

## BOARD OF COUNTY COMMISSIONERS FREDERICK COUNTY, MARYLAND

Winchester Hall • 12 East Church Street • Frederick, Maryland 21701  
301-600-1100 • FAX: 301-600-1849 • TTY: Use Maryland Relay  
www.frederickcountymd.gov

January 25, 2011

Terry Romine, Esquire  
Executive Secretary  
Public Service Commission of Maryland  
William Donald Schaefer Tower  
6 St. Paul Street, 16<sup>th</sup> Floor  
Baltimore, MD 21202-6806

### COMMISSIONERS

Blaine R. Young  
*President*

C. Paul Smith  
*Vice President*

Billy Shreve

David P. Gray

Kirby Delauter

Barry L. Stanton  
*County Manager*

**Re: Case 9223 – In the Matter of the Application of Potomac Edison Company for a Certificate of Public Convenience and Necessity to Construct the Maryland Segment of a 765 kV Transmission Line and Substation in Frederick County, Maryland**

Dear Executive Secretary Romine:

I am writing on behalf of the Board of County Commissioners of Frederick County, Maryland, a body corporate and politic of the State of Maryland and political subdivision thereof, (“Board”), a party in Public Service Commission (“PSC”) case number 9223.

As the PSC is aware, the Potomac Edison Company (“Potomac Edison”) has requested that the PSC issue a certificate of public convenience and necessity authorizing the construction of what is known as the PATH transmission line and a new electric substation in Frederick County, Maryland. Allegheny Power claims that the PSC has the authority to site this substation as well as the transmission line. The PSC believes it has the requested authority if the substation is “integral” to the transmission line (PSC Order 82892; PSC Case No. 9198). This Board, the elected governing body of Frederick County, Maryland, and head of Frederick County Government, disagrees. Under zoning, planning and land use authority delegated to the Board by the Maryland General Assembly, Frederick County Government is responsible for siting this proposed substation.

To reiterate comments previously submitted to the PSC, the Maryland General Assembly specifically delegated authority to locate electric substations to Maryland local government. Article 66B, Section 3.08, of the Annotated Code of Maryland, requires that Potomac Edison obtain a finding of consistency with Frederick County’s Comprehensive Plan from the Frederick County Planning Commission (subject to appeal to the Board) before an electric substation may be built in Frederick County. Under the Board’s Article 66B zoning authority, Potomac Edison must also obtain a special exception from Frederick County’s Board of Appeals before a substation may be located on Agricultural zoned land in the County. Regardless of the PSC’s Order No. 82892, and the scope of PSC Case 9223, Potomac Edison must obtain the required finding of consistency and special exception from Frederick County Government before it may locate its proposed electric substation in Frederick County, Maryland.

### CHARACTER COUNTS!



JOSEPHSON INSTITUTE OF ETHICS<sup>SM</sup>

TRUSTWORTHINESS • RESPECT  
RESPONSIBILITY • FAIRNESS  
CARING • CITIZENSHIP

CHARACTER COUNTS! and the Six  
Pillars of Character are service  
marks of the CHARACTER  
COUNTS! Coalition, a project of the  
Josephson Institute of Ethics.  
www.charactercounts.org

Terry Romine, Esquire

January 25, 2011

Page Two

I write today to advise the PSC of the results of hearings recently concluded by the Frederick County Board of Appeals and by the Frederick County Planning Commission. Reserving its position that the PSC, rather than Frederick County Government, has exclusive authority to site the proposed Kemptown area substation in Frederick County, in August 2010 Potomac Edison applied for Frederick County's required special exception and finding of consistency that would permit the substation to be located where proposed. The resulting proceedings involved days of testimony by Potomac Edison, Frederick County citizens, and organizations concerned with the proposed substation and resulted in final decisions precluding Potomac Edison's proposed substation. These proceedings were open to all, televised live, simultaneously available by web access, and are now available for public review by simply going to the archived video link at the Board's website ([www.frederickcountymd.gov](http://www.frederickcountymd.gov)). These were fair and open proceedings and conducted with all due process. Let there be no doubt that this Board supports these processes and decisions.

Specifically, the Frederick County Board of Appeals ("BOA") heard approximately 27 hours of testimony on September 29, October 14 and November 13, 2010. The BOA deliberated in open session on November 18, voting 2 to 1 to deny Potomac Edison's application for a special exception. Potomac Edison requested reconsideration of the BOA's initial decision on December 8 which request was considered by the BOA in open session on December 16, 2010 and denied. The BOA's final written decision dated December 20, 2010, a copy which is enclosed, then issued.

On September 15, 2010 the Frederick County Planning Commission held a public hearing to consider Potomac Edison's request that its proposed Kemptown area substation be found to be consistent with the Frederick County Comprehensive Plan. The Planning Commission found the proposed substation to be inconsistent with the Countywide Comprehensive Plan for multiple reasons including those articulated expressly in the Planning Commission's written decision. Potomac Edison did not request that this Board reverse the Planning Commission finding of inconsistency, a copy of which is enclosed.

Finally, realizing that the PSC has jurisdiction over Potomac Edison's proposed PATH transmission line, we should mention that on October 20, 2010 the Frederick County Planning Commission held a public hearing to consider the proposed PATH 765 kV transmission line, as required by Frederick County Code, Section 1-9-4.110 (B), which requires that the plans of any overhead electric transmission line of 69 kV or greater be submitted to the Planning Commission for its review and recommendation. After considering the proposed PATH transmission line, the Planning Commission found the proposed line to be inconsistent with the Frederick County Comprehensive Plan. While Potomac Edison did not appear at this hearing, later claiming that it was not aware that it had been scheduled, approximately 50 citizens somehow became aware of, and were present at, this hearing which was publically listed on the County's website. Potomac Edison was later given the opportunity to present its comments on the proposed transmission line to the Planning Commission on January 19, 2011, but chose not to do so (on January 5, 2011 Potomac Edison requested a postponement given that it had requested an extension of PSC Case 9223).

In summary, this Board, the Frederick County Board of Appeals and Frederick County Planning Commission take their responsibility for land use decisions seriously. Frederick County proceedings are open to all and conducted with all due process. While decisions may not always be what applicants seek, our processes are fair and in accord with Maryland law. In this instance, the result of the required considerations by Frederick County's Board of Appeals and Planning Commission is that Potomac Edison's proposed Kemptown area substation may not be built in its

Terry Romine, Esquire

January 25, 2011

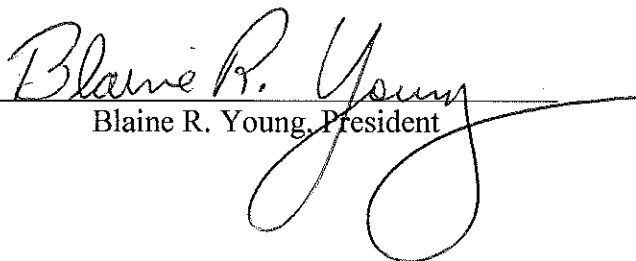
Page Three

proposed location. This Board supports the Frederick County Board of Appeals and Frederick County Planning Commission processes and decisions dealing with this matter.

We hope this summary of relevant Frederick County proceedings is helpful to the PSC in its deliberations in Case 9223. If you have any questions, please feel free to contact Assistant County Attorney Richard McCain at (301) 600-2613.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
OF FREDERICK COUNTY, MARYLAND

By:   
Blaine R. Young, President

Enclosures

cc: Chair and Members of the Public Service Commission  
Dennis Sober, PSC Hearing Examiner  
Board of County Commissioners  
Barry Stanton, County Manager  
David Dunn, Assistant County Manager  
Eric Soter, Director, Planning Division  
Jim Gugel, Chief Planner  
John Mathias, County Attorney  
Richard J. McCain, Assistant County Attorney  
PSC Case 9223 Service List

**IN THE MATTER OF:  
THE APPLICATION OF  
PATH ALLEGHENY  
TRANSMISSION COMPANY, LLC  
FOR SPECIAL EXCEPTION**

\* \* \* \* \*

**\* BEFORE THE  
\* FREDERICK COUNTY  
\* MARYLAND  
\* BOARD OF APPEALS  
\* CASE NO. B-10-08**

\* \* \* \* \*

**FINDINGS AND DECISION**

PATH Allegheny Maryland Transmission Company, LLC (hereinafter referred to either as "PATH" or "the Applicant") has submitted an application to the Frederick County Board of Appeals for a Special Exception to authorize the construction and operation of a non-governmental utility, specifically an electric power substation, to be located on land classified and located within an Agricultural zoning district in Frederick County. For the reasons hereinafter set forth, the Board of Appeals denies that application.

Preliminarily, it is noted that the Applicant registered its objection to the proceedings before the Board of Appeals based upon its assertion that the Maryland Public Service Commission, a state, not county, agency, has sole jurisdiction over the issues relating to the placement of the facility which forms the subject of this case. The determination of that jurisdictional question is not before the Board, and the Board takes no position on that issue.

A public hearing on the application was held in a series on September 29, 2010, October 14, 2010, November 13, 2010 and November 18, 2010. Prior to that hearing, written material was submitted to the Board by the Applicant, several groups appearing in opposition to the application and individual citizens. The members of the Board of Appeals visited the site of the proposed project, as well as several areas of the surrounding environs on Wednesday September 15, 2010, pursuant to the requirements of Frederick County Code, Section 1-19-3.200.2(B).

Based upon the evidence submitted into the record, the Board finds as follows.

PATH Allegheny Maryland Transmission Company, LLC is a Delaware Limited Liability Company formed and established, in large measure, for the purpose of undertaking a project to transmit electrical power generated in the coal mines of West Virginia by way of a

power transmission highline extending from West Virginia, through parts of Virginia and into Maryland. It appears that the precise location of the transmission line is still subject to debate and governmental review; however, what is certain is the desire of the Applicant to locate its electrical substation in Frederick County. More specifically, the property eyed by the Applicant as the location of the substation consists of approximately 170 acres of land located on the west side of Bartholows Road, Mount Airy, Maryland<sup>1</sup> (hereinafter referred to as "the Subject Property"). The Subject Property consists of several separate parcels, owned either by the Applicant or by separate entities, namely PATH-MD, PATH Allegheny and Baltimore Gas and Electric Company, for which the Applicant acts as agent in these proceedings.

The Subject Property is classified in the Agricultural zoning district under the provisions of Chapter 1-19 of the Frederick County Code. Visually, the Subject Property is undeveloped, is used for agricultural purposes, and consists of generally rolling terrain with some forested areas and several stream-beds. It is traversed by an existing 500 kilovolt (kV) electric transmission line which enters the Subject Property from its western boundary, extends in a generally easterly direction, and then turns mid-way into the Subject Property and exits the Subject Property at its northeast boundary. A second transmission line, configured in a generally north to south direction, is located to the west of the Subject Property and parallels the western boundary of the Subject Property. It joins the first transmission line, just described, west of the Subject Property.

There are existing residential subdivisions located directly to the north and to the south of the Subject Property, and another residential subdivision is located directly to the east of the

---

<sup>1</sup>In the public discourse leading to these proceedings, the substation has been consistently referred to as the "Kemptown substation". Kemptown is an unincorporated community located south of the subject property. As was pointed out at the hearing on more than one occasion, however, the Subject Property on Bartholows Road and other properties located in the vicinity of the Subject Property bear a mailing address of Mt. Airy, Maryland, an incorporated municipality located to the north and east of the subject property.

Subject Property on the opposite side of Bartholows Road. The evidence submitted to the Board was that there are in the vicinity of 1,300 to 1,350 residences in these residential communities, and these figures have not been challenged.

These residential subdivisions are located on lands which are classified for the most part in the Residential zoning district under Chapter 1-19 of the Frederick County Code. The zoning map for Frederick County, submitted as an exhibit at the hearing, reflects that the area of Frederick County south of Interstate 70 and east of Green Valley Road (Route 75), which includes the Subject Property, is zoned primarily for either residential or agricultural purposes. The Subject Property, while of varying elevations, is situated overall at a lower elevation than most of the surrounding residential subdivisions.

As described by the Applicant, the PATH substation project will cover approximately 42 acres of the total 170 acres of the Subject Property. To accommodate the substation, a significant portion (approximately 73 acres) of the rolling terrain will be substantially graded to establish a level surface for the 42 acre project. The substation itself will consist of two control buildings, with a maximum height of thirty (30) feet, constructed of white metal sheeting and a metal roof, transformers and reactors, galvanized tubular steel structures and towers to support the transmission lines, several of which will reach a height of 175 feet. The 42 acres comprising the substation will be surrounded by fencing six (6) feet in height which will be topped with barbed wire or razor coil. There will be no permanent lighting of the substation, while occasional lighting may be required during times of maintenance. No permanent personnel will occupy the substation; however, personnel may make periodic visits to the property, perhaps 4 or 5 per month. The facility is intended to be in constant and continuous operation, 24 hours per day, 365 days per year.

In order to mitigate the visual impact of the facility on the neighboring properties, the Applicant proposes to construct earthen berms at strategic locations around the perimeter of the facility and to utilize trees and landscaping to conceal, to some extent, the presence of the facility. Balloon tests conducted by the applicant, and simulation photographs, modified to show the appearance of the facility after construction is completed, show that the facility will still be visible from many of the neighboring properties. In fact the applicant's witness stated here are

some problematic areas and the intent of the landscaping was to conceal the lower structures and buildings.

There was significant opposition to the application for the special exception. Representatives of three organizations<sup>2</sup> recognized by the Board Chair presented evidence in opposition to the project (or at least its location on the Subject Property) as did a number of individuals. The bases of their opposition took several forms including:

- Concerns over Electrical Magnetic Forces (EMFs) that will be generated from the facility and the adverse effects that those EMFs will have on the individuals, especially children, living nearby. The opposition offered documentation of several scientific studies conducted over a number of years.
- Concerns over the noise which will be generated by the facility. There was evidence that the constant hum of the transmission lines, the reactors, transformers and the generators would be a continuous and constant annoyance to those living nearby.
- Concerns over fires, vandalism, and other catastrophic events that may occur at the facility. There was evidence addressing the type of oils used in the transformers on the facility that would cause chemical contamination if they were burned either accidentally or through intentional action, such as terrorism. The resulting smoke could seriously effect the substation neighbors who would, in all probability, have to be evacuated for their own health and safety as testified by the Frederick County Fire Marshall.
- Concerns over possible contamination of ground water, and thus the drinking water of neighboring residents with private and community wells, in the event that grading during construction or chemical leakage contaminates the underground water aquifers.
- Concerns over the effect that the facility will have on wildlife in the area as 7 acres of the mature forest area will be cleared.
- There was no need for the substation given future predictions for electricity usage in the

---

<sup>2</sup>The three organizations are "Citizens Against the Kemptown Electrical Substation" (CAKES), the Sugarloaf Conserancy, and the Sierra Club of Maryland.

coming years and there are other, more appropriate means of generating electricity, such as wind power.

- There are more appropriate locations for the substation.

An overriding concern of many opponents was the effect that the facility would have on the values of their homes, not only in a monetary sense but in the adverse effects the presence of the facility would have on their quality of life. Presently, the area of and surrounding the Subject Property consists of in excess of 1,300 residences. One opposition group submitted the testimony of Mr. Wayne Six, a real estate appraiser operating in Frederick County for many years, who testified that the fair market value of several specific homes in the area would decrease between 12½ and 20 percent from present day values if the substation is constructed as planned. These decreases in value would be fairly consistent throughout the surrounding neighborhoods and within a similar range of percentage decrease in value.

The rationale for his opinion was based primarily on the adverse effect of having an industrial appearing facility of this size, height and magnitude, directly in the midst of three well-established residential neighborhoods. In short, people do not want to pay as much money for a house with a 42 acres electrical substation with 175 foot tall towers in close proximity to the house as they would for the same house without such a facility.

In response to these concerns, the Applicant submitted evidence that countered each of these objections and concerns. It submitted evidence that there is no definitive proof that EMFs have an adverse effect on health, that the concerns about fire would be mitigated by using different oils in the transformers and by constructing the facility in such a manner as to minimize the risk of extensive fire, and that the noise generated at the facility would not exceed Frederick County Code requirements. The Applicant presented evidence that there would not be any impact on ground water or nearby wells, and there would be no detrimental effect on wildlife.

The Applicant also submitted the testimony of Mr. Jay Goldman, a licensed real estate appraiser operating in Charleston, West Virginia, who testified that the presence of the facility

would not have any adverse impact on neighboring property values. He found support for this position in a situation in Charleston in which a local property situated in proximity to a two acre substation (the proposal in Frederick County is a 42 acre site) and a landfill did not suffer any loss in property value as a result of that proximity.

The extent of all of the evidence presented at the hearing cannot, with any practicality, be fully summarized in this decision; however, the Board focuses on certain facts and issues and decides this matter based upon these.

A special exception use is a use of land which is permitted on land located in an identified zoning district provided it meets the various criteria established by the Board of County Commissioners. The Frederick County Code sets forth general criteria applicable in the consideration of any application for a special exception as well as specific criteria applicable to certain specified uses. An application for a special exception must be granted if the applicant can present evidence and persuade the Board of Appeals that all of the general and specific criteria have been met and satisfied. Conversely, if the applicant for a special exception cannot satisfy all of the general and special criteria, then the application may not properly be granted, and the failure to satisfy even one of the stated criteria requires denial of the application.

Frederick County Code, Section 1-19-3.210 establishes the general criteria applicable to the consideration of and which must be satisfied before any special exception may be granted. Frederick County Code, Section 1-19-8.339 establishes the specific criteria which must be satisfied when seeking a special exception to use land as a non-governmental utility (as is sought by the Applicant). In reaching its decision, however, the Board focuses on Section 1-19-3-210 (B) (1), (2) and (3) and on Section 1-19-8.339 (I).

For the Board of Appeals to grant the Applicant's request for a special exception, the Board would have to find, with regard to these sections, that:

- The proposed use is consistent with the purpose and intent of the Comprehensive Development Plan and of this chapter. (§ 1-19-3-210 (B)(1))

- The nature and intensity of the operations involved in or conducted in connection with it and the size of the site in relation to it are such that the proposed use will be in harmony with the appropriate and orderly development of the neighborhood in which it is located. (§ 1-19-3-210 (B)(2))
- Operations in connection with the special exception at the proposed location shall not have an adverse effect such as noise, fumes, vibration or other characteristics on neighboring properties above and beyond those inherently associated with the special exception at any other location within the zoning district. (§ 1-19-3-210 (B)(3))

Additionally, in order to grant the Applicant's request for this special exception, the Board would have to find that:

- When permitted in nonresidential zones, a nongovernmental utility shall have an appearance consistent with the surrounding neighborhood. (§ 1-19-8.339(I)).

The Board finds and concludes, based upon the evidence appearing in the record, that these sections have not been satisfied thereby requiring a denial of the application for special exception.

*The proposed use is consistent with the purpose and intent of the Comprehensive Development Plan and of this chapter. (§ 1-19-3-210 (B)(1))*

Not unexpectedly, each opposing party in these proceedings referred to and relied upon various sections of the Frederick County Comprehensive Plan in support of their respective positions that the proposed use either is or is not consistent with the purpose and intent of that Plan. Both the Applicant and those opposing the project point to various Chapters of the Comprehensive Plan to support their respective positions. Occasionally, each side relies upon the same Chapter, with their own view of that Chapter, to support opposing positions.

As has been pointed out by counsel in these proceedings, the Comprehensive Plan is not intended to be a binding document but is, rather, a guideline to be utilized by Planning

Commissions, Boards of Appeal, and others involved in land use and development to satisfy certain goals. This Board is not of the view that the proposed use by the Applicant must satisfy all criteria in the Comprehensive Plan. To do so would establish a nearly insurmountable burden in light of the fact, so clearly illustrated by the opposing viewpoints in this case, that one may find support for nearly any position in some part of the Comprehensive Plan.

The Board, instead, focuses upon the goals which the County Commissioners, and the Planning Commission before it, were attempting to reach for the betterment of the citizens of Frederick County. A review of the Comprehensive Plan, taken as a whole, reflects that those who adopted the Plan were cognizant of Frederick County's position, both historically and geographically. There is a recognition in the Plan that Frederick County has a rich and diverse history reflected in its agricultural underpinnings, its unique location in relation to historical events, and its overriding sense of community. There is, on the other hand, a recognition that Frederick County is located in the midst of two large metropolitan areas, and that commercial, industrial and residential growth emanating from those metropolitan regions and coming to Frederick County is inevitable. In the view of the Board, the purpose and intent of the Comprehensive Plan includes the effort to balance these two competing characteristics. The Comprehensive Plan also looks to the preservation of the County's rural communities from inharmonious development (specifically in Chapters 3: Conserving Our Natural Resources, Chapter 4: Protecting and Preserving Our Heritage, Chapter 5: Preserving Our Agricultural and Rural Community, Chapter 9: Assessing Our Water Resources and Chapter 10: Managing Our Growth). The question, then, is whether the use of the Subject Property as envisioned by the Applicant is consistent with these efforts. The Board concludes that it does not.

As noted, the size of the proposed use is, quite simply, massive. It will consist of 42 acres of galvanized steel, with 50 foot to 175 foot towers on a gravel base. It will be surrounded by six foot high fencing, topped by barbed wire or razor coil. While the Board recognizes the plans of the Applicant to take measures to conceal the facility, the photographs submitted by the Applicant itself reflect that the earthen berms with landscaping will not conceal the facility from

its surroundings. Indeed, the Applicant acknowledged that it will not be able to "hide" the facility from many of the surrounding areas, especially those to the east of the Subject Property on the opposite side of Bartholows Road.

The members of the Board visited the site and had an opportunity to observe the surrounding neighborhoods. The zoning map reflects that the Subject Property is surrounded on three sides by residentially zoned, and residentially used, properties. The use of the Subject Property as envisioned by the Applicant is not consistent with the purpose and intent of the Comprehensive Plan which seeks to preserve such areas from uses which are not consistent with that preservation effort.

*The nature and intensity of the operations involved in or conducted in connection with it and the size of the site in relation to it are such that the proposed use will be in harmony with the appropriate and orderly development of the neighborhood in which it is located. (§ 1-19-3-210 (B)(2))*

This section first requires consideration of the nature and intensity of the operations in connection with the proposed use and the size of the site in relation to that use. Once considered, the Board must determine whether that nature and intensity of operations is in harmony with the appropriate and orderly development of the surrounding neighborhood.

There is no need to repeat that the use of the Subject Property will be intensive. Electrical substations have become common-place in industrialized society, and their appearance is well recognized and established. This particular substation is nearly unparalleled in size and scope. The Applicant acknowledged that it will be the largest such substation in Frederick County and, indeed, in Maryland. When asked about other similarly sized substations, the Applicant made reference to several (perhaps four) located in California, Maine and Europe.

The opposition groups compared the size of the proposed substation as larger than the Pentagon with towers taller than the statue portion of the Statue of Liberty. The use of the substation will be for the purpose of reducing the power levels in the lines from 765 kV to 500 kV (a "step down station").

Given this level of intensity of operations, the Board must determine whether that use is in harmony with the appropriate and orderly development of the neighborhood in which it is located. As noted previously, the "neighborhood in which it is located" consists of over 1,300 residences located in an area of Frederick County which is zoned, primarily, for either residential or agricultural uses. There is little, if any, property in the areas south of I-70 and east of Green Valley Road which is zoned for either industrial or commercial uses. The structures are proposed to be placed at less than two hundred feet from adjacent residential properties to the west and several hundred feet from other adjacent properties. The Board does not find that a 42 acre substation bearing the appearance described is harmonious with the surrounding residential areas and does not advance the further development of this area in an appropriate and orderly manner. To the contrary, the Board accepts the evidence that this project will adversely affect the fair market values of the surrounding properties, and that such devaluation is neither appropriate nor orderly. Consequently, the Board concludes that the Applicant has not satisfied the requirements of this sub-section.

*Operations in connection with the special exception at the proposed location shall not have an adverse effect such as noise, fumes, vibration or other characteristics on neighboring properties above and beyond those inherently associated with the special exception at any other location within the zoning district. (§ 1-19-3-210 (B)(3)).*

This section will be discussed in the context of the special exception standards set forth by the Court of Appeals in *Schultz vs. Pritts*, 291 Md. 1 (1981) and *Peoples Counsel vs. Loyola College*, 406 Md. 54 (2008). The Board acknowledges that a non-governmental utility is a use which has been authorized in an agricultural zone, albeit only by special exception. The fact, however, that the County Commissioners determined that such a use is permitted only as a special exception was a tacit recognition that such uses have, at least to some degree, an adverse

effect. The Code, itself, refers to the adverse effects "inherently associated with the special exception" use. The question is whether those adverse effects will manifest themselves to a greater degree at the proposed location than would otherwise exist in another location in an agricultural district.

The Board is charged with the duty and obligation to review this conditionally permitted use in light of the various criteria established in the zoning code provisions. Many of those criteria leave little room for debate. For instance, a mathematically established set back requirement is either met or not met, and can be determined by simple measurements. Or, the Board need not exercise much discretion in determining whether the applicant submitted photographs of the existing site and area. The applicant either has or has not submitted such photographs. Other criteria, however, require an exercise of discretion and judgment, and the Board may not simply review the proposed use as one which is permitted so long as an argument may be made that those criteria have been met. Whether these more amorphous conditions have been satisfied will, in many cases, be the subject of, sometimes vehement, disagreement. The Board must make the final determination these matters in light of the evidence presented before it.

The Board finds that the adverse effects of the proposed use in this case include the adverse visual effects that will be experienced by those in the neighborhood, the adverse effects on the lifestyles of those residing on the three sides of the Subject Property, the potential adverse effects on the water supply and ultimately, the adverse effect on the fair market value of surrounding property. While these adverse effects might be present under any circumstance, they are magnified to an excessive degree in this particular location by the mere fact that there are a significantly greater number of homes and people affected than might otherwise be affected in a more remote location. The circumstances in this case are unique in that the "farm" on which the project is envisioned to be situated is not in a remote location surrounded by other

farms or sparsely populated areas, as one might normally expect in an agricultural area; rather, the Subject Property is the "hole in the doughnut" in that it is an oasis of agricultural land surrounded by lands zoned for and used as residential homes. The applicant recognizes this in its Justification letter by noting the "contiguous nature of the current large agricultural mass in the region". The recognized adverse effects of this special exception use will be greater in this location than in other locations in the agricultural zone. Consequently, the Board concludes that the Applicant has not satisfied the requirements of this section.

*When permitted in nonresidential zones, a nongovernmental utility shall have an appearance consistent with the surrounding neighborhood. (§ 1-19-8.339(I)).*

This section is one of the specific conditions which must be satisfied in order for the Board to grant this application for special exception. Consequently, an analysis of the appearance of both the proposed use and of the surrounding neighborhood is required. The appearances of both have been discussed previously, and the Board concludes, based on those descriptions, that the appearance of the 42 acres substation is not consistent with the appearance of residential subdivisions surrounding the Subject Property.

The Applicant posits, however, that there is a consistency of appearance because of the existing transmission lines which traverse the Subject Property. The Board rejects that position.

First, Section 1-19-8.339(I) requires that the proposed use be consistent in appearance with the surrounding neighborhood. The transmission lines to which the Applicant refers are not located in the "surrounding" neighborhood but are, rather, on the Subject Property itself. The transmission lines to which the Applicant refers enters the Subject Property at its western boundary, and before entering the Subject Property at that location, those lines do extend and continue on away from the Subject Property. In similar fashion, the lines exit the Subject

Property at its northeast boundary and extend away from the Subject Property in that same northeasterly direction. In the view of the Board, however, the appearances of the surrounding neighborhoods are not, in any sense, defined by those lines which move away from the homes which exist at those locations. The appearance of the surrounding neighborhood is that of a typical residential subdivision. The appearance of the proposed substation facility is that of galvanized steel structures, industrial in nature. The two are not consistent.

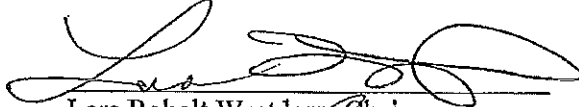
Secondly, even if one were to consider that the transmission lines located on the Subject Property are to be considered in assessing the appearance of the surrounding neighborhood, the Board still finds that the presence of these lines do not serve to satisfy the requirements of this section. While the appearance of the existing transmission lines unquestionably bears an industrial appearance, their presence does not define the appearance of the entire area of the Subject Property and its environs. Those lines are merely a part of the picture, and the entire picture, in the opinion of the Board, is that of a residential community surrounded by farm land, albeit with a transmission line running through the farm land.

Be that as it may, the proposed use will magnify, exponentially, the industrial appearance of the area, and will, in the view of the Board, come to define the entire area, including the adjoining residential areas. After reviewing all of the evidence presented at the hearings, and after having heard the testimony of the witnesses, the Board concludes that the Applicant has not satisfied this section, thereby requiring a denial of the Application.

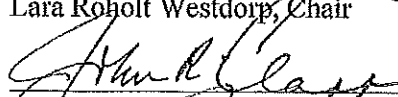
#### Conclusion

For the reasons set forth above, whether considered individually or collectively, the Board denies the Application for the special exception submitted by the Applicant on a motion from Mr. Clapp, seconded by Ms. Sepe. Ms. Westdorp noted her objection to the inclusion of Sections 1-19-3.210(B)(1), (B)(2), and 1-19-8.339(I) in the motion. Yeas- 2, Nays-1 (Westdorp)

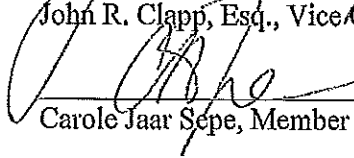
Adopted by the Board of Appeals on the 20<sup>th</sup> day of December, 2010.



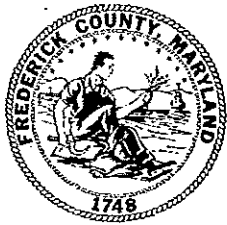
Lara Roholt Westdorp, Chair



John R. Clapp, Esq., Vice Chair



Carole Jaar Sepe, Member



**FREDERICK COUNTY PLANNING COMMISSION**  
**DIVISION OF PLANNING**  
**FREDERICK COUNTY, MARYLAND**

---

Winchester Hall 12 East Church Street Frederick, Maryland 21701 (301) 600-1138

**FCPC Transmittal Memorandum**

**TO:** Board of County Commissioners  
**FROM:** Frederick County Planning Commission  
**Through:** Eric Soter, Director  
Division of Planning  
**DATE:** September 16, 2010  
**RE:** Kemptown Substation – Finding of Consistency

---

Per Article 66B, Section 3.08 of the Annotated Code of Maryland, the Frederick County Planning Commission (FCPC) held a public hearing on September 15, 2010 regarding the Finding of Consistency with the Countywide Comprehensive Plan for the proposed Kemptown Substation.

Art. 66B, Section 3.08 reads in part:

*... a publicly or privately owned street, square, park or other public way, ground, or open space, or public building or structure, or public utility may not be constructed or authorized in the local jurisdiction or the major geographic section of the local jurisdiction until the location, character, and extent of the development has been submitted to and approved by the planning commission as consistent with the plan.*

The FcPc found the application **Inconsistent** with the Countywide Comprehensive Plan due to the location, character and extent of the proposal and further that it was **Inconsistent** with certain goals and policies including:

- NR-P-03 Balance public infrastructure and utility capacity needs with physical impacts to environmental features
- NR-P-13 Focus a higher proportion of development within Community Growth Areas to protect green infrastructure land.
- AG-G-02 Encourage the growth of new, and the preservation of existing agricultural industries in Agricultural designated areas in order to support local farm operations.
- AG-P-04 Support Frederick County's farming economy and farming communities and services necessary to sustain a viable agricultural industry.
- AG-P-05 Support land use initiatives to maintain and enhance Rural Communities to service the agricultural industry.

- HO-G-04 Increase investment in existing neighborhoods and rural communities through revitalization efforts.
- HO-P-08 Maintain the quality and unique character of its housing stock in existing neighborhoods and communities.
- WR-G-01 Maintain a safe and adequate drinking water supply to accommodate the needs of the current population as well as future generations.
- WR-G-02 Protect and enhance the quality of Frederick County's surface waters, ground water resources, and wetlands.
- MG-P-03 Pursue redevelopment strategies as a way to minimize the need to expand existing Community Growth Areas or establish new Community Growth Areas.
- MG-P-04 Further expansion of the designated Rural Residential areas into the surrounding Agricultural/Rural or Natural Resource designated areas is not permitted.
- MG-P-08 Encourage, and where appropriate regulate, redevelopment such that the design character and functional traits of the existing adjacent neighborhoods or districts are not diminished.
- MG-P-27 Use every available regulatory and policy tool available to ensure that community design issues are a high priority in the review of land development proposals.

Motioned: Floyd, 2<sup>nd</sup> by Lawrence  
Vote: 6-0-0-1  
For: 6 – Floyd, Lawrence, White, McClurkin, Wolfe, Hagen  
Against: 0 –  
Abstain: 0 –  
Absent: 1 – Forrence

cc: Ronald A. Hart, County Manager  
Teresa Biser, Executive Assistant to County Manager  
Joyce Grossnickle, Administrative Officer  
Michael Chomel, Senior Assistant County Attorney  
Richard McCain, Assistant County Attorney  
William "KC" Reed, Loiderman Soltesz Associates, Inc.  
Mike Hosier, Allegheny Power  
Mike Gogol Allegheny Power  
Bob Cannon, Saul Ewing, LLP  
Terry Romine, Public Service Commission  
Dennis Sober, Public Service Commission  
File – Kemptown Substation Finding of Consistency