

Solar Power Cables/Road: Maryland Court Asked to Consider Whether County Has Sufficient Interest to Provide Subsurface Access



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The Appellate Court of Maryland (“Appt. Court”) was asked to address an issue arising out of an attempt to install solar cables underneath a county road. See *Board of County Commissioners of Somerset County v. Howard Kevin Anderson, et al.*, 2023 WL 2821548 (April 7, 2023).

The question considered was whether Somerset County, Maryland, (“County”) could allow the placement of solar energy cables in its existing subsurface utility and runoff pipes below the roads.

A lower court had determined after a second trial that the Andersons had a fee simple interest in County roads adjacent to their property.

The Andersons had opposed the County’s granting an easement to Great Bay Solar I, LLC (“GBS”) to install solar cables beneath the road in the preexisting utility and runoff pipes. The Andersons were ultimately deemed fee simple owners of the relevant roads.

The County in the first trial had been found to have a sufficient interest in the roads to permit GBS to install solar power cables.

After a remand by the Appt. Court, the lower court was found to have:

... declared, contrary to its initial conclusion, and with no explanation, that the County did not have a sufficient interest in the roads “to grant [GBS] (or any other person or entity) the right to bury electrical cables or any other device unrelated to the public’s right of use for travel and transportation.”

Consequently, GBS was not permitted to maintain or utilize the buried cables and the Andersons were provided the right to remove the cables.

The Appt. Court was asked by the County to address the following questions:

- Did the circuit court’s unexplained finding that the County did not have a sufficient interest in the roads to allow installation of solar cables satisfy this Court’s remand for clarification on that issue?
- Where the County lawfully maintains subsurface pipes for runoff and utilities, could it allow such a pipe to convey solar energy instead of water?

Subsequent to the lower court’s determination, the Andersons stated on the second appeal they granted GBS an easement for the placement of the existing electric cables in the roads. As a result, they argued

that the issue (i.e., whether GBS has the right to maintain its electric cables beneath the public roads owned by the Andersons) is moot.

The Appt. Court further noted that:

. . . Because the County asserts that there may be some effects from the circuit court's decision on this moot issue, and both parties agree that vacating this portion of the judgment is appropriate, we vacate the portion of the judgment addressing whether the County had "sufficient interest" in the roads to grant rights to GBS and remand to the circuit court to dismiss that portion of the judgment.

A copy of the Opinion can be downloaded [here](#).