, MD 21157
410-848-2040 FAX# 443-289-8942 410-876-1222
EMAIL: RTF142@GMAIL.COM WWW.RTFSURVEYING.COM
CHECKED BY: _____ DATE: _____
DRAWN BY: MEB DATE: 12/22/2016
SCALE: 1" = 50' RTF JOB#: 16-44

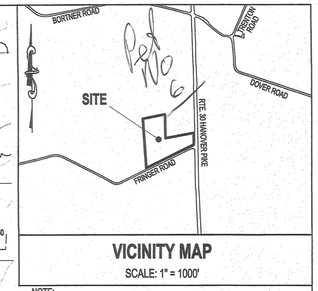
-------- DENOTES LIMIT OF DISBURSEMENT

REVISIONS	
DATE	REASON
2-3-2017	County review comments
2-5-2017	County review comments

STATE OF MARYLAND — JOHN E. LEMMERMAN — No. 21096 — PROFESSIONAL LAND SURVEYOR

JOHN E. LEMMERMAN
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 21096
EXP. 8-3-17





VICINITY MAP
SCALE: 1" = 1000'

NOTE:
1. "SPECIAL EXCEPTION" HEARING/ APPROVAL CASE #2016-0335-SPHX ON OCTOBER 12, 2016. THE RELIEF GRANTED IS SUBJECT TO THE FOLLOWING
1.1. 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.
1.2. PRIOR TO ISSUANCE OF PERMITS PETITIONERS MUST SUBMIT FOR APPROVAL BY THE BALTIMORE COUNTY LANDSCAPE ARCHITECT A LANDSCAPE PLAN DEMONSTRATING THE "SOLAR FARM" WILL BE ADEQUATELY SCREENED FROM HANOVER PIKE CONSISTENT WITH THE SCENIC VIEW GUIDELINES IN THE CMDP.
1.3. NO SIGNAGE OR LIGHTING SHALL BE PERMITTED.
1.4. IF THE SOLAR FARM IS NOT IN CONTINUOUS USE AND OPERATION FOR A PERIOD OF ONE (1) YEAR OR MORE, IT SHALL BE REMOVED AT THE OWNERS' OR OPERATOR'S SOLE EXPENSE. SHOULD THE OWNERS OR OPERATORS FAIL TO DO SO, BALTIMORE COUNTY MAY ENGAGE A CONTRACTOR TO PERFORM THE WORK, AND ALL COSTS AND EXPENSES ASSOCIATED THEREWITH SHALL BE A LIEN ON THE PROPERTY AND COLLECTED IN THE SAME MANNER AS REAL ESTATE TAXES.
1.5. THE SOLAR FARM SHALL BE ENCLOSED BY PERIMETER FENCING TO PREVENT UNAUTHORIZED ACCESS TO THE SITE AND SCREEN THE VIEW FROM OFF-SITE.
1.6. ALL POWER LINES AT THE SITE, TO THE EXTENT PRACTICABLE, SHALL BE PLACED UNDERGROUND.
2. SITE IS UN-MANNED AND MONITORED REMOTELY. NO COMMERCIAL ENTRANCE OR PARKING IS REQUIRED.
3. **ALL PROPERTIES SHOWN ARE ZONED RC-2**

6' PERIMETER SCREENED CHAIN LINK FENCING
DETAIL
NTS

APPROVED Final Landscape Plans
Baltimore County
Dept. of Permits, Approvals & Inspections
Name _____ Date 2/6/17

SITE DATA
1. TOTAL AREA = 6.454 AC. ±
2. ZONING = RC-2
3. TAX MAP: 25, PARCEL: 267
4. 3RD COUNCILMANIC DISTRICT.

OPERATIONS IN INSTALLATION PHASE SCHEDULE	
1	LAYOUT UTILITIES REVIEW AND MARKING.
2	UNDESIREABLE VEGETATION REMOVAL AND HERBICIDE APPLICATION.
3	PLANTING PIT EXCAVATION, SOIL PREPARATION, AND PLANT INSTALLATION.
4	PLANTING BED ROTO-TILLING AND SOIL PREPARATION, APPLYING SHREDDED HARDWOOD BARK (SHB) MULCH, AND PLANT INSTALLATION.
5	APPLYING FERTILIZER SOLUTION AFTER INSTALLATION, AND CLEANUP.

AREA OF DISBURSANCE:
- 600 PIERS@ @ 1 SQ. FT. EACH = 600 SQ. FT. (PILE DRIVEN)
- CONCRETE PAD(S) FOR INVERTERS = 600 SQ. FT.±
- STABILIZED CONSTRUCTION ENTRANCE = 759 SQ. FT. ±
- TOTAL AREA OF DISTURBANCE = 1759 SQ. FT.
- THERE WILL BE NO ADDITIONAL GRADING (ANY DISTURBANCE OF EARTH, INCLUDING BUT NOT LIMITED TO CLEARING, STRIPPING, STOCKPILING, EXCAVATING, SCARIFYING, FILLING OR ANY COMBINATION THEREOF) OTHER THAN DISTURBANCE NOTED ABOVE.

TREE PROTECTION NOTES
1. Upon notification of County approval of the final landscape plan, trees which are to remain shall be marked in the field by the developer and protected in an approved manner. Trees within the construction area which are to remain undisturbed shall be encircled with a fence for protection, (snow fencing or other approved methods). The contractor shall not disturb the area within the fence in any manner deleterious to the trees.
2. Any trenching operations within the vicinity of trees should be done in a manner to protect the tree roots. Tearing and ripping of tree roots should be avoided. Roots should be severed neatly.
3. All trees to be removed should be removed in a manner that will not damage the remaining trees. Any trees that are to remain that are damaged during clearing operation must be repaired in an approved manner by a tree expert as soon as final clearing has been completed. After construction is completed, temporary barriers, surplus materials and all trash, debris and rubbish shall be removed from the site. All backfill shall be clear of building material, stone and rubbish.
4. Existing trees (particularly mature trees) which are retained will undergo "post operative shock" caused by the construction activity. All possible safeguards should be taken to minimize these effects and to provide optimum growth conditions. Foliage feeding and liquid or root feeding are encouraged. Branch and foliage thinning are also desirable.

APPLICANT	OWNER	TITLE REFERENCE
EARTH AND AIR TECHNOLOGY C/O KEN DONITHON 60 AILE RUN CT, SUITE 4 WESTMINSTER, MD 21157	DONALD E. LIPPY KATHLEEN F. LIPPY 421 LEES MILL ROAD HAMPSTEAD, MD 21074	DONALD E. LIPPY KATHLEEN F. LIPPY 27651-231 JANUARY 14, 2009

FINAL LANDSCAPE PLAN LANDSCAPE ARCHITECT CERTIFICATION FORM

IT IS CERTIFIED THAT THIS LANDSCAPE PLAN IS IN COMPLIANCE WITH ALL PLANS PREVIOUSLY APPROVED BY BALTIMORE COUNTY AND THE BALTIMORE COUNTY COMMENTS ATTENDANT THERETO.

CHRIS BATTEN
PRINT NAME

2/6/2017
DATE

STATE OF MARYLAND — CHRIS BATTEN — NO. 921 — LANDSCAPE ARCHITECT

FINAL LANDSCAPE PLAN OWNER CERTIFICATION FORM

I CERTIFY THAT I HAVE REVIEWED THIS FINAL LANDSCAPE PLAN; THAT I AM AWARE OF THE REGULATIONS PRESENTED IN THE BALTIMORE COUNTY LANDSCAPE MANUAL; AND I AGREE TO COMPLY WITH THESE REGULATIONS AND ALL APPLICABLE POLICY, GUIDELINES AND ORDINANCES. I AGREE TO CERTIFY THE IMPLEMENTATION OF THIS APPROVED FINAL LANDSCAPE PLAN UPON COMPLETION OF THE LANDSCAPE INSTALLATION PRIOR TO PWA CLOSEOUT IF APPLICABLE OR NOT LATER THAN ONE (1) YEAR FROM THE DATE OF APPROVAL OF THIS PLAN TO THE DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS, DEVELOPMENT PLANS REVIEW, ROOM 119, COUNTY OFFICE BUILDING, 111 W. CHESAPEAKE AVENUE, TOWSON, MD 21204.

APPLICANT'S SIGNATURE	2/6/2017 DATE		EARTH AND AIR TECHNOLOGY PRINT NAME
60	AILE RUN COURT	SUITE 4	410-980-9325
ADDRESS (PLEASE PRINT)	STREET		PHONE #
WESTMINSTER	MARYLAND		21157
CITY	STATE		ZIP

PAI # N/A PERMIT # _____

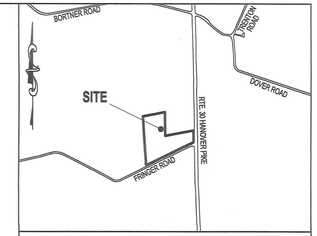
FILE: SPECIAL EXCEPTION # 2016-0335-SPHX Pet. No. 6

FINAL LANDSCAPE PLAN FOR SOLAR PANEL ARRAY FIELD AS A "PUBLIC UTILITY USE" FOR

LIPPY PROPERTY

HANOVER ROAD AND NORTH SIDE OF FRINGER ROAD
4TH ELECTION DISTRICT, BALTIMORE CO., MD
3RD COUNCILMANIC DISTRICT
TAX MAP: 25, GRID: 21, PARCEL: 267

MARYLAND STATE GRID NORTH (NAD 1983/91)



VICINITY MAP

SCALE: 1" = 1000'

GENERAL NOTES:

1. DEVELOPMENT NAME: LIPPY PROPERTY
2. OWNER:
   DONALD E. LIPPY
   KATHLEEN F. LIPPY
   421 LEES MILL ROAD
   HAMPSTEAD, MD 21074
   APPLICANT:
   EARTH AND AIR TECHNOLOGIES, LLC.
   C/O KEITH DONITHAN
   445 HAND COURT
   HAMPSTEAD, MD 21074
   PREPARED BY:
   RTF ASSOCIATES, INC.
   142 EAST MAIN STREET
   WESTMINSTER, MD 21157
   ATTEN. JOHN E. LEMMERMAN
3. 410-848-2040
4. PROPERTY REFERENCE:
   TAX MAP: 25, GRID: 21, PARCEL: 267
   TAX ACCOUNT #: 1900078921
   DEED: 27851~231
   BOUNDARY: RTF ASSOCIATES, INC.
   ZONING: BALTIMORE COUNTY, 200 SCALE ZONING MAP, GIS TILE 025B3
5. FLOODPLAIN: NO IDENTIFIED FEMA FLOODPLAIN ON SITE
6. SITE AREA: 6.454 AC. ±; ZONED: RC-2
7. PARKING:
   REQUIRED: 0
8. EXISTING USE IS RESIDENTIAL AND AGRICULTURAL.
9. SITE HISTORY: NONE
10. THE PROPERTY HAS BEEN HELD INTACT SINCE 1982
11. THE SITE IS NOT LOCATED WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
12. THE SITE IS LOCATED BEYOND THE URBAN RURAL DEMARCATION LINE (URDL).
13. THERE WERE NO COMMERCIAL PERMITS OR ACTIVE ZONING VIOLATIONS FOUND ON FILE WITH BALTIMORE COUNTY.
14. NO SIGNAGE IS PROPOSED.
15. THIS SITE IS NOT IN ANY FAILED BASIC SERVICES MAP AREAS.
16. ALL ADJOINING PROPERTIES ARE ZONED RC2
17. A SOLAR FARM/FACILITY WAS PREVIOUSLY APPROVED ON THIS PROPERTY BY THE ADMINISTRATIVE LAW JUDGE FOR BALTIMORE COUNTY IN CASE NO. 2016-0335-SPHX. THAT APPROVAL IS CURRENTLY PENDING APPEAL AND THE CURRENT PLAN AND PETITION ARE FILED DUE TO THE RECENTLY ENACTED PROVISIONS OF BILL 37-17.

SPECIAL EXCEPTION RELIEF:

1. TO GRANT SPECIAL EXCEPTION RELIEF FOR A SOLAR FACILITY PURSUANT TO BCZR § 4E-102 (AS ESTABLISHED BY BILL 37-17).
2. FOR SUCH OTHER AND FURTHER RELIEF AS MAY BE REQUIRED BY THE ADMINISTRATIVE LAW JUDGE FOR BALTIMORE COUNTY.

VARIANCE RELIEF:

1. TO APPROVE A MINIMUM SETBACK OF 35 FEET, IN LIEU OF THE 50 FT. SOLAR FACILITY SETBACK REQUIRED TO THE NEAREST TRACT BOUNDARY, PURSUANT TO BCZR § 4E-104.A.4;
2. FOR SUCH OTHER AND FURTHER RELIEF AS MAY BE REQUIRED BY THE ADMINISTRATIVE LAW JUDGE FOR BALTIMORE COUNTY.

PLAN TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION AND VARIANCE
FOR
LIPPY PROPERTY
HANOVER ROAD AND NORTH SIDE OF FRINGER ROAD
4TH ELECTION DISTRICT, BALTIMORE CO., MD
3RD COUNCILMANIC DISTRICT
TAX MAP: 25, GRID: 21, PARCEL: 267

NOTE:
THIS SURVEY WAS COMPLETED WITHOUT THE BENEFIT OF A TITLE REPORT.

NOTE:
A LICENSEE EITHER PERSONALLY PREPARED THIS BOUNDARY SURVEY OR WAS IN RESPONSIBLE CHARGE OVER ITS PREPARATION AND THE SURVEY WORK REFLECTED IN IT, IN COMPLIANCE WITH REQUIREMENTS SET FORTH IN §09.13.06.12 OF THE ANNOTATED CODE OF MARYLAND.

REVISIONS	
DATE	REASON
09/15/2016	FINALIZE & ADD BEG. PT.
02/06/2017	REMOVE LOD & EXPAND VIEW
8/11/17	RE-FILE ZONING CASE

JOHN E. LEMMERMAN
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 21096
EXP. 9-3-19

TITLE REFERENCE

DONALD E. LIPPY
KATHLEEN F. LIPPY
27851~231
JANUARY 14, 2009

STATE OF MARYLAND
JOHN E. LEMMERMAN
No. 21096
REGISTERED PROFESSIONAL LAND SURVEYOR

RTF Associates, Inc.
LAND SURVEYORS & PLANNERS
142 EAST MAIN STREET WESTMINSTER, MD 21157
410-848-2040 FAX# 443-289-9942 410-876-1222
EMAIL: RTF142@GMAIL.COM WWW.RTFSURVEYING.COM

CHECKED BY: SPJEL DATE: 06/08/2016
DRAWN BY: RMF DATE: 06/07/2016
SCALE: 1" = 50' RTF JOB#: 16-44

2018-0052-XA