

Introduced 9/6/16  
Public hearing 9/19/16  
Council action 10/5/16  
Executive action \_\_\_\_\_  
Effective date 12/16/16

### County Council of Howard County, Maryland

2016 Legislative Session

Legislative day # 14

**BILL NO. 59 – 2016 (ZRA – 164)**

**Introduced by**

**Calvin Ball**

**AN ACT** amending the Howard County Zoning Regulations to remove certain restrictions that limit the size of Commercial Solar Facilities on County Preservation Parcels and allow Commercial Solar Facilities as a Conditional Use on RR and RC zoned properties, under certain conditions; and generally relating to Commercial Solar Facilities.

Introduced and read first time September 6, 2016. Ordered posted and hearing scheduled.

By order Jessica Feldmark  
Jessica Feldmark, Administrator to the County Council

Having been posted & notice of time & place of hearing and title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on September 19, 2016.

By order Jessica Feldmark  
Jessica Feldmark, Administrator to the County Council

This Bill was read the third time October 5, 2016 and Passed , Passed with amendments , Failed .

By order Jessica Feldmark  
Jessica Feldmark, Administrator to the County Council

Sealed with the County Seal and presented to the County Executive for approval this 6<sup>th</sup> day of October, 2016 at 4 a.m./p.m.

By order Jessica Feldmark  
Jessica Feldmark, Administrator to the County Council

Approved/vetoed by the County Executive on \_\_\_\_\_, 2016.

\_\_\_\_\_  
Allan H. Kittleman, County Executive

NOTE: ~~[[text in brackets]]~~ indicates deletions from existing law; TEXT IN ALL CAPITALS indicates additions to existing law. ~~Strikeout~~ indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **WHEREAS**, Policy 4.12 of *PlanHoward 2030* calls for the County to "Develop an energy plan that  
2 prepares for different future energy scenarios, examines options for various kinds of future energy  
3 sustainability, promotes conservation and renewable resources, and sets targets to reduce greenhouse  
4 gases"; and

5  
6 **WHEREAS**, Policy 4.12 has an Implementing Action D which calls for the County to "Implement the  
7 County's 2010 Climate Action Plan (referenced in Chapters 1, 3, and 12), which relates to future energy  
8 technology, such as wind, solar, geothermal, and other renewable sources"; and

9  
10 **WHEREAS**, The General Plan also states in Policy 4.12, Implementing Action G, that the County  
11 should "Explore evolving energy markets, plus options for enabling "smart grid" technologies, which  
12 reveal new opportunities to create, store, consume, and invest in energy commodities and related  
13 assets"; and

14  
15 **WHEREAS**, according to the Howard County Economic Development Authority, "Howard County's  
16 diverse agriculture industry is 335 farms strong, with:

- 17 • Innovative and robust growth in landscape, greenhouse and horticulture enterprises;
- 18 • A boom in agri-tourism and locovore food sales to consumers through farmers' markets and  
19 other outlets; and
- 20 • More horses per acre than any other county in the U.S., along with boarding and training  
21 services"; and

22  
23 **WHEREAS**, in order to ensure that Howard County's 355 farms remain economically viable into the  
24 future, the County should encourage new policies and regulations, similar to this Zoning Regulations  
25 Amendment, which encourage diversifying farms' production to the benefit of both farmers and County  
26 residents.

27  
28 **NOW THEREFORE:**

29  
30 ***Section 1. Be it enacted by the County Council of Howard County, Maryland, that the Howard***  
31 ***County Zoning Regulations are hereby amended as follows:***

32  
33 *By amending:*

34  
35 *Section 106.1: "County Preservation Easements"*  
36 *Subsection D. "Conditional Uses"*



1 *Numbers 1 “ALPP Purchased Easements and ALPP Dedicated Easements” and 2 “Other Dedicated*  
2 *Easements”*

3

4 *and*

5

6 *Section 131.0: “Conditional Uses”*

7 *Subsection N. 52 “Solar Facility, Commercial”*

8

9

10 **Howard County Zoning Regulations**

11

12 **SECTION 106.1: - COUNTY PRESERVATION EASEMENTS**

13

14 **D. Conditional Uses**

15 1. ALPP Purchased Easements and ALPP Dedicated Easements

16 a. Conditional Uses shall not be allowed on agricultural preservation easements  
17 unless they support the primary agricultural purpose of the easement property, or are an  
18 ancillary business which supports the economic viability of the farm, and are approved  
19 by the hearing authority in accordance with the applicable provisions of Sections 130.0  
20 and 131.0 of these regulations. On an ALPP purchased or dedicated easement property,  
21 the area devoted to Conditional Uses may not exceed a cumulative use cap equal to 2%  
22 of the easement or up to a maximum of 1 acre for preservation parcels created as part  
23 of the Cluster Subdivision process.

24 The following Conditional Uses may be allowed:

- 25 (1) Animal hospitals
- 26 (2) Barber shop, hair salon and similar personal services facilities
- 27 (3) Bottling of spring or well water
- 28 (4) Communication Towers
- 29 (5) Farm tenant house on a parcel of at least 25 acres but less than 50 acres
- 30 (6) Historic building uses
- 31 (7) Home based contractors

- 1 (8) Home occupations
- 2 (9) Kennels and/or pet grooming establishments
- 3 (10) Landscape contractors
- 4 (11) Limited outdoor social assemblies
- 5 (12) Sawmills or bulk firewood processing
- 6 (13) School buses, commercial service
- 7 (14) Small wind energy systems, freestanding tower
- 8 [(15) Solar facilities, commercial]]

9 b. In addition, the following Conditional Uses which may require additional land  
10 area may be permitted on agricultural preservation easements:

- 11 (1) Agribusiness, limited to uses itemized in Section 131.0.N.
- 12 (2) Farm winery—class 2
- 13 (3) SOLAR FACILITIES, COMMERCIAL

14  
15 2. Other Dedicated Easements

16 a. Conditional Uses shall not be allowed on other dedicated easements unless they  
17 support the primary purpose of the easement property and are approved by the Hearing  
18 Authority in accordance with the applicable provisions of Sections 130.0 and 131.0 of  
19 these Regulations. On these dedicated easements, the following Conditional Uses  
20 which do not require the construction of new principal structures or use of an outdoor  
21 area that is more than 2% of the preservation parcel acreage up to a maximum of 1 acre  
22 may be allowed:

- 23 (1) Animal hospitals
- 24 (2) Antique shops, art galleries and craft shops
- 25 (3) Barber shop, hair salon and similar personal service facilities
- 26 (4) Bottling of spring or well water
- 27 (5) Child day care centers and nursery schools, day treatment and care facilities
- 28 (6) Communication towers
- 29 (7) Country inns

- 1 (8) Historic building uses
- 2 (9) Farm tenant house on a parcel of at least 25 acres but less than 50 acres
- 3 (10) Home based contractors
- 4 (11) Home occupations
- 5 (12) Kennels and/or pet grooming establishments
- 6 (13) Landscape contractors
- 7 (14) Limited outdoor social assemblies
- 8 (15) Museums and libraries
- 9 (16) Retreats
- 10 (17) School buses, commercial service
- 11 (18) Shooting ranges—outdoor rifle, pistol, skeet and trap
- 12 (19) Small wind energy systems, freestanding tower
- 13 ~~[(20) Solar Facilities, commercial]]~~
- 14 ~~[[21]]20~~ Two family dwellings, accessory apartments and multi-plex dwellings

b. In addition, the following Conditional Uses which may require additional land area may be permitted on other dedicated easements:

- 17 (1) Agribusiness, limited to uses itemized in Section 131.0.N.2
- 18 (2) Charitable or philanthropic institutions dedicated to environmental conservation
- 19 (3) Farm Winery—Class 2
- 20 (4) Golf Courses
- 21 (5) SOLAR FACILITIES, COMMERCIAL

**SECTION 131.0: CONDITIONAL USES**

**N. Conditional Uses and Permissible Zoning Districts**

- 28 52. Solar Facility, Commercial

1 A Conditional Use may be granted in the RC or RR District for a commercial solar  
2 facility, provided that:

3 [[a. The land on which the commercial solar facility is proposed may not be in the  
4 Agricultural Land Preservation Program and it may not be encumbered by any  
5 environmental preservation easements.]]

6 [[b]]A. The maximum size of a solar facility shall be 75 acres notwithstanding the size of  
7 the parcel. The parcel on which the commercial solar facility is proposed must be a  
8 minimum of 10 acres in size.

9 [[c]]B. All structures and uses must meet a minimum 50 foot setback from all property  
10 lines.

11 [[d]]C. No structure or use may be more than 20 feet in height.

12 [[e]]D. A 'Type D' landscaping buffer must be provided around the perimeter of the  
13 proposed commercial solar facility unless the Hearing Authority determines that an  
14 alternative buffer is sufficient.

15 [[f]]E. All security fencing must be located between the landscaping buffer and the  
16 commercial solar facility.

17 [[g]]F. The systems shall comply with all applicable local, state, and federal laws and  
18 provisions.

19 [[h]]G. A commercial solar facility that is no longer used shall be removed from the site  
20 within one year of the date that the use ceases.

21 [[i]]H. The premises shall be maintained at all times in a clean and orderly condition,  
22 including the care or replacement of plant materials required in the landscaping plan.  
23 The responsibility for compliance with this provision shall be with all parties having a  
24 lease or ownership interest in the commercial solar facility. The applicant shall provide  
25 the Hearing Authority with details regarding maintenance and access for the site.

26 [[j]]I. A solar collector or combination of solar collectors shall be designed and located  
27 to avoid glare or reflection onto adjacent properties and adjacent roadways and  
28 shall not interfere with traffic or create a safety hazard. THE PETITIONER SHALL  
29 INCLUDE A GLARE STUDY WITH THE CONDITIONAL USE PETITION.

30 [[k]]J. The applicant shall agree to register all solar collectors with the Department of  
31 Fire and Rescue Services. The registration shall include a map of the solar facility  
32 noting the location of the solar collectors and the panel disconnect.

1           [[1]]K. Tree removal shall be minimized and reforestation shall be done in accordance  
2           with Section 16.1026 of the Howard County Code.

3           L. SCENIC VIEWS

4           ~~[[m]]~~L(1) The applicant shall demonstrate that the solar facility does not harm the scenic  
5           characteristics of the view of or from:

6           ~~(1)~~A. A public park;

7           ~~(2)~~B. A national or state designated scenic byway;

8           ~~(3)~~C. A road listed in the Scenic Roads Inventory adopted under Section  
9           16.1403 of the Howard County Code; or

10          ~~(4)~~D. A historic structure as defined in Section 16.601 of the Howard County  
11          Code.

12          2. VISUAL IMPACT ANALYSIS REQUIRED TO DEMONSTRATE MINIMAL IMPACT TO  
13          OR FROM SCENIC VIEWS

14  
15          A. THE CONDITIONAL USE PETITION SHALL INCLUDE A VISUAL IMPACT  
16          ANALYSIS MAPPING ALL VIEWSHED IMPACTS AND ANY PROPOSED  
17          MITIGATION. THIS ANALYSIS SHALL INCLUDE MAPPED VISUAL IMPACT  
18          ASSESSMENTS OF ALL IMPORTANT OR CRITICAL VIEWPOINTS OR  
19          ELEVATIONS FROM WHICH THE SOLAR FACILITY CAN BE SEEN FROM A  
20          FIXED VANTAGE POINT. FOR PURPOSES OF THIS SUBSECTION, A  
21          VIEWSHED IS A TOPOGRAPHICALLY DEFINED AREA INCLUDING ALL  
22          CRITICAL OBSERVATION POINTS FROM WHICH THE SOLAR FACILITY IS  
23          VIEWED.

24  
25          B. IF THE VISUAL IMPACT ASSESSMENT AS MAPPED PARTICULARLY  
26          INTERFERES WITH AND COMPROMISES CRITICAL OBSERVATION POINTS  
27          WITHIN THE VIEWSHED THAT WARRANT VIEWSHED PROTECTION, THE  
28          PETITIONER SHALL MITIGATE THE VIEW THROUGH ADDITIONAL  
29          LANDSCAPING OR OTHER FORMS OF MITIGATION, INCLUDING  
30          RECONFIGURATION OF THE SOLAR PANELS, OR AS MAY BE REQUIRED BY  
31          THE HEARING AUTHORITY.

32  
33          C. FENCING ALONG ROAD FRONTAGE OR THE PERIMETERS OF THE

1 COMMERCIAL SOLAR FACILITY SITE WHERE THE FENCING WOULD BE  
2 VISIBLE SHALL BE CONSTRUCTED OF A MATERIAL AND DESIGN  
3 CONSISTENT WITH THE CHARACTER OF THE ROADWAY OR AREA.

4  
5 D. THE PETITION SHALL INCLUDE A LANDSCAPE PLAN.

6  
7 M. THE HOWARD COUNTY AGRICULTURAL LAND PRESERVATION BOARD SHALL  
8 REVIEW ANY CONDITIONAL USE PETITION WHICH PROPOSES TO BUILD A NEW  
9 COMMERCIAL SOLAR FACILITY ON PARCELS WHICH ARE IN THE AGRICULTURAL LAND  
10 PRESERVATION PROGRAM PRIOR TO APPROVAL BY THE HEARING AUTHORITY.  
11 PRESERVATION PROGRAM PRIOR TO APPROVAL BY THE HEARING AUTHORITY IN THE  
12 FOLLOWING MANNER:

13  
14 (1) PRIOR TO SCHEDULING AND CONVENING A PRESUBMISSION COMMUNITY  
15 MEETING PURSUANT TO HOWARD COUNTY ZONING REGULATIONS SECTION  
16 131.0.F.1, THE PETITIONER SHALL SUBMIT A PROPOSED CONDITIONAL USE PLAN  
17 FOR A COMMERCIAL SOLAR FACILITY ON A PARCEL OR PARCELS IN THE  
18 AGRICULTURAL LAND PRESERVATION PROGRAM TO THE HOWARD COUNTY  
19 AGRICULTURAL LAND PRESERVATION BOARD FOR ADVISORY REVIEW AS TO  
20 WHETHER THE SITING OF THE COMMERCIAL SOLAR FACILITY ON THE PARCEL OR  
21 PARCELS SUPPORTS THE PRIMARY AGRICULTURAL PURPOSE OF THE EASEMENT  
22 PROPERTY OR IS AN ANCILLARY BUSINESS WHICH SUPPORTS THE ECONOMIC  
23 VIABILITY OF THE FARM.

24  
25 (2) THE MATERIALS SUBMITTED FOR REVIEW SHALL INCLUDE, AT A MINIMUM, A  
26 COPY OF THE AGRICULTURAL LAND PRESERVATION PROGRAM EASEMENT, A  
27 COPY OF THE HOWARD COUNTY SOIL CONSERVATION AND WATER QUALITY  
28 PLAN, AND A COPY OF THE PROPOSED CONDITIONAL USE PLAN.

29  
30 (3) THE BOARD'S ADVISORY REVIEW SHALL BE IN WRITING.

31  
32 (4) THE PETITIONER SHALL MAKE THE BOARD'S ADVISORY REVIEW AVAILABLE  
33 AT THE PRESUBMISSION COMMUNITY MEETING.

34  
35 (5) THE DEPARTMENT OF PLANNING AND ZONING'S TECHNICAL STAFF REPORT ON

1 THE PETITION SHALL INCLUDE AN EVALUATION OF AND A RECOMMENDATION ON  
2 THE BOARD'S ADVISORY REVIEW OF THE PETITION AND SHALL INCLUDE AS  
3 ATTACHMENTS THE BOARD'S ADVISORY REVIEW AND A COPY OF THE  
4 AGRICULTURAL PRESERVATION EASEMENT.

5  
6 N. SUBJECT TO SECTION 106 OF THESE REGULATIONS, THE PROPERTY ON WHICH AN  
7 APPROVED COMMERCIAL SOLAR FACILITY IS LOCATED IS ELIGIBLE TO BE A SENDING  
8 PARCEL PROVIDED THAT ONE DENSITY RIGHT IS RETAINED FOR THE CONDITIONAL USE  
9 UNTIL THE COMMERCIAL SOLAR FACILITY IS REMOVED.

10  
11 *Section 2. Be it further enacted by the County Council of Howard County, Maryland, that the*  
12 *publisher of the Howard County Zoning Regulations is authorized hereby to amend the Conditional*  
13 *Uses and Permissible Zoning Districts chart attached to Section 131 of the Zoning Regulations in*  
14 *order to reflect the substantive changes made by this Act.*

15  
16 *Section 3. And Be It Further Enacted by the County Council of Howard County, Maryland, that this Act*  
17 *shall become effective 61 days after its enactment.*



Amendment 1 to Council Bill 59-2016

BY: Mary Kay Sigaty

Legislative Day No: 16

Date: October 5, 2016

Amendment No. 1

1 (This amendment requires a glare study and visual impact analysis for Commercial Solar  
2 Facilities Conditional Use petitions).

3  
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5  
6 On page 5, in line 28, after the period insert "THE PETITIONER SHALL INCLUDE A GLARE  
7 STUDY WITH THE CONDITIONAL USE PETITION.".

8  
9 On page 6, immediately following line 2, insert "L. SCENIC VIEWS". On the same page,  
10 in line 3, strike "[[m]]L." and substitute "(1)"; in line 5, strike "(1)" and substitute "A."; in line 6,  
11 strike "(2)" and substitute "B."; in line 7, strike "(3)" and substitute "C."; and in line 9, strike  
12 "(4)" and substitute "D.". Lastly on the same page, immediately following line 10, insert the  
13 following:

14 "2. VISUAL IMPACT ANALYSIS REQUIRED TO DEMONSTRATE MINIMAL IMPACT TO OR  
15 FROM SCENIC VIEWS

16  
17 A. THE CONDITIONAL USE PETITION SHALL INCLUDE A VISUAL IMPACT ANALYSIS  
18 MAPPING ALL VIEWSHED IMPACTS AND ANY PROPOSED MITIGATION. THIS ANALYSIS  
19 SHALL INCLUDE MAPPED VISUAL IMPACT ASSESSMENTS OF ALL IMPORTANT OR  
20 CRITICAL VIEWPOINTS OR ELEVATIONS FROM WHICH THE SOLAR FACILITY CAN BE  
21 SEEN FROM A FIXED VANTAGE POINT. FOR PURPOSES OF THIS SUBSECTION, A  
22 VIEWSHED IS A TOPOGRAPHICALLY DEFINED AREA INCLUDING ALL CRITICAL  
23 OBSERVATION POINTS FROM WHICH THE SOLAR FACILITY IS VIEWED.

24  
25 B. IF THE VISUAL IMPACT ASSESSMENT AS MAPPED PARTICULARLY INTERFERES WITH  
26 AND COMPROMISES CRITICAL OBSERVATION POINTS WITHIN THE VIEWSHED THAT

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WARRANT VIEWSHED PROTECTION, THE PETITIONER SHALL MITIGATE THE VIEW THROUGH ADDITIONAL LANDSCAPING OR OTHER FORMS OF MITIGATION, INCLUDING RECONFIGURATION OF THE SOLAR PANELS, OR AS MAY BE REQUIRED BY THE HEARING AUTHORITY.

C. FENCING ALONG ROAD FRONTAGE OR THE PERIMETERS OF THE COMMERCIAL SOLAR FACILITY SITE WHERE THE FENCING WOULD BE VISIBLE SHALL BE CONSTRUCTED OF A MATERIAL AND DESIGN CONSISTENT WITH THE CHARACTER OF THE ROADWAY OR AREA.

D. THE PETITION SHALL INCLUDE A LANDSCAPE PLAN.”.

ADOPTED 10/5/16  
FAILED \_\_\_\_\_  
SIGNATURE Jessica Feldman

Amendment 2 to Council Bill 59-2016

BY: Mary Kay Sigaty

Legislative Day No: 16  
Date: October 5, 2016

Amendment No. 2

1 *(This amendment establishes requirements for the Agricultural Land Preservation Board's*  
2 *recommendation for Commercial Solar Facilities conditional uses).*  
3  
4  
5

6 On page 6, strike line 14, in its entirety, and substitute the following:

7 "PRESERVATION PROGRAM PRIOR TO APPROVAL BY THE HEARING AUTHORITY IN THE FOLLOWING  
8 MANNER:  
9

10 (1) PRIOR TO SCHEDULING AND CONVENING A PRESUBMISSION COMMUNITY MEETING PURSUANT  
11 TO HOWARD COUNTY ZONING REGULATIONS SECTION 131.0.F.1, THE PETITIONER SHALL  
12 SUBMIT A PROPOSED CONDITIONAL USE PLAN FOR A COMMERCIAL SOLAR FACILITY ON A  
13 PARCEL OR PARCELS IN THE AGRICULTURAL LAND PRESERVATION PROGRAM TO THE  
14 HOWARD COUNTY AGRICULTURAL LAND PRESERVATION BOARD FOR ADVISORY REVIEW AS  
15 TO WHETHER THE SITING OF THE COMMERCIAL SOLAR FACILITY ON THE PARCEL OR PARCELS  
16 SUPPORTS THE PRIMARY AGRICULTURAL PURPOSE OF THE EASEMENT PROPERTY OR IS AN  
17 ANCILLARY BUSINESS WHICH SUPPORTS THE ECONOMIC VIABILITY OF THE FARM.  
18

19 (2) THE MATERIALS SUBMITTED FOR REVIEW SHALL INCLUDE, AT A MINIMUM, A COPY OF THE  
20 AGRICULTURAL LAND PRESERVATION PROGRAM EASEMENT, A COPY OF THE HOWARD  
21 COUNTY SOIL CONSERVATION AND WATER QUALITY PLAN, AND A COPY OF THE PROPOSED  
22 CONDITIONAL USE PLAN.  
23

24 (3) THE BOARD'S ADVISORY REVIEW SHALL BE IN WRITING.  
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26 (4) THE PETITIONER SHALL MAKE THE BOARD'S ADVISORY REVIEW AVAILABLE AT THE  
27 PRESUBMISSION COMMUNITY MEETING.  
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(5) THE DEPARTMENT OF PLANNING AND ZONING'S TECHNICAL STAFF REPORT ON THE PETITION SHALL INCLUDE AN EVALUATION OF AND A RECOMMENDATION ON THE BOARD'S ADVISORY REVIEW OF THE PETITION AND SHALL INCLUDE AS ATTACHMENTS THE BOARD'S ADVISORY REVIEW AND A COPY OF THE AGRICULTURAL PRESERVATION EASEMENT."

~~ADOPTED~~ *as amended 10/5/16*  
~~FAILED~~  
~~SIGNATURE~~ *Jessica Feldman*

Amendment 1 to Amendment #2  
Council Bill No. 59-2016

BY: Mary Kay Sigaty

Legislative Day No:  
Date:

Amendment No. 1 to Amendment #2

*(This amendment clarifies that the Conditional Use Plan to be submitted to the Board is a proposed Conditional Use Plan).*

- 1 On page 1, in line 22, before "Conditional", insert "PROPOSED".
- 2
- 3
- 4
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ADOPTED 10/5/16  
FAILED \_\_\_\_\_  
SIGNATURE Jessica Feldman

Handwritten text, possibly a signature or initials, located in the center of the page. The text is faint and difficult to decipher.

Amendment 2 to Council Bill 59-2016

BY: Mary Kay Sigaty

Legislative Day No: 16  
Date: October 5, 2016

Amendment No. 2

1 *(This amendment establishes requirements for the Agricultural Land Preservation Board's*  
2 *recommendation for Commercial Solar Facilities conditional uses).*  
3  
4  
5

6 On page 6, strike line 14, in its entirety, and substitute the following:

7 "PRESERVATION PROGRAM PRIOR TO APPROVAL BY THE HEARING AUTHORITY IN THE FOLLOWING  
8 MANNER:

9  
10 (1) PRIOR TO SCHEDULING AND CONVENING A PRESUBMISSION COMMUNITY MEETING PURSUANT  
11 TO HOWARD COUNTY ZONING REGULATIONS SECTION 131.0.F.1, THE PETITIONER SHALL  
12 SUBMIT A PROPOSED CONDITIONAL USE PLAN FOR A COMMERCIAL SOLAR FACILITY ON A  
13 PARCEL OR PARCELS IN THE AGRICULTURAL LAND PRESERVATION PROGRAM TO THE  
14 HOWARD COUNTY AGRICULTURAL LAND PRESERVATION BOARD FOR ADVISORY REVIEW AS  
15 TO WHETHER THE SITING OF THE COMMERCIAL SOLAR FACILITY ON THE PARCEL OR PARCELS  
16 SUPPORTS THE PRIMARY AGRICULTURAL PURPOSE OF THE EASEMENT PROPERTY OR IS AN  
17 ANCILLARY BUSINESS WHICH SUPPORTS THE ECONOMIC VIABILITY OF THE FARM.

18  
19 (2) THE MATERIALS SUBMITTED FOR REVIEW SHALL INCLUDE, AT A MINIMUM, A COPY OF THE  
20 AGRICULTURAL LAND PRESERVATION PROGRAM EASEMENT, A COPY OF THE HOWARD  
21 COUNTY SOIL CONSERVATION AND WATER QUALITY PLAN, AND A COPY OF THE  
22 CONDITIONAL USE PLAN.

23  
24 (3) THE BOARD'S ADVISORY REVIEW SHALL BE IN WRITING.

25  
26 (4) THE PETITIONER SHALL MAKE THE BOARD'S ADVISORY REVIEW AVAILABLE AT THE  
27 PRESUBMISSION COMMUNITY MEETING.  
28





Amendment 3 to Council Bill 59-2016

BY: Calvin Ball

Legislative Day No: 16  
Date: October 5, 2016

Amendment No. 3

1 *(This amendment would clarify that density rights may be sent from properties that have*  
2 *Commercial Solar Facilities conditional uses on them).*

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On page 6, immediately following line 15, insert the following:

"N. SUBJECT TO SECTION 106 OF THESE REGULATIONS, THE PROPERTY ON WHICH AN  
APPROVED COMMERCIAL SOLAR FACILITY IS LOCATED IS ELIGIBLE TO BE A SENDING  
PARCEL PROVIDED THAT ONE DENSITY RIGHT IS RETAINED FOR THE CONDITIONAL  
USE UNTIL THE COMMERCIAL SOLAR FACILITY IS REMOVED."

ADOPTED 10/5/16  
FAILED \_\_\_\_\_  
SIGNATURE Jessica Johnson

1 A Conditional Use may be granted in the RC or RR District for a commercial solar  
2 facility, provided that:

3 [[a. The land on which the commercial solar facility is proposed may not be in the  
4 Agricultural Land Preservation Program and it may not be encumbered by any  
5 environmental preservation easements.]]

6 [[b]]A. The maximum size of a solar facility shall be 75 acres notwithstanding the size of  
7 the parcel. The parcel on which the commercial solar facility is proposed must be a  
8 minimum of 10 acres in size.

9 [[c]]B. All structures and uses must meet a minimum 50 foot setback from all property  
10 lines.

11 [[d]]C. No structure or use may be more than 20 feet in height.

12 [[e]]D. A 'Type D' landscaping buffer must be provided around the perimeter of the  
13 proposed commercial solar facility unless the Hearing Authority determines that an  
14 alternative buffer is sufficient.

15 [[f]]E. All security fencing must be located between the landscaping buffer and the  
16 commercial solar facility.

17 [[g]]F. The systems shall comply with all applicable local, state, and federal laws and  
18 provisions.

19 [[h]]G. A commercial solar facility that is no longer used shall be removed from the site  
20 within one year of the date that the use ceases.

21 [[i]]H. The premises shall be maintained at all times in a clean and orderly condition,  
22 including the care or replacement of plant materials required in the landscaping plan.  
23 The responsibility for compliance with this provision shall be with all parties having a  
24 lease or ownership interest in the commercial solar facility. The applicant shall provide  
25 the Hearing Authority with details regarding maintenance and access for the site.

26 [[j]]I. A solar collector or combination of solar collectors shall be designed and located  
27 to avoid glare or reflection onto adjacent properties and adjacent roadways and shall  
28 not interfere with traffic or create a safety hazard.

29 [[k]]J. The applicant shall agree to register all solar collectors with the Department of  
30 Fire and Rescue Services. The registration shall include a map of the solar facility  
31 noting the location of the solar collectors and the panel disconnect.

10

11



1           [[l]]K. Tree removal shall be minimized and reforestation shall be done in accordance  
2           with Section 16.1026 of the Howard County Code.

3           [[m]]L. The applicant shall demonstrate that the solar facility does not harm the scenic  
4           characteristics of the view of or from:

- 5                   (1) A public park;
- 6                   (2) A national or state designated scenic byway;
- 7                   (3) A road listed in the Scenic Roads Inventory adopted under Section  
8                   16.1403 of the Howard County Code; or
- 9                   (4) A historic structure as defined in Section 16.601 of the Howard County  
10                  Code.

11           M. THE HOWARD COUNTY AGRICULTURAL LAND PRESERVATION BOARD SHALL  
12           REVIEW ANY CONDITIONAL USE PETITION WHICH PROPOSES TO BUILD A NEW  
13           COMMERCIAL SOLAR FACILITY ON PARCELS WHICH ARE IN THE AGRICULTURAL LAND  
14           PRESERVATION PROGRAM PRIOR TO APPROVAL BY THE HEARING AUTHORITY.

15  
16           ***Section 2. Be it further enacted by the County Council of Howard County, Maryland, that the***  
17           ***publisher of the Howard County Zoning Regulations is authorized hereby to amend the Conditional***  
18           ***Uses and Permissible Zoning Districts chart attached to Section 131 of the Zoning Regulations in***  
19           ***order to reflect the substantive changes made by this Act.***

20  
21           ***Section 3. And Be It Further Enacted by the County Council of Howard County, Maryland, that this Act***  
22           ***shall become effective 61 days after its enactment.***



BY THE COUNCIL

This Bill, having been approved by the Executive and returned to the Council, stands enacted on \_\_\_\_\_, 2016.

\_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, having been passed by the yeas and nays of two-thirds of the members of the Council notwithstanding the objections of the Executive, stands enacted on \_\_\_\_\_, 2016.

\_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, having received neither the approval nor the disapproval of the Executive within ten days of its presentation, stands enacted on October 16, 2016.

  
\_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, not having been considered on final reading within the time required by Charter, stands failed for want of consideration on \_\_\_\_\_, 2016.

\_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, having been disapproved by the Executive and having failed on passage upon consideration by the Council stands failed on \_\_\_\_\_, 2016.

\_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, the withdrawal of which received a vote of two-thirds (2/3) of the members of the Council, is withdrawn from further consideration on \_\_\_\_\_, 2016.

\_\_\_\_\_  
Jessica Feldmark, Administrator to the County Council



Amendment 1 to Council Bill 59-2016

BY: Mary Kay Sigaty

Legislative Day No: 16

Date: October 5, 2016

Amendment No. 1

1 (This amendment requires a glare study and visual impact analysis for Commercial Solar  
2 Facilities Conditional Use petitions).  
3  
4  
5

6 On page 5, in line 28, after the period insert "THE PETITIONER SHALL INCLUDE A GLARE  
7 STUDY WITH THE CONDITIONAL USE PETITION.".  
8

9 On page 6, immediately following line 2, insert "L. SCENIC VIEWS". On the same page,  
10 in line 3, strike "[[m]]L." and substitute "(1)"; in line 5, strike "(1)" and substitute "A."; in line 6,  
11 strike "(2)" and substitute "B."; in line 7, strike "(3)" and substitute "C."; and in line 9, strike  
12 "(4)" and substitute "D.". Lastly on the same page, immediately following line 10, insert the  
13 following:

14 "2. VISUAL IMPACT ANALYSIS REQUIRED TO DEMONSTRATE MINIMAL IMPACT TO OR  
15 FROM SCENIC VIEWS  
16

17 A. THE CONDITIONAL USE PETITION SHALL INCLUDE A VISUAL IMPACT ANALYSIS  
18 MAPPING ALL VIEWSHED IMPACTS AND ANY PROPOSED MITIGATION. THIS ANALYSIS  
19 SHALL INCLUDE MAPPED VISUAL IMPACT ASSESSMENTS OF ALL IMPORTANT OR  
20 CRITICAL VIEWPOINTS OR ELEVATIONS FROM WHICH THE SOLAR FACILITY CAN BE  
21 SEEN FROM A FIXED VANTAGE POINT. FOR PURPOSES OF THIS SUBSECTION, A  
22 VIEWSHED IS A TOPOGRAPHICALLY DEFINED AREA INCLUDING ALL CRITICAL  
23 OBSERVATION POINTS FROM WHICH THE SOLAR FACILITY IS VIEWED.  
24

25 B. IF THE VISUAL IMPACT ASSESSMENT AS MAPPED PARTICULARLY INTERFERES WITH  
26 AND COMPROMISES CRITICAL OBSERVATION POINTS WITHIN THE VIEWSHED THAT

1 WARRANT VIEWSHED PROTECTION, THE PETITIONER SHALL MITIGATE THE VIEW  
2 THROUGH ADDITIONAL LANDSCAPING OR OTHER FORMS OF MITIGATION, INCLUDING  
3 RECONFIGURATION OF THE SOLAR PANELS, OR AS MAY BE REQUIRED BY THE  
4 HEARING AUTHORITY.

5  
6 C. FENCING ALONG ROAD FRONTAGE OR THE PERIMETERS OF THE COMMERCIAL  
7 SOLAR FACILITY SITE WHERE THE FENCING WOULD BE VISIBLE SHALL BE  
8 CONSTRUCTED OF A MATERIAL AND DESIGN CONSISTENT WITH THE CHARACTER OF  
9 THE ROADWAY OR AREA.

10  
11 D. THE PETITION SHALL INCLUDE A LANDSCAPE PLAN.”.  
12  
13  
14  
15  
16

Amendment 1 to Amendment #2  
Council Bill No. 59-2016

BY: Mary Kay Sigaty

Legislative Day No:  
Date:

Amendment No. 1 to Amendment #2

*(This amendment clarifies that the Conditional Use Plan to be submitted to the Board is a proposed Conditional Use Plan).*

1 On page 1, in line 22, before "Conditional", insert "PROPOSED".

2

3

4

5





Amendment 2 to Council Bill 59-2016

BY: Mary Kay Sigaty

Legislative Day No: 16  
Date: October 5, 2016

Amendment No. 2

1 *(This amendment establishes requirements for the Agricultural Land Preservation Board's*  
2 *recommendation for Commercial Solar Facilities conditional uses).*

3  
4  
5  
6 On page 6, strike line 14, in its entirety, and substitute the following:

7 "PRESERVATION PROGRAM PRIOR TO APPROVAL BY THE HEARING AUTHORITY IN THE FOLLOWING  
8 MANNER:

9  
10 (1) PRIOR TO SCHEDULING AND CONVENING A PRESUBMISSION COMMUNITY MEETING PURSUANT  
11 TO HOWARD COUNTY ZONING REGULATIONS SECTION 131.0.F.1, THE PETITIONER SHALL  
12 SUBMIT A PROPOSED CONDITIONAL USE PLAN FOR A COMMERCIAL SOLAR FACILITY ON A  
13 PARCEL OR PARCELS IN THE AGRICULTURAL LAND PRESERVATION PROGRAM TO THE  
14 HOWARD COUNTY AGRICULTURAL LAND PRESERVATION BOARD FOR ADVISORY REVIEW AS  
15 TO WHETHER THE SITING OF THE COMMERCIAL SOLAR FACILITY ON THE PARCEL OR PARCELS  
16 SUPPORTS THE PRIMARY AGRICULTURAL PURPOSE OF THE EASEMENT PROPERTY OR IS AN  
17 ANCILLARY BUSINESS WHICH SUPPORTS THE ECONOMIC VIABILITY OF THE FARM.

18  
19 (2) THE MATERIALS SUBMITTED FOR REVIEW SHALL INCLUDE, AT A MINIMUM, A COPY OF THE  
20 AGRICULTURAL LAND PRESERVATION PROGRAM EASEMENT, A COPY OF THE HOWARD  
21 COUNTY SOIL CONSERVATION AND WATER QUALITY PLAN, AND A COPY OF THE  
22 CONDITIONAL USE PLAN.

23  
24 (3) THE BOARD'S ADVISORY REVIEW SHALL BE IN WRITING.

25  
26 (4) THE PETITIONER SHALL MAKE THE BOARD'S ADVISORY REVIEW AVAILABLE AT THE  
27 PRESUBMISSION COMMUNITY MEETING.  
28

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(5) THE DEPARTMENT OF PLANNING AND ZONING'S TECHNICAL STAFF REPORT ON THE PETITION SHALL INCLUDE AN EVALUATION OF AND A RECOMMENDATION ON THE BOARD'S ADVISORY REVIEW OF THE PETITION AND SHALL INCLUDE AS ATTACHMENTS THE BOARD'S ADVISORY REVIEW AND A COPY OF THE AGRICULTURAL PRESERVATION EASEMENT."

Amendment 3 to Council Bill 59-2016

BY: Calvin Ball

Legislative Day No: 16  
Date: October 5, 2016

Amendment No. 3

1 *(This amendment would clarify that density rights may be sent from properties that have*  
2 *Commercial Solar Facilities conditional uses on them).*

3  
4  
5

6 On page 6, immediately following line 15, insert the following:

7 "N. SUBJECT TO SECTION 106 OF THESE REGULATIONS, THE PROPERTY ON WHICH AN  
8 APPROVED COMMERCIAL SOLAR FACILITY IS LOCATED IS ELIGIBLE TO BE A SENDING  
9 PARCEL PROVIDED THAT ONE DENSITY RIGHT IS RETAINED FOR THE CONDITIONAL  
10 USE UNTIL THE COMMERCIAL SOLAR FACILITY IS REMOVED."

11  
12  
13  
14





Reply all | Delete Junk |

**FILE COPY**

CB 59-2016

Ricky &amp; Leslie Bauer &lt;rrfarm@verizon.net&gt;

Reply all |

Today, 4:41 PM  
CouncilMail

Honorable Council Members,

I am writing in regards to CB 59-2016, and the accompanying Amendment 2 to the proposal.

First, I am in favor of the proposed bill to allow commercial solar facilities on agriculture preserved ground. The only suggestion or proposed change that I would make to the bill would be that instead of having minimum and maximum acre parameters for solar use, the amount of allowable acres should be based on a percentage of the farm size. This would be more equitable to all landowners.

In regards to Council Member Sigaty's proposed Amendment 2, I also support this amendment. I think it would be a good idea to allow the agricultural preservation board to be involved in the process of helping to determine the amount of allowable acreage for individual properties that would like to house a commercial solar facility.

Thanks in advance for your consideration.

Sincerely  
Ricky Bauer



Reply all | Delete Junk |

## Solar legislation CB59 2016

LM

Lynn Moore <lynnpmoore@verizon.net>

Today, 4:33 PM

CouncilMail

Reply all |

This message was sent with high importance.

County Councilmen,

I appreciate and am in favor of Councilman Calvin Ball 's Solar legislation CB59-2016, currently proposed. I concur with the proposed legislation to expand the allowable uses on agricultural land. I would make the following recommendations:

- The preferred placement of the solar panels would not be on prime agricultural fields. It would be best placed on highly erodible slopes and marginal ground.
- No more than 30 % of the farm should be used for the solar project.
- Once the solar project is terminated, there should be complete removal of all equipment.
- If the land used for the solar project is under an agricultural preservation program, it must remain in the agricultural program throughout the solar project. Therefore, 'the removal of the development rights' remains intact.

Lynn Parlett Moore  
Larriland Farm  
2415 Woodbine Rd.  
Woodbine, MD 21797  
[www.pickyourrown.com](http://www.pickyourrown.com)

Reply all | Delete Junk |

CB-59

Richard Freas <rafreas@gmail.com>

Reply all |

Today, 2:43 PM  
**CouncilMail**

Keep

I am requesting that CB 59 be tabled so that it's full impact on the county can be discussed.

Richard Freas  
9465 Glen Ridge Drive  
Laurel, MD 20723

Reply all | Delete Junk |

## CR 11-2016 Council Rules

joelhurewitzaug2010@gmail.com on behalf of Joel Hurewitz &lt;joelhurewitz@



Today, 3:33 PM

CouncilMail

Reply all |

Dear Howard County Council,

The proposed amendments to the Council Rules in CR 11-2016 are overly restrictive and will limit the operations of the Council more than is probably intended.

Rule 1.002 (b)(3) not only will prohibit hearings in December, but possibly in August as well. When the Council considered the emergency legislation last August it was introduced on a Wednesday with a hearing on Friday. If the Wednesday in future years falls on the last days of July, this provision will preclude a hearing on that legislation in August.

There is no exception in this provision either for emergencies or for a super-majority to allow for a hearing. Without more leeway, this provision will restrict the scheduling of emergency hearings or require other legislation to be filed just to allow for a hearing on the emergency bill.

In addition, there is no provision for a super-majority to allow for hearings in December.

The limitations on the meetings in December will preclude consideration of vacancies within 30 days as required by Sections 202(e) and 302(f) of the Charter. If a member of the Council or the County Executive were to be elected to other offices during a presidential election, it is possible that the individual might resign in November requiring a December appointment.

I hope that amendments will be considered to address these scenarios.

Sincerely,

Joel Hurewitz

Reply all | Delete Junk |

**FILE COPY**

## CB-59 - BAD Legislation!

SJ

Suzanne Jones &lt;jones.suze@gmail.com&gt;

Today, 8:52 AM

CouncilMail

Reply all |

Just a note to let you know that I oppose CB-59 as currently proposed. I do not think it is right & I do not think it is fair. There is no reason farmers need to have the privilege of being overpaid to lease their land for solar purposes -- especially when densities are being put upon in the eastern portion of the County. There are many alternatives that are more attractive for more than one reason (rooftop solar, for one).

I HIGHLY oppose:

- \* \$30,000 - \$40,000 per acre for putting land in agricultural preservation.
- \* Density Exchanges Options for \$40,000 per acre.
- \* Lease payments per acre at a rate of \$1,500 per year.
- \* Famers who pay little or no property, fire, or rain tax—while still residing in Howard County.

CB-59 is ill thought out legislation and it needs to be stopped. As a resident of the "east" section of Howard County, I highly resent the treatment we are receiving in favor of the west. I vote and I vote my conscious.

--

Regards,

Suzanne E. Jones  
(410) 465-7861  
10144 Hobsons Choice Ln.  
Ellicott City, MD 21042


Go placidly amid the noise and the haste.  
You are a child of the universe.  
And whether or not it is clear to you,  
no doubt the universe is unfolding as it should.





Reply all | Delete Junk |

## CB59 as amended

PV  Paul Verchinski <verchinski@yahoo.com>  
Today, 2:49 AM  
CouncilMail

Reply all |

I support this Bill as amended and ask that it be passed. Paul Verchinski 5475 Sleeping Dog Lane, Columbia

Sent from Yahoo Mail on Android

Fwd: CB 59 -2016

RT  
○

Richard Tufts <tuftsdaisy@verizon.net>  
Yesterday, 5:53 PM  
CouncilMail

Reply all |

| Action Items

To All,

I will appreciate your kind consideration of the points in my letter below.

Respectfully,  
Richard G. Tufts  
Daisy MD

Letter to the Howard Council from Richard G. Tufts  
Regarding Proposed CB 59-2016

I regret being unable to attend the Council meetings in September and am therefore taking the liberty of writing to express my position on CB 59 - 2016 and hope you will consider and find the following thoughts helpful:

I agree with testimonies by Mr. Ted Mariani, Mr. Dan O'Leary and Ms. Susan Garber presented at the September 19th session. Additionally, I believe Ms. Becker's testimony was spot on and trust you will deeply weigh the legal ramifications she pointed out before pressing on with the proposed bill.

I am in favor of helping our farmer neighbors and support the Agricultural Preservation program. It should be maintained and respected together with the Trust of ALL Citizens.

The Ag Pres program was established with Howard County citizen input. I understand it was and is for the purpose of incentivizing land owners to protect their land from commercial development while preserving and allowing its use for farming. You all are acutely aware of the dictates of the Agricultural Preservation Program's law. But as Ms. Becker very professionally pointed out, this law is being ignored. If more serious consideration is not given to the proposed Bill, I feel not only will it destroy Public Trust for the good of a few, but it will be illegal and ripe for challenge. More work is definitely needed.

Please remember as you devote more effort to the Bill, that **using Ag Pres land for purposes other than Agriculture, cannot interfere with its primary use, which is AGRICULTURE.** I am concerned that by opening Ag Pres today to commercial solar power farms, tomorrow, the County could be seen destroying

Public Trust. I feel this could establish a very bad precedent i. e. a 'slippery slope' unless there are constraints written into the Bill and codified prohibiting participants from "coming back to the well" again in 20 more years.

While working towards a viable bill that will benefit to the farming community as well as the overall community, may I also suggest considering a COMPROMISE- a Farm-to-Table Cooperative. Three years ago the Roving Radish program was started by Howard County with its initial goal of "... Promoting healthy farm-to-table eating habits [in] our community [citizens], while creating sustainable markets for our local and regional farms." In the first year that program was able to purchase less than 10% of local farm product; today that number is closer to 40% of local product going into the meal kits. This year Mr. James Zoller and the Roving Radish added a farm-to-restaurant delivery program which will provide an opportunity for local farms to get more of their product into many fine restaurants in Howard County. Kathy Johnson, Howard County's Agricultural Development Manager with the county Economic Development Authority has been working with the farming community, the restaurants and the Office of Tourism to develop a restaurant-growers program over the last several years. She has been researching the idea of a Cooperative and working with Mr. Zoller has brought about some growth in the relationship between farms and restaurants. There are many more opportunities in this area that need to be explored. I believe speaking and working with Ms. Johnson from HCEA and Mr. Zoller from the Roving Radish to establish a robust farm-to-table/restaurant Cooperative, will benefit our farmers and contribute to the health of all Howard County residents.

Council members, growing fruits and vegetables is what farms are for! It is what the Ag Pres program was and is intended to promote. Cooperatives like the one in Washington County, Southwest Virginia, are working very successfully throughout the country. A Farm to Restaurant & Table Cooperative NEEDS to be more robust in Howard County County.

In closing I wish to express my concern with the implication suggested in remarks before the Council on September 19. I have authored Scenic Roads rationales and thanks to Councilman Greg Fox, successfully listed five roads in the Rural West in the Scenic Roads Inventory. I have believed in Mr. Kingdon Gould's initial intent for forty years and feel our bucolic, country roads need protecting. It would be shameful to destroy or further dilute the Scenic Roads Act to "make way" for commercial development. Finally, I feel the implication of remarks regarding the function of our Hearing Examiner were inappropriate. I trust the Council will dismiss disparaging remarks made concerning Scenic Roads, Historic Structures and our Hearing Examiner's functions.

Thank you very much for reading these thoughts. I hope you will seriously consider our two points - the serious ramifications of Council Bill 59-2016 as proposed and the merits of our suggested Compromise, a robust, viable farm-to-table Cooperative in Howard County.

Respectively,  
Richard G. Tufts  
Daisy, MD

Reply all | Delete Junk |

## SOLAR FARMS

BERNADETTE MULLINIX &lt;mbmullinix@verizon.net&gt;

Reply all |

Wed 9/28, 8:10 PM  
CouncilMail

TO ALL MEMBERS

PLEASE INCLUDE MALPF GROUND. YOU DID IT QUICK WHEN IT WAS ABOUT MULCH. NOT YOU JON.

ALSO I SEE A SOLAR FARM CAN'T BE BUILT IN VIEW OF A PARK. MAYBE WE DIDN'T WANT THE PARK OUT HERE.

I SEE IT MUST BE FENCED AND HAVE A VIEW SCREEN BUILT AROUND IT.

TELL PEOPLE TO CONTROL THEIR KIDS.

WHEN THEY BUILT HOUSE'S IN THE WESTERN END OF THE COUNTY THEY DID NOT BLOCK THEM FROM MY VIEW.

AND LAST LETS CALL PRESERVED GROUND WHAT IT IS OPEN SPACE.

THE COUNTY NOR THE STATE HAS DONE NOTHING TO PRESERVE THE STUART OF THE LAND.SO ALL BOTH ARE DOING ARE

DOING IS OPEN SPACE. YOU CAN PUT A DRESS ON A PIG IT IS STILL A PIG.

THANKS MARK A MULLINIX

CELL 443-310-0348

YES I ALWAYS DO ALL CAP LOCKS, NOT SCREAMING JUST FIND EASIER TO READ

Reply all | Delete Junk |

## Personal thoughts on CB59

SG

Susan Garber <buzysusan23@yahoo.com>

Sun 9/25, 4:11 PM

CouncilMail

Reply all |

Additional personal test...

39 KB

Download

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Please consider the information in the attached document.

Best regards,  
Susan Garber

Dear Councilmembers,

I oppose turning farm land into large solar installations, especially preservation parcels. There is NO farming involved in a "solar farm." Just because an activity is conducted on parcels zoned for and taxed as agricultural land, it is not necessarily farming. Industrial mulching is a prime example of such an activity Howard County has been debating. I find solar farms just as objectionable and in need of greater public debate. Farming implies planting things which grow or tending animals which grow. The only thing a solar farm grows is passive income for land owners and profits for solar companies. (Of the solar industry representatives, who spoke at the public hearing, two were from out of state and one was from out of county. Where's the benefit to Howard County in that?)

The Maryland General Assembly declared that it is in the general public interest of the State to foster and encourage farming activities to:

1. maintain a readily available source of food and dairy products close to the metropolitan areas of the State;
2. encourage the preservation of open space as an amenity necessary for human welfare and happiness; and
3. prevent the forced conversion of open space land to more intensive uses because of the economic pressures caused by the assessment of the land at rates or levels incompatible with its practical use for farming.

It is for those reasons that Howard citizens have paid dearly to preserve land in the west. In addition to the commitment of tax dollars for purchasing development rights, the consequence for those in the east is increasingly overwhelming density with all of the negative quality of life issues that involves.

I understand the good intension of helping to boost farming income. However, **it is critical that farmers not suffer from unintended consequences from this bill.** Farmers (with land in agricultural preservation or not) who are enjoying lower tax assessments on their land might want to think twice before signing any contracts with solar installers. Do they really want to have their land assessed at non-farming rates???

The Tax-Property Article of the Annotated Code of Maryland, Section 8-209, <http://www.dat.state.md.us/sdatweb/aguse.html> details what the agricultural use assessment means to the property owners, namely significant savings. However, according to the Annotated Code **the significantly lower assessment only applies to land that is "actively used" for farm or agricultural purposes and defines "actively used" as "land that is actually and primarily used for a continuing farm or agricultural use."**

The primary test used by the Department of Assessments and Taxation can be summarized as follows:

1. What is the nature of the agricultural activity? Is the land tilled or is it in pasture or woodland or a combination?

2. Is the agricultural activity truly a bonafide agricultural activity that is generally recognized as such by the agricultural community?
3. Is the agricultural activity the primary use of the land or does it appear that the primary use is non-agricultural?
4. Is the agricultural use a continuing operation or only temporary in nature?

Considerable tax penalties can result from receiving the agricultural use assessment inappropriately. Neither industrial mulching nor commercial solar installations are agricultural uses and they therefore should not benefit from the lower agriculture use assessment. Owners should be mindful that lands being assessed in the Agricultural Use Category could be subject to an Agricultural Transfer Tax at some later date in the event of a transfer, sale, or other action leading to or causing a violation of the agreement as contained in any Letter of Intent that may have been filed in order to receive the Agricultural Use Assessment.

The lower assessments on agricultural land are shockingly low! I was surprised to find that parcels of 75 acres (and more) in western HoCo pay less property tax than I do. Consider that I have less than half an acre, some of which is in forest conservation, and that I live in the OVER/UNDER part of Howard County. (The southeast part with OVER crowded roads, OVERly dense development, OVER CROWDED and UNDER achieving schools?) You may find it interesting to go to the MD Property tax database and compare your own tax assessment with those of large parcels in the west.  
<http://sdat.dat.maryland.gov/RealProperty/Pages/default.aspx>

Forgive me if I feel a bit cheated; especially when it comes to the prospect of agricultural preservation land owners triple dipping by installing solar panels instead of actually farming. In addition to benefitting from a significantly lower property tax rate they have already been paid to relinquish their development rights.

That money paid for relinquishing development rights is substantial. According to County records, the price paid by the county has varied over the past 25 years. In 1990 \$6,000 per acre was the norm but this has escalated dramatically with recent contracts in the \$30,000 plus range. In 2011 the county purchased 3 easements for a total commitment of 34.8 million dollars, of which 28 million was cash payments and 6.7 million was in future interest payments. The owner has an option of taking a cash payment or a 30 year tax exempt bond. In the 1990's the interest rate on the bonds was in the 8% range which led many to accept the bond option. Recently, due to low market interest rates, the cash option seems preferred. In 2015 we Howard Co. tax payers paid as much as **\$30,966 per acre** for farmland to remain farmland! How come that is not enough??? How come the citizens' bargain to preserve farmland is about to be broken?

The most recent version of the HoCo Ag Pres Program restrictive covenant states that in exchange for the payment the Grantor (land owner) covenants, grants and relinquishes the Development Rights in the Land. Development Rights is defined in section 15.502 of the Act as meaning the right to develop the parcel for purposes other than agricultural uses. "Development Right" includes, but is not limited

to, the right to use the property for industrial or commercial uses, for residential purposes (except for owner and tenant houses) or the storage or depositing of trash, junk, rubbish or debris.

It is interesting to note that the O' Malley Administration (always red hot on all forms of alternative energy production) had the good sense to allow—but limit-- solar installations on Maryland Agricultural Land Preservation Fund (MALPF) easements. **MALPF limits the size to 5% of the farm-- but in no event more than 5 acres no matter how large the farm.** (The MALPF program also requires an annual payment to the State if the land is thus utilized. I don't see a similar benefit to Howard County included in the proposed legislation.)

The proposed ZRA has no limit on the percentage of the site to be utilized and would allow up to 75 acres of solar panels. **How come Howard County would consider lowering its standards so far below the State's?** Such irresponsible action will have consequences beyond putting a blemish on what to date has been an outstanding success. It threatens to eradicate not just the appearance of preserved land or of sustaining agriculture, but of any continued support of the Ag Pres Program by the community at large *who sacrifices quite a bit for it.*

While solar panel producers claim they can yield energy without the dispersal of carbon emissions or greenhouse gasses produced by fossil fuel power generating systems, **solar energy production is not without health issues**, particularly in its manufacturing and disposal. The Silicon Valley Toxics Coalition warns "that solar panel production creates many of the same toxic byproducts as those found in semiconductor production, including silicon tetrachloride, dusts, and greenhouse gases like sulfur hexafluoride. These byproducts aren't anything to scoff at— silicon tetrachloride, for example, makes land unsuitable for growing crops. And for each ton of polysilicon produced, four tons of silicon tetrachloride are generated." <http://cleantechnica.com/2009/01/14/danger-solar-panels-can-be-hazardous-to-your-health/>

"Modern solar systems use components that radiate high levels of radio frequency electromagnetic radiation, which poses health risks to those with electromagnetic hypersensitivity (EHS). The primary health hazard involved with solar energy generation is that people with EHS get sick from electromagnetic radiation in even very small amounts.....Solar cells are also made of non-recyclable materials. Therefore, the absence of an environment-friendly way to dispose of non-functioning solar cells could pose a threat to the environment as well." [http://www.ehow.com/list\\_6155201\\_solar-energy-health-effects-humans.html](http://www.ehow.com/list_6155201_solar-energy-health-effects-humans.html) Some people report being able to hear the hum from the inverters.

Any commercial solar installations on non-preserved farmland should have requirements for considerable setbacks in addition to being taxed at non-agricultural rates. My preference would be that as a rule of thumb they should be invisible to neighbors and passing traffic from roadways. They should not saddle up right next to roads and destroy the view of the countryside. Decades ago the decision makers in HoCo dictated that all development should occur in the eastern part of the county in order to preserve the west. CB59 removes the opportunity for density-weary residents to have a Sunday drive in the country **in our own County.**

*Susan Garber*



Reply all | Delete Junk |

## CB 59-2016

SG

Susan Garber <buzysusan23@yahoo.com>

Sat 9/24, 12:37 PM

CouncilMail

Reply all |

HCCA opposes CB59R.p...  
249 KB

Download

| Action Items

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Dear Council members,

Thank you for your attention to my testimony on Monday, September 19, 2016. Regrettably, I discovered that the copies I provided you that evening were not of my final version. Please see the attached document which has additional conclusions.

Best regards,  
Susan Garber



## Howard County Citizens Association

*Since 1961...*

*The Voice Of The People of Howard County*

The HCCA finds CB 59 (ZRA164) to be extremely disappointing on multiple fronts, both general and specific.

**IN GENERAL** it perpetuates the worst of some recurring bad practices:

- 1.) At a time when our zoning and subdivision regulations are in desperate need of a complete overhaul, this is another prime example of diluting our zoning laws one ZRA at a time. One fully suspects that each and every conditional use listed currently was the result of one or more individual property owners who wanted to do yet one more thing with their property beyond what had previously been allowed. We need a better defined and more comprehensive, rather than piecemeal approach to zoning.
- 2.) Zoning changes outside of the 10 year Comp Zoning process are granted for change or mistake. This ZRA is being presented as if to simply correct an oversight. Perhaps that oversight **was** opening the western part of the county to commercial solar installations. Perhaps the permission in section 106. 1 was the mistake, rather than failure to remove the prohibition in section 131. O. N. 5 2. A. It is alarming how quickly a 2013 Comp Zoning provision to provide an increase to 2% of parcels for conditional uses is now increased to 75 acres! That 75-acre conditional-use limitation is the only limiting factor proposed for eligible parcels.
- 3.) Failure to identify those parties who will benefit the greatest from the change constitutes a lack of transparency. Who stands to benefit the most this time? Why did **they** not put forth the ZRA themselves? Why did they not pay the fee that helps cover staff expenses for its consideration? Is the major beneficiary the Solar Companies marketing to farmers or is it those few large parcel owners who are likely to fit the qualifications to benefit from 75 acres of passive income? Are they simply trying to avoid drawing attention to themselves?
- 4.) Loosely defined terms and a lack of specificity on enforcement leaves provisions open to interpretation—and litigation, adding significant time and expense to what needs to be more straightforward. Stipulations like "tree removal shall be *minimalized*" has proven meaningless in other zones, like R-H-ED. Similarly, while it is laudable to include a provision that a solar facility no longer used needs to be removed from the site within one year, without bonds put up front to ensure its removal there's absolutely no guarantee this will happen.

5.) Citizen participation is once again only an illusion. While the legislation calls for the ALPB to review requests for solar installations the criteria for evaluation is not included in the actual legislation. The Boards function is only advisory, thus allowing a single person, the Hearing Examiner, to ignore and override their expert recommendations. HCCA has recently submitted a proposal that citizen-staffed Boards and Commissions (such as the Historic Preservation Commission or Design Advisory Panel) be elevated to authority status from advisory. If a change in the Zoning regulations is necessary to achieve this, then that would be a worthwhile use of the ZRA process!

6.) The unfortunate reality is that one can pick specific sentences out of Plan 2030 to justify almost any action. It appears that merely quoting chapter and verse is all that is required for DPZ to 'support' the proposal in their technical report without truly evaluating the impact on the general welfare of the citizens.

7.) Zoning regulations and changes are often indistinguishable from the activities of the Economic Development Authority. DPZ recommends the 2% cap restriction be removed in order to produce economically viable commercial solar facilities. Is it our job to increase farmers income? is that the job of government? Increasing the income of farmers (and solar companies who may or may not be located in Howard County) is taking precedent over breaking the public trust (and ignoring their sacrifice.) It puts profit for a few over quality of life for the many—with no discernible tax benefit to the County.

8.) There is a failure to provide specific data, necessary to make informed decisions. While 270 parcels are identified as being of at least 10 plus acres in the preservation program, this proposal fails to identify how many of those could actually reach the 75-acre maximum. Prognosticating that "only a few will actually qualify or wish to do so" is not a justification for permitting an activity. One need only look to the conditional use of age restricted housing in R-20 to see density increase from 2 units to 5 units per acre throughout the County.

9.) Failure to recognize that Howard County is the second SMALLEST jurisdiction in the state is resulting in numerous significant APFO issues. Constantly increasing density and decreasing open space is short-sighted and irresponsible.

**SPECIFICLY**, there are numerous fundamental issues relative to commercial solar installations in the western county.

1.) **Commercial solar facilities are not agriculture.** One cannot simply redefine terms because it is convenient or profitable to do so. Webster defines agriculture as 'the science or art of cultivating the soil, producing crops, and raising livestock.' Such agricultural pursuits are what Howard County citizens were agreeing to when they supported the establishment of our

Agricultural Land Preservation Program, or Ag Pres for short. Merely adding the noun 'farm' after another word does not imply any agricultural pursuit, as is evidenced by the terms 'fat farm' or 'funny farm'.

**2.) Allowing large commercial solar installations on ag pres land breaks a fundamental trust with those residing in other parts of the County who sacrifice considerably in supporting the preservation of Western Howard County for farming.** Those in the Eastern part of the County have been told for decades they must accept greater residential density and all the commercial and industrial uses -- and the lower quality of life that comes with that in order to preserve and protect the west from development. Supporters of this bill try to now justify trading support of local agriculture for support of green energy production. References to policy 4 .12 are simply **not** adequate to justify this breaking of the public trust.

**3.) What exactly is the public benefit?**

We hear many arguments for how this will benefit farmers, but Howard County should not sacrifice its agricultural preservation land in order to provide additional income for farmers OR energy for others. Why, as the second smallest jurisdiction in the state of Maryland, (and with an unusually high 51% of land already developed) would we want to expand solar installations in the huge quantities suggested?

**4.) There appears to be a greater benefit to the solar industry than to Howard Co taxpayers.** Whether putting 234 ALPP properties and 746 dedicated preservation parcels in Howard into commercial solar facilities is a true benefit to the health, safety, and welfare of the entire Howard population is much more open to debate.

**5.) It is not the role of government to increase or stabilize farmers' incomes.** The proposal can increase the amount of land available on a particular parcel increasing the economic viability of the facility. It can increase the profitability to the farmer as an additional income stream. However, it is not the job of the Howard government to do so, any more than it is to increase the income stream of any other resident. The argument that the changes could incentivize property owners to participate in land preservation is bogus. It is of no benefit to the rest of the county residents who agreed to sacrifice in order to have farm land available in the west to be used for farming. It is not at all uncommon for farm families to have some other form of part time employment. If the farm family feels they cannot make the income level they desire—even with lower property taxes and Ag Pres funding, then perhaps they should consider selling. There will always be another individual willing to escape high density areas to give farming a go.

**6.) The role of the ALP Board needs to be strengthened.** As written, their role in the review process would not be similar to Forest Conservation and Wetland Mitigation requests on ALPP

property. In this case the Board would only be able to give recommendations to DPZ for inclusion of their technical report. Perhaps this is where change needs to be made. The Board needs to have more power when it comes to the placement of solar panels so that agricultural expertise would be a primary consideration. This expertise should be shared early in the process.

7.) **Increases have already been provided.** ALPP purchased easements represent the vast majority of preserved land totaling almost 15,300 acres. Prior to 2013 Comp Zoning outdoor conditional use area for preservation easement could not exceed a quarter of an acre. During Comp Zoning it was changed instead to 2% of the parcel size in order to accommodate larger operations. What other changes can we anticipate for other things passed during Comprehensive Zoning if a change this large and significant can be passed at this time?

8.) **Will this not further complicate the cluster subdivision process?** Many residents in the West are already upset with how the cluster subdivision process is playing out.

9.) **Why is solar the only energy alternative being considered** at this time? Is it simply that it is the first alternative energy industry to be so heavily promoting itself? Could an unexpected consequence of this legislation be to preclude other, less obtrusive forms, such as wind and geothermal? These alternatives would occupy far less land, leaving more for actual farming—the raising of crops or animals.

### **CONCLUSIONS: Just say NO**

1.) Commercial solar facilities should not be permitted on agricultural preservation parcels or easements. To do so would break the public trust.

2.) While this bill clearly benefits farmers and solar companies it is hard to determine the benefit to the general public.

3.) Commercial solar facilities are not agriculture and therefore any land populated with such solar facilities should lose the reduced agricultural property tax assessment.

4.) Tillable ground should not be covered with solar panels whether within Ag Pres or not. It is not much different than constructing homes on farms where both instances negate agricultural purpose and result in covered ground regardless.

5.) If we are to accept the argument that intercropping underneath the solar panels and/ or the grazing of certain livestock among the solar panels is a viable and compatible use, why not require such truly agricultural endeavors as part of a condition of having solar panels?

6.) Other less visually obtrusive forms of alternative energy production (such as wind and geothermal) should not be precluded by a solar farm bill since those alternatives use less land, making traditional agricultural functions of raising crops and livestock more possible.

7.) Solar panels are not without health risks—both in their production and their disposal.

8.) There is no need to sacrifice our farmland in order to support green energy initiatives when there are acres and acres of commercial property roofs that could be used instead.



Empower Your World.

**FILE COPY**

**COPY OF ORAL TESTIMONY TO THE COUNTY COUNCIL OF HOWARD COUNTY, MD, IN SUPPORT OF BILL NO. 59-2016 (ZRA-164), SEPTEMBER 19, 2016**

My name is Dennis Satnick. I am Sr. Consultant to RER Energy Group, who was recently recognized as the 28<sup>th</sup> Top 50 Solar Developer in the United States *by Solar Power World Magazine*. I wish to say a few words in support of Bill No. 59-2016, commonly referred to ZRA-164.

Before moving to MD some 4-years ago, I had both the honor and responsibility to spend 3-years as a sitting member on the PA Farmland Preservation Board. I was appointed to the Board by former Governor Edward Rendell.

I learned several things while serving on the Board. First, that the size of the average farm in MD as well as PA, DE and NJ, is less than 100 acres. Second, most farm owners do not farm their own property, they lease the land out to a tenant farmer who pay between \$200 - \$300 per acre. A quick calculation indicates income between \$20,000 - \$30,000. Not a life changing sum, but enough to temporarily round off some of life's hard edges.

A solar developer, on the other hand, will pay between \$750 - \$1,500 per acre. For the sake of an apples-to-apples comparison, a farm owner could earn between \$75,000 and \$150,000 compared to the previously mentioned \$20,000 - \$30,000. This is a life changing number and one that could possibly mean keeping one's farm to pass down to a future generation, create a legacy or help out financially when retirement will certainly will come.

I believe that amending the Howard County Zoning Ordinance to permit ground mounted solar facilities on County Preservation Parcels in the RR and RC zoning districts will help preserve the "farm family" way of life for those farm owners who face increasing financial difficulties.

Thank you.







PETITION TO AMEND THE ZONING REGULATIONS OF HOWARD COUNTY

DPZ Office Use Only: Case No. ZRA- 164 Date Filed: 12-8-15

1. Zoning Regulation Amendment Request

I (we), the undersigned, hereby petition the County Council of Howard County to amend the Zoning Regulations of Howard County as follows: To amend Section s 106.1 County Preservation Easements and 131.0: Conditional Uses section to eliminate an unintended conflict that would prohibit the Commercial Solar Facilities on preservation parcels as a Conditional Use.

[You must provide a brief statement here. "See Attached Supplement" or similar statements are not acceptable. You may attach a separate document to respond to Section 1 in greater detail. If so, this document shall be titled "Response to Section 1"]

2. Petitioner's Name Dr. Calvin Ball, Councilperson

Address 3430 Courthouse Drive, Ellicott City, MD 21043

Phone No. (W) 410-313-2001 (H)

Email Address @howardcountymd.gov

2013 DEC -8 P 2 48

3. Counsel for Petitioner Paul Johnson, Esq.

Counsel's Address 3450 Courthouse Drive, Ellicott City, MD 21043

Counsel's Phone No. 410-313-2101

Email Address PJohnson@howardcountymd.gov

4. Please provide a brief statement concerning the reason(s) the requested amendment(s) to the Zoning Regulations is (are) being proposed The proposed changes to the Zoning Regulations will eliminate the unintended conflict that would prohibit the Commercial Solar Facilities on preservation parcels as a Conditional Use. During the comprehensive zoning effort of 2013 there was a new section added to the Zoning Regulations (106.1) for County Preservation Easements which permitted Commercial Solar Facilities as a conditional use on preservation easements. Unfortunately, the Conditional Use language that prohibited Commercial Solar Facilities on preservation parcels was not deleted. In addition, given the nature of Commercial Solar Facilities, the limits of 106.1D.1.a and 106.1D.2.a are not feasible. Therefore, this conditional use should be listed more appropriately under 106.1D.1.b and 106.1D.2.b.

5. Please provide a detailed justification statement demonstrating how the proposed amendment(s) will be in harmony with current General Plan for Howard County                      POLICY 4.12 – “Develop an energy plan that prepares for different future energy scenarios, examines options for various kinds of future energy sustainability, promotes conservation and renewable resources, and sets targets to reduce greenhouse gases.” This policy has an Implementing Action D which calls to “Implement the County’s 2010 Climate Action Plan (referenced in Chapters 1, 3, and 12), which relates to future energy technology, such as wind, solar, geothermal, and other renewable sources.”

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[You may attach a separate document to respond to Section 5. If so, this document shall be titled “Response to Section 5”]

6. The Legislative Intent of the Zoning Regulations in Section 100.0.A. expresses that the Zoning Regulations have the purpose of “...preserving and promoting the health, safety and welfare of the community.” Please provide a detailed justification statement demonstrating how the proposed amendment(s) will be in harmony with this purpose and the other issues in Section 100.0.A.                      The General Plan also states in Policy 4.12, Implementing Action G that [the County should] “Explore evolving energy markets, plus options for enabling “smart grid” technologies, which reveal new opportunities to create, store, consume, and invest in energy commodities and related assets.”

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[You may attach a separate document to respond to Section 6. If so, this document shall be titled “Response to Section 6.”]

7. Unless your response to Section 6 above already addresses this issue, please provide an explanation of the public benefits to be gained by the adoption of the proposed amendment(s) .                      See number 6 above.

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[You may attach a separate document to respond to Section 7. If so, this document shall be titled “Response to Section 7.”]

8. Does the amendment, or do the amendments, have the potential of affecting the development of more than one property, yes or no? \_\_\_\_\_ Yes. \_\_\_\_\_

If yes, and the number of properties is less than or equal to 12, explain the impact on all properties affected by providing a detailed analysis of all the properties based upon the nature of the changes proposed in the amendment(s). If the number of properties is greater than 12, explain the impact in general terms.

The minimum required lot size for a Commercial Solar Facility is 10 acres. If there are parcels that fit that size criteria and meet the other Conditional Use requirements (setback, uses, etc.) then they would be eligible for the use. According to the County GIS staff there are approximately 270 parcels that are at least 10+ acres and in the preservation program.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
[You may attach a separate document to respond to Section 8. If so, this document shall be titled "Response to Section 8."]

9. If there are any other factors you desire the Council to consider in its evaluation of this amendment request, please provide them at this time. Please understand that the Council may request a new or updated Technical Staff Report and/or a new Planning Board Recommendation if there is any new evidence submitted at the time of the public hearing that is not provided with this original petition. \_\_\_\_\_


\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
[You may attach a separate document to respond to Section 9. If so, this document shall be titled "Response to Section 9."]

10. You must provide the full proposed text of the amendment(s) as a separate document entitled "Petitioner's Proposed Text" that is to be attached to this form. This document must use this standard format for Zoning Regulation Amendment proposals; any new proposed text must be in CAPITAL LETTERS, and any existing text to be deleted must be in [[ Double Bold Brackets ]]. In addition, you must provide an example of how the text would appear normally if adopted as you propose.

**After this petition is accepted for scheduling by the Department of Planning and Zoning, you must provide an electronic file of the "Petitioner's Proposed Text" to the Division of Public Service and Zoning Administration. This file must be in Microsoft Word or a Microsoft Word compatible file format, and may be submitted by email or some other media if prior arrangements are made with the Division of Public Service and Zoning Administration.**

11. The Petitioner agrees to furnish additional information as may be required by the Department of Planning and Zoning prior to the petition being accepted for scheduling, by the Planning Board prior to its adoption of a Recommendation, and/or by the County Council prior to its ruling on the case.
12. The undersigned hereby affirms that all of the statements and information contained in, or filed with this petition, are true and correct. The undersigned has read the instructions on this form, filing herewith all of the required accompanying information. If the Petitioner is an entity that is not an individual, information must be provided explaining the relationship of the person(s) signing to the entity.

Calvin Ball  
 Petitioner's name (Printed or typed)

 12/8/15  
 Petitioner's Signature Date

\_\_\_\_\_  
 Petitioner's name (Printed or typed)

\_\_\_\_\_  
 Petitioner's Signature Date

\_\_\_\_\_  
 Petitioner's name (Printed or typed)

\_\_\_\_\_  
 Petitioner's Signature Date

Paul Johnson 12/8/15  
 Counsel for Petitioner's Signature

[If additional signatures are necessary, please provide them on a separate document to be attached to this petition form.]

**FEE**

The Petitioner agrees to pay all fees as follows:

Filing fee .....\$695.00. If the request is granted, the Petitioner shall pay \$40.00 per 200 words of text or fraction thereof for each separate textually continuous amendment (\$40.00 minimum, \$85.00 maximum)

Each additional hearing night..... \$510.00\*

\* The County Council may refund or waive all or part of the filing fee where the petitioner demonstrates to the satisfaction of the County Council that the payment of the fee would work an extraordinary hardship on the petitioner. The County Council may refund part of the filing fee for withdrawn petitions. The County Council shall waive all fees for petitions filed in the performance of governmental duties by an official, board or agency of the Howard County Government.

**APPLICATIONS: One (1) original plus twenty (24) copies along with attachments.**

\*\*\*\*\*

**For DPZ office use only:**

Hearing Fee \$ \_\_\_\_\_

Receipt No. \_\_\_\_\_

**PLEASE CALL 410-313-2395 FOR AN APPOINTMENT TO SUBMIT YOUR APPLICATION**

**County Website: [www.howardcountymd.gov](http://www.howardcountymd.gov)**

Attachment A

SECTION 106.1: - County Preservation Easements

D. Conditional Uses

1. ALPP Purchased Easements and ALPP Dedicated Easements

- a. Conditional Uses shall not be allowed on agricultural preservation easements unless they support the primary agricultural purpose of the easement property, or are an ancillary business which supports the economic viability of the farm, and are approved by the hearing authority in accordance with the applicable provisions of Sections 130.0 and 131.0 of these regulations. On an ALPP purchased or dedicated easement property, the area devoted to Conditional Uses may not exceed a cumulative use cap equal to 2% of the easement or up to a maximum of 1 acre for preservation parcels created as part of the Cluster Subdivision process.

The following Conditional Uses may be allowed:

- (1) Animal hospitals
- (2) Barber shop, hair salon and similar personal services facilities
- (3) Bottling of spring or well water
- (4) Communication Towers
- (5) Farm tenant house on a parcel of at least 25 acres but less than 50 acres
- (6) Historic building uses
- (7) Home based contractors
- (8) Home occupations
- (9) Kennels and/or pet grooming establishments
- (10) Landscape contractors
- (11) Limited outdoor social assemblies
- (12) Sawmills or bulk firewood processing
- (13) School buses, commercial service
- (14) Small wind energy systems, freestanding tower
- [[ (15) Solar facilities, commercial ]]

b. In addition, the following Conditional Uses which may require additional land area may be permitted on agricultural preservation easements:

- (1) Agribusiness, limited to uses itemized in Section 131.0.N.
- (2) Farm winery—class 2
- (3) SOLAR FACILITIES, COMMERCIAL

2. Other Dedicated Easements

a. Conditional Uses shall not be allowed on other dedicated easements unless they support the primary purpose of the easement property and are approved by the Hearing Authority in accordance with the applicable provisions of Sections 130.0 and 131.0 of these Regulations. On these dedicated easements, the following Conditional Uses which do not require the construction of new principal structures or use of an outdoor area that is more than 2% of the preservation parcel acreage up to a maximum of 1 acre may be allowed:

- (1) Animal hospitals
- (2) Antique shops, art galleries and craft shops
- (3) Barber shop, hair salon and similar personal service facilities
- (4) Bottling of spring or well water
- (5) Child day care centers and nursery schools, day treatment and care facilities
- (6) Communication towers
- (7) Country inns
- (8) Historic building uses
- (9) Farm tenant house on a parcel of at least 25 acres but less than 50 acres
- (10) Home based contractors
- (11) Home occupations
- (12) Kennels and/or pet grooming establishments
- (13) Landscape contractors
- (14) Limited outdoor social assemblies
- (15) Museums and libraries
- (16) Retreats



(17) School buses, commercial service

(18) Shooting ranges—outdoor rifle, pistol, skeet and trap

(19) Small wind energy systems, freestanding tower

[[20] Solar Facilities, commercial]]

[[21]20] Two family dwellings, accessory apartments and multi-plex dwellings

b. In addition, the following Conditional Uses which may require additional land area may be permitted on other dedicated easements:

(1) Agribusiness, limited to uses itemized in Section 131.0.N.2

(2) Charitable or philanthropic institutions dedicated to environmental conservation

(3) Farm Winery—Class 2

(4) Golf Courses

(5) SOLAR FACILITIES, COMMERCIAL

## SECTION 131.0: - Conditional Uses

### N. Conditional Uses and Permissible Zoning Districts

#### 52. Solar Facility, Commercial

A Conditional Use may be granted in the RC or RR District for a commercial solar facility, provided that:

[[a. The land on which the commercial solar facility is proposed may not be in the Agricultural Land Preservation Program and it may not be encumbered by any environmental preservation easements.]]

[[b]]A. The maximum size of a solar facility shall be 75 acres notwithstanding the size of the parcel. The parcel on which the commercial solar facility is proposed must be a minimum of 10 acres in size.

[[c]]B. All structures and uses must meet a minimum 50 foot setback from all property lines.

[[d]]C. No structure or use may be more than 20 feet in height.

[[e]]D. A 'Type D' landscaping buffer must be provided around the perimeter of the proposed commercial solar facility unless the Hearing Authority determines that an alternative buffer is sufficient.

[[f]]E. All security fencing must be located between the landscaping buffer and the commercial solar facility.

[[g]]F. The systems shall comply with all applicable local, state, and federal laws and provisions.

[[h]]G. A commercial solar facility that is no longer used shall be removed from the site within one year of the date that the use ceases.

[[i]]H. The premises shall be maintained at all times in a clean and orderly condition, including the care or replacement of plant materials required in the landscaping plan. The responsibility for compliance with this provision shall be with all parties having a lease or ownership interest in the commercial solar facility. The applicant shall provide the Hearing Authority with details regarding maintenance and access for the site.

[[j]]I. A solar collector or combination of solar collectors shall be designed and located to avoid glare or reflection onto adjacent properties and adjacent roadways and shall not interfere with traffic or create a safety hazard.

[[k]]J. The applicant shall agree to register all solar collectors with the Department of Fire and Rescue Services. The registration shall include a map of the solar facility noting the location of the solar collectors and the panel disconnect.

[[l]]K. Tree removal shall be minimized and reforestation shall be done in accordance with Section 16.1026 of the Howard County Code.

[[m]]L. The applicant shall demonstrate that the solar facility does not harm the scenic characteristics of the view of or from:

- (1) A public park;
- (2) A national or state designated scenic byway;
- (3) A road listed in the Scenic Roads Inventory adopted under Section 16.1403 of the Howard County Code; or
- (4) A historic structure as defined in Section 16.601 of the Howard County Code.

M. THE HOWARD COUNTY AGRICULTURAL LAND PRESERVATION BOARD SHALL REVIEW ANY CONDITIONAL USE PETITION WHICH PROPOSES TO A COMMERCIAL SOLAR FACILITY ON PARCELS WHICH ARE IN THE AGRICULTURAL LAND PRESERVATION PROGRAM PRIOR TO APPROVAL BY THE HEARING AUTHORITY.



April 14, 2016

## TECHNICAL STAFF REPORT

*Planning Board Meeting on April 28, 2016*

**Case No./Petitioner: ZRA – 164 – Dr. Calvin Ball**

**Request:** Amend Section 131.0-Conditional Uses of the Zoning Regulations to allow Commercial Solar Facilities on Agricultural Land Preservation Parcels (ALPP) and require that all Conditional Use petitions for Commercial Solar Facilities on ALPP land be reviewed by the Agricultural Land Preservation Board (ALPB).

Amend Section 106.1-County Preservation Easements to eliminate the use area restrictions for Commercial Solar Facilities on ALPP purchased or dedicated easements, preservation parcels created as part of a cluster subdivision process, and other dedicated easements.

### I. BACKGROUND

As part of the 2013 Comprehensive Zoning process, Section 106.1- County Preservation Easements, was added to the Zoning Regulations. Prior to Comprehensive Zoning in 2013, uses permitted on preservation easements were addressed through an administrative policy and were not included in the Zoning Regulations. The Commercial Solar Facility land use was not addressed by this policy.

Section 106.1 references different types of agricultural preservation easements in the Rural Conservation (RC) and Rural Residential (RR) Zoning Districts. Each type identified in the zoning regulations is explained below.

*ALPP Purchased Easements* are purchased by the County and represent the vast majority of preserved land, totaling almost 15,300 acres. Easements are purchased based on a scoring system that assesses suitability of a parcel for agricultural use. Prior to the addition of Section 106.1 to the Zoning Regulations, the outdoor conditional use area for a preservation easement could not exceed ¼ acre. During Comprehensive Zoning in 2013, the maximum area was changed to a percentage of the parcel size (2%) to accommodate the need for larger operations on large properties that could support them.

*ALPP Dedicated Easements* are dedicated to the County rather than purchased. They consist of density sending parcels or cluster subdivision residue parcels, per the requirements of the Zoning Regulations. Density sending parcels determined to be suitable for farming are dedicated to the County and enter into the ALPP.

Preservation parcels created as part of an on-site cluster development can also be encumbered by an ALPP easement. However, these parcels are typically remnant parcels and are often not suitable for

farming. Those that are not, are dedicated as environmental preservation parcels, referred to in Section 106.1 as "*Other Dedicated Easements.*"

Section 106.1 enumerates permitted uses on preservation easements and are categorized as Matter of Right, Accessory, or Conditional. Matter of Right and Accessory land uses consist mainly of farming and related operations. Conditional Uses consist of agricultural based commercial uses and are separated into two categories based upon the amount of land area needed to operate. The first category of Conditional Uses includes Commercial Solar Facilities and is subject to a cumulative maximum land use area as described below:

- For ALPP purchased and dedicated easements, the use area cannot exceed 2% of the easement;
- For preservation parcels created as part of a cluster subdivision, the use area cannot exceed 1 acre;
- For other dedicated easements, the use area cannot exceed 2% of the easement up to 1 acre.

The second category of land uses is not subject to a maximum land area requirement.

Section 131.0.N.52 governs Commercial Solar Facility Conditional Uses in the RC and RR districts that are not on ALPP lands. Further, Section 131.0.N.52.a. explicitly prohibits Commercial Solar Facilities on ALPP land or any parcel encumbered by an environmental preservation easement. Clearly a conflict in the Zoning Regulations exists between this section and the permission granted in section 106.1. This conflict is likely an oversight during the Comprehensive Zoning process, whereby the prohibition in Section 131.0.N.52.a should have been removed once the permission in Section 106.1 was granted.

## II. DESCRIPTION AND EVALUATION OF PROPOSAL

The petitioner proposes to eliminate the conditional use provision that prohibits Commercial Solar Facilities on ALPP land and other County easements, thus correcting the oversight that occurred during Comprehensive Zoning. The petitioner also proposes to add a requirement that the Howard County Agricultural Land Preservation Board review any Conditional Use for a Commercial Solar Facility on parcels that are in the ALPP. Furthermore, the petitioner proposes to reclassify the Commercial Solar Facility as a land use that "may require additional land area," thereby increasing the maximum use area beyond the 2%/one-acre cumulative use caps. The proposed amendment would apply to lots in the RR or RC Zoning Districts that meet the Conditional Use requirements for a Commercial Solar Facility and are encumbered by an ALPP Purchased Easement, ALPP Dedicated Easement, and/or other dedicated easement.

The following evaluation of ZRA-164 provides technical recommendations for each proposed text amendment. The Petitioner's complete proposed amendment text is attached to this Technical Staff Report as Exhibit A (Petitioner's Proposed Text).

## 1. SECTION 131.0: CONDITIONAL USES

### Section 131.0.N.52.a – Remove

#### Staff recommends approval of the amendment

This section prohibits Commercial Solar Facilities on land that is in the Agricultural Land Preservation Program or encumbered by environmental preservation easements. Due to an oversight, this section was not removed during Comprehensive Zoning in 2013. The proposed amendment would remedy the discrepancy between Section 106.1 and Section 131.0 by removing the prohibition of Commercial Solar Facilities on land in the ALPP or encumbered by environmental preservation easements. DPZ recommends deletion of this section in order to remove the conflict in the regulations.

### Section 131.0.N.52.m – Add new section

#### Staff recommends approval of the amendment

The petitioner proposes to add a requirement that the Howard County ALPB review any Conditional Use for a Commercial Solar Facility on parcels that are in the ALPP. This will provide an opportunity for additional technical review by agricultural preservation experts, which will assist the Hearing Authority in rendering a decision.

DPZ reviewed ZRA 164 with the ALPB on February 17, 2016 and March 28, 2016 and they expressed support for this requirement. Specifically, they discussed a desire to provide input regarding the location and size of proposed facilities so that impacts to farm land with high soil quality and other important agricultural features are minimized. Additional information on these discussions can be found in EXHIBIT B and EXHIBIT C.

DPZ supports the ability of the ALPB to review Commercial Solar Facility Conditional Use proposals to help ensure the proposal is in harmony with the intent of the ALPP.

## 2. SECTION 106.1: COUNTY PRESERVATION EASEMENTS

### Section 106.1.D.1.a.(15) – Remove

### Section 106.1.D.1.b.(3) – Add new section

### Section 106.1.D.2.a.(20) – Remove

### Section 106.1.D.2.b.(5) – Add new section

#### Staff recommends approval of these amendments



Land uses listed in Section 106.1.D.1.a are subject to a cumulative use area maximum equal to 2% of the easement or up to a maximum of one acre on preservation parcels part of a cluster subdivision. Land uses listed in Section 106.1.D.2.a are subject to a cumulative use area maximum equal to 2% of the easement up to a maximum of 1 acre. The Commercial Solar Facility land use is included in these sections.

Land uses listed in Section 106.1.D.1.b and 106.1.D.2.b are not subject to a maximum use area. The proposed amendments remove the Commercial Solar Facility land use from Sections 106.1.D.1.a/106.1.D.2a and adds it to Sections 106.1.D.1.b/106.1.D.2.b. This would eliminate the 2%/one-acre cumulative use area maximum for Commercial Solar Facilities on preservation easements. The existing 75-acre conditional use limitation will serve as the only limiting factor pertaining to use area size for eligible parcels.

In order to maximize exposure to the sun, solar panels are erected parallel to the ground or slightly angled, which cause solar farms/facilities to be very land intensive. Additionally, the establishment of a Commercial Solar Facility and size of that facility depends on numerous factors, including capacity of transmission lines, proximity to a distribution center/substation, and economies of scale, which can limit potential locations. Consequently, even if a particular parcel was able to support a 75 acre solar farm, it is unlikely that every factor would align such that a facility this size could operate. The 2% land area maximum drastically reduces the area of land available for the installation of solar panels and when combined with other factors, can reduce the viability of solar technology on a particular parcel. Recognizing the complex and varied factors involved in siting an economically viable Commercial Solar Facility, DPZ recommends that the 2%/one-acre cumulative use cap restriction be removed.

### **III. GENERAL PLAN**

The Petitioner asserts that ZRA-164 is in harmony with of the following PlanHoward 2030 (General Plan) policies:

#### **Policy 4.12**

“Develop an energy plan that prepares for different future energy scenarios, examines options for various kinds of future energy sustainability, promotes conservation and renewable resources, and sets targets to reduce greenhouse gases.”

#### **Implementation Action D**

“Implement the County’s 2010 Climate Action Plan (referenced in Chapters 1, 3, and 12), which relates to future energy technology such as wind, solar, geothermal, and other renewable sources.”

**Implementation Action G**

“Explore evolving energy markets, plus options for enabling “smart grid” technologies, which reveal new opportunities to create, store, consume, and invest in energy commodities and related assets.”

The proposed amendments will expand the opportunity for solar technology by potentially allowing Commercial Solar Facilities on 234 ALPP properties and 746 dedicated preservation parcels in Howard County. Additionally, increasing the amount of land area available for solar facilities on a particular parcel increases the economic viability of the facility and profitability to the farmer as an additional income stream. Furthermore, the potential revenue generated from the Commercial Solar Facility on ALPP land could provide an incentive for property owners to participate in land conservation. These outcomes are in harmony with Policy 4.12 and Implementation Actions D & G of the PlanHoward 2030 General Plan. Therefore, DPZ concurs with the petitioner’s assertion.

**IV. AGENCY COMMENTS**

The Howard County Agricultural Land Preservation Board reviewed the Petitioner’s proposal in meetings held on February 17, 2016 and March 28, 2016. A copy of the minutes from the February meeting is attached as EXHIBIT B to this Technical Staff Report. Since the minutes from the March 28, 2016 ALPB meeting were not approved at the time of this report, a summary of the ZRA 164 discussion at that meeting is attached as EXHIBIT C.

Comments from all other applicable agencies have not yet been received. Any substantive comments received from these agencies before the Planning Board Public Hearing will be forwarded to the Planning Board members before the hearing date.

**V. RECOMMENDATION**

**APPROVAL**

For the reasons noted above, the Department of Planning and Zoning recommends that ZRA-164 be **APPROVED**.

Approved by:

 4-14-16  
Valdis Laxdins, Director Date

NOTE: The file is available for public review at the Department of Planning and Zoning Public Information Counter.

**ZRA 164 – Exhibit A**

**Petitioner's Proposed Text**

(CAPITALS indicate text to be added; [[brackets indicate text to be deleted]].)

**SECTION 106.1: - County Preservation Easements**

**D. Conditional Uses**

**1. ALPP Purchased Easements and ALPP Dedicated Easements**

- a. Conditional Uses shall not be allowed on agricultural preservation easements unless they support the primary agricultural purpose of the easement property, or are an ancillary business which supports the economic viability of the farm, and are approved by the hearing authority in accordance with the applicable provisions of Sections 130.0 and 131.0 of these regulations. On an ALPP purchased or dedicated easement property, the area devoted to Conditional Uses may not exceed a cumulative use cap equal to 2% of the easement or up to a maximum of 1 acre for preservation parcels created as part of the Cluster Subdivision process.

The following Conditional Uses may be allowed:

- (1) Animal hospitals
- (2) Barber shop, hair salon and similar personal services facilities
- (3) Bottling of spring or well water
- (4) Communication Towers
- (5) Farm tenant house on a parcel of at least 25 acres but less than 50 acres
- (6) Historic building uses
- (7) Home based contractors
- (8) Home occupations
- (9) Kennels and/or pet grooming establishments
- (10) Landscape contractors
- (11) Limited outdoor social assemblies
- (12) Sawmills or bulk firewood processing
- (13) School buses, commercial service



(14) Small wind energy systems, freestanding tower

[[ (15) Solar facilities, commercial ]]

b. In addition, the following Conditional Uses which may require additional land area may be permitted on agricultural preservation easements:

(1) Agribusiness, limited to uses itemized in Section 131.0.N.

(2) Farm winery—class 2

(3) SOLAR FACILITIES, COMMERCIAL

2. Other Dedicated Easements

a. Conditional Uses shall not be allowed on other dedicated easements unless they support the primary purpose of the easement property and are approved by the Hearing Authority in accordance with the applicable provisions of Sections 130.0 and 131.0 of these Regulations. On these dedicated easements, the following Conditional Uses which do not require the construction of new principal structures or use of an outdoor area that is more than 2% of the preservation parcel acreage up to a maximum of 1 acre may be allowed:

(1) Animal hospitals

(2) Antique shops, art galleries and craft shops

(3) Barber shop, hair salon and similar personal service facilities

(4) Bottling of spring or well water

(5) Child day care centers and nursery schools, day treatment and care facilities

(6) Communication towers

(7) Country inns

(8) Historic building uses

(9) Farm tenant house on a parcel of at least 25 acres but less than 50 acres

(10) Home based contractors

(11) Home occupations

(12) Kennels and/or pet grooming establishments

(13) Landscape contractors

- (14) Limited outdoor social assemblies
- (15) Museums and libraries
- (16) Retreats
- (17) School buses, commercial service
- (18) Shooting ranges—outdoor rifle, pistol, skeet and trap
- (19) Small wind energy systems, freestanding tower
- [[20) Solar Facilities, commercial]]
- [[21]]20) Two family dwellings, accessory apartments and multi-plex dwellings

b. In addition, the following Conditional Uses which may require additional land area may be permitted on other dedicated easements:

- (1) Agribusiness, limited to uses itemized in Section 131.0.N.2
- (2) Charitable or philanthropic institutions dedicated to environmental conservation
- (3) Farm Winery—Class 2
- (4) Golf Courses
- (5) SOLAR FACILITIES, COMMERCIAL

## SECTION 131.0: - Conditional Uses

### N. Conditional Uses and Permissible Zoning Districts

#### 52. Solar Facility, Commercial

A Conditional Use may be granted in the RC or RR District for a commercial solar facility, provided that:

[[a. The land on which the commercial solar facility is proposed may not be in the Agricultural Land Preservation Program and it may not be encumbered by any environmental preservation easements.]]

[[b]]A. The maximum size of a solar facility shall be 75 acres notwithstanding the size of the parcel. The parcel on which the commercial solar facility is proposed must be a minimum of 10 acres in size.

[[c]]B. All structures and uses must meet a minimum 50 foot setback from all property lines.

- [[d]]C. No structure or use may be more than 20 feet in height.
- [[e]]D. A 'Type D' landscaping buffer must be provided around the perimeter of the proposed commercial solar facility unless the Hearing Authority determines that an alternative buffer is sufficient.
- [[f]]E. All security fencing must be located between the landscaping buffer and the commercial solar facility.
- [[g]]F. The systems shall comply with all applicable local, state, and federal laws and provisions.
- [[h]]G. A commercial solar facility that is no longer used shall be removed from the site within one year of the date that the use ceases.
- [[i]]H. The premises shall be maintained at all times in a clean and orderly condition, including the care or replacement of plant materials required in the landscaping plan. The responsibility for compliance with this provision shall be with all parties having a lease or ownership interest in the commercial solar facility. The applicant shall provide the Hearing Authority with details regarding maintenance and access for the site.
- [[j]]I. A solar collector or combination of solar collectors shall be designed and located to avoid glare or reflection onto adjacent properties and adjacent roadways and shall not interfere with traffic or create a safety hazard.
- [[k]]J. The applicant shall agree to register all solar collectors with the Department of Fire and Rescue Services. The registration shall include a map of the solar facility noting the location of the solar collectors and the panel disconnect.
- [[l]]K. Tree removal shall be minimized and reforestation shall be done in accordance with Section 16.1026 of the Howard County Code.
- [[m]]L. The applicant shall demonstrate that the solar facility does not harm the scenic characteristics of the view of or from:
- (1) A public park;
  - (2) A national or state designated scenic byway;
  - (3) A road listed in the Scenic Roads Inventory adopted under Section 16.1403 of the Howard County Code; or

(4) A historic structure as defined in Section 16.601 of the Howard County Code.

M. THE HOWARD COUNTY AGRICULTURAL LAND PRESERVATION BOARD SHALL REVIEW ANY CONDITIONAL USE PETITION WHICH PROPOSES TO A COMMERCIAL SOLAR FACILITY ON PARCELS WHICH ARE IN THE AGRICULTURAL LAND PRESERVATION PROGRAM PRIOR TO APPROVAL BY THE HEARING AUTHORITY.

## EXHIBIT B

### HOWARD COUNTY AGRICULTURAL LAND PRESERVATION BOARD AND STATE AGRICULTURAL PRESERVATION ADVISORY BOARD

February 17, 2016

#### Attendance:

Board Members: Lynn Moore, Chair  
Rickey Bauer, Vice Chair  
Jamie Brown  
Howie Feaga  
Ann Jones  
Denny Patrick

Public: John Zirschky

Staff: Valdis Lazdins, Director, Department of Planning and Zoning  
Amy Gowan, Deputy Director, Department of Planning and Zoning  
Joy Levy, Administrator, Agricultural Land Preservation Program  
Beth Burgess, Chief, Resource Conservation Division  
Mitch Ford, Planning Technician, Agricultural Land Preservation Program  
Kim Pruum, Special Assistant, Office of Council Chair Dr. Calvin Ball

Ms. Moore called the meeting to order at 7:10 p.m. and conducted introductions.

#### Discussion Items

##### 1) SB 236: Amendment to *PlanHoward 2030* to Amend the Growth Tiers

Ms. Gowan gave a presentation on a current proposal to amend *PlanHoward 2030* by changing the existing Growth Tiers structure for Howard County. In 2012, the Maryland General Assembly passed Senate Bill (SB) 236, which was legislation intended to protect the Chesapeake Bay and its watersheds by limiting the amount of development that could occur on septic systems. The Bill required counties to classify land in one of four Growth Tiers that would determine future growth for an area based on certain characteristics such as utility services, agricultural usage, locally designated growth areas, and natural features. After considering several different Growth Tier mapping proposals, the County Council approved Council Bill 1-2013, which became effective in April 2013.

The Tiers map that was approved in 2013 restricted the development rights of many citizens in the RC (Rural Conservation) zoning district in western Howard County by placing them in Tier IV. This limited the maximum number of lots that could be created on any parcel to four, which is the most that are allowed as a minor subdivision. Those properties in the RR (Rural Residential) zoning district kept their full development potential. Ms. Gowan explained that the current legislation would amend the Tiers map so that Tier III would include all properties in the

RC and RR, except for those that are permanently preserved, which would remain Tier IV. Tier III would also include properties encumbered by the Maryland Agricultural Land Preservation Foundation (MALPF) program, since these easements are not technically in perpetuity.

Ms. Gowan continued the presentation by explaining the Impact Data Chart. The Chart analyzed how many additional lots could be created if all of the current Tier IV properties over 21.25 acres that are available for additional development were changed to Tier III. The 21.25 acre figure is the minimum amount of acreage needed to create a major subdivision, which is anything 5 lots or greater. There are 53 Tier IV parcels totaling 2,330 acres that would currently yield 204 lots. If Tier IV were to be lifted, the potential units would increase to 498, representing a net increase of 294 units of added capacity. This analysis does not include any site development constraints, nor does it include any properties under MALPF easements that could potentially terminate. Ms. Gowan stated that the proposed legislation is meant to keep development decisions on a local level, and provide relief from additional development restriction from the state. She concluded by saying that the current measures in place to monitor and control growth in the West, such as the Adequate Public Facilities Ordinance and the Housing Allocation Chart, would continue to serve that purpose.

After Ms. Gowan completed the presentation, Mr. Feaga stated his concern about the administration making the decision to exclude the MALPF properties from Tier IV. He noted that the draft version of the legislation that he presented to the Farm Bureau did not include the MALPF exclusion provision. Mr. Lazdins explained that there was some lag time between the initial draft proposal and what County Executive Kittleman wants to now include. Mr. Lazdins stated that the Executive believes that if a property owner is able to successfully petition to be released from the terms of the MALPF easement, they should have the opportunity to develop their land.

Mr. Bauer and Ms. Jones had questions about whether the various State agencies know about the proposal and what their reactions have been. Mr. Bauer opined that this will encourage MALPF property owners to try and terminate their easements. Ms. Jones stated that the County and the State are supposed to be working together to further the goals of the MALPF program and this sends the completely wrong message, not only in the County but statewide.

The Board members expressed their concern and frustration over the proposed amendment. They were particularly displeased with the MALPF provision, but also concerned about how the proposed change might have a larger effect on the County's ag preservation program and the farming community. Ms. Moore stated that by reversing the Tiers, the proposal would undermine the entire program by furthering the placement of residential communities adjacent to working farms. She noted how challenging the recent conflicts over permitted uses on farmland have been for the agricultural community.

Mr. Bauer stated that most farmers try to make long term plans for their operations, while the county continues to change its stance on how the West should develop. He noted the challenges this presents to the farming community. He contrasted this to other counties that have developed policies to support ag preservation and stuck to them. Ms. Moore followed on this point, by questioning the premise of the preservation program itself if the County can't maintain a consistent position on developing rural land in Western Howard County. Mr. Brown commented that the inconsistency in zoning under the proposed amendment could be viewed as



discrimination towards the farmers in the ALPP, and that all preservation farmers should be Tier III, if the MALPF properties will be.

There was an extensive conversation with Mr. Zirschky about the two parcels his family is attempting to preserve, and the circumstances that have created a situation where the County cannot acquire easements on either property based on lack of development potential. Ms. Levy attempted to explain that it is the combination of the Tiers restrictions and the number of subdivisions that have already occurred that has resulted in our inability to move forward.

There was discussion about the MALPF termination process and how this would affect future requests. Ms. Moore opined that the County has never had a strong policy that protects agriculture. There was agreement that the Tiers brought that to us, but now it's going to be taken away unless the MALPF properties can be added back in.

Ms. Jones stated her concern that it's not just the potential disparity in development potential that concerns her, but also the uses that are allowed on different properties. She gave as an example a dairy farm that wants to expand to produce ice cream and is told they needed a separate septic system to accommodate the new use. Since the purpose behind SB236 was to restrict septic systems in Tier IV areas, an ALPP farm in Tier IV could be prohibited from diversifying to stay viable, while a farm in Tier III would have no such restriction.

Ms. Jones read the language that defines Tier III, stating that if MALPF farms become Tier III, they will be considered land that is, "not planned for sewer service, not dominated by agriculture or forest, and planned for large lot subdivision." She stated her strong objection that this language should apply to MALPF easement properties.

Mr. Bauer stated his opinion that it's naïve to think that the perpetuity clause in the ALPP easements will never be challenged, particularly if the legislation passes as currently proposed.

Mr. Lazdins encouraged the Board to attend the Planning Board meeting tomorrow night. He summarized the Board's main concerns to confirm that he could capture the essence of their input when he reports back to the Administration.

## **2) ZRA 164: Zoning Regulations Amendment, Conditional Uses, Commercial Solar Facilities**

Ms. Gowan introduced the next discussion item by giving an overview of Zoning Regulation Amendment (ZRA) 164 for the Conditional Use of Commercial Solar Facilities on ALPP land. In early December 2015, Council President Ball filed the ZRA with the County Council. Typically, the Department of Planning and Zoning (DPZ) will seek input from other agencies or departments that have technical expertise on the ZRA subject matter to assist DPZ in drafting a Technical Staff Report for submission to the Planning Board. Since it has the potential to significantly impact ALPP properties, DPZ staff wanted to give the ALPB an opportunity to review and comment on the proposed legislation. Ms. Gowan explained that the proposed ZRA would eliminate the current 2% maximum coverage restriction for commercial solar facilities, as is currently provided for in the Conditional Uses subsection of Section 106.1.

Ms. Pruim elaborated on the proposal by stating that the ZRA would expand the Conditional Use that was previously passed in Comprehensive Zoning. Specifically, the ZRA amendment would increase the size from the current maximum of 2% coverage of the property, to up to 75 acres of the parcel. In addition, Ms. Pruim highlighted the newly added Section M of the ZRA, which states that the Board "shall review any conditional use petition which proposes a commercial solar facility on parcels which are in the ALPP prior to approval by the Hearing Authority."

Mr. Feaga stated that this program would be good for unproductive tracts of land. However, he voiced concern over the distance from the property to the nearest transmission lines. In order to connect to the closest substation to operate the solar facility, the new construction of transmission lines could exceed as much as \$1,000,000 per mile. Ms. Pruim stated that Council Chair Ball is cognizant of this issue, and recognizes that various criteria must be considered to determine how viable any particular site is.

Mr. Bauer commented that a percentage of the parcel would be a more appropriate constraint, rather than a flat acreage amount. He took issue with the idea of pristine farmland being used for solar production. The Board agreed that this was an important concern, and that land with superior agricultural soils should be prioritized for agricultural production, and not the construction of a solar facility.

Ms. Pruim addressed this concern by stating that Council Chair Ball's Office has taken a global approach in researching practices of intercropping underneath solar panels. Although it can be done, she conceded that its success depends on a variety of factors (i.e. sun, shade, etc.). Ms. Moore found this statement to be idealistic from her experience in the farming industry. Ms. Burgess added that certain livestock could graze amongst the solar panels (i.e. turkeys, chickens, lambs, etc.).

Ms. Jones commented on the ZRA proposal by saying that there are two things to think about when considering a commercial solar facility: 1) the amount the County paid for the easement originally, which was partially determined by the percentage of prime and productive soils, and 2) the types of uses tangential to farming that are appropriate on preservation ground, and where should they be located to minimize conflict.

Ms. Moore asked whether the Board would have the opportunity to create criteria. Ms. Pruim stated that is how the ZRA is drafted, and that Dr. Ball is open to their comments. Ms. Levy asked for clarification as to whether the Board would be reviewing each application on a case by case basis. Ms. Pruim confirmed that the Board would offer recommendations on each application. Ms. Moore asked how much weight the recommendations would have. Mr. Lazdins answered by saying that the Board's recommendations would be included with DPZ's written testimony, so that their opinions would be heard before the Hearing Examiner made a final decision.

Ms. Moore asked whether their specific criteria could be included in the legislation. Ms. Pruim said that Dr. Ball wanted to keep things broad, but is open to other approaches. Board members expressed a variety of opinions as to how to proceed.



Ms. Jones commented that having bonds in place for full removal of the equipment is important if the solar company was to ever go bankrupt. Ms. Pruum stated that the ZRA draft addressed this issue under Section G.

Towards the end of the discussion, Ms. Moore summarized by stating that it would be worthwhile for the Board to create a policy that would outline specific criteria that would allow for a thorough evaluation of each application. Mr. Lazdins agreed that having criteria that evaluates environmental conditions (i.e. soils, topography, etc.) would further the goals of the Board and the ALPP. The Board agreed that they will move forward on drafting an official list of criteria during upcoming Board meetings.

### **3) Alternate Funding for the Storm Water Management Fee**

Per Mr. Feaga's request, the proposed elimination of the Storm Water Management Fee was added to the meeting agenda. Mr. Feaga opened the discussion by stating that in lieu of the Fee, the transfer tax used in funding the ALPP has been proposed as a replacement for meeting State requirements for storm water management. Mr. Feaga opined that this proposed replacement of funds is not fair to the ag community since the farmers have been practicing good storm water management activities for a long period of time.

Mr. Feaga stated that the commercial sector in the County is complaining because of the financial burden they have incurred due to this fee. It was the general consensus of the Board that agriculture is contributing a much higher percentage of their individual profits toward this goal than the 20% annually that the commercial sector claims they are responsible for.

Ms. Pruum stated that Howard County faces two questions to think about when confronted with the proposed elimination of the Fee: 1) can the County meet MS4 Permit requirements without the contribution of private property owners, and 2) what incentives are there to help encourage storm water management stewardship by the general public.

The Board generally agreed that the current Fee structure should remain in place, and that commercial owners should be mandated to pay the amount like everyone else. They supported this viewpoint by claiming that farmers have been on the forefront of storm water and nutrient management long before other parties became involved.

Ms. Levy spoke of the financial situation of the ALPP, and how it related to the sourcing of the alternate funding for the Fee. Specifically, Ms. Levy mentioned that the bulk of the program's installment purchase agreements that were acquired in the early 1990s will start to become due in 2019. The disbursement for these payments is expected to last until 2024 or 2025. Once the majority of these obligations are paid off, ALPP funding will become more flexible for other purposes. However, at this time, she stated that diverting the funding should be done carefully, if at all.

### **4) Application of Neonicotinoids on Howard County Park Property**

Ms. Levy described the policy written by the Howard County Department of Recreation and Parks which prohibits the application of the insecticide known as neonicotinoids, commonly referred to as neonics, on Howard County park property. Currently, agricultural operations that

lease county park land are exempt. The Board members stated that they thought this policy is already in place and questioned whether it is being proposed as legislation. Mr. Brown cited that if the neonicotinoids prohibition were to become a bill, it would be a major concern for the agricultural community, because what starts as a prohibition on county property expands to include all property.

Ms. Moore commented on the neonicotinoids situation by noting the resistance factor that certain pesticides have on a species. She stated that having a broader range of choices of different pesticides helps to mitigate species resistance. Moreover, Ms. Moore expressed concern about the manner of application, which is handheld spraying at the individual's discretion. This method leads to a lack of calibration and moderation of the insecticide. Ms. Moore also commented that there are already significant regulations passed by the Environmental Protection Agency enforcing pollinator protection measures in the agricultural industry. Therefore, any additional regulation related to neonicotinoids is unnecessary.

Mr. Feaga moved to adjourn the meeting, which was seconded by Ms. Jones and carried unanimously. The meeting adjourned at 9:49 pm.

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Joy Levy, Executive Secretary  
Agricultural Land Preservation Board

## EXHIBIT C

### HOWARD COUNTY AGRICULTURAL LAND PRESERVATION BOARD

#### SUMMARY OF MARCH 28, 2016 DISCUSSION REGARDING ZRA 164 (SOLAR)

##### **ZRA 164: Zoning Regulations Amendment, Conditional Uses, Commercial Solar Facilities**

Ms. Gowan updated the Board on the status of the proposed Zoning Regulations Amendment (ZRA) by explaining the Department's process of evaluation and recommendation of the ZRA to the Planning Board. She announced that the proposed ZRA will be presented to the Planning Board on April 28, 2016. Current zoning regulations do not allow commercial solar on ALPP property. Fundamentally, the proposal would eliminate this restriction, and allow properties to participate in this endeavor on up to 75 acres of ALPP land.

Mr. Feaga commented that the Board would like to review proposals for new solar operations on ALPP property early on in the process, if the proposed ZRA shall pass. By doing this, the Board would be able to provide guidance on the placement of the solar facility directly to the farmer.

Ms. Gowan spoke in-depth about the procedure for these matters. When a property in the ALPP wishes to create a solar operation, a conditional use petition would be received by the Department. After staff review, the request would be sent to the Board for their review and recommendation. Using a set of criteria to evaluate the property, the Board would recommend either approval or rejection to the Department. The Board has the option to develop the set of criteria to include certain mechanisms and conditions that could evaluate the factors of location and size of the facility. Once a recommendation has been made by the Board, the response will be incorporated into the DPZ staff report. In compliance with the zoning regulations, the Board's recommendations would be given additional weight in the report. At large, the Board's review would merely be a recommendation, and would not stop the placement of the operation if it were to eventually be approved by the Hearing Authority. In the end, the Hearing Authority would have the final say on any incoming requests for commercial solar facilities on ALPP land.

Ms. Levy clarified to the Board that their role in the review process would not be similar to forest conservation and wetland mitigation requests that take place on ALPP property. In this case, the Board would only be able to give a recommendation to the Department. Reasons for this authoritative difference are due to the zoning component of the Conditional Use.

Ms. Cable added that a few years ago, the state passed *HB 861/SB 259: Agricultural Easements – Renewable Energy Generation Facilities* that supported alternative energy on up to five acres of property in the MALPF program. She noted that the state regulations for alternative energy uses would be a good resource for the Board to use in developing their own criteria, and that they would be available for public comment by April 1, 2016.

Mr. Feaga mentioned that the Board's process for approving requests for tenant houses could serve as a similar reference in drafting a set of criteria. For instance, the criteria could specify

size, shape, and location of an incoming request, as well as its impact on the surrounding farmland. Ms. Cable expounded that the state's criteria is based on similar characteristics, along with site access to the generating facility.

Ms. Burgess noted that it would be helpful to know the potential yield that is granted from the amount of acreage used for a solar facility. In regards to the MALPF limitation, Ms. Cable shared that MDA has found that five acres is insufficient for a standalone solar operation. Mr. Zantzing of Community Energy Solar, LLC agreed with Ms. Cable that five acres does not warrant a worthwhile solar operation. For now and the foreseeable future, a five acre facility generates the equivalent of 1 megawatt. As a result of this minimal production, most solar companies would not invest in constructing such a facility. On average, most companies will construct a solar facility on approximately 10 to 20 acres. The facility size is dependent on a variety of factors including the type of technology being used, the existing electrical infrastructure, and the site itself.

Mr. Zantzing spoke in detail about his industry and the science of solar technology. Mr. Brown inquired about the state of solar in Howard County, and whether or not companies are finding the location to be beneficial. Mr. Zantzing asserted that Maryland currently has a market for solar electricity, proving the need for more solar establishments. By and large, the sustainable nature of solar energy complements the state's goals and mandates for renewable energy.

Ms. Cable commented that the potential loss of agricultural tax assessment is another thing to consider when constructing commercial solar facilities on active farms. Mr. Brown believed that there should be a balance between agriculture and solar operations on the parcel. Both agreed that this becomes an even greater issue with smaller farms where space becomes limited.

Ms. O'Brien asked the Board if they would be interested in providing additional criteria concerning the acreage limitation outlined in the proposal. She suggested that the Board could specify a certain percentage amount that could be used in tandem with the current 75 acre maximum. Presently, the language does not have a percentage limitation, so in theory, a 75 acre farm could be used to construct a 75 acre solar facility.

Mr. Brown remarked that the proposed 75 acre maximum quantified in the ZRA is excessive. This becomes an even greater concern when numerous parcels in preservation are less than 75 acres. Mr. Feaga doubted the ability to even have a 75 acre solar farm, due to the lack of electrical infrastructure needed to support the generated wattage. Mr. Zantzing agreed with Mr. Feaga's skepticism by stating it is very challenging for all requirements to be met when constructing solar facilities of that size. He reiterated that solar is largely based on the current electrical infrastructure, as well as the energy capacity that can be managed from the output.

Mr. Feaga expressed to the Board that he likes the idea of the farmer having the opportunity to earn a profit from solar generation, but at the same time dislikes the idea of tillable ground being covered with solar panels. He cited the similarity between constructing solar panels and constructing homes on farms; where both instances negate agricultural purpose and result in covered ground regardless. He supported the notion of granting the Board more power when it comes to the placement of solar panels, so that agricultural expertise would be a primary consideration.

Ms. Voss of Chanceland Farm voiced to the Board that she has been considering a solar facility on her property in West Friendship. The proposed site would be a rectangular strip in between a circular horse track and Interstate 70. Depending on setback restrictions from the interstate highway, the solar facility could be anywhere from 8 to 17 acres on her 191 acre farm. She explained that the soliciting company would still be interested in constructing the facility on only 8 acres if that were to be the case.

Moving forward, members of the Board still have the option to testify at the Planning Board meeting to voice their concerns for the proposal.

CB59-2016



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Courthouse Drive

Ellicott City, Maryland 21043

410-313-2350

Voice/Relay

Valdis Lazdins, Director

FAX 410-313-3467

**Subject:** Planning Board Recommendations

ZRA-163 & ZRA 166 (Jonathan Weinstein, Councilperson and Binder Rock, LLC)  
ZRA-164 (Calvin Ball, Councilperson)

**To:** Recipients of Planning Board Recommendations

**From:** Toni Sieglein   
Division of Public Service and Zoning Administration

**Date:** May 23, 2016

Attached are the Planning Board Recommendations for ZRA-164, ZRA-163 and ZRA-166. Should you have any questions, please contact this office at 2350.

cc: Diane Wilson, Chief of Staff  
Gary Kuc, County Solicitor  
Paul Johnson, Deputy County Solicitor  
Howard County Council  
Robin Regner, Administrative Assistant to Zoning Board  
Jennifer Sager, Legislative Coordinator  
Theodore Wimberly – Legislative Assistant

:tms  
Attachment



1 CALVIN BALL  
2 PETITIONER,  
3 ZRA 164

\* BEFORE THE  
\* PLANNING BOARD OF  
\* HOWARD COUNTY, MARYLAND

4 \*  
5 \* \* \* \* \*

6 **MOTION:** *To recommend approval of the Zoning Regulation Amendment petition*  
7 *request to amend Section 131.0 of the Zoning Regulations to allow Commercial Solar*  
8 *Facilities on Agricultural Land Preservation Parcels (ALPP) and require that all Conditional*  
9 *Use petitions for Commercial Solar Facilities on ALPP land be reviewed by the Agricultural*  
10 *Land Preservation Board (ALPB). Also, to recommend approval of the Zoning Regulation*  
11 *Amendment petition request to amend Section 106.1 to eliminate the use area restrictions*  
12 *for Commercial Solar Facilities on ALPP purchased or dedicated easements, preservation*  
13 *parcels created as part of a cluster subdivision process, and other dedicated easements.*  
14

15 **ACTION:** *Recommended Approval; Vote 5 to 0.*

16 \* \* \* \* \*

17 RECOMMENDATION

18  
19 On May 10, 2016, the Planning Board of Howard County, Maryland, considered the petition of Dr.  
20 Calvin Ball, to amend Section 131.0.N.52. of the Zoning Regulations to allow Commercial Solar Facilities on  
21 County Preservation Easements and require that the ALPB review all Conditional Use petitions for  
22 Commercial Solar Facilities on County Agricultural Preservation Easements. The petition also requests an  
23 amendment to Section 106.1 of the Zoning Regulations to eliminate the use area restrictions for Commercial  
24 Solar Facilities on ALPP purchased or dedicated easements, preservation parcels created as part of a cluster  
25 subdivision process, and other dedicated easements.

26  
27 The Planning Board considered the ZRA Petition, the Department of Planning and Zoning (DPZ) Technical  
28 Staff Report and Recommendation, comments of reviewing agencies and testimony from the public. DPZ  
29 recommended approval of the petition because it corrects an oversight made during the 2013 Comprehensive  
30 Zoning. Additionally, the amendment furthers the General Plan goals related to alternative energy scenarios  
31 and the County General Plan goals related to alternative energy scenarios; increases the amount of land area  
32 in the County available for solar facilities and their economic viability; provides an additional income stream  
33 to farmers to help sustain the costs of continuing to farm their land; and offers same opportunity to owners of  
34 ALPP farmers making it more economically desirable to enter the program.

1  
2  
3 Petitioner Dr. Calvin Ball made the following comments:  
4

- 5 • This amendment would expand economic growth, create jobs, promote environmental sustainability,  
6 and support Howard County's farmers and preservation parcels.
- 7 • There is a conflict in the Zoning Regulations that must be removed, and approving this ZRA would  
8 correct an oversight that happened during Comprehensive Zoning.
- 9 • He believes that it was the County Council's intent to allow development of Commercial Solar  
10 Facilities on preservation parcels during Comprehensive Zoning in 2013. However, language  
11 prohibiting Commercial Solar Facilities in the ALPP was never removed from the Zoning  
12 Regulations.
- 13 • Howard County should promote policies that enable it to reduce energy consumption.
- 14 • This ZRA will further best practices and goals outlined in Plan Howard 2030 as well as the County's  
15 2010 Climate Action Plan which encourages the use of renewable energy sources such as solar.
- 16 • Solar power is an expanding and evolving market that is worthy of investment.
- 17 • If passed, this ZRA will increase the amount of land available for solar technology development.  
18 However, many eligible properties may not be suitable for a Commercial Solar Facility based on a  
19 variety of factors, making the number of properties affected much lower than it appears.
- 20 • The purpose of this ZRA is to give properties that are in ALPP as many opportunities at their disposal  
21 to succeed and remain economically successful, maximizing the investment in their land, while still  
22 protecting the land for future generations.
- 23 • ZRA 164 will not eliminate Howard County's Preservation Program, significantly reduce the amount  
24 of farmland preserved, or reduce the amount of crops grown locally.
- 25 • To ensure that those in the County that are most impacted by changes to agricultural preservation  
26 understand those changes, he proposed that the Agricultural Land Preservation Board (ALPB) offer a  
27 technical review and submit comments to the Hearing Examiner for Conditional Use proposals for  
28 Commercial Solar Facilities.

29  
30 Mr. Stefano Ratti represented Sun East Development and responded to technical questions posed by the  
31 Planning Board and provided testimony in support of the proposal. Mr. Ratti stated that his company has  
32 experience developing solar projects across the country. He stated that solar energy provides a net benefit to  
33 the County, has low disturbance to the property, and creates clean renewable energy and jobs. Mr. Ratti also  
34 stated that solar power generation can coexist with other farming activities and provides a steady source of



1 income for farmers. Mr. Ratti stated that there are natural limitations that would preclude some properties  
2 from being used for a Commercial Solar Facility. These limitations include the electrical infrastructure,  
3 conditional use approval, sensitive environmental features, shading, topography, and lack of interest from  
4 property owners. Therefore, only a fraction of the land available for solar development can actually be used  
5 for that purpose.

6  
7 Mr. Walter Carson spoke in opposition to the petition.

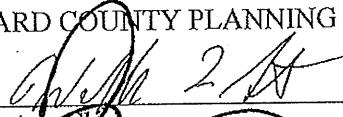
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9 Mr. Howie Feaga, President of the Howard County Farm Bureau, Natalie Zeigler, Teresa Stonesifer,  
10 Howard County Councilwoman Mary Kay Sigaty, and Don Warfield spoke in support of the petition.

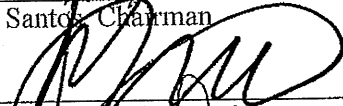
11  
12 The Planning Board recognized that by growing crops farmers utilize the sun to make a living. They  
13 also recognized that technology is progressing and the farmers should be given the ability to capitalize on new  
14 opportunities to utilize the sun to make a living. The Planning Board also noted that some Commercial Solar  
15 Facilities may be impossible to hide completely, however, many issues related to proximity and buffering will  
16 be addressed through the Conditional Use process. The Planning Board also recognized that allowing  
17 Commercial Solar Facilities on ALPP land may be the only way that some farmers will be able to continue  
18 farming. The Planning Board was in favor of removing the 2% or one acre cap on the maximum cumulative  
19 use area since the Commercial Solar Facility use is not feasible unless a certain amount of land is available.  
20 The Planning Board also noted that there is still a 75 acre cap in place. Finally, the Planning Board stated that  
21 out of all the uses that they have reviewed for the rural west, a Commercial Solar Facility use is one of the  
22 least intrusive that has been proposed.

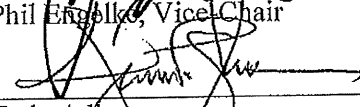
23  
24 Tudy Adler made a motion to recommend approval of the proposed amendment to Section  
25 131.0.N.52. of the Zoning Regulations that would allow Commercial Solar Facilities on ALPP and require  
26 that all Conditional Use petitions for Commercial Solar Facilities on ALPP land be reviewed by the ALPB;  
27 and approval of the proposed amendment to Section 106.1 of the Zoning Regulations to eliminate the use area  
28 restrictions for Commercial Solar Facilities on ALPP purchased or dedicated easements, preservation parcels  
29 created as part of a cluster subdivision process, and other dedicated easements. Phil Engelke seconded the  
30 motion. The motion passed by a vote of 5 to 0.

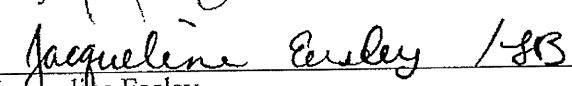
1 For the foregoing reasons, the Planning Board of Howard County, Maryland, on this 23<sup>rd</sup> day of  
2 May, 2016, recommends that ZRA 164, as described above, be **APPROVED**.

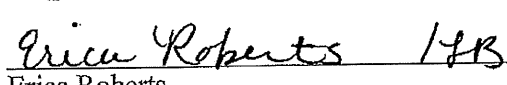
3  
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5  
6 HOWARD COUNTY PLANNING BOARD

7   
8 Bill Santo, Chairman

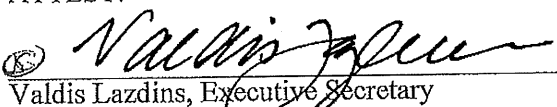
9   
10 Phil Engelle, Vice Chair

11   
12 Tudy Adler

13   
14 Jacqueline Easley

15   
16 Erica Roberts

17  
18  
19 ATTEST:

20   
21 Valdis Lazdins, Executive Secretary

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CB 59

September 15, 2016

Dr. Calvin Ball, Chairman  
Howard County Council  
Howard County Government  
3430 Court House Drive  
Ellicott City, MD 21043

RE: ZRA 164- Amendments to Sections- 131.0  
and 106.1 Solar Facilities on Agricultural  
Land Preservation Parcels

Dear Chairman Ball:

On behalf of my client, Concerned Citizens of Western Howard County (CCWHC), I would like to address concerns and opposition to the proposed text amendments set forth in ZRA 164 as it relates to allowing Commercial Solar Facilities on Agricultural Land Preservation Parcels (ALPP) and other dedicated easements, and the elimination of the existing land use area restrictions.

Existing Regulations

Under the existing regulations, Section 131.0.N. 52.a, Commercial Social Facilities are prohibited on land that is in the Agricultural Land Preservation Program or encumbered by environmental preservation easements. This commercial prohibition is echoed in every Deed of Easement executed by and between the Howard County Government and each of the 270 landowners in the Agricultural Land Preservation Program.

Although the Technical Staff Report dated April 14, 2016 characterized this prohibition as an oversight, there is strong evidence to the contrary. While the inclusion of the language set forth in Section 106.1 indicates an intention to allow for these types of Commercial Solar Facilities on ALPP and other Dedicated Easements, it clearly imposed the following maximum area land use are restrictions:

- For ALPP purchased and dedicated easements, the use are cannot exceed 2% of the easement,
- For preservation parcels created as part of a cluster subdivision, the use area cannot exceed 1 acre, and

- For other dedicated easements, the use area cannot exceed 2% of the easement up to 1 acre.

Arguably, a more reasonable interpretation of the prohibiting language in Section 131.0.N.52 would be that it omitted the phrase: “Subject to the provisions set forth under Section 106.1,” which sets forth the criteria for solar facilities. Clearly there was intent during the Comprehensive Zoning process to provide for limit Solar Facilities on ALPP and other Dedicated Easements subject to “reasonable” area use restrictions which would not conflict with the agricultural use of the property. Section 106.1.D.1 provides that “Conditional Uses shall not be allowed on agricultural preservation easements unless they support the primary agricultural purpose of the easement property, or are an ancillary business which supports the economic viability of the farm, and are approved by the hearing authority in accordance with the applicable provisions of Sections 130.0 and 131.0 of these regulations.” (Emphasis added.)

### Proposed Amendments

Under the Petitioner’s Proposed Text to Section 106.1, Commercial Solar Facilities would be deleted from the first category of Conditional Uses and included in the second category (which is not subject to a maximum land area requirement). To do so would be inconsistent with not only the County’s PlanHoward 2030 General Plan but also with the 2014 COMAR Regulations regarding Authorized Renewable Energy Source (ARES) applicable to Maryland State encumbered easements under the Maryland Agricultural Land Preservation Foundation (MALPF). Under the proposed amendments to Section 131.0.N.52, Commercial Solar Facilities on ALPP could cover as much as 75 acres of preserved farm land.

### PlanHoward 2030

PlanHoward 2030 encourages “stewardship of the land under easement” and puts forth suggestions to reduce “farmland use conflicts”. Furthermore, Policy 4.4.a requires a “robust” buffer between cluster lots and adjoining agricultural properties. If Commercial Solar Facilities are allowed on ALPP easements and other dedicated easements under Section 131.0.N.52, the required setback would only be 50 feet. That is hardly a “robust” buffer, especially on dedicated easements in cluster subdivisions. PlanHoward 2030 states: “It is particularly important that agricultural easement properties are adequately buffered when the adjoining land use changes, since a preserved farm will always remain an agricultural use.”

Under the proposed text amendments if Section 131.0 is made applicable to Purchased ALPP or Dedicated Easements, then the maximum size of a solar facility could potentially be as large as 75 acres, with a 50 foot setback from adjoining property owners. Having a commercial facility in such close proximity to residential development will undoubtedly lead to conflicts with neighboring property owners.

### State COMAR Regulations

In 2014, the Maryland General Assembly amended Section 2-513 (c) of the Agricultural Article of the Annotated Code of Maryland, to allow for Authorized Renewable Energy Sources

(ARES) on properties subject to MALPF easements. Under the State Regulations, the facility cannot occupy more than 5% of the property under easement, or 5 acres, whichever is less. Additionally, the Foundation must determine that “the facility utilizing an Authorizing Renewable Source will not interfere significantly with the agricultural use of the land subject to the easement.” The provisions under Maryland Law go even further, under Section 2-513 (c) 6, by requiring any Facility Owner that uses the land, subject to an easement, to remit an annual payment of 5% of any lease payment paid to the landowner to Maryland Agricultural Land Preservation Fund.

#### Fiscal Impact

Under the proposed text amendments for ZRA 164, there are no provisions for any repayment to Howard County for the removal of the agricultural property from the Howard County Preservation Program, which is being converted to commercial use. This is in direct conflict with the current policy which requires a repayment to the County for any property that is no longer being used for agricultural purposes. This represents a financial loss to the tax payers of Howard County and the Agricultural Preservation Program. Additionally to the extent that federal funds were used to purchase easement property, repayment may be required.

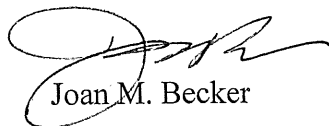
#### Conflict with the Agricultural Preservation Program

As you know, the County has spent over 300 millions of dollars of tax-payer money to place 15,300 acres into the Agricultural Preservation Program. When the Agricultural Preservation Program was adopted in Howard County in 1978, its clear purpose was to preserve agricultural land in perpetuity and to restrict the development of that land for any industrial or commercial use that was not directly related to farming or agricultural purposes. To allow a landowner to use their land in a commercial use would be to jettison the original intent to place the property in preservation.

For the reasons outlined above, Zoning Regulation Amendment 164 should not be approved as proposed.

Very truly yours,

JOAN M. BECKER, LLC



Joan M. Becker

cc:

Councilman Greg Fox  
Councilwoman Mary Kay Sigaty  
Councilwoman Jennifer Terrasa  
Councilman Jon Weinstein  
Ted Mariani, CCWHC



# HCCA

**Howard County Citizens Association**

*Since 1961...*

*The Voice Of The People of Howard County*

The HCCA finds CB 59 (ZRA164) to be extremely disappointing on multiple fronts, both general and specific.

**IN GENERAL** it perpetuates the worst of some recurring bad practices:

- 1.) At a time when our zoning and subdivision regulations are in desperate need of a complete overhaul, this is another prime example of diluting our zoning laws one ZRA at a time. One fully suspects that each and every conditional use listed currently was the result of one or more individual property owners who wanted to do yet one more thing with their property beyond what had previously been allowed. We need a better defined and more comprehensive, rather than piecemeal approach to zoning.
- 2.) Zoning changes outside of the 10 year Comp Zoning process are granted for change or mistake. This ZRA is being presented as if to simply correct an oversight. Perhaps that oversight **was** opening the western part of the county to commercial solar installations. Perhaps the permission in section 106. 1 was the mistake, rather than failure to remove the prohibition in section 131. O. N. 5 2. A. It is alarming how quickly a 2013 Comp Zoning provision to provide an increase to 2% of parcels for conditional uses is now increased to 75 acres! That 75-acre conditional-use limitation is the only limiting factor proposed for eligible parcels.
- 3.) Failure to identify those parties who will benefit the greatest from the change constitutes a lack of transparency. Who stands to benefit the most this time? Why did **they** not put forth the ZRA themselves? Why did they not pay the fee that helps cover staff expenses for its consideration? Is the major beneficiary the Solar Companies marketing to farmers or is it those few large parcel owners who are likely to fit the qualifications to benefit from 75 acres of passive income? Are they simply trying to avoid drawing attention to themselves?
- 4.) Loosely defined terms and a lack of specificity on enforcement leaves provisions open to interpretation—and litigation, adding significant time and expense to what needs to be more straightforward. Stipulations like “tree removal shall be *minimalized*” has proven meaningless in other zones, like R-H-ED. Similarly, while it is laudable to include a provision that a solar facility no longer used needs to be removed from the site within one year, without bonds put up front to ensure its removal there's absolutely no guarantee this will happen.

5.) Citizen participation is once again only an illusion. While the legislation calls for the ALPB to review requests for solar installations the criteria for evaluation is not included in the actual legislation. The Boards function is only advisory, thus allowing a single person, the Hearing Examiner, to ignore and override their expert recommendations. HCCA has recently submitted a proposal that citizen-staffed Boards and Commissions (such as the Historic Preservation Commission or Design Advisory Panel) be elevated to authority status from advisory. If a change in the Zoning regulations is necessary to achieve this, then that would be a worthwhile use of the ZRA process!

6.) The unfortunate reality is that one can pick specific sentences out of Plan 2030 to justify almost any action. It appears that merely quoting chapter and verse is all that is required for DPZ to 'support' the proposal in their technical report without truly evaluating the impact on the general welfare of the citizens.

7.) Zoning regulations and changes are often indistinguishable from the activities of the Economic Development Authority. DPZ recommends the 2% cap restriction be removed in order to produce economically viable commercial solar facilities. Is it our job to increase farmers income? is that the job of government? Increasing the income of farmers (and solar companies who may or may not be located in Howard County) is taking precedent over breaking the public trust (and ignoring their sacrifice.) It puts profit for a few over quality of life for the many—with no discernible tax benefit to the County.

8.) There is a failure to provide specific data, necessary to make informed decisions. While 270 parcels are identified as being of at least 10 plus acres in the preservation program, this proposal fails to identify how many of those could actually reach the 75-acre maximum. Prognosticating that "only a few will actually qualify or wish to do so" is not a justification for permitting an activity. One need only look to the conditional use of age restricted housing in R-20 to see density increase from 2 units to 5 units per acre throughout the County.

9.) Failure to recognize that Howard County is the second SMALLEST jurisdiction in the state is resulting in numerous significant APFO issues. Constantly increasing density and decreasing open space is short-sighted and irresponsible.

**SPECIFICLY**, there are numerous fundamental issues relative to commercial solar installations in the western county.

1.) **Commercial solar facilities are not agriculture.** One cannot simply redefine terms because it is convenient or profitable to do so. Webster defines agriculture as 'the science or art of cultivating the soil, producing crops, and raising livestock.' Such agricultural pursuits are what Howard County citizens were agreeing to when they supported the establishment of our



Agricultural Land Preservation Program, or Ag Pres for short. Merely adding the noun 'farm' after another word does not imply any agricultural pursuit, as is evidenced by the terms 'fat farm' or 'funny farm'.

2.) **Allowing large commercial solar installations on ag pres land breaks a fundamental trust with those residing in other parts of the County who sacrifice considerably in supporting the preservation of Western Howard County for farming.** Those in the Eastern part of the County have been told for decades they must accept greater residential density and all the commercial and industrial uses -- and the lower quality of life that comes with that in order to preserve and protect the west from development. Supporters of this bill try to now justify trading support of local agriculture for support of green energy production. References to policy 4 .12 are simply **not** adequate to justify this breaking of the public trust.

3.) **What exactly is the public benefit?**

We hear many arguments for how this will benefit farmers, but Howard County should not sacrifice its agricultural preservation land in order to provide additional income for farmers OR energy for others. Why, as the second smallest jurisdiction in the state of Maryland, (and with an unusually high 51% of land already developed) would we want to expand solar installations in the huge quantities suggested?

4.) There appears to be **a greater benefit to the solar industry than to Howard Co taxpayers.** Whether putting 234 ALPP properties and 746 dedicated preservation parcels in Howard into commercial solar facilities is a true benefit to the health, safety, and welfare of the entire Howard population is much more open to debate.

5.) **It is not the role of government to increase or stabilize farmers' incomes.** The proposal can increase the amount of land available on a particular parcel increasing the economic viability of the facility. It can increase the profitability to the farmer as an additional income stream. However, it is not the job of the Howard government to do so, any more than it is to increase the income stream of any other resident. The argument that the changes could incentivize property owners to participate in land preservation is bogus. It is of no benefit to the rest of the county residents who agreed to sacrifice in order to have farm land available in the west to be used for farming. It is not at all uncommon for farm families to have some other form of part time employment. If the farm family feels they cannot make the income level they desire—even with lower property taxes and Ag Pres funding, then perhaps they should consider selling. There will always be another individual willing to escape high density areas to give farming a go.

6.) **The role of the ALP Board needs to be strengthened.** As written, their role in the review process would not be similar to Forest Conservation and Wetland Mitigation requests on ALPP



property. In this case the Board would only be able to give recommendations to DPZ for inclusion of their technical report. Perhaps this is where change needs to be made. The Board needs to have more power when it comes to the placement of solar panels so that agricultural expertise would be a primary consideration. This expertise should be shared early in the process.

7.) **Increases have already been provided.** ALPP purchased easements represent the vast majority of preserved land totaling almost 15,300 acres. Prior to 2013 Comp Zoning outdoor conditional use area for preservation easement could not exceed a quarter of an acre. During Comp Zoning it was changed instead to 2% of the parcel size in order to accommodate larger operations. What other changes can we anticipate for other things passed during Comprehensive Zoning if a change this large and significant can be passed at this time?

8.) **Will this not further complicate the cluster subdivision process?** Many residents in the West are already upset with how the cluster subdivision process is playing out.

9.) **Why is solar the only energy alternative being considered** at this time? Is it simply that it is the first alternative energy industry to be so heavily promoting itself? Could an unexpected consequence of this legislation be to preclude other, less obtrusive forms, such as wind and geothermal? These alternatives would occupy far less land, leaving more for actual farming—the raising of crops or animals.

### **CONCLUSIONS: Just say NO**

1.) Commercial solar facilities should not be permitted on agricultural preservation parcels or easements. To do so would break the public trust.

2.) Commercial solar facilities are not agriculture and therefore any land populated with such solar facilities should lose the reduced agricultural property tax assessment.

3.) Tillable ground should not be covered with solar panels whether within Ag Pres or not. It is not much different than constructing homes on farms where both instances negate agricultural purpose and result in covered ground regardless.

4.) If we are to accept the argument that intercropping underneath the solar panels and/ or the grazing of certain livestock among the solar panels is a viable and compatible use, why not require such truly agricultural endeavors as part of a condition of having solar panels?

5.) Other less visually obtrusive forms of alternative energy production (such as wind and geothermal) should not be precluded by a solar farm bill since those alternatives use less land, making traditional agricultural functions of raising crops and livestock more possible.

Testimony For Legislative Session 2016

Introduced by Councilman Calvin Ball

RE: BILL NO. 59-2016 (ZRA--164)

September 19, 2016

This testimony is against (con) the removal of certain restrictions that limit the size of Commercial Solar Facilities on County Preservation Parcels and allow Commercial Solar Facilities as a Conditional Use on RR & RC zoned properties under certain conditions.

1. By this proposal of land change allowing industrialization of the land with increased rows of solar panels on ALPP purchased easements and ALPP dedicated easement land this proposal is way too soon to be approved without a longer history of solar panels cell efficiency conversions. At the present time the efficiency of solar panel cell conversion is about 20% and some companies are not that high.
2. Electrical energy is not an agricultural product. It is an industrial product. In the stock market it is understood that there are two types of commodities: Agricultural commodities and industrial commodities. Clearly stated solar energy is not considered an agricultural commodity, it is an industrial commodity.
3. ALPP (Agricultural Land Preservation Program) money was collected from taxpayers and spent to preserve this farm land for agricultural purposes in perpetuity. This was to preserve farmland for farming and not to be overtaken by development and industrialization by changing definitions under farming and ZRA's of this sort.
2. If ALPP land could be opened up and broken down into commercial and industrial uses, what other commercial and industrial enterprises could use this same model for further expansion onto farmland. Example mulching and composting on a larger commercial/industrial scale in western Howard County.
2. Widespread disappearance of the farmland and its rich soil for growing crops and pasture will be altered and decimated without proper yearly cultivation. Can this land be rehabilitated back into farmland if this solar industry collapses, or becomes impractical, out dated, or bankrupted?
3. Who has the right to change rural conservation land areas and rural residential properties into commercial/ industrial designations without proper transparency and openly informing the citizens who live on rural conservation and rural residential areas of western Howard County?
4. Where are the planned and informational Community Meetings to impartially educate the citizens in RC & RR areas with the pros and cons of industrial solar panels being proposed near or on the preservation parcels next to their homes?
5. There have been no Pre submission meetings to inform the citizens of the proposed request of changes to their area where industrial solar panels could be expanded. Who is responsible for getting pre submission meetings together and why has this large change not been addressed under pre submission meetings before this proposal was submitted?
6. The suggestion that farm animals can also utilized the land that solar panels are on at the same time, is completely unrealistic and uneducated guessing. Most panels would have to be severely raised to allow animals to go underneath them and for what? Grazing on dirt? Tending to the farmland herds and flocks, and transporting these animals in a plot filled with solar panels can not be successfully without damage to panels and the animals. So forget those solar panel ads that show solar panels in rows and sheep also in the same area with electrical energy being produced by rows of solar panels.
4. Growing crops on the industrial solar panel land is also unrealistic as those crops require planting , fertilizing, watering , weeding, cultivating and then harvesting without damaging the solar panels.
5. Removal of a commercial solar facility or its panels that is no longer used (life span of panels) requires some place to dump a large number of panels. Have there been any studies on where to dump these old panels in a safe, healthy manner without contaminating the environment?

6. Why is a Task Force not being made to further evaluate and study deeply the implications of industrial solar panels being introduced into the rural western part of Howard County before they are approved and clearing farmland for industrialization enterprises?

7. Large numbers of industrial solar panels require periodic removal of dust and debris on them through washing and perhaps some chemical cleaners. Where does this run off water or any other chemical treatment go? Is it safe for streams and eventually the BAY?

Why are there no provisions for any repayment to Howard County and the taxpayers if the Howard County Agricultural Land Preservation Program converts farmland preservation (ALPP) into a commercial and industrial use such as solar panels.

#### SUMMARY AND SUGGESTIONS

1. Have Community Meetings to inform the citizens with the pros and cons of solar panels displacing farmland into partial industrialization areas. Get a general consensus on this issue with the citizens of western Howard county.

2 Form a Task Force to investigate into the legal, economical, long term environmental safety, farmland utilization transition impacts, residential property value impacts, and Chesapeake Bay impacts that industrial solar panels will change.

3. Create a form of repayment plan and impose it on the solar panel industry and land owners for removal of agricultural property from the Howard County Preservation Program into industrialize use.

4. Revisit and redefine and perhaps remove parts of Section 106.1 under Howard County Zoning Regulations. Part D Conditional Uses with ALPP Purchased Easements and ALPP Dedicated Easements. Remove Solar Facilities, commercial (b.(3) and under 2. Dedicated Easements remove conditional uses (21) Solar Facilities, commercial and b. (5) Solar Facilities, Commercial. Under Section 131.0 Conditional Uses and Permissible Zoning Districts N. and revisit the new proposed legislation numbers a-m.

5. Consider and revisit placing solar panels on commercial buildings roof tops and grounds that belong to Howard County in urban areas. Example: The big old Bendix building now called Dorsey Building on Bendix Drive in Columbia that houses the Department of Public Works.

6. To commercial developers impose some of the costs and require placement of solar panels on any new large commercial buildings in urban areas of Howard County starting now.

7. To all County Council Members and Legislators. Please consider being Strict Caretakers of rural lands and farmland in the western part of Howard County.

Development doesn't always equate with success and better living conditions.

Citizens that live in western Howard County chose a rural lifestyle that is as important to them as those that live in urban and suburban areas surrounding Columbia.

If one does not live on farmland or in the rural land of western Howard County at least be respectful and understanding of those citizens and their homesteads that do live there and want to keep it that way.

This proposal will open the door to increase industrialization and commercialization of irreplaceable rural land and farmland particularly in western Howard County.

Change back the definition of farming in zoning regulations and eliminate the present one that allows increased industrialization and commercialization in rural areas of land and dedicated land under ALPP and farming in general.

Respectfully testifying, (9/20/2016)

*Brenda Stewart*

Brenda Stewart, V.M.D  
2752 Daisy Road, Daisy Road, Woodbine, MD 21797-8124

[drsjbstewart@AOL.com](mailto:drsjbstewart@AOL.com)  
1 (410) 442-2471

Background of Resident, Dr. Brenda Stewart

Live on a farm in western Howard County - 46 years

Have raised beef cattle, horses, and produce roll bales

Graduate with B.S degree, cum laude, Rutgers University College of Agriculture and Environmental Science

Graduate with V.M.D Veterinary Degree , University of Pennsylvania Veterinary School

Past President of the Maryland Simmental Cattle Association

Past member of Ulman's Task Force on Zoning Changes Advice from Business, Farmers, Lawyers and Residents

Past President and Charter Member of Concerned Citizens of Western Howard County (CCWHC) civic association

Member of Howard County Civic Association (HCCA)

Member of the Joint Working Group (JWG) on reviewing Zoning changes for Howard 2030

Family Membership in Howard County Farm Bureau

Statement of Theodore F. Mariani FAIA PE MCRP  
16449 Ed Warfield Road  
Woodbine Md. 21797  
Hearing Date 19 September

In RE : Case Number ZRA 164 which would change the zoning regulations to allow Commercial Solar Facilities on Agricultural Land Preservation Parcels and on other dedicated easements including those in cluster subdivisions.

I appear this evening as the President of CCWHC and with a perspective of both a farm owner that put our 185 acre farm into the County Ag program 25 years ago and also as the Chairman of the 1990 HC Study Commission on Rural Land Use that resulted in the formulation of the Cluster Zoning Regulations that curtailed the proliferation of 3 acre zoning while preserving land for agriculture and enhancement of the environment.

My first concern with this ZRA is the violation of trust that this proposal embodies. Based on Section 15.501 thru 15.510 of the Howard County Code the Ag Pres program's purpose was "

"to protect and enhance agricultural land in Howard County".

To that end the landowners that entered the program joined in a covenant with the county to ensure the accomplishment of that intent. I quote from the exact wording of the agreement that my wife and I entered into with the county

"the Grantor covenants, grants and relinquishes the right to develop the Land for any purpose except those which are related directly to or as an accessory use of the premises for farming and agricultural purposes" The covenant then proceeds to explain in detail which development rights are not allowed The development rights that are relinquished "include, but are not limited to, the right to develop the Land for use in the following manner:

(1) industrial or commercial uses "

Other uses were cited as not being allowed including residential development but it is clear that the first among the various uses that were prohibited were : "Industrial or commercial uses" Further this relinquishment of the right to use the land for industrial or commercial purposes is to be "in perpetuity".

It is abundantly clear that a large scale " solar installation " is both an industrial and commercial use

Generation of electrical power for sale to the public is clearly not an agricultural pursuit. To argue otherwise would be illogical.

Further to change the purpose of the original legislation that created the County Ag Pres program would be a violation of the basis on which the program was presented to and endorsed by the citizens of Howard County. It would also be a violation of the covenants that cover every farm that is in the program.

Recognizing that over \$300 Million Dollars of tax funds have been committed to the program it is quite likely that an aggrieved adjacent land owner and taxpayer could sue the county for misappropriation of tax revenues.



Another issue that needs to be addressed is the requirement that for land taken out of the program to be used for non agricultural use the County must be equitably compensated. As an example when a land owner elects to create one acre lots for sale the County must be paid back exactly what was paid for the development rights. Assuming the county paid \$10,000 per acre for development rights a land owner wishing to install a 50 acre solar array would have to repay the county \$500,000 dollars.

A second issue is the huge scale of the potential power generating system. that would be allowed under this ZRA. Most farms in Howard County are relatively small Many farm sites are 100 acres or less, yet on a 85 acre parcel one could install a 75 acre solar array. with only 50 foot setbacks from adjacent properties.

A 75 acre field of solar panels ( equivalent to 55 football fields ) adjacent to residential development would be overwhelming.

One should also recall that when farms were admitted into the program they are scored based on the quality of the land for productive farming operations. Only the superior sites were admitted to the program. Thus when you place an array of solar panels on the site you are eliminating the best farm land from agricultural production..

It should be noted that while certain "accessory uses are permitted on Ag Pres land they are allowed only to support the primary purpose of the farm and are quite restricted in scale For example almost all are limited to 2% of the land area and up to a maximum of 1 acre. In no case are they to become a replacement for agricultural production.

Another concern is the proviso that the Ag Board review such applications and comment thereon. There are no guidelines established for how each application should be judged nor objective criteria on which to base a decision. Further the Ag Board composition , while well suited to evaluate the quality of the land for farming does not have the range of expertise to evaluate the impacts of such large scale industrial projects on the surrounding community.

Let us now turn to the other dedicated easements including the preservation parcels in cluster subdivisions.

Here we have a rather unique problem. Most of the cluster preservation parcels are intertwined with the residential lots of the subdivision , in some cases resembling an octopus. To allow a huge solar array in such close proximity to residences can have many adverse impacts some off which can not be foreseen Solar reflections can be more than troublesome. A case in point being the Los Angeles Concert Hall which had a stainless steel cladding that inadvertently, focused sunlight on a neighboring residential building . The solar heat gain was so severe that the apartment units were rendered uninhabitable. which led to a law suit against the city. The city ultimately spent many millions of dollars to rectify the situation.

Another concern would be the emotional and economic effect on the near by residents. These folks bought into the cluster arrangement with the expectation that the uses of the preservation parcels would be rather benign. Typically these uses have been farmers or landscapers growing crops or plant stock. which is visually and functionally compatible with residential use. When the Cluster zoning concept was envisioned by the commission that I chaired ,this is the type of use that was intended This was codified in the regulations to limit any intensive





development on these parcels. A massive industrial/commercial solar array was never contemplated and is not consistent with the intent of the regulations.

Another issue is the restrictive covenants that are placed on each cluster preservation parcel. Many of these covenants are with third party entities such as Maryland Environmental Trust, Maryland Historical Trust, Patuxent Conservation Corps and various HOA's. It is unlikely that these parties would be willing to release encumbered land for commercial solar utilization. Even if such action were to occur, abutting home owners would have a right to bring a suit to prohibit such action.

The question is what purpose is being served and at what cost?

Putting solar panels on roofs, or over parking areas generally makes sense. Creating huge solar arrays in a remote area on scrub land is appropriate, and most large scale solar installations have this in common. But to use preserved prime agricultural land or land that is embedded in residential development for an industrial purpose flies in the face of reason.

Converting a farm field into a solar facility could be appealing to some in the farming community since a lease rate for a commercial solar installation is in the range of 15 times what crop land can bring under a typical lease. The fact that farm land is leased at the current modest rate is what makes farming practical in Howard County.

A typical Howard County farmer owns about 100 to 200 acres but through leasing can be farming 1000 acres or more. This is the benchmark for a sustainable crop farming operation. If the preserved farms are put into non farm uses such as solar power stations these farmers will lose access to this essential resource.

Solar power can have a place on a farm as a source of energy for the farm. And if in the process some excess power is created it can be put back into the grid to provide added income to the farm operator. This could qualify as an accessory use especially if a modest sized solar array were placed on barn and shed roofs or over impervious surfaces.

Conversion of prime farm land for huge industrial scale power generation is clearly not in the best interest of Howard County. The use of dedicated preservation parcels within cluster subdivisions for large solar arrays is not in keeping with the intent of the program that established this regime. Recall that the cluster approach had two principal rationales first to head off the proliferation of 3 acre lots throughout the RR and RC zones and to preserve a significant percentage of the sites for farming and farm related activity.

For the reasons stated this ZRA should be rejected.



**Professional Qualifications of Theodore F. Mariani FAIA PE MCRP**

In his sixty year professional career as an Architect Engineer and Planner he has designed over 500 projects including University Master Plans, Hospital Campus expansions, a satellite community in Prince Georges County and the Washington DC Convention Center.

He has served in numerous positions that have involved local and regional development. These have included:

Land Use Committee of the Washington Regional Council Of Governments  
Chairman of the District of Columbia Zoning Commission  
National Vice President of the American Institute of Architects  
Chairman of the Howard County Commission on Rural Land Use  
Chairman of the Howard County Planning Board  
Member of the Howard County Commercial Nodes Study Group  
Member of the Citizens Advisory Panel for the Howard County General Plan  
Member of the Howard County Mulch and Composting Task Force

Currently he is serving as :

President of the Concerned Citizens of Western Howard County  
President of the Howard County Historical Society



**FILE COPY**

# MBIA Letter of Support for CB59 - Solar Energy

JG

Joshua Greenfeld <jgreenfeld@marylandbuilders.org>

Reply all |

Today 11:54 AM

Feldmark, Jessica; Ball, Calvin B; Smith, Gary; Weinstein, Jon; Terrasa, Ji+14 more

MBIA Letter of Support...

148 KB

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Dear Chairman Ball and Members of the Howard County Council:

In advance of tonight's Council session, please accept this letter of support for CB 59 – 2016 (ZRA – 164) on behalf of Howard County Chapter of the Maryland Building Industry Association (MBIA). Specifically, the proposed legislation permits property owners with AG preservation easements or other restrictive easements the opportunity to build a commercial solar facility on properties where a conditional use is approved.

The MBIA strongly supports the option for landowners to benefit from the use of solar on their properties. The MBIA believes landowners in western Howard County should be given as many options to maintain and thrive on their properties for future generations as possible.

Thank you for your support of this legislation and the home building industry in Howard County.

Best,

**Josh Greenfeld, Esq.**

[jgreenfeld@marylandbuilders.org](mailto:jgreenfeld@marylandbuilders.org)

Vice President of Government Affairs

Maryland Building Industry Association

[11825 W. Market Place](#)

[Fulton, MD 20759](#)

Ph: 443-515-0025

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ACE5820

Future Industry Leaders Speaker Series - Sept. 22  
Breakfast and Discussion with Jeff Ott. [Register here.](#)

Tour the Esplanade at National Harbor - Oct. 11  
Networking, Discussion and Tour. [Register here.](#)

Certified Aging-in-Place (CAPS) Courses - Oct. 11, 12 & 13  
Get your Designation. Register at [marylandbuilders.org](http://marylandbuilders.org)

Check out NAHB's Member Advantage Program at [www.nahb.org/ma](http://www.nahb.org/ma)

FILE COPY

September 21, 2016

**Re: LETTER OF SUPPORT FOR CB59-2016 – Solar Energy**

Dear Chairman Ball and Members of the Howard County Council:

Please accept this letter of support for CB 59 – 2016 (ZRA – 164) on behalf of Howard County Chapter of the Maryland Building Industry Association (MBIA). Specifically, the proposed legislation permits property owners with AG preservation easements or other restrictive easements the opportunity to build a commercial solar facility on properties where a conditional use is approved.

The MBIA strongly supports the option for landowners to benefit from the use of solar on their properties. However, in order to make solar energy a competitive option for larger properties and not just current agricultural preservation properties, the MBIA also supports an amendment to this bill allowing property owners the option to consider solar first without restricting their future AG preservation or density sending options. It is the MBIA's opinion that the first existing commercial solar facility is harmed if not given the same options to access Howard County's permanent preservation options. A minor amendment allowing density sending (or AG preservation) from existing commercial solar facilities would address this issue and create a level playing field for commercial solar to be placed on the best properties in the county for that use.

The MBIA believes landowners in western Howard County should be given as many options to maintain and thrive on their properties for future generations as possible. Thank you for your support of this legislation and the home building industry in Howard County.

If you have any questions about these comments and would like to discuss MBIA's position further, please do not hesitate to contact me at (443) 433-6287 or [Jamie@i-s-land.com](mailto:Jamie@i-s-land.com) or Josh Greenfeld at (443) 515-0025.

Best regards,

James Fraser, Chair, MBIA of Howard County

Cc: County Executive Allan Kittleman  
Councilmember Greg Fox  
Councilmember Mary Kay Sigaty  
Councilmember Jen Terrassa  
Councilmember Jon Weinstein

Jessica Feldmark  
Diane Wilson  
Jahantab Siddiqui  
Valdis Lazdins



Reply all | Delete Junk |

## Authorization to Represent

CW

Charlotte Williams <lutton@prodigy.net>

Today 10:58 AM

CouncilMail; Dan O'Leary <DanielOL@aol.com>

Reply all |



**September 19, 2016**

To: The Hearing Examiner,  
The Board of Appeals,  
The Planning Board,  
The Department of Planning & Zoning,  
The Howard County Council,  
[Howard County Government](#)  
[Howard County, MD](#)

The board of directors of GHCA has authorized Dan O'Leary, to represent the official positions of the Association. In particular, to oppose CB-59, allowing industrial solar installations on preservation parcels.

Attest,

By email this date to: [councilmail@howardcountymd.gov](mailto:councilmail@howardcountymd.gov)

Charlotte Williams,  
President

Reply all | Delete Junk |

## FW: opposition to ZRA 164

FG

Fox, Greg

Today 12:00 PM

Sayers, Margery

Reply all |

Keep

zra 164 .pdf  
348 KB

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**From:** Joan Becker [mailto:jbecker@joanbeckerlaw.com]

**Sent:** Thursday, September 15, 2016 4:00 PM

**To:** Ball, Calvin B

**Cc:** Weinstein, Jon; Terrasa, Jen; Sigaty, Mary Kay; Fox, Greg; theodore.f.mariani@me.com

**Subject:** opposition to ZRA 164

Dear Chairman Ball:

Attached please find a letter outlining the concerns of my client, Concerned Citizens of Western Howard, regarding ZRA 164. Upon your review, if you would like to discuss this further before Monday's hearing, please feel free to contact me at the phone number below.

Thank you.

Joan Becker

---

Joan M. Becker, LLC

Attorney at Law

15300 Carrs Mill Road, Woodbine, MD 21797

Phone: (410) 442-5000 - Fax: (410) 442-5930

E-mail: [jbecker@joanbeckerlaw.com](mailto:jbecker@joanbeckerlaw.com)

**JOAN M. BECKER, LLC**

ATTORNEY AT LAW

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Woodbine, MD 21797

Telephone: 410-442-5000

Fax: 410-442-5930

jbecker@joanbeckerlaw.com

www.joanbeckerlaw.com

September 15, 2016

Dr. Calvin Ball, Chairman  
Howard County Council  
Howard County Government  
3430 Court House Drive  
Ellicott City, MD 21043

RE: ZRA 164- Amendments to Sections- 131.0  
and 106.1 Solar Facilities on Agricultural  
Land Preservation Parcels

Dear Chairman Ball:

On behalf of my client, Concerned Citizens of Western Howard County (CCWHC), I would like to address concerns and opposition to the proposed text amendments set forth in ZRA 164 as it relates to allowing Commercial Solar Facilities on Agricultural Land Preservation Parcels (ALPP) and other dedicated easements, and the elimination of the existing land use area restrictions.

Existing Regulations

Under the existing regulations, Section 131.0.N. 52.a, Commercial Social Facilities are prohibited on land that is in the Agricultural Land Preservation Program or encumbered by environmental preservation easements. This commercial prohibition is echoed in every Deed of Easement executed by and between the Howard County Government and each of the 270 landowners in the Agricultural Land Preservation Program.

Although the Technical Staff Report dated April 14, 2016 characterized this prohibition as an oversight, there is strong evidence to the contrary. While the inclusion of the language set forth in Section 106.1 indicates an intention to allow for these types of Commercial Solar Facilities on ALPP and other Dedicated Easements, it clearly imposed the following maximum area land use are restrictions:

- For ALPP purchased and dedicated easements, the use are cannot exceed 2% of the easement,
- For preservation parcels created as part of a cluster subdivision, the use area cannot exceed 1 acre, and

- For other dedicated easements, the use area cannot exceed 2% of the easement up to 1 acre.

Arguably, a more reasonable interpretation of the prohibiting language in Section 131.0.N.52 would be that it omitted the phrase: “Subject to the provisions set forth under Section 106.1,” which sets forth the criteria for solar facilities. Clearly there was intent during the Comprehensive Zoning process to provide for limit Solar Facilities on ALPP and other Dedicated Easements subject to “reasonable” area use restrictions which would not conflict with the agricultural use of the property. Section 106.1.D.1 provides that “Conditional Uses shall not be allowed on agricultural preservation easements unless they support the primary agricultural purpose of the easement property, or are an ancillary business which supports the economic viability of the farm, and are approved by the hearing authority in accordance with the applicable provisions of Sections 130.0 and 131.0 of these regulations.” (Emphasis added.)

### Proposed Amendments

Under the Petitioner’s Proposed Text to Section 106.1, Commercial Solar Facilities would be deleted from the first category of Conditional Uses and included in the second category (which is not subject to a maximum land area requirement). To do so would be inconsistent with not only the County’s PlanHoward 2030 General Plan but also with the 2014 COMAR Regulations regarding Authorized Renewable Energy Source (ARES) applicable to Maryland State encumbered easements under the Maryland Agricultural Land Preservation Foundation (MALPF). Under the proposed amendments to Section 131.0.N.52, Commercial Solar Facilities on ALPP could cover as much as 75 acres of preserved farm land.

### PlanHoward 2030

PlanHoward 2030 encourages “stewardship of the land under easement” and puts forth suggestions to reduce “farmland use conflicts”. Furthermore, Policy 4.4.a requires a “robust” buffer between cluster lots and adjoining agricultural properties. If Commercial Solar Facilities are allowed on ALPP easements and other dedicated easements under Section 131.0.N.52, the required setback would only be 50 feet. That is hardly a “robust” buffer, especially on dedicated easements in cluster subdivisions. PlanHoward 2030 states: “It is particularly important that agricultural easement properties are adequately buffered when the adjoining land use changes, since a preserved farm will always remain an agricultural use.”

Under the proposed text amendments if Section 131.0 is made applicable to Purchased ALPP or Dedicated Easements, then the maximum size of a solar facility could potentially be as large as 75 acres, with a 50 foot setback from adjoining property owners. Having a commercial facility in such close proximity to residential development will undoubtedly lead to conflicts with neighboring property owners.

### State COMAR Regulations

In 2014, the Maryland General Assembly amended Section 2-513 (c) of the Agricultural Article of the Annotated Code of Maryland, to allow for Authorized Renewable Energy Sources



(ARES) on properties subject to MALPF easements. Under the State Regulations, the facility cannot occupy more than 5% of the property under easement, or 5 acres, whichever is less. Additionally, the Foundation must determine that "the facility utilizing an Authorizing Renewable Source will not interfere significantly with the agricultural use of the land subject to the easement." The provisions under Maryland Law go even further, under Section 2-513 (c) 6, by requiring any Facility Owner that uses the land, subject to an easement, to remit an annual payment of 5% of any lease payment paid to the landowner to Maryland Agricultural Land Preservation Fund.

#### Fiscal Impact

Under the proposed text amendments for ZRA 164, there are no provisions for any repayment to Howard County for the removal of the agricultural property from the Howard County Preservation Program, which is being converted to commercial use. This is in direct conflict with the current policy which requires a repayment to the County for any property that is no longer being used for agricultural purposes. This represents a financial loss to the tax payers of Howard County and the Agricultural Preservation Program. Additionally to the extent that federal funds were used to purchase easement property, repayment may be required.

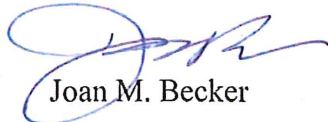
#### Conflict with the Agricultural Preservation Program

As you know, the County has spent over 300 millions of dollars of tax-payer money to place 15,300 acres into the Agricultural Preservation Program. When the Agricultural Preservation Program was adopted in Howard County in 1978, its clear purpose was to preserve agricultural land in perpetuity and to restrict the development of that land for any industrial or commercial use that was not directly related to farming or agricultural purposes. To allow a landowner to use their land in a commercial use would be to jettison the original intent to place the property in preservation.

For the reasons outlined above, Zoning Regulation Amendment 164 should not be approved as proposed.

Very truly yours,

JOAN M. BECKER, LLC



Joan M. Becker

cc:

Councilman Greg Fox  
Councilwoman Mary Kay Sigaty  
Councilwoman Jennifer Terrasa  
Councilman Jon Weinstein  
Ted Mariani, CCWHC

Reply all | Delete Junk |

## CB59-2016 Written Testimony Braganca

**FILE COPY**

MB

Meagan Braganca <mbraganca@verizon.net>

Mon 4:57 PM

CouncilMail

Reply all |

CB59-2016 solarWritten...  
139 KB

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Please see attached

Thank you  
Meagan Braganca

“Now that you know, what will you do?”  
*-Everyone’s an advocate for something-*

LIFE COBY

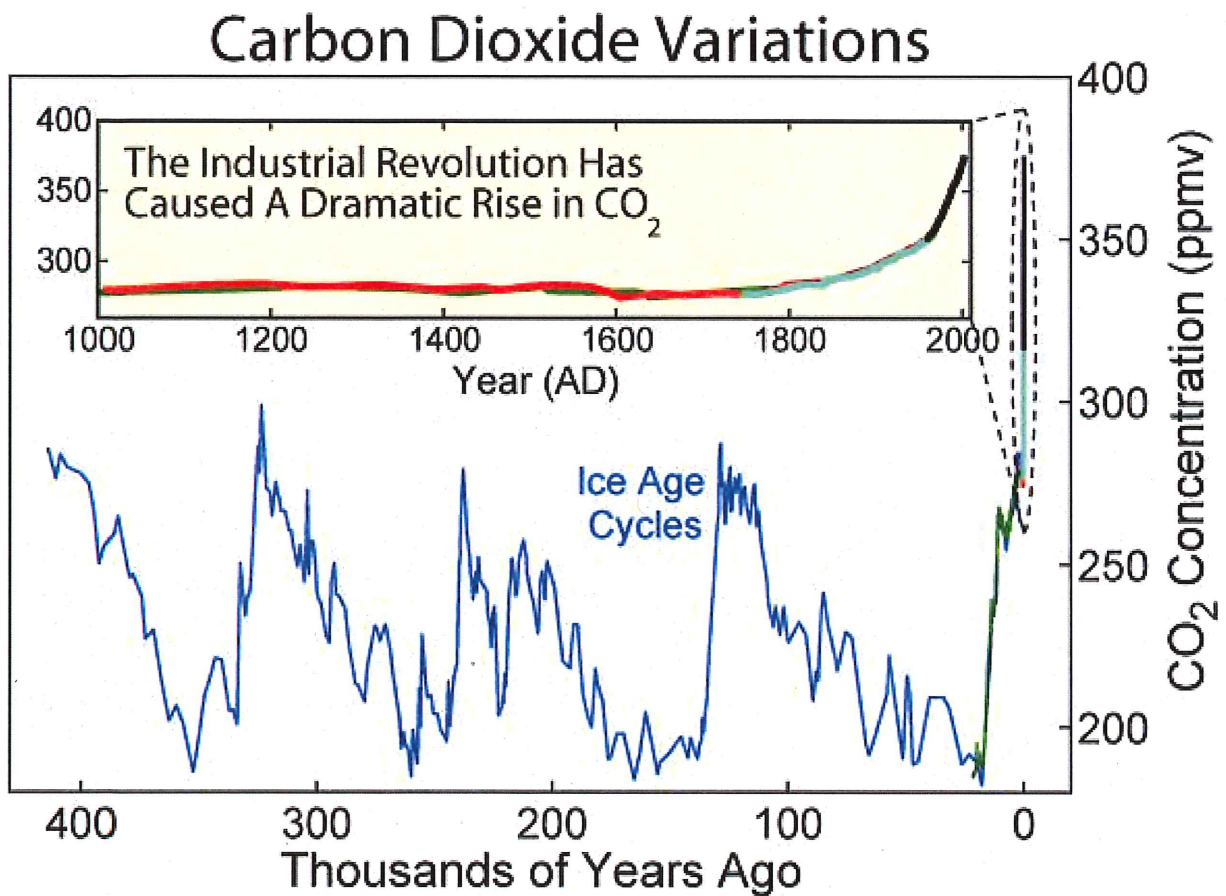


Howard County Council Hearing  
September 19, 2016  
Written Testimony  
CB59-2016  
Position: In Strong Favor

Submitted by: Meagan Braganca (3720 Valerie Carol Court, Ellicott City)

As a climate leader with the Climate Reality Project, environmental activist, and mom of three I strongly urge the county council to pass this bill to clarify the zoning regulations as they pertain to commercial solar arrays on agricultural preservation land.

Climate change is an urgent matter. Our normal carbon cycle has been greatly disrupted by human-caused fossil fuel emissions. Just a few decades ago, we were within the normal carbon bounds at 310-330 ppm CO<sub>2</sub>. We are currently sustaining just over 400 ppm, far above the norm:



The large-scale and rapid installation of renewable energy is a major element necessary for any hope of returning to the normal carbon cycle. Commercial solar plays a vital role in this equation.

Respectfully Submitted,  
Meagan Braganca