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## FW: opposition to ZRA 164

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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

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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.

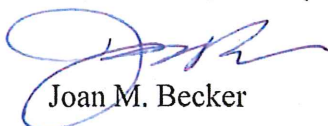
Conflict with the Agricultural Preservation Program

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