

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.

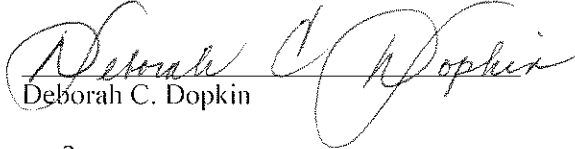
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Jason S. Garber, Chairman



Kendra Randall Jolivet



Deborah C. Dopkin



Board of Appeals of Baltimore County

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May 10, 2018

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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,

A handwritten signature in cursive script that reads "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