

Open Work Session
Solar Energy Systems – Proposed Regulations
May 5, 2020

Mr. McCain said, at the last two MACO sessions when they stated their top three priorities, one of those top three priorities was solar parameters for local jurisdictions to have in their zoning codes, particularly rural Counties. He said, in fact, the rural coalition had a meeting on this at the last MACO session, and Council has a copy of the presentation that was given by Sandra Macklemore and Les Knapp from MACO, and Ryan Showalter, who is an attorney and handles a lot of these solar projects. He said he is not going to go through that presentation, but he definitely encourages Council to read that presentation. He said that presentation is a fabulous document, and kind of walks through all the issues around solar and the importance of having regulations in their local zoning codes to be prepared when the next industrial scale solar project comes to their County. He said they put an example in there of some other Counties. He said a lot of this is focused particularly on industry scale because they can be extremely controversial, and he will say, from a professional standpoint, there are several steps they have to take when they do a solar project, and one of those is that a real estate valuation expert has to be retained to address the issue of whether it affects surrounding property values or not, so that is one of the things they have to do. He said, professionally, he has had to be involved in a number of these. He said, in fact, they list several projects in that presentation, and several projects listed here on Delmarva. He said, in fact, he had to testify in the first few, which were Richfield, Cherry Wood, and Blue Grass, and they are big projects. He said Cherry Wood in Caroline County is a 202-megawatt project; just to put that in perspective, that is about 1,000 acres of land, and they are starting to talk about 500,000 pounds. He clarified, they are not just talking about what they might see riding by on Route 50, or the one in Hebron, those are small scale, but they are talking about things that are 50 or 80 megawatts. He said, for anything over 2 megawatts, the Public Service Commission has to authorize. He said these can be quite controversial. He explained, for the Richfield solar project in Dorchester County in Hurlock, he attended three Board of Appeals hearings with standing room only, and that went on for literally several months. He said there were so many people in attendance, and after three hours or so they were not even scratching the surface of people testifying, so they had to keep rescheduling public hearings. He said they can be quite controversial, and any County will tell them that most of these Counties did not have these regulations when it came to their County, and quickly after they had their first project they introduced regulations into their zoning code to be better prepared for the next time. He said, in most of these zoning codes they reference in the examples some of the ones that have been here, and it is pretty basic stuff. He said they are not talking about real major things, and mostly they are just talking about landscaping buffers and fencing requirement setbacks, but some big things they need to address with solar are things like decommissioning. He explained, these projects do not last forever, and a lot of times they lease the land for 30 or 40 years, so they need some kind of decommissioning language. He said some of the Counties on the Shore and across Maryland have also addressed things like how much acreage to allow in solar farms. He said one of the things from the farming community standpoint is they do not want to use up all of their prime farmland for solar projects, so some of them put limits on acreage. He said some of them also designate corridors, such as in Queen Anne's where they have a Delmarva Corridor, and it kind of follows one of the Delmarva Power grids and right-of-way, and they have to be within a certain distance of that right-of-way. He said they include that in there, and he knows Mr. Taylor has included this information in here as he has been involved with this as well. He said

locally they put Talbot County's in there just to give Council an idea of what these requirements in the zoning code may look like. He said what they see in Talbot County, and in a lot of County's zoning code regulations, is that they sort of have a small, medium/intermediate, and large scale. He said obviously there is a big difference between people putting solar panels on rooftops versus an industrial scale, essentially, a power plant with someone doing 100 megawatts and using up 600, 800 or 1,000 acres of land. He said Mr. Taylor has also included some codes from Counties not in Maryland as well. He said there is one from North Carolina, and one from Virginia. He said Georgia Tech did a study, and that information is in there as well. He said, just to sum this up, at the end of the day, they are a little bit late to the game here, but MACO has emphasized to the rural Counties to make this a priority, and by no means do they have to reinvent the wheel because there are plenty of models of Legislation out there and zoning parameters they can follow. He said he also wants to mention that some people say the Public Service Commission kind of dictates these projects, but once they can get an approval to introduce one into a County and get a certificate of need, if it is over 2 megawatts, the Public Service Commission makes it very clear that consideration should be given, and they recommend that consideration be given to local zoning regulations. He said, in fact, their quote is "consideration has to be given", so they do look at and want to abide by local regulations.

Mrs. Acle said she does not have that much knowledge on solar energy. She then asked what the opposition was when Mr. McCain was going to these public hearings, to which Mr. McCain responded, a good example of that would be the Richfield solar project in Dorchester County, which was a very large project. He said it was about 600 acres of land, so they were talking about several hundred thousand solar panels. He said it is a very rural part of the County, and is all agriculture. He said the agricultural community was very split on it because a lot of the folks just felt like they did not want to see the farm field turn into a solar power plant. He said that was probably the biggest opposition, that they wanted it to remain as agriculture. He said a lot of times people will make the argument that it is going to take away their property values, their view shed because they are going to have to look at solar panels as opposed to agriculture, and that is probably the most typical opposition in these types of projects.

Mr. Hastings said, about five years ago, Les Knapp with MACO and himself put together a work group that basically looked at a lot of these issues, and they tried to find common ground on a lot of this. He said it takes 400 years to make one inch of good topsoil, and a County like Kent County went out of their way to put good regulations in place only to feel like they were being superseded by the Public Service Commission on their wind project, which eventually became massive solar. He said some of these bigger issues are gobbling up agricultural land pretty quickly. He said Caroline County went through a process and then set a limit of 2,000 acres. He said the Cherry project and the larger one they had together was immediately 1,800 acres of 2,000 total acres, so 1,800 acres were automatically gobbled up with those two projects. He clarified, what that means, and what he thinks a lot of farmers fear, is when they lose that amount of acreage and farming, suddenly they cannot go to any of their suppliers, and they are creating fragmentation. He said also people who used to be their neighbors and buying farm equipment keeping the price down low because everyone was going to one source for products, suddenly there are fewer people doing that, and suddenly the cost goes up for neighboring farmers. He said they heard a lot of that back and forth, but it certainly became a bigger issue to try to find common ground on these utility scale projects for smaller communities.

Mrs. Acle asked if these happen mainly in areas that are zoned agricultural, to which Mr. McCain responded, yes. He said, for the most part, they are almost entirely. He said, in this kind of scale, they are in the areas that are zoned agricultural because they are pretty rural areas because of the amount of acreage that is required. Mr. Hastings said they started calling it solar sprawl because big companies were coming out of Seattle and San Francisco who were then gobbling up and targeted Eastern Shore land that was wide open and next to a transmission line so they could come in. He said there were issues for a while as to whether they were being taxed at the agricultural rate or at a commercial rate, and this is more of a commercial activity.

Mr. McCain said Delmarva is very much targeted for this because of their location as they are in the mid-Atlantic, and close to a lot of metropolitan areas. He said another thing about these types of projects is they do not provide power to towns, but the power is sold to the grid. He said Delmarva Power is not a producer, they are a transmitter of energy, so these projects are designed to feed into the grids. He said the purchasers of this could be from New York or New Jersey, not their neighboring town in most cases.

Mr. Dodd said, tagging onto what Mrs. Acle and Mr. Hastings said, and along with Mr. McCain's comments about these farmers, are they seeing mostly commercial investors, or are they farmers who cannot grow a crop and need to subsidize their farming, to which Mr. McCain responded, it is actually both of the above. He explained, typically, they have a solar company who does the project and they will either purchase or lease the land from the landowner. He said the landowner makes their money from the land lease or the land purchase. He said the actual development of these projects are almost always a solar company, and typically a solar company, as Mr. Hastings referenced, is not typically local. He said there are companies from Chicago, Seattle, and Virginia, and a lot of times there are three stages of this. He clarified, there is the landowner whose land is being leased or purchased, then the solar company that develops it, and in most of these cases they then sell that to a power company who then run it long-term. Mrs. Acle asked if these places are zoned agricultural, and it is like there is no regulation on this, to which Mr. McCain responded, no, they are actually heavily regulated. He explained, there are a lot of hurdles any solar company has to go through with the Public Service Commission. He said they have to get a certificate of need from the Public Service Commission, and that is a very onerous and very expensive endeavor. He said, once they are able to obtain that certificate of need, that is sort of a golden ticket for the company to move forward with their project, but that can take a year and a half in a very expensive investment to obtain a certificate of need from the Public Service Commission.

Mr. Cannon said he is not sure, but he would guess when Mrs. Acle mentioned regulations, she may have been thinking local regulations, to which Mrs. Acle responded, yes. Mr. McCain apologized, and said locally most of these end up in front of the Board of Zoning Appeals because, typically, it is not addressed directly in their zoning code. He said they are dealt with on a case by case basis, and the danger there is they lack consistency, and also, as he said, it can be very controversial sometimes because they do not have a local code to reference. He said it is much simpler when they have a local code to reference that says what they have to do, and that is why MACO encourages this so much for rural Counties. He said, in the Brief Book is an example in Washington County where there was a big controversy. He said it was tried to be denied, and there were challenges that go with that.

Mr. Cannon said, to him, this sounds very reminiscent of what they lived through when there were huge debates and discussions about downzoning the agricultural district, and that was when there was huge growth in Wicomico County between 2006 and 2008, and that was a huge firestorm. He said it was all about property rights versus farm fragmentation, how they would come out with that, and how they would keep that balance. He said he knows that some local farmers have weighed in on this. He then thanked Mr. McCain for putting this together and said it was a lot of hard work, and a lot of great work. He then asked what Mr. McCain's take is on how the farmers feel about this, and the Farm Bureau as well, to which Mr. McCain responded, there were a few questions asked, so he will back up a little bit. He said he remembers that very well when he was on the Council around 2006 or 2007 and they were dealing with that, but this is much different. He clarified, this is not a property rights issue, this is a zoning issue. He said all of their properties are zoned something, and in their agricultural community, if they are zoned agriculture, they have that in their code, and in the code there are certain things they can do and cannot do, etc. He said solar, especially large scale industrial solar, is something that was not on the radar when their code was written a number of years ago. He said, in regards to the agricultural community, they have involved them as much as they can. He said, in fact, he and Mrs. Hurley reached out to the Farm Bureau and some of the farmers and had a meeting. He said Mrs. Hurley helped him with that back in January or so, and Mrs. Hurley did take minutes of that, but they got some feedback from folks from agriculture and the Farm Bureau, and they have had discussions about this. He said they have had several farmers weigh in since they had those meetings, and they made some suggestions of things they need to consider, and he would say the reaction is a little mixed, and that is the best way to describe it. He clarified, farmers want to protect their farmland, but they also want to have as many options as they can with their land, so, to get to Mr. Cannon's point, just like anything in their zoning code, it is always a balancing act. He said the good thing with this, as he mentioned earlier, is they are not inventing the wheel at all. He said most Counties already have put this in their code and they have addressed this very recently, so it is very contemporary, and they can model something in Wicomico after the other Counties in terms of what has been best for them and what failures they have had too so they can fail forward. Mr. Cannon said he would hope so. He said, when they start talking about imposing restrictions, and it is interpreted as limiting a landowner's revenue streams, he recognizes the importance of this, to which Mr. McCain responded, once again, Mr. Cannon is going down the wrong rabbit hole there. He said they are not talking about creating anything to limit anyone's revenue streams as that is not what this is about. He said, if someone builds a house, there are setback requirements. He said they are not taking anything away from people, they are trying to have consistency.

Mr. Dodd said Mr. McCain is doing a fantastic job, and this deserves another Work Session, but it is getting late and they have a guest who has been hanging on awhile. He said he thinks this should be discussed at their next meeting, and he hopes Mr. McCain can remember so he does not forget. He then asked what the difference is in the Public Service Commission regulations versus the County regulations that Council may look into adopting, and if Mr. McCain can keep that in mind for his next presentation.

Mr. Holloway said Mr. McCain said this is not a property rights issue but a zoning issue, but when they rezone any kind of property they are affecting property rights one way or the other by either giving them more rights or less rights. He said he just looked on the internet and corn is \$3.15 today. He said farmers cannot grow corn for \$3.15. He said Mr. Cannon brought up what was going on in 2006 and 2007, and farmers like the options. He said no farmer wants to give up their land, and farmers want to

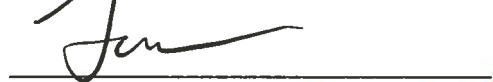
farm. He said sometimes they have to make choices to stay in the farming business by selling off a building lot, and Council heard about all that back then. He said solar panels are not hitting this area too much yet. He said he agrees with some of this, and there are things in there about dismantling, but they really need to be careful here on how they go about changing the zoning to what farmers can do with their land. He said he is very sensitive about this. He said they heard what they heard, and they had tractors circling the Government Office Building back then, and they do not want to go through that again. He said he guesses Mr. McCain has been meeting with the Farm Bureau, but he has not heard too much out of them about this yet, or other farmers. He said, when they go changing zoning on farmer's land, Mr. McCain can say this does not affect it, but right now they can do this, so if they do zoning regulations, they are changing it. He clarified, he appreciates the work Mr. McCain has done, and he is not criticizing, but he is just saying they need to watch this very carefully about what they do to affect the value of farmland in Wicomico County. Mr. McCain said he agrees with that 100 percent, but, number one, this is a valuation issue, and they are talking about when someone does one of these, what is it going to look like and what parameters they put around it, but they do need to be sensitive to it. He said tonight is really just to put this out there. He said it is coming, and they do not have anything to address it, so what he is trying to do here is avoid an issue like they had with the DAF issue, and this is heading in that same direction, so they should be proactive, not reactive. Mr. Dodd said he agrees. There was no further discussion.


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