

September 8, 2022

Dear Council President and Members,

Please submit this testimony into the OFFICIAL RECORD opposing ZTA 22-01 and reply to confirm that it has been added thereto.

I attest and affirm that the following statements are true and accurate within my personal knowledge.

Principles for Finding Common Ground: Please read my testimony and consider it in your discussions and actions regarding Zoning Text Amendment (ZTA) 22-01. Many, if not all of you, consider yourself to be concerned about protecting the environment. Let's start by taking inspiration from an environmental icon, Jane Goodall, as to guiding principles for how to approach issues. In a recent book, she offers three principles: wisdom, direct experience, and compassion.¹ Wisdom is more than information and knowledge, it also involves the heart. Approach an issue with knowledge and heart, have direct experience with or connect with people who have direct experience with the issue, and show compassion. I propose we take these principles to listen and open your hearts and minds as you approach the issues of ZTA 22-01 and wireless technologies.

Listening To All Residents: Do you wonder why Marc Elrich was elected and recently re-elected in spite of an openly hostile and antagonistic Council, endorsements and accolades by the Washington Post for his opponents, and many millions of dollars advertising for his opponents funded by PACs and personal finances? It is because he has heart. He is a person before he is a politician. He listens to residents. He cares about their cares. He doesn't disparage residents, he doesn't try to bully or accuse residents he disagrees with of being conspiracy theorists or of spreading false information by KGB.² He listened to residents in response to ZTA 19-07 and offered moderate solutions that were rejected by the Council³

It's time that this Council listens to all its residents, welcomes their information, meets with them, and seeks solutions to address their needs. This means setting aside politics, previous policy positions, friendships and alliances with fellow Councilmembers, and being curious to learn why people like me and so many others are so opposed to ZTA 22-01 and MoCo's approach to wireless technologies. We are interested in finding safe and fair solutions for modern internet and technology in Montgomery County and near our homes. Do not disparage

¹ Goodall and Abrams, *The Book of Hope*, Celadon Books, New York, NY, 2021

² Council Meetings on ZTA 19-07 on June 29, and in July 13, July 20th, 2021 and NPR radio interview on July 17th, 2021.

³ See County Executive Elrich's Memo of July 5th and Amendments submitted to Council July 20th, 2021.

us, do not bully us with name calling, do not ignore us or our information or our proposed solutions.

Many, if not nearly all of you, have refused to meet with residents regarding 19-07 and now 22-01. County staff estimated that there are 32,000 existing poles with setbacks between 30 and 60 feet.⁴ Thus ZTA 22-01 could affect hundreds of thousands of residents across MoCo. And yet, all of these lives are dismissed as “an administrative adjustment”.

Why would I spend my time devoted to this issue rather than on professional and family projects? I purchased my home here, have lived in Montgomery County for over 30 years and raised my children here while they attended public schools. We are settled in our neighborhood, we trusted Montgomery County, so we decided to age in place.⁵ And yet, if you continue with 22-01 and policies of 19-07, none of us, including families with young children, will be able to live in our homes. How can we be uprooted? Where would the resources come from?

Why is the Council so resistant to resident input on wireless? I am frequently asked: “Why is the Council ignoring you? Why are they resistant to science and information? Why won’t they meet with you?” So, I ask you all, “Why is it you ignore us”? Where is your interest in Open Meetings? In transparency? In resident responsiveness? In the People’s Counsel? In caring about our health, the environment, trees, wildlife, birds, bees, pollinators? Racial Justice and Social Equity? Bridging the digital divide? I know you profess to care about these issues, so why don’t you want to learn more about threats to these cherished values from your ZTAs?

The lead champion of ZTA 19-07 and 22-01 has said that in his whole political career, he has never seen such an outpouring of resident resistance on an issue as with these cell tower Amendments.⁶ It has been 6 years in the making and resident opposition is not abating, if anything it is bolstered by recent Court cases and intensifying. You are on the wrong side of history, but we will pay with our health for your policies if they continue to ignore the legal and scientific evidence on wireless technology.

So why do you not want to even meet with us? Perhaps it is because of industry advertising and lobbying. The wireless industry is estimated to be as much as a \$4-5 trillion worldwide industry. Anyone who watches TV is bombarded with ads for 5G, seemingly every 2 minutes. 5G is the future, 5G is cool, 5G is the way to connect to be modern?. Who doesn’t love or at least depend

⁴ See page 3, “setback”

https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2021/20210310/20210310_PHED2.pdf

⁵ I understand that the lead sponsor in pre-election debates indicated that he does not favor the County’s long standing principle in its Master Plan—aging in place. Sounds like us elders are disposable and are being relegated to institutional living. And who will pay for that? How do our costs of institutional living figure into your cost/benefit analyses for MoCo?

⁶ Council Meetings on ZTA 19-07 on June 29, and in July 2021.

on their laptops, cell phones, tablets, and other devices to function in this world? Who wouldn't want to be up-to-date with the latest technology? And then there is the lure of political success, the lobbyists who sponsor conferences, offer positions on their committees, and perhaps might even offer future job possibilities. Harvard cites the Federal Communications Commission (FCC) as a "captured agency dominated by the industries it is supposed to be regulating."⁷

Are you not skeptical? Do you not want to know the "other" side? Haven't we learned the obvious from the tobacco and opioid debacles that we cannot depend on industry-funded "research" or advertising. This is not conspiracy theory, it is rational analysis of understanding what are the motivations behind actions and perspectives. A systematic review found that 82% of radiofrequency studies that were independently funded or funded by governments found negative health effects from mobile phones. However, only 33% of studies funded by industry found negative effects.⁸

Council Responsibilities and Process: Looking at the Council's voting on ZTA 19-07, it seems that several Councilmembers had doubts about the County's wireless ZTAs and this ambivalence was evidenced by fluctuating voting. I urge all of you on the Council to listen to and vote your conscience and not be swayed by the voices and surrogates for the wireless industry or any political allegiances. The information below on some of the legal and scientific issues should at least give you pause. Think of the cell towers near children in stand-alone pre-schools and nursery schools as well as in churches and synagogues and on or near public schools. Each of you is responsible for the consequences of your actions. The Councilmembers took an oath of office to both uphold the Constitution and the laws of Maryland. Your oath and the imbedded ethical values both demand that you take very seriously the risks of imposing harm on residents.⁹

The statements made by Councilmembers immediately before the vote on ZTA 19-07 were that there is no evidence of risks of harm to human health and if there was, we would know from our government agencies (see legal below). Further, other Councilmembers, also pushing for a vote just weeks before an expected major Court decision, said if anything new came from the Court decision, the Council would amend the ZTA.¹⁰ In fact, 2.5 weeks later the Court had significant rulings pertinent to safety of cell towers and wireless technologies. However, during the Council's first Town hall (remote) when they returned in September after August recess, no questions on cell towers were addressed. Later we were told by the county staff person managing the events that the Council had informed them that the Council would not be accepting or addressing any questions on cell towers or 19-07. During the Council meetings in the spring of 2021 leading up to the vote on July 27th, there was no meaningful public

⁷ https://ethics.harvard.edu/files/center-for-ethics/files/capturedagency_alster.pdf

⁸ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1797826/>

⁹ Councilmembers cannot rely on a defense of relying on others; they have individual responsibility for their own actions.

¹⁰ July 27th MoCo Council meeting.

discussions. In the Council meetings after reconvening in the fall of 2021 during Zoom Council meetings, town halls, and most debates, chats on zoom call were controlled so only “approved” chats and Q & As were visible to others and addressed. Add to this that offices were closed because of COVID restrictions, calls being answered by voicemail, and even when contact could be made with a staffer, requests for phone calls or remote meetings with Council members were widely refused. Is this inclusive democracy by our once esteemed County Council?

Landmark Court Ruling Against the FCC and its outdated exposure standards for wireless technologies: On August 13, 2021 (2.5 weeks after the Council pushed through a vote on 19-07) the U.S. Court of Appeals for the D.C. Circuit ruled in favor of Environmental Health Trust et al. as follows: The Federal Communications Commission (FCC) violated federal law (the Administrative Procedures Act, or APA) and was “capricious and arbitrary” by failing to provide a “reasoned explanation” for deciding that its wireless radiation exposure limits do not need updating, even though these limits have not been reviewed since 1996. The Food and Drug Administration (FDA) has not provided an “articulation of the factual... bases” for its conclusions, which “represent[s] a failure by the FDA”, and therefore the FCC cannot rely upon FDA webpage FAQs on cell phone safety. All other expert agencies in the federal government have been silent on the question of safety, and “silence does not even indicate whether the expert agencies... considered any of the evidence”. The Court ordered FCC to “provide a reasoned explanation for its decision” and to address the impacts of RF radiation on children and the environment. FCC has not yet complied with this order.

Additional background regarding the EH Trust decision: Petitioners submitted over 11,000 pages of scientific evidence indicating health effects of wireless radiation exposure at levels below FCC’s current limits. FCC is required to set exposure limits to protect public health, but it is not a health agency and must rely on other expert agencies’ analyses (which have not been done). The Federal Drug Administration (FDA) acknowledges that it has not made any determination about the safety of cell towers.^{11, 12, 13}

More specifically, the Court found that the FCC did not provide evidence of properly examining evidence such as the testimony of persons injured by wireless radiation and impacts from long-term wireless exposure and impacts to children, the developing brain, the reproductive system and wildlife and the environment.

¹¹ See letter dated January 11, 2022, from FDA Center for Devices and Radiological Health https://ehtrust.org/wp-content/uploads/FCC_FDA-Communications-FCC-Lawyer-and-Mother-on-Cell-Tower-Radiation-.pdf

¹² See public comments by local resident groups regarding Montgomery County's reliance on FDA statements: <https://www.regulations.gov/comment/FDA-2021-P-1347-0732>

¹³ This section is from Background Information on candidate pledge document produced by residents <https://techwisemocomd.org/wp-content/uploads/2022/07/Voter-Guide2.pdf> and <https://ehtrust.org/>

The FCC must now re-examine the submissions on their record. The Court specifically ordered the FCC to provide a reasoned explanation for the above issues as well as the ubiquity of wireless devices and the technological developments since the FCC last updated its guidelines.

ZTA 22-01 Does not meet standards of Racial Equity and Social Justice (RESJ) —22-01 is another step towards widening the digital divide: RESJ impact statements are challenging to produce and the initial Statement or assessment of 22-01 noted “... if the reduced set back requirements for small cell towers authorized under ZTA 22-01 results in negative health outcomes, this in turn could widen health disparities by race and ethnicity.”¹⁴ The Statement on the effect on the digital divide relied heavily on a report that was almost entirely based on industry-funded information.¹⁵

Compared to wireless from cell antennas and towers, wired broadband is less costly, more reliable, more secure, faster, and supports wireless in homes at resident discretion. Angela Siefer, Executive Director of the National Digital Inclusion Alliance (which represents over 850 affiliates in 48 states)¹, testified to the U.S. Congress in 2020 on this topic: “The excitement around 5G has led to claims 5G will solve the digital divide. It will not.”¹⁷

Furthermore, the Statement did not address social justice and the disparate effects by age, gender and disability status.¹⁸ “Researchers at the Environmental Working Group, a respected nonprofit, have called for child exposure levels 200-400 times lower than the current FCC limits.¹⁹ The bones of children's skulls are not as fully developed as adults, leaving their developing brains more vulnerable.²⁰ In a study by Santini, women living near cell towers were much more likely to report adverse health outcomes than men.²¹ Further data estimate prevalence of electro sensitivity (ES) as recognized by the Americans with Disabilities Act (ADA) suggest cell towers closer to homes, enabled by 22-01, could result in adverse health outcomes in up to 30% of the population, and cause a constructive eviction in 0.65% of the population –

¹⁴ <https://www.montgomerycountymd.gov/OLO/Resources/Files/resjis/ZTA/2022/ZTA22-01.pdf>

¹⁵ The Brookings Report was funded by T-Mobile, the author was chair of an industry –funded organization. Brookings has received significant industry funding with donors including AT&T T-Mobile, Verizon, Google. <https://www.brookings.edu/research/enabling-opportunities-5g-the-internet-of-things-and-communities-of-color/>; https://www.brookings.edu/wp-content/uploads/2016/11/turner_lee_cv_december-2016.pdf; <http://www.tprcweb.com/past-board-members/>; <https://cdn.ca9.uscourts.gov/datastore/opinions/2020/08/12/18-72689.pdf>; https://www.brookings.edu/wp-content/uploads/2022/02/brookings_contributorslist_fy2022.pdf

¹⁷ <https://docs.house.gov/meetings/IF/IF16/20200129/110416/HHRG-116-IF16-Wstate-SieferA-20200129.pdf>;

<https://www.racialequitytools.org/glossary>

¹⁸ <https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/RacialEquity/Bill27-19.pdf>;

https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md/0-0-0-118171.

¹⁹ <https://ehjournal.biomedcentral.com/articles/10.1186/s12940-021-00768-1>

²⁰ <https://www.marylandmatters.org/2021/07/23/opinion-children-deserve-safety-assurances-when-it-comes-to-cellphone-radiation/>

²¹ See Table 2-<https://www.tandfonline.com/doi/abs/10.1081/jbc-120020353>

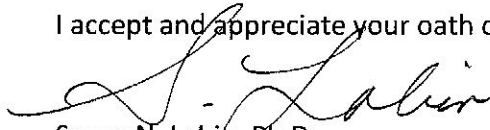
this is approximately 7,000 people in Montgomery County alone being forced to flee their homes.”

Request for Council Action: Let the new Council take up the issue of 22-01. The very existence of 22-01 indicates the complexity of the Zoning Codes related to wireless facilities and the need for a thorough analysis of such codes. This would also allow time for a more thorough RESJ impact assessment, and Environmental and Climate as well as Economic Impact assessments. Attempting to push through 22-01 as “an administrative” change is not only contrary to goals of transparency, but is dangerously pernicious. There is no legal justification requiring 22-01.²³ If the Council persists in considering 22-01 this session, it should at least schedule a nighttime hearing so the many people on the wait list can be given an opportunity to provide verbal testimony. Let the Council and community hear the voices of the residents. If the Council persists, let the PHED Committee refrain from bringing the amendment to the Council for a vote. If the Committee persists, we urge Councilmembers to vote “NO” on 22-01.

CLOSING

I have presented no matter of mere “concern” or any other non-substantive matter, but solely matters of substance, of fact, and law.

I accept and appreciate your oath of office.



Susan N. Labin, Ph.D.

Submitted September 8, 2022 11:30 am.

²³ There were legal justifications presented for ZTA 19-07 “We don’t feel that we can put up roadblocks even if we wanted to because federal action has been very clear as to what the expectation is.” (Riemer, Council meeting June 29th). However, the Courts have been very clear that the County maintains its rights to regulate the location of towers. Numerous other municipalities have passed zoning codes compliant with federal law, such as San Rafael, CA. which are far more protective of residential areas (<https://www.cityofsanrafael.org/documents/resolution-14621/>)(<https://www.cityofsanrafael.org/documents/resolution-14621/>). Also see an example municipal ordinance that is FCC compliant and the proposed alternative approach by County Executive Elrich in his memo dated July 15, 2021. The assertion that the County was required to implement ZTA 19-07 was based on an incorrect assessment about the ability of federal executive agencies to override legislation by Congress as well as appellate court precedent. The City of Portland case dealt with Section 235 of the telecom act and how applications are processed; that case did nothing to change the interpretation of The Telecommunications Act of 1996, Section 332c7B(i)(II), which preserves the long-held right of state and local jurisdictions over zoning authority and tower location (<https://drive.google.com/file/d/1ISfUHqk2vQxoiXZqFLyhh-3mJZD9RJjb/view>).

Hello, my name is Susan Labin. Thank you for the opportunity to speak to you today. I am speaking as a long-time resident of Montgomery County in opposition to Zoning Text Amendment (ZTA) 22-01.

I have 6 issues for you today:

1. I ask each Councilmember to consider whether you are acting as Public servant or as politician positioning for your next job or committee assignment?
2. Is this another industry debacle like tobacco and opioid travesties, but even larger? How do the lobbyists and the constant barrage of 5G advertising affect you?
3. You are accountable to your conscience and for upholding your oath of office. You do not have to agree with us, but you do have a fiduciary duty to find solutions that respect residents' interests. Rather than treating us as obstacles, think of us as your resources and partners.
4. The US Court of Appeals for the DC Circuit last year resoundingly ruled for Environmental Trust et.al., against the FCC. It called the FCC "arbitrary and capricious" in failing to consider the vast amount of scientific evidence on the negative effects of wireless technologies on humans, children, and the environment. I urge the Council not to act in same manner. The court clarified that no federal agency has ever reviewed the body of scientific evidence on cell towers.
5. What problem are you solving? Wired internet is almost universally available in MoCo. Wired is about 50 x less costly, far faster, more reliable, more secure, uses less energy, and allows for wireless in one's home. Where are the County's Climate and Economic assessments? As per congressional testimony: "... 5G will **not** solve the digital divide".
6. As for social justice, 22-01 will disproportionately affect the vulnerable: Electro Sensitivity is a medical diagnosis protected by ADA. What about the County's legal exposure for costs from dislocation, harm, and even death for thousands of residents?

Hundreds of thousands of residents may be affected by 22-01-this is not a trivial "administrative" correction.

VOTE your conscience: CANCEL all action or VOTE NO on 22-01.