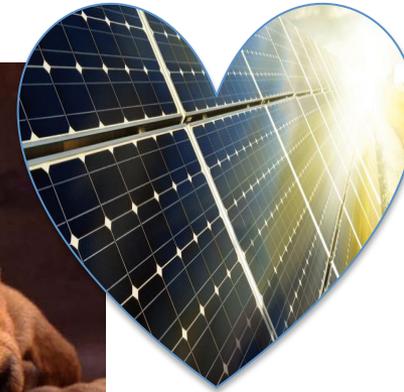


Can't We All Just Get Along?



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Maryland Regulatory Landscape

- Maryland Power Plant Siting Act passed in 1971 to end “nimby” opposition to power plant development.
- Power plant siting responsibility of Maryland Public Service Commission after “due consideration” of grid stability, economics, esthetics, historic sites, aviation safety, air and water pollution, and disposal of waste.
- Court of Appeals has held that CPCN process “preempts” local discretionary approvals (special exceptions, conditional use approvals, etc) *Howard County v. Potomac Electric Power Co.*, 319 Md. 511 (1990).
- Pending Case: Pinesburg Solar, Court of Special Appeals

Maryland Regulatory Landscape

- Over years, “nimby” has crept back into process.
- PSC must also give “due consideration” to “the recommendation of the governing body” where the project is located.
- As of October 1, 2017, PSC must give “due consideration” to:
 - “consistency of the application with the [local government’s] comprehensive plan and zoning.”
 - “the efforts to resolve any issues presented” by the local government.

Maryland Regulatory Landscape

- **Developers**

- Pros

- Decision making by entity with statewide expertise in energy
 - Application reviewed by agencies with experience reviewing solar projects
 - Considers benefits to state, not just local jurisdiction

- Cons

- PSC becoming increasingly sensitive to local concerns
 - Confusion over preemption based on county
 - Litigated proceedings expensive, time consuming, and uncertain

- **Local Jurisdictions**

- Pros

- Pass off responsibility for controversial projects to state entity
 - Benefit from expertise of state in reviewing solar projects

- Cons

- Reduced control over land use issues
 - Must support position as party in legal proceeding

Be Careful!

Pigs get fat.



Hogs get slaughtered.



Issues and Best Practices

- Meet with local jurisdiction prior to filing CPCN application
 - Apply for local discretionary approval? Or waive?
- Site selection
 - Best sites are environmentally sound and feature natural screening from public roads and neighboring residences and/or no neighboring residences
- Zoning
 - Zoning should either allow project or local jurisdiction should affirmatively waive zoning
 - Will zoning change during CPCN process? (Frederick and Queen Anne's Counties)

Issues and Best Practices

- Prime Farmland
 - State and local jurisdictions have expressed concern over solar projects located on “prime farmland” designated by USDA Soil Survey.
 - State has not taken aggressive position. Some zoning ordinances (Frederick County) have attempted to ban solar on such land.
- Screening
 - CPCN applications should include specifics about vegetative screening, focusing on public roads and neighboring residences.
 - Goal: project “invisible”
 - Digital renderings of after planting and after growth are increasingly useful.
- Glare
 - CPCN application should include glare analysis regarding neighboring properties, roads, railways, and airports.

Issues and Best Practices

- Forestry
 - Exemption from Maryland Forest Conservation Act is possible but could draw local and State opposition
 - Best sites allow for forest mitigation on site by placing existing forest into easement
- Pollinators
 - Pollinator habitat provides esthetic and agricultural benefits, and is increasingly supported by State
- Taxes
 - Increased tax revenue may win local support