

MINUTES

Baltimore County Planning Board Meeting

July 19, 2018

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by the
Baltimore County Planning Board**

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Note: A copy of the appendices is located in the official Planning Board files.

Minutes

July 19, 2018

Call to Order, Introduction of Board Members

Chairman Phillips called the meeting to order at 4:06 p.m. The following members were:

<u>Present</u>	<u>Absent</u>
1. Mr. N. Scott Phillips	1. Ms. Lori Graf
2. Ms. Christina Berzins	2. Mr. Todd Warren
3. Ms. Nancy Hafford	3. Mr. Jon Herbst
4. Mr. Paul Hartman	4. Mr. Mark Schlossberg
5. Ms. Cathy Wolfson	
6. Mr. Wayne McGinnis	
7. Mr. Bob Schweitzer	
8. Mr. Howard Perlow	
9. Ms. Michelle Lipkowitz	
10. Mr. Rick Yaffe	

County staff present included Andrea Van Arsdale, Jeff Mayhew, Jenifer Nugent, Lloyd Moxley, Wally Lippincott, Teri Rising, and Jeff DelMonico from the Department of Planning. Dave Thomas from the Department of Public Works was also present. Ms. Berzins left after the Board meeting adjourned and was not present for the Public Hearing.

Review of Today’s Agenda

Chairman Phillips asked staff if any changes were made to the agenda. Mr. DelMonico indicated that no modifications to the agenda were made.

Minutes of the June 21, 2018 Meeting

Chairman Phillips asked the Planning Board members if they had any questions regarding the minutes from the June 21st, 2018 meeting. No questions were posed and the Chair entertained a motion to accept the draft minutes. Ms. Berzins made the motion and Mr. Hartman seconded the motion, which passed unanimously at 4:08 p.m. Absent for the vote were Ms. Graf, Mr. Warren, Mr. Herbst, and Mr. Schlossberg.

Items for Vote

1. Bill 37-17: Solar Facilities – Evaluation of the Impacts of Solar Facilities in Baltimore County

At the June 21st, 2018 meeting, this Board directed the Planning staff to organize and structure the recommendations of the Board members so that a comprehensive motion is made. Planning's staff has outlined points the Board will need to discuss to include in the motion. Chairman Phillips began by requesting that Mr. Wally Lippincott address the Board by providing a synopsis of this prepared outline. Mr. Lippincott listed all of the comments that each Board member suggested during the Board's discussion.

Mr. McGinnis stated that the public has overwhelmingly condemned the use of solar facilities on prime and productive farm land. Mr. McGinnis believes that allowing these solar facilities on farm fields to generate added income for the property owners is not a sound argument. Mr. McGinnis posited that while these land owners may not want to farm the fields, there are other farmers who would. Several Counties have implemented a moratorium from using farm land for solar facilities, including ones that have already been applied for. The amount of current investment for these solar facilities is minimal. Laying out a grid on a piece of land is a boiler plate design. The effect on the neighbors is enduring. The solar industry is changing so rapidly that it would be unwise to lock in this usage for twenty-five years or so.

Mr. Perlow believes that there are certain instances where a solar facility may be appropriately located on farmland when the location is away from a scenic view. Mr. Perlow is concerned that there may not be enough opportunity areas for solar facilities to locate on non-farmland. The industry will change rapidly but there are immediate benefits with having solar facilities now rather than later. Baltimore County is in the metropolitan district and so it is more appropriate for solar as compared to more rural counties such as Frederick or Allegany. Mr. Perlow is in support of allowing the solar facilities now in the development review pipeline to continue. The rules change too often during the development process and the costs associated with development are exorbitant, including negotiating with the power companies. Mr. Perlow may be in support of a moratorium for six months to a year for any future solar facility projects and would recommend a study be completed by the Council or the Board. There are cell towers that are not in the most attractive locations but the community benefits from having reliable cellular reception. Mr. Perlow believes that our society has come to accept visual imperfections as tradeoffs given the added benefits provided to the public.

Ms. Wolfson would support a retroactive moratorium. Bill 37-17 states that the Planning Board would make recommendations within a year. The developers understood the risks involved and yet went ahead with trying to get approvals for the projects. Ms. Wolfson also believes that the communities and districts which had no input during the review should be included going forward. Ms. Wolfson believes that just because mistakes have been made in the past on utility locations does not warrant the allowance of more mistakes to take place.

Mr. Schweitzer stated that the most practical approach is to focus solar facilities into the business and manufacturing zones short of a moratorium. This satisfies the needs of solar investors and it leaves the productive farm areas alone. Mr. Schweitzer believes that farm fields should be the last place to locate these facilities.

Mr. Hartman believes that this legislation should be revisited at a later time by this Board and the County Council. With the technology changing so quickly, it is hard to predict what it will be like in five years from now. Mr. Hartman would also reinforce the idea of enticing the solar industry to locate solar panels in business and manufacturing zones first before any consideration can be given for greenspace or agricultural lands. There is no evidence that building in the business and manufacturing zones is not cost effective. These industrialized lands are already impervious and parking lots are not aesthetically pleasing already. The moratorium can be implemented on projects in the Resource Conservation zones until a study is done in the future.

Mr. Yaffe shared one concern from a gentleman who said that he has a farm that backs up to the landfill and was having trouble finding someone to farm the field. Mr. Yaffe explains that he supports locating solar facilities in manufacturing and business zones with the caveat that if you cannot find someone willing to farm the land, and it does not affect the scenic view, then a solar farm may be permitted.

Mr. Phillips asked staff if there is a definition for prime and productive soils. Mr. Lippincott affirmed that prime and productive soils are defined in the BCZR and they include Class I, II, and III as determined by the USDA. Mr. Yaffe would recommend that prime and productive lands be off limits. Ms. Wolfson inquired about how you would define the diligence of not finding someone willing to farm the land, this is highly subjective.

Mr. Phillips indicated that for the land owners of these farms, the income generated by solar facilities is greater than the profits produced by the leasing fields. Mr. Phillips shared with the Board that a moratorium would significantly reduce the ways in which a land owner could profit from their property. Mr. McGinnis responded that zoning also limits economic abilities of property owners and feels that there needs to be further study. Many of the solar facilities are under appeal and the outcomes are yet to be determined.

Ms. Berzins believes that there is a natural risk in doing development and being in real estate as the markets and laws are constantly in flux. Ms. Berzins asked staff how many solar facility projects in the review pipeline have received an order from the Administrative Law Judge. Mr. Lippincott stated that all of the projects have received such an order. Ms. Berzins believes that the Board should recommend that these projects have a maximum acreage allotted to put a cap in place. Ms. Berzins asked how many acres each project is typically sized at. Mr. Lippincott indicated that in order to achieve the two megawatts cap, a minimum of fifteen or sixteen acres are needed. Ms. Berzins stated that of the fourteen projects submitted, a total of 210 acres is being impacted. Mr. Lippincott shared that many projects also require forest buffers and forest conservation so the total acreage may be double.

Mr. Yaffe stated that a solar facility would impact residents so long as they do not impact the scenic view. Ms. Berzins shared that locating solar facilities on top of commercial buildings is not financially feasible for many structures and also functionally problematic as some have HVAC units located on the roofs. Ms. Berzins feels uncomfortable with the Board making a decision without more information. Meanwhile, the applicants of the existing projects have invested significant financial burdens.

Mr. Phillips shared that the Board is strongly recommending that solar be encouraged in the business and manufacturing zones. The Board does not have a consensus on a retroactive or prospective moratorium. Mr. Phillips expressed his discomfort in recommending a retrospective moratorium.

Mr. Perlow stated that the costs of building solar facilities on commercial land is too expensive for the developers as the cost of land is higher. Mr. Perlow stated that there are solar fields and wind turbines along Route 50 towards Ocean City, Maryland. There are places in Baltimore County where the solar facilities could be located where they will not impact the scenic views. The cheaper land allows the solar companies to generate the power at a price which is affordable for the consumers of the power company. The scenic views should be protected but there are limits and not every location is scenic.

Mr. McGinnis stated that allowing an industrial use in the Resource Conservation zone is contrary to this zone's intention. If one industrial use is permitted then other uses will follow. Mr. McGinnis believes that a study should be done, the public has spent a substantial amount of money to appeal the solar facilities.

Mr. Hartman shared that the land from the solar industry is being leased and not purchased. The cost of the land should not be factored in since the developers are not buying the land. There are well above the necessary acreage for solar facilities over parking lots inside the Urban Rural Demarcation Line (URDL). The greenspace in Baltimore County is a limited resource and should be protected.

Ms. Berzins asked staff how many solar facilities are located on prime and productive soils. Mr. Lippincott stated that there are about 140,000 acres of prime and productive soils in Baltimore County, but the soils are wide spread and all of the projects may have some prime and productive soils. Ms. Berzins believes that a diligent effort should be made to limit the amount of prime and productive soils on the land being proposed for solar facility projects. Mr. Lippincott stated that most of the soils in Baltimore County are prime and productive except for the sandy coastal areas and where steep slopes exist.

Mr. Phillips shared his view that the Board is looking make recommendations on solar facilities to the Council by listing a number of conditions they can agree on. Mr. Lippincott has stated that setting the rules of the road is demanding but other jurisdictions have made attempts.

Mr. Perlow stated that the pricing for leasing land can vary greatly so the economics of locating solar facilities becomes challenging. These facilities cannot be forced to locate in the commercial areas, and although the scenic views should be maintained, agricultural land should not be completely off limits.

Mr. Yaffe shared his view that a percentage limit of a prime and productive land could be imposed upon land owners who build a solar facility, around 10.5 or 12 percent, along with a no tolerance policy for obstructing the scenic view.

Mr. Perlow believes that a person who wants to build solar panels on the roof of their house should be allowed to do so despite it being unattractive. Principally, Mr. Perlow see this discussion in much the same way since the Board may be recommending to restrict a property owner's ability to develop the land. Mr. Perlow would like to have three months or so to gather more information about this topic before sending a recommendation to the County Council.

Ms. Andrea Van Arsdale, Director for the Department of Planning, stated that the Board has been requested to determine how the legislation has been functioning up to now. A study of how to advance the legislation is separate from what this Board has been asked to do.

Mr. Phillips began by listing the comments of the Board members and taking an informal vote on whether to approve each comment for recommendation to the County Council.

The Board was unanimous in supporting the comment that solar is critical to our future.

The Board was unanimous in voting down the recommendation that solar facilities should not be located on farmlands.

The Board was unanimous in voting down the recommendation that solar facilities should not be located on RC 2 zoned lands.

The Board was unanimous in voting down the recommendation on not allowing solar facilities on all Resource Conservation zones.

The Board had a majority in support of not permitting solar facilities on prime and productive land.

The Board unanimously supported the recommendation on directing solar facilities to the Business and Manufacturing zones, brownfields, rooftops and parking lots where financially feasible.

The Board voted down the recommendation on directing solar facilities to County owned lands so that the financial benefits can be used to lessen tax impacts on farmland owners.

The Board voted unanimously to approve the recommendation that laws from other jurisdictions should be considered in reviewing this legislation.

The Board voted unanimously to recommend investigating the feasibility of locational criteria for determining appropriate siting of solar facilities.

The Board voted unanimously to recommend that the solar facilities should not be detrimental to the County's scenic view routes and sheds.

The Board voted unanimously to recommend that participation in future studies should be broadened to include stakeholders from each Councilmanic District.

The Chairman called for a motion to send these affirmed recommendations to the County Council. Ms. Berzins made the motion, Ms. Hafford seconded the motion which was passed at 5:16 p.m. with Mr. Yaffe voting against the motion. Absent for the vote were Ms. Graf, Mr. Warren, Mr. Herbst, and Mr. Schlossberg.

Chairman Phillips stated that the Chair will draft a companion letter to the Council indicating that the Board is recommending that the Council review with the Office of Law a moratorium on further permits for solar facilities.

Mr. Perlow moved that the Board vote on whether the Planning Board believes that the fourteen existing applications before the appellate Law Judge not be allowed to go forward. The motion failed to receive a second, the motion died at 5:18 p.m. The Chairman asked the Board if there is desire for an alternative motion.

Ms. Hafford shared her view that the solar facilities are already going through a legal appeal process and believes the Board does not need to take further legal action.

The Chairman stated that the Board is not recommending a moratorium at this time, rather it is raising the question for a legal review to such a process. This is the Chairman's recommendation and will be coming from the Chair.

Mr. McGinnis stated that he would be willing to move to recommend a moratorium until further study is completed. The Vice Chairwoman indicated that the Board is leaving the moratorium separate from the recommendations being sent to the County Council. The Chairman will be sending a letter on the question of the legality of a moratorium separately. Mr. McGinnis conceded to the Chair's proposal.

Item for Introduction

2. 8014 Philadelphia Road, Days Woods Properties LLC, Zoning Case 2018-0206-X: Corvette Sign Exemption

Ms. Josephine Selvakumar apprised the Board on the history of the sign located at 8014 Philadelphia Road (A.K.A. Corvette Sign). Ms. Selvakumar provided the Board with images of the Corvette sign and explained the reasons for why the Administrative Law Judge referred the sign to the Planning Board.

Mr. Pete Alatzas, the owner of the Corvette sign, addressed the Board and explained how the sign came to be. Mr. Alatzas has provided the Board with two letters in support of keeping the sign. Mr. Alatzas has also not heard any objection to keeping the sign.

Ms. Wolfson asked if Mr. Alatzas would be willing to repaint the sign. Mr. Alatzas indicated that he would be willing once he receives confirmation that the sign can remain.

Mr. Russ Mirabile, Rosedale Community Association, stated that the sign has never been a hindrance to the community and believes that the sign should remain. The vote for the sign is tentatively scheduled for September 6, 2018.

Other Business

3. Report from the July 12th, 2018 meeting of the Landmarks Preservation Commission

Mr. Yaffe reported on the July 12th, 2018 meeting of the LPC. The LPC voted to issue 4 Certificates of Appropriateness (COA).

4. Recent County Council Legislation of Interest to the Board

Mr. DelMonico provided a brief report on the recently passed County Council legislation which is listed below.

- a. Bill 54-18 – Zoning Regulations – Neighborhood Commons Overlay District

Adjournment of the Board Meeting

Chairman Phillips called for a motion to adjourn the Board meeting. Ms. Berzins made the motion and Ms. Hafford seconded the motion, which passed unanimously at 5:28 p.m. Absent for the vote were Ms. Graf, Mr. Warren, Mr. Herbst, and Mr. Schlossberg.

Public Hearing**
by the
Baltimore County Planning Board

Call to Order, Introduction of Board Members, and Remarks on Procedure by Chairman

Items for Public Hearing

1. Cycle 36 Water Supply and Sewerage Master Plan Amendments

Mr. Dave Thomas from Baltimore County Department of Public Works provided a brief review of the Cycle 36 Water Supply and Sewerage Master Plan Amendments which was introduced on June 21, 2018. The amendments are available in the official Planning Board file.

Mr. Hartman asked if these issues affect adjacent properties. Mr. Thomas indicated that the Public Works has only been working with the applicants. Mr. Hartman inquired if any other property owners are asking for similar requests. Mr. Thomas stated that only this applicant is asking for the modification.

Ms. Kristen Scottodifga, advocating on behalf of her family, stated that their well system is contaminated by road salt. This has health risks and irritates the skin when bathing. This accelerates corrosion causing replacement of faucets and radiator valves. The family has been suggested to replace all metal plumbing within the house. The applicant is willing to agree to some restrictions to maintain the integrity of the URDL by enrolling in Maryland's Conservation Reserve Enhancement Program.

Ms. Wolfson asked if this will effectively move the Metropolitan Line. Mr. Thomas said that it would not and there would be conditions placed to ensure such. Mr. Perlow expressed concern that other homes may be coming in with the same request. Mr. Thomas stated that the alternative is a reverse osmosis system which is expensive and not always reliable. Mr. Perlow asked who would maintain the pipe. Mr. Thomas stated that the applicant would be responsible.

Adjournment of Public Hearing