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

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

OPINION

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

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

FACTS

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

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

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

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

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

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

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

Discussion

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

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

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

Taken together, for purposes of this discussion, these 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 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	*	BEFORE THE
	*	BOARD OF APPEALS
	*	OF
	*	BALTIMORE COUNTY
4th Election District 3rd Councilmanic District	*	Case No. 16-335-SPHX

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

CONCURRING/DISSENTING OPINION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

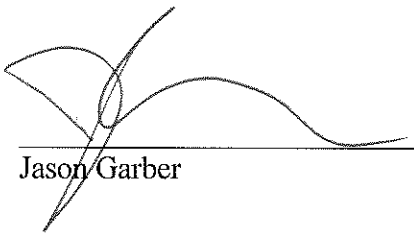
as testified to by Mr. Calao, an adjacent neighbor. While certain impacts may be generally accounted for by being a use permitted by special exception in a RC-2 Zone, the question of noise here is not one where there is sufficient evidence to determine if the noise would have an adverse effect above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

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

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

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

April 28, 2017
Date



Jason Garber

Board of Appeals of Baltimore County

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

April 28, 2017

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

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

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

Dear Counsel:

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

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

Very truly yours,

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