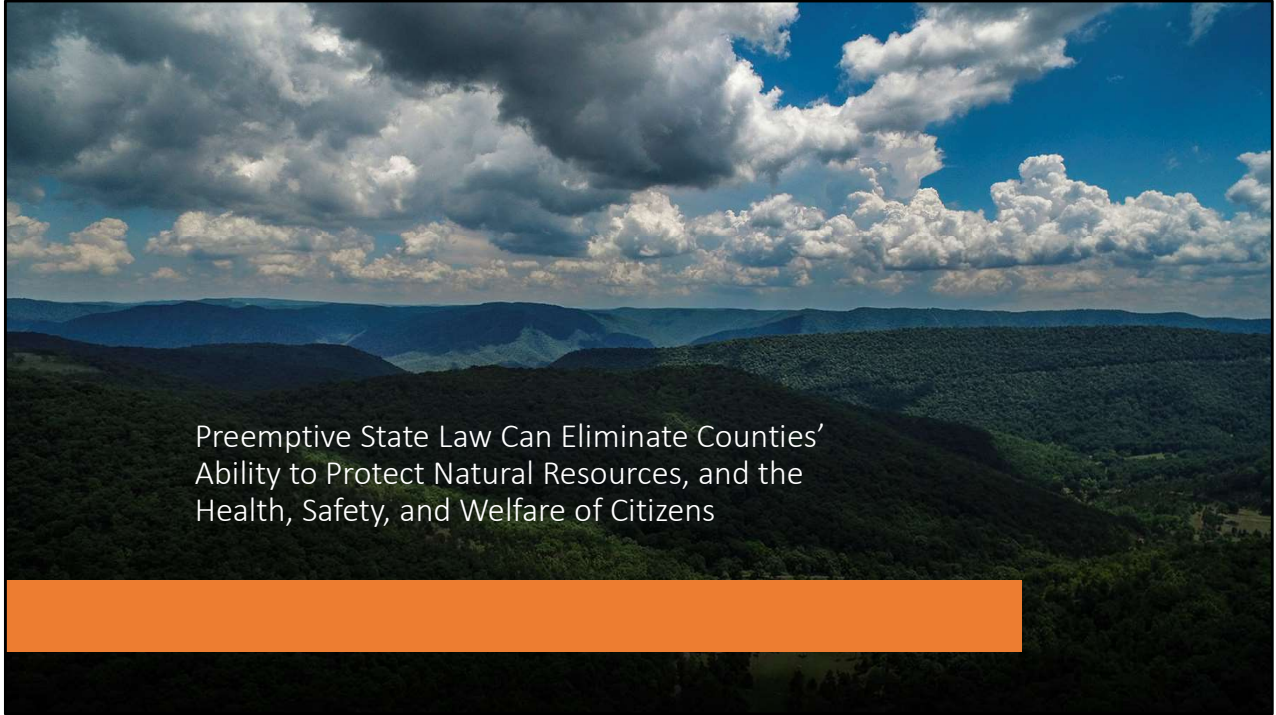



In the experience of Hardy County.



Particularly though legislation that diminishes the powers and authority of zoning and land use planning.



Preservation of Natural Resources and Protection of Health, Safety, and Welfare of Citizens has Been the Goal of Planning & Zoning Since the early 1900s.

Separation of Incompatible Uses.  
Minimizing adverse impacts.

Anyone who wants to exploit these things is NOT going to support local zoning. This is clearly illustrated in the history of WV.

Now, some believe and promote the idea that the goal of zoning is to limit growth. That should not be the case – unless THAT IS a particular type of “growth” is negatively affecting your community. **Planning is about keeping the local benefits of growth greater than the local costs.**

It is all of our jobs to understand and maintain that balance – and it is not always easy.



## Recent Preemptive Legislation Regarding County (Planning) Regulatory Authority

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- Senate Bill 242 - passed in 2022
  - §8A and §19
- House Bill 3313 and Senate Bill 585 – introduced 2023
  - §7 and §19
- House Bill 2459 – introduced 2023
  - §8A
- House Bill 3446 – introduced 2023
  - §24 negating affect of §8A

If we have no power to maintain that cost/benefit balance, we are all at the mercy of the highest bidder. So, we should be concerned about the trend toward state law that weakens local planning power.

Notice code 8A (zoning) is a popular topic in preemptive legislation along with agriculture chapter 19 which ties into the right to farm.

Another popular topic is large scale energy production facilities

These industries are land and natural resource intensive uses – thus their beef with local land use law.

An aerial photograph of a large farm complex. In the foreground, a herd of cattle is gathered in a dirt lot. Behind them are several large, long barns with green roofs. Two tall, cylindrical silos stand prominently. The farm is surrounded by green fields and rolling hills in the background under a clear blue sky.

The reason Hardy enacted zoning was explicitly for the protection of agriculture and the resources it requires.

That goal remains the same.

SOME HISTORY OF HARDY - Hardy enacted their planning commission in 1966 and adopted their first zoning ordinance in 1973

They did this after the department of agriculture and the extension office promoted the idea of zoning as a protection tool for agriculture and its necessary resources – clean and abundant land, water, & air. I still have some GREAT publications from that era that are still relevant.

So Hardy County bought into that idea, and they still believe it to be true. Generations of small farmers have been actively involved with and supportive of our local zoning. And, Hardy County has always whole heartedly supported right to farm legislation...

We are #1 ag production county in the state exceeding #2 by nearly 100 million dollars annually AND we are still able to experience recreational and residential growth (many high end second homes) - so we must be doing something right.

It seems (UP TO NOW ANYWAY) we have been maintaining a cost/benefit good balance in our development.



So, this is what we are dealing with today. Our planning commissioners and county commissioners are in touch with our local farmers, and they believe planning is still trying to protect agriculture and YET out of county entities are promoting this kind of message. This is a postcard that was sent to hundreds of our citizens warning farmers that our planning commission is trying to take away their freedoms and their "right to farm" by calling them industrial uses. That misleading (hopefully misinterpreted) statement may be the reason behind one of the first pieces of right to farm preemptive legislation that we have seen. Next Slide.

Preemptive Law  
Senate Bill 242 – passed 2022  
*Prohibiting county ordinances that prevent or limit a landowner's complete use of natural resources or real property for farm or agricultural operations outside of municipalities or urban area.*

**§8A-7-10. Effect of enacted zoning ordinance.**

- (e) Nothing in this chapter authorizes an ordinance, rule or regulation preventing or limiting, outside of municipalities or urban areas, the complete use (i) of natural resources by the owner; or (ii) of a tract or contiguous tracts of land of any size for a farm or agricultural operation as defined in §19-19-2 by the owner. For purposes of this article, agritourism includes, but is not limited to, the definition set forth in §19-36-2.

**§19-19-2**

- (a) "Agriculture" shall mean...the production of food, fiber and woodland products, by means of cultivation, tillage of the soil and by the conduct of animal, livestock, dairy, apiary, equine or poultry husbandry, and the practice of forestry, silviculture, horticulture, harvesting of silviculture products, packing, shipping, milling, and...
- (b) "Agricultural land" shall mean any amount of land and the improvements thereupon, used or usable in the production of food, fiber or woodland products of an annual value of \$1,000 or more, by the conduct of the business of agriculture, as defined in subsection (a) of this section.
- (c) "Agritourism" activity means any lawful activity carried out on a farm or ranch that allows members of the general public for recreational, entertainment, or educational purposes to view or enjoy rural activities

So, some level of the "ag industry" (not our local famers) saw the need to introduce this legislation

What was the reason for this legislation?

The definition along with the definition of ag land as any land producing \$1000 of product per year (qualifying for farm tax class) – is concerning when talking about zoning exemptions because with that low bar, this legislation could affect about 95% of our county and probably nearly the same for many of you having potential to exempt pretty much all land uses from zoning. And the agritourism definition – again, that could be ANYTHING . The good news is that we believe the broad ambiguity of this code makes it weak.

Changes in  
Agriculture  
Ownership =  
Changes in  
Priorities and  
Respect for Local  
Resources

Corporate Farming  
Hardy County



Family Farming  
Hardy County



Perhaps SB 242 had something to do with this change in the face of agriculture:  
By Corporate I mean there is no local farm involved – investor groups or the industry itself (in Hardy JBS Foods – a global company) owns the land and/or facilities.  
This concerns us because capital investors from other states or countries could care less about the long term impact their operations are having on the neighbors, the land, or the water. They have no motivation to be good stewards like local farmers who have owned the land sometimes for generations.  
AND each poultry house in these large-scale multi-house CAFOs take away an opportunity for a local family farmers to diversify their farming operations with the addition of a poultry house.



**Issue:** Huge Scale Agriculture Operations (Exempt from WVDEP Large Water User Status) Have Unchecked Access to Local Water Supplies

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- Residential Water Use:  
300 gal per day
- Poultry House Water Use:  
3,000 gal per day
- **One** of the Several Mega-house Facilities in South Branch Potomac Watershed = 63,000 gal per day



The concerns we have with this new type of “farm” are many, but one of the most important issues is this: WATER

## Existing Legislation May Prevent Local Government from Protecting the Natural Resources of their Citizens

### Hardy Comprehensive Plan, Page 9 & 25 of (proposed Agriculture Chapter)



The large water usage from a single source without sufficient (supply/demand) study, the runoff contaminants, and the use of prime agricultural soils for industrial scale operations are top environmental concerns in our area.



...the standards for development in agricultural zones should maintain the goal to retain and protect agricultural soils, agricultural water rights, and address other issues important to farmers and farmland.

### §8A-7-10. Effect of enacted zoning revision from SB 242 in 2022

- (e) Nothing in this chapter authorizes an ordinance, rule or regulation preventing or limiting, outside of municipalities or urban areas, the complete use (i) of natural resources by the owner; or (ii) of a tract or contiguous tracts of land of any size for a farm or agricultural operation as defined in §19-19-2 by the owner. For purposes of this article, agritourism includes, but is not limited to, the definition set forth in §19-36-2.

Seeing this, we addressed our concerns as one does in our new Comprehensive Plan And in 2022 along came SB 242 - the bad neighbor policy.

While we as the county are trying to use planning and zoning to protect the resources necessary for locally owned agriculture (and our recreational and residential successes)

Someone decides we should no longer have that power.

That concerns us, and if you look at the water difficulties out west, it should concern you as well. No one cares about your local water source more than you – so you need to at least try to maintain some level of control over its use. And IT IS NOT LIMITLESS.

## Proposed Legislation that Could Prevent Local Government from Protecting the Natural Resources of their Citizens

### Hardy Comprehensive Plan, Page 9 & 25 of (proposed Agriculture Chapter)



The large water usage from a single source without sufficient (supply/demand) study, the runoff contaminants, and the use of prime agricultural soils for industrial scale operations are top environmental concerns in our area.



...the standards for development in agricultural zones should maintain the goal to retain and protect agricultural soils, agricultural water rights, and address other issues important to farmers and farmland.

### §7-1-3zz Revision in HB 3313

*Limit of authority for county commission to regulate agricultural production.*

- Notwithstanding §7-1-3 of this code, the county commission may not establish or approve ordinances, rules, regulations, license requirements or any other authorization of agricultural production operations as defined in §19-19-2 of this code that duplicate or exceed any state law or regulations for the purpose of the establishment, expansion, or continuation of agricultural businesses.
- Furthermore, all existing ordinances, rules, regulations, licensing, or any other county authority enacted by county commissions regarding agricultural production operations as defined in §19-19-2 of this code are hereby declared invalid and unenforceable.

Some would like to see the county powers diminished even further.

Note that this is the code involves the authorization of county commission powers not planning & zoning code and I it seems to me all of you should be concerned about language in your own code section that starts out with COUNTY COMMISSION MAY NOT ESTABLISH...

To me that is pretty aggressive.

There was some rumblings about Hardy County being a reason for this legislation, but again, it is not clear what justification was given to legislators concerning the need for this legislation.

The DEP does not regulate CAFO water use – which is a concern of Hardy discussed in public meeting – so perhaps that is at least part of the reason for this “state law” language.

Proposed  
Legislation to  
Prevent Local  
Government  
from...  
Regulating All  
Land Use in  
Rural Areas.

- §7-1-3zz Revision in HB 3313
- Notwithstanding §7-1-3 of this code, the county commission may not establish or approve ordinances, rules, regulations, license requirements or any other authorization of agricultural production operations as defined in §19-19-2 of this code that duplicate or exceed any state law or regulations for the purpose of the establishment, expansion, or continuation of agricultural businesses.
- Furthermore, all existing ordinances, rules, regulations, licensing, or any other county authority enacted by county commissions regarding agricultural production operations as defined in §19-19-2 of this code are hereby declared invalid and unenforceable.

As inflammatory as that portion of the legislation is, the second part was perhaps the most disturbing part

This original version of the legislation could have negated county floodplain ordinances among MANY other ordinances county commissions adopt that affect areas of their counties that are agricultural – again note that this could limit your powers on any land that makes \$1000 in ag production.

This shows the lack of understanding about local government from those proposing these laws. To me it says their struggle for power and a “free ticket for their employer” is much more important than having correct and complete information and protecting West Virginians.

We as counties are the only ones who can keep this kind of thing in check! We need to wake up!

Expanding Code  
Definition of  
Agriculture and  
Weakening of Zoning  
Authority Puts  
Industry Priorities  
Above those of Your  
Citizens

Home / News / U.S. News / West Virginia Fear Log Plant

### West Virginians Fear Log Plant's Potential Health Risks

Residents of a small West Virginia town are worried that their health and quality of life will be upended by a logging company's plans to relocate a toxic-spewing fumigation facility to their backyard

By Associated Press | April 27, 2023, at 1:33 p.m.  
Save Comment Facebook Twitter Email Print

agdaily.com

### Timber fumigation plans in rural West Virginia spark backlash



By Ryan Tipps, Managing Editor, 2023-04-26

[Go to Publisher's website](#)

Home / News / Political News / Official: WVa Pesticide Facility

### Official: WVa Pesticide Facility Wouldn't Pass Zoning Muster

A county planning official in West Virginia says the proposed site of a toxic-spewing logging facility would violate a zoning ordinance

By Associated Press | May 4, 2023, at 2:25 p.m.  
Save Comment Facebook Twitter Email Print

So now there are other industries who are starting to hop onto the “agriculture” hay wagon...  
The headlines shown here are concerning a Hardy County land use issue that was so controversial that it made national news.

**Issue: Log Fumigation Facility Using Methyl Bromide (a Highly Toxic Pesticide Banned in many Counties) Proposed in Agricultural Area.**

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- Hundreds of Residents and Farmers Opposed the Proposed Location of this Project
- Current Zoning would NOT allow the project where proposed, but only in Industrial Zone with Conditional Use Permit
- Some Argued that code changes from SB 242 would exempt this Industrial facility from local Zoning and Land Use Law



The issue that brought 100s to a DEP air quality permit hearing.

## Proposed Legislation that Would Prevent Local Government from Protecting the Health and Safety of their Citizens

### Hardy County Zoning Ordinance

- Sites using toxic or hazardous chemicals shall be a Conditional Use in Industrial Districts Only
  - This means the Board of Zoning Appeals may place conditions on a proposed project to mitigate health and safety concerns to the citizens

### §7-1-3kk Revision - HB 3313

*Authority to provide for the elimination of hazards to public health and safety; penalty.*

- *Provided, That county commissions may not establish or approve ordinances, rules, regulations, or take other actions that cancel or alter the purchase, use or application of any federal or state registered pesticides, herbicides, or insecticide products.*

So specific legislation was introduced as part of HB 3313 (WE BELIEVE) in an attempt to prevent counties (us) from using zoning to keep this type of industry in designated areas – or areas zoned industrial.

If we can't maintain the authority to use land use law in that most basic way (health & safety regarding toxic chemicals) – the original purpose of zoning, then we are seriously failing our citizens.

Again, we the counties are the only ones who can speak out against this type of micromanagement from the state.



I come back to this because even our most conservative farmers who supported this mailing were appalled that this type of facility could be exempted from zoning as agriculture. And they became very suspicious of the intent of this PR campaign when they saw the proposed legislation directly aimed at pesticides – I think we all should be feeling suspicious and asking questions.





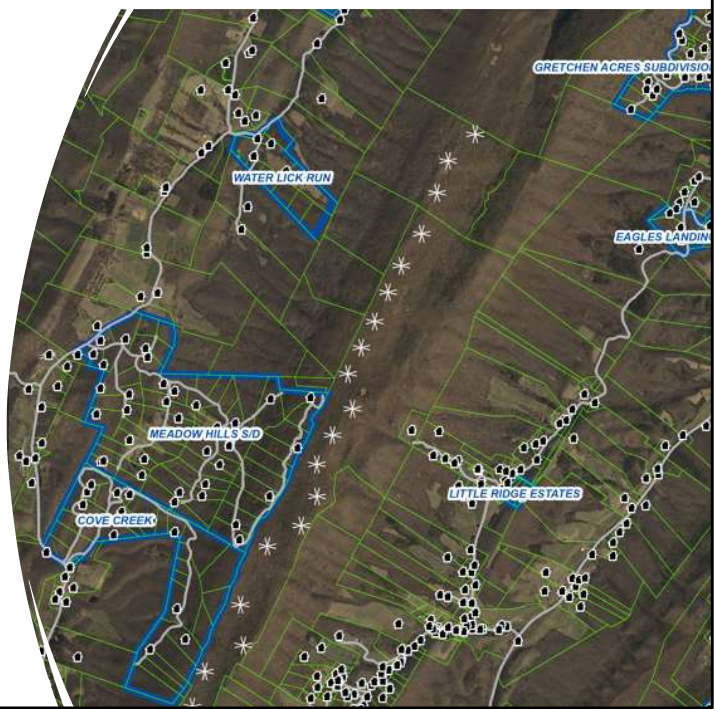
Pressure for Large  
Utility Scale  
Renewable Energy  
Near Population  
Centers Puts  
Agriculture, Tourism,  
and Residential  
Economies at Risk

So, there is one more instance of a land intensive industry seeking exemption from local land use law from the state legislature – renewable energy.

I just want you all to understand that industries know we aren't paying attention, so they are taking this opportunity to remove our voices from the decision making process about what happens to our land.

**Issue: Proposed Wind Energy Project  
in Hardy County in Residential Zone**

- Area Zoned Residential (for 25+ years)  
Contains 10 subdivisions,  
315 habitable structures worth  
\$33 million dollars
- 600' Turbines proposed within 350'  
of subdivision property lines -  
unprecedented
- After being given a rather difficult path  
for Zoning approval this close to  
residences, Invenergy decided to seek  
Zoning exemption from the Legislature

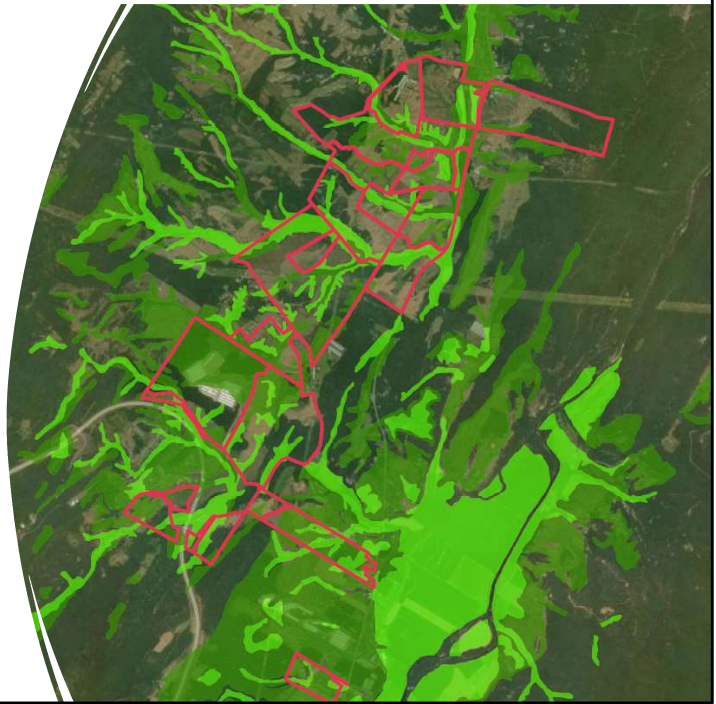


This one is very big in Hardy County right now.

As industries find that running to daddy (the state legislature) is a workable solution to their "PROBLEM" of being forced to give reasonable consideration to the needs of communities in which they want to develop, they will continue to try to circumvent our local law. I think – and I believe many legislators think that the state legislature is not the place where local battles should be fought.

Issue: Proposed Utility Scale Solar Project Utilizing 3,000 acres of Active Agricultural Land in Hardy Co.

- The local benefits of Utility Scale Solar projects do not equal the costs to *most* communities
- Decommissioning/Reclamation processes are not clearly defined
- Loss of agricultural land that will likely never return to productivity can throw off ag economy balance



IRONY– without the right to zone agricultural land, it may cease to exist

There is about 5,000 additional acres of ag land in some level of solar development in surrounding counties. This while WV has some 450,000+ acres of degraded land available for consideration for these projects. It is just that ag land is easier and cheaper for development.

There are ways for these industries to co-exist, but the only way to apply the tools necessary for that to happen is effective planning/zoning. The investor backed utility scale energy industry does NOT care about our development cost/benefits analysis. They care about making the most money by spending the least.

With current technologies - Every Mega Watt produced by utility scale solar uses 5-10 acres of land. We have to be thoughtful about what land is used.

## Proposed Legislation to Prevent Local Government from Protecting Local Resources, Economies, and Carrying Out Local Goals

### Hardy Comprehensive Plan, Page 24 of (proposed Infrastructure Chapter) and Zoning Law



The County must carefully consider the balance of large-scale green energy with the resulting land impacts to ensure responsible development.



The highest most valued asset was identified as agriculture at 54.8% of survey respondents. Other areas of the survey also indicate a strong desire to preserve agricultural land. All of these aspects must be considered when reviewing large scale green energy developments within the County.



**Zoning** Currently, in the Hardy county Zoning Ordinance, the only path to utility scale green energy development is in Industrial Zones – we are currently developing zoning revisions to address based on most recent citizen input.

### §8A-7-3 Proposed Revision to Zoning Section through - HB 2459

- (f) Exempt wholesale generators are a permitted use in any zoning district.
- (ii) "Exempt wholesale generator" means any person or entity:
  - (1) Who is not an electric utility;
  - (2) Who intends to purchase or construct and operate an electric generating facility

### §24-2-1 Proposed Revision to PSC Code though - HB 3446

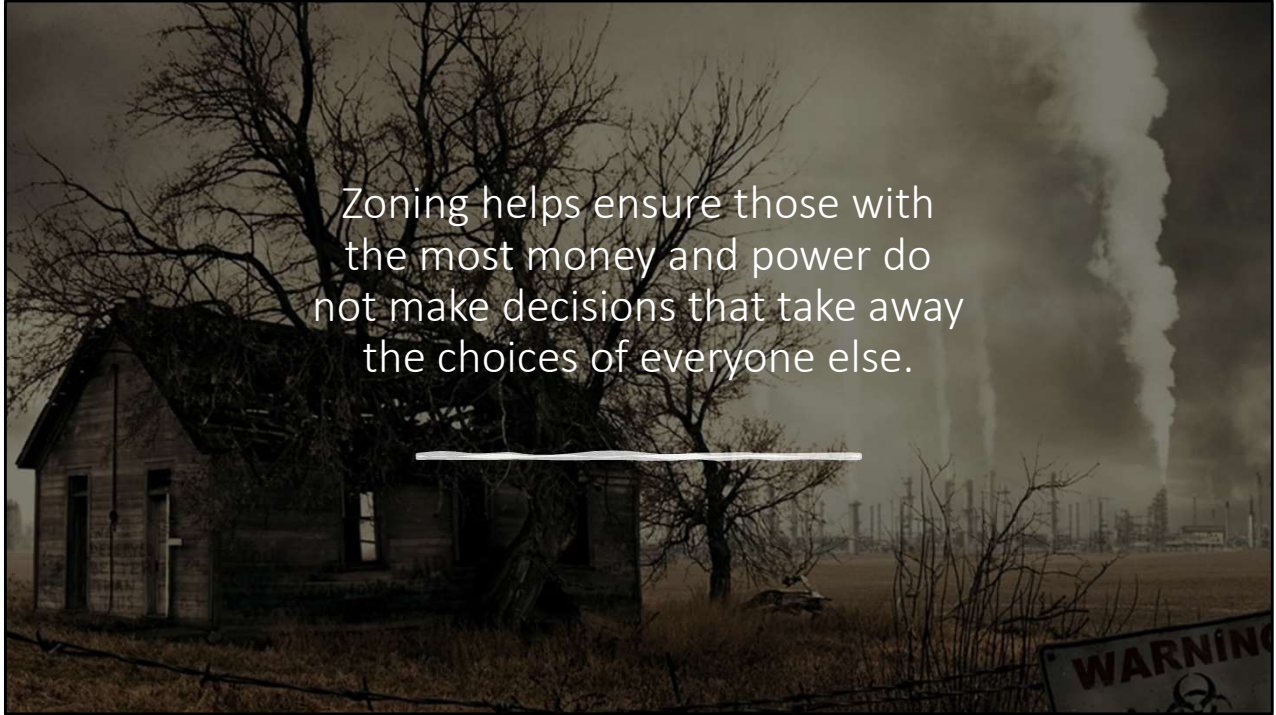
- If...exempt wholesale generator...is precluded or inhibited by a municipal or county commission ordinance or resolution or an order of a government board acting pursuant to a municipal or county commission ordinance or resolution, then the installation, construction and utilization of the facility may nevertheless proceed pursuant to the authority of the commission.

I just want to point out that Wholesale generator projects are usually owned by capital investors and sell power to the highest bidder on the grid - sometimes users are 100s of miles from the project – little solid benefit to community except for lease payment to land owner.

From a community perspective the Cost/benefit is not there!

YET, Our local utilities are required to build solar projects on degraded land as should these private equity backed projects.

Note that the Legislature chose not pass laws proposed to make smaller community solar projects viable in WV – those somewhat smaller projects allow locals to produce and use power for the local community.



Zoning helps ensure those with the most money and power do not make decisions that take away the choices of everyone else.

My final point is: The local communities need to maintain the ability to have choices by maintaining that cost benefit balance for development through thoughtful planning/zoning. Don't let state legislators and industry professionals decide what is best for your county – that is your job.

Historically, Who has always had the most money and power in WV? Industry based out of state. So, it is no surprise that large out of state entities are opposed to zoning. Let's not fall victim to that AGAIN in WV.

**You often hear people say that zoning is a “taking of property” well lack of zoning can lead to the same...**

I implore you all to take seriously the chipping away of the local planning/zoning authority happening in this state. Learn about what is going on and how it will play out in your area, ASLO My call to action is help WVACO help us by taking a united stand against legislation that is trying to negate an important power of local government – no matter if it is an issue to you right now or not – it will eventually hit you.

Our job is to protect our citizens, carry out their will, and protect our local economies – right now we are in a fight to maintain the authority to do our job and we need to take that seriously. I will close by saying Please, let's unite to fight against state law that is taking away your local power.