HOWARD COUNTY
AGRICULTURAL LAND PRESERVATION BOARD

3430 Courthouse Drive
Ellicott City, Maryland 21043
410-313-5407
www.howardcountymd.gov

2014 Agricultural Land Preservation Board Meeting Minutes

January
February – No Meeting
March – No Meeting
April
May
June
July – No Meeting
August
September – No Meeting
October
November
December – No Meeting

HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING
3430 Court House Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350

Marsha S. McLaughlin, Director

www.howardcountymd.gov
FAX 410-313-3467
TDD 410-313-2323

HOWARD COUNTY AGRICULTURAL LAND PRESERVATION BOARD AND STATE AGRICULTURAL PRESERVATION ADVISORY BOARD

January 27, 2014

Attendance:

Board Members:	Ricky Bauer, Vice-Chair Mickey Day Howie Feaga Ann Jones Shirley Matlock Denny Patrick
Public:	Tim Feaga Mark Mullinix Mike Mullinix Nance Mullinix
Staff:	Joy Levy, Administrator, Agricultural Land Preservation Program Lisa O'Brien, Senior Assistant County Solicitor, Office of Law Beth Burgess, Chief, Resource Conservation Division Mary Smith, Secretary, Agricultural Land Preservation Program

Mr. Bauer called the meeting to order at 7:36 p.m. and conducted introductions.

Action Items

1) Minutes from the November 25, 2013 – Ms. Levy explained that after the minutes had been sent out to Board members, she became aware that a significant portion of the discussion at the end of the meeting was not captured in the draft minutes she received from Ms. Smith. It wasn't until she listened to the tape earlier today that she realized the extent of the omitted material. Ms. Levy stated that she amended the last page of the minutes to include the discussion, and emailed the amended minutes out this afternoon. She apologized for the late notice and asked the Board members if they had enough time to review the amended version. Mr. Day moved to approve the minutes as amended. Mr. Feaga was seconded the motion. The motion passed unanimously.

2) Minutes from the January 15, 2014 phone meeting - Mr. Bauer called for approval of the conference call minutes of January 15, 2014. Mr. Feaga moved to approve, which was seconded by Mr. Day. The motion passed unanimously.

3) Minutes from the January 22, 2014 phone meeting - Mr. Bauer called for approval of the conference call minutes of January 22, 2014. Ms. Jones moved to approve, which was seconded by Mr. Day. The motion passed unanimously.

4) Request for Approval, Location of Principal Dwelling, Patrick property, HO-98-03-PPSD(1); 44 acres (ALPB) - Ms. Levy read the staff report, stating that the request to construct a landowner's dwelling was submitted by Tim Feaga of Heritage Reality, on behalf of the property owner, Patrick Family Limited Partnership II. Ms. Levy stated that the property is now unimproved, but that a principal dwelling existed when the farm came under easement. Based on a review of the aerial map history, it appears to have been razed sometime between 2006 and 2007, which is prior to the Patrick family's purchase of the farm. Per the deed of easement, the property is entitled to a principal dwelling. The request requires Board approval for the location.

Ms. Levy referred to the aerial and soil maps she provided, and a drawing submitted by Tim Feaga, noting that with the exception of a small patch of woods along the southern boundary, the property is all open ground. She stated that wherever the dwelling is located will have some impact on the farming operation, but noted that the proposed location is mostly Class III soils. She stated that the dwelling will take access from a relatively short driveway off Rt. 94, and recommended approval of the request.

Ms. Matlock inquired as why the proposed location isn't in the same location as the original dwelling. Tim Feaga responded that the original home was too close to the road and would be undesirable for most potential buyers.

Howie Feaga and Mr. Bauer suggested several alternate locations further from the road that wouldn't be in the middle of a field. Tim Feaga continued to make his case for the proposed placement, stating his belief that it enhances the farm and creates a minimal disturbance.

Mr. Day moved to approve the recommendation, noting that he recognizes both the Board's concerns and Tim Feaga's justification for the location as proposed. The motion was seconded by Howie Feaga. Mr. Bauer called for a vote. Howie Feaga, Ms. Jones and Mr. Day voted to approve. Ms. Matlock and Mr. Bauer voted against. Mr. Patrick abstained. The motion carried.

5) Termination of MALPF Easement, Elizabeth Mullinix property, 13-80-05A, 133 Acres (APAB) - Ms. O'Brien listed the names of the four members of the APAB present at the meeting, stating that they are the only ones who will be involved in the consideration of this request. She then reviewed the legal framework for easement terminations and detailed the process so far. After explaining the regulatory basis for the County's role in termination requests, Ms. O'Brien introduced the "County Review of MALPF 25 Year Termination Requests" policy document and read the five criteria by which termination requests are to be evaluated. Those criteria are:

- Effect of termination on County preservation policies and actions, including public investment by the County and State
- Effect of termination on County growth management policies and actions
- Effect of termination on County policies and actions supporting agricultural economic development
- Extent of vicinal protected land and effect of termination on properties that are protected and/or in agricultural land use
- Evaluation of the subject property to determine its desirability for acquisition as if it were currently being considered for easement purchase

Ms. Levy reviewed the staff report with the Board, summarizing each of the criteria as follows:

1) A release of the subject property from the MALPF easement restrictions is contrary to the County's stated goal and long term history of investing in the preservation of agricultural land. The County has invested 30 years and $300 million to keep farmland free of development pressure.
2) The termination of the easement on the subject property would negatively impact the County's growth management policies, since farms in the MALPF program have always been assumed to be permanently encumbered for the purposes of growth projections and the need for infrastructure and other county services. Although recent state legislation has severely restricted the number of lots that large parcels can achieve, there is no way to know what effect future state laws may have on subdivision potential, which is why maintaining the easement is critical.

3) The extensive services that the County offers through the Economic Development Authority's Agricultural Marketing Program represent a significant commitment of funding and effort to assist farmers as they expand, diversify and innovate. Business plan development, technical assistance and grant opportunities are all available to Howard County farmers. While this does not guarantee success, many of the County's farmers have increased productivity and profitability as a result.
4) Farmers, particularly those who have preserved their own land, rely on the preserved land around them staying under easement. It is much easier to farm efficiently if surrounded by other land that will always remain in farming. Many county farmers are concerned about the potential domino effect that would be created if the subject property is released from the MALPF easement.
5) The Mullinix property scored 893 out of 1000 points using the ALPP scoring system, which is higher than any of the recently completed Batch 14 properties. Given its size, soils capability and very high percentage of nearby and adjacent protected land, this property would be highly desirable as a current applicant.

Ms. Levy stated that in accordance with the provisions of the County Policy, staff recommends that the APAB recommend denial of the request to terminate the MALPF easement on the Mullinix property.

Mr. Bauer stated that each of the five criteria would be discussed individually with an informal poll taken at the end of each item. Once the consideration of all five criteria was completed, a formal vote would be conducted.

1) County preservation policies and actions, including public investment

Mr. Bauer and Mr. Feaga questioned whether the State has contributed funding towards county easements and whether the county has contributed funding toward MALPF easements. Ms. Levy confirmed both.

Ms. Jones stated that Howard County was in the preservation forefront statewide for many years, and that there's no question that the County has invested heavily in preserving agricultural land.

Mr. Mullinix asked for clarification as to how much county and state funding went into the purchase of the easement. Ms. Levy stated that the proportion was 60% state and 40% county.

Mr. Feaga stated that the County shouldn't have implemented SB 236. Other members responded that comments regarding SB 236 are more relevant to later criteria.

There being no other comments, Mr. Bauer called for a poll as to whether Board members agree or disagree that the termination request is contrary to the County's preservation policies and actions, including public investment.

Ms. Matlock, Ms. Jones and Mr. Bauer agreed. Mr. Feaga disagreed.

2) County growth management policies and actions

Mr. Feaga stated his opinion that since the County chose to implement the requirements of SB 236, the termination of this easement will not affect growth management policies in Howard County.

Ms. Jones stated that any subdivision has an impact on farming, even if the development potential isn't as significant as before SB 236. She also stated that the bill could be overturned in the future.

Mr. Bauer stated that the four lots this farm could achieve under SB 236 don't have any effect on the County's growth management policies.

There being no other comments, Mr. Bauer called for a poll as to whether Board members agree or disagree that the termination request is contrary to county growth management policies and actions.

Mr. Bauer and Mr. Feaga disagreed. Ms. Jones agreed. Ms. Matlock had no comment.

3) County policies and actions supporting agricultural economic development

Mr. Bauer stated that farmers shouldn't be forced into looking at alternative farming operations in order to survive.

Mr. Feaga stated that not everyone wants to grow vegetables, and that the EDA is less open to traditional operations.

Mr. Bauer disagreed, stating that he benefitted from an EDA grant.

Ms. Jones stated that EDA will help anyone, and that no one is being forced to do something different.

Ms. Matlock agreed that EDA is there to help and isn't putting pressure on anyone.

Mr. Feaga stated that EDA isn't helping traditional farmers, despite Mr. Bauer's statement that he received a grant for his grain operation.

There being no other comments, Mr. Bauer called for a poll as to whether Board members agree or disagree that the termination request is contrary to county policies and actions supporting agricultural economic development.

Mr. Bauer, Ms. Jones and Ms. Matlock agreed. Mr. Feaga disagreed.

4) Effect of termination on vicinal properties

Mr. Feaga stated that since the Mullinix farm could only achieve four cluster lots under SB 236, there wouldn't be a significant effect on adjacent properties if the easement were terminated.

Mr. Bauer agreed with Mr. Feaga, even though he acknowledged that statewide the termination would set a precedent.

Mr. Mullinix asked for clarification as to how many houses and lots would be allowed on the farm while in preservation versus if the property was no longer under easement. Ms. Levy stated that under easement, there are no rights for lots or dwellings. Lot rights are personal to the grantor of the easement, and Mr. Clevenger was the grantor, so when the property sold to the Mullinix family, the lot rights were extinguished. Ms. Levy also stated that on an unimproved farm, MALPF does not allow a principal dwelling to be constructed. If the termination request was granted, she confirmed that the property could yield four cluster lots.

Ms. Jones stated that the law and zoning can change at any time.

There being no other comments. Mr. Bauer called for a poll as to whether Board members agree or disagree that the termination request would have an effect on vicinal properties.

Ms. Jones and Ms. Matlock agreed. Mr. Bauer and Mr. Feaga disagreed.

5) Desirability of subject property as if it were applying for easement acquisition today

Mr. Feaga and Mr. Bauer questioned the relevance and accuracy of the county scoring system to this discussion.

Ms. Jones defended using the scoring system as the most appropriate way to determine the agricultural value of the property.

Mr. Mullinix asked when the County's policy went into effect. Ms. Levy stated it was approved by the County Executive in 2007.

There being no other comments, Mr. Bauer called for a poll as to whether Board members agree or disagree that the property would still be desirable if it was being considered for acquisition today.

Ms. Jones and Ms. Matlock agreed. Mr. Bauer and Mr. Feaga agreed conceptually that this farm is still valuable for preservation. Mr. Bauer and Mr. Feaga disagreed with using the County's scoring system for arriving at that conclusion.

There being no further discussion, Mr. Bauer asked for a motion. Ms. Matlock moved to accept staff's recommendation. Ms. Jones seconded the motion.

Ms. Matlock and Ms. Jones voted for the motion. Mr. Feaga voted against. Mr. Bauer abstained. The motion carried.

Mr. Bauer stated for the record his opinion that it is unfair for this Board to vote in open session and the MALPF Board to vote in closed session.

Discussion Items

1) Program updates - Ms. Levy stated that she did not have any updates.

Ms. Matlock motioned to adjourn, seconded by Mr. Feaga. The motion passed unanimously. The Board adjourned at 9:15 p.m.

_____

Joy Levy, Executive Secretary
Agricultural Land Preservation Board

HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING
3430 Court House Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350

Marsha S. McLaughlin, Director

www.howardcountymd.gov
FAX 410-313-3467
TDD 410-313-2323

HOWARD COUNTY AGRICULTURAL LAND PRESERVATION BOARD AND STATE AGRICULTURAL PRESERVATION ADVISORY BOARD

April 28, 2014

Attendance:

Board Members:	Lynn Moore, Chair Ricky Bauer, Vice-Chair Howie Feaga Ann Jones Shirley Matlock Denny Patrick
Public:	Bill Dodd Alan Sharp Chuck Sharp
Staff:	Joy Levy, Administrator, Agricultural Land Preservation Program Lisa O'Brien, Senior Assistant County Solicitor, Office of Law Beth Burgess, Chief, Resource Conservation Division Mary Smith, Secretary, Agricultural Land Preservation Program

Ms. Moore called the meeting to order at 7:33 p.m. and conducted introductions.

Action Items

1) **Minutes from the January 27, 2014** – Ms. Moore called for approval of the January 27, 2014 minutes. Mr. Bauer moved to approve, which was seconded by Ms. Jones. The motion passed unanimously.

2) **Minutes from the May 2, 2014 phone meeting** - Ms. Moore called for approval of the conference call minutes of April 16, 2014. Mr. Feaga moved to approve, which was seconded by Mr. Bauer. The motion passed unanimously.

3) **Election Chair and Vice-Chair** – Ms. Moore opened the nominations for chair and vice chair. Ms. Jones moved that Ms. Moore and Mr. Bauer should continue in their respective offices of chair and vice chair. Ms. Matlock seconded the motion. The motion carried unanimously.

4) **Request for Recommendation on Easement Acquisition, Egan property, 57 acres (ALPB)** - Ms. Levy stated that the current owners are Victoria and Michael Egan, who are being represented by Bill Dodd. The request is coming before the Board from both the owners and the Sharp family, as contract purchasers. The property is located on Annapolis Rock Road, on the southeast side of Rt. 94. Ms. Levy stated that approximately 48 acres are in crops and the remainder is in woods. There is one uninhabitable dwelling and there are no agricultural buildings on the property.

Ms. Levy noted that the Soil Conservation District reported that there is a current Soil Conservation and Water Quality Plan in place. As noted on the score sheet, the most desirable features of this property are the high percentage of land in agricultural use and the large amount of preserved land nearby and immediately adjacent.

Ms. Levy recommended approval, based on the application meeting all eligibility criteria for acquisition of an agricultural preservation easement.

Ms. Moore called for discussion and questions.

Mr. Dodd stated that this property has been given final approval as a density receiving subdivision. The Egan family and the contract purchasers have agreed that they would rather forego the subdivision and put the property into preservation.

Mr. Sharp reported that the Soil Conservation Plan is current, and will be considered fully implemented by the District if he continues his no till rotation of beans, wheat and corn. Ms. Levy noted that as of the application date, the status of the Plan was considered current, but not fully implemented, granting 75 points.

Mr. Feaga asked if there is a utility pipeline running across this property. Mr. Sharp confirmed that there is an underground pipeline. Ms. O'Brien asked if he can farm overtop of it and Mr. Sharp confirmed that he can, stating the only thing he can't plant is trees.

Ms. Levy stated that Mr. Feaga called her this afternoon to inquire as to why the recently reviewed Pue property, which also has an underground pipeline, had to exclude the pipeline acreage and the Egan property did not.

Mr. Feaga also noted that several years ago, the Board approved a BGE easement across several county and state easement properties, but did not require the acreage to be released from the easement.

Ms. Levy confirmed that the BGE underground pipeline request that Mr. Feaga is referring to was done as an overlay easement.

Mr. Feaga noted that he is concerned about treating these similar situations consistently. Ms. Levy stated that she and Ms. O'Brien briefly discussed the issue prior to the meeting, but had not agreed on an approach. She stated her opinion that the Board should vote on the current request as is, and if there is a change that has to be made, they will see it again.

Ms. Levy stated her opinion that the Pue property would be more likely to need a change, since it is the only one in recent history where we've excluded an underground pipeline.

Several members agreed that there are many properties already in the program that have utility easements.

Ms. Moore asked whether the BGE pipeline on the Pue property is in the road right of way, or if it's adjacent to it. Ms. Levy confirmed that some of it is in the right of way and some is out, which is another complicating factor.

Ms. Levy confirmed Ms. Moore's assertion that the Board will be seeing either the Pue or the Egan property again, depending on the policy decision.

Ms. Jones motioned to approve the Egan score with the pipeline acreage included. Mr. Feaga seconded the motion. The motion passed unanimously.

Mr. Sharp questioned whether additional items would be available for reconsideration if the Egan property came back for review due to the pipeline issue, specifically the status of the Conservation Plan. A long discussion followed regarding timing of the application relative to the decision whether a Plan is fully implemented. The main conclusion is that the Soil Conservation District makes the status determination, and if there is a problem or concern with how that was determined, it needs to be addressed with the District.

There was a conversation about different types of utility easements and that the policy may have to allow some flexibility for case by case determination.

5) Request for Recommendation on Easement Acquisition – Approval of Revised Per Acre Price, Louis and Mary Pfefferkorn property, 54 acres (ALPB) - Ms. Levy noted that the Board initially approved the price per acre for this applicant on April 22, 2013. The Board then approved a revised price on April 16, 2014. Subsequent to the April 16 approval, the Pfefferkorn family decided, after much debate, to forego the protection of the Green Infrastructure Network (GIN) resources on site, thus relinquishing the extra points associated with the GIN.

Ms. Levy noted the current score sheet, which reflects all of the changes the Board approved on April 16, plus the new change to delete the GIN points.

Mr. Feaga noted that there is a pipeline that runs along the front of this farm, though he's not sure if it's in the road right of way, or within the actual property boundary.

Ms. Levy stated that she would follow up and make sure all properties are handled consistently.

Mr. Feaga asked why the Pfefferkorns decided to not accept the GIN. Ms. Levy stated that she believed their main concern was being able to adequately control invasive species.

Ms. Jones moved to approve acceptance of the revised price. Ms. Matlock seconded the motion, which passed unanimously.

6) Amendments to Rules of Procedure (public hearing) – Ms. Levy stated that the initial reason for the amendments to the Rules of Procedure (ROP) was to change the Board's meeting date from the second to the fourth Monday of the month, and to move the request submission deadline back a week to allow her more time to prepare staff reports. She stated that once she started reviewing the ROP, she realized that they needed an overhaul to reflect the changes that were made to the Program prior to the current acquisition cycle. Ms. Levy noted that what started as a housekeeping measure turned into a major project.

Ms. Levy stated that the Ag Code was amended so that easement acquisition requests now come before the Board as a public meeting, as opposed to a public hearing, which was the previous requirement. She noted that most of the proposed changes to the ROP are to make it consistent with the new Code provisions.

Ms. Jones inquired as to the change in the requirement that the Board conduct site visits of applicant properties. It was confirmed that site visits are now an option, not a requirement. There was discussion amongst the Board members about the need to visit properties if they no longer have their 50 discretionary points.

Ms. Jones asked about the ROP requirement for swearing in those who wish to testify at meetings. Ms. Levy confirmed that even though we haven't been doing it, the ROP does require that anyone who wishes to testify take an oath to speak the truth, whether at a public hearing or a public meeting.

Ms. Jones expressed her concern that requiring an oath is overly formal and might intimidate someone wishing to testify. Ms. O'Brien opined that asking people to take an oath makes them think twice about what they are testifying to, and provides a standard of reliance for the Board.

Ms. Jones asked if other county board do this, and Ms. O'Brien confirmed that most do.

Mr. Feaga motioned to accept the amendments to the Rules of Procedure, which was seconded by Ms. Matlock. A vote was called. Ms. Matlock and Mr. Feaga voted in favor. Mr. Bauer and Ms. Jones voted against. Ms. Moore clarified that what they are voting on is the text that is shown in red, which indicates what has changed. This generated additional discussion because the provisions regarding taking the oath are not new and would be unaffected by the vote.

Ms. Moore asked if the Board members would like to reconsider their vote. Another vote was taken and the motion passed unanimously.

There was additional discussion about changing the oath provision in the future. Ms. Levy stated she would bring a draft to the next meeting with the oath language taken out, and if the Board likes the proposed amended language, Ms. Levy would prepare it for the following month, as a public hearing.

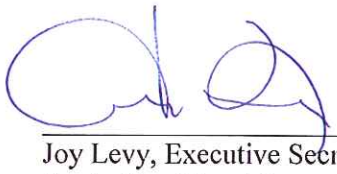
Discussion Items

1) **Program updates** – Ms. Levy stated that the other two Pfefferkorn properties will be settling the next day, April 29. The Pue property is at the commitment letter stage, and they chose to wait until the interest rate is determined by the first property to go to settlement, which will be tomorrow, for their commitment letter to be drafted. Ms. Levy noted that she is ready to send the letter out, though this issue with the utility easement may postpone the timing on the letter.

2) **Mullinix Property** –Ms. Levy stated that the County Council voted to deny the Mullinix's request for termination. MALPF will most likely be acting on this at their May meeting.

3) **County Easements Inspections** – Ms. Levy stated that the ALPP is looking to hire a contingent employee to conduct county easement inspections this summer. She told the Board that the candidate is a school teacher and that he contacted her inquiring about field work for over the summer. She indicated that she will be working on a protocol and an inspection form to bring to the Board at their next meeting.

Ms. Jones motioned to adjourn, seconded by Mr. Matlock. The motion passed unanimously. The Board adjourned at 9:04 p.m.



Joy Levy, Executive Secretary
Agricultural Land Preservation Board

HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING
3430 Court House Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350

Marsha S. McLaughlin, Director

www.howardcountymd.gov
FAX 410-313-3467
TDD 410-313-2323

HOWARD COUNTY AGRICULTURAL LAND PRESERVATION BOARD AND STATE AGRICULTURAL PRESERVATION ADVISORY BOARD

May 28, 2014

Attendance:

Board Members:	Lynn More, Chair Ricky Bauer, Vice-Chair Howie Feaga Ann Jones Denny Patrick
Public:	Michael Calkins, Howard County Soil Conservation District Adam Herod
Staff:	Joy Levy, Administrator, Agricultural Land Preservation Program Lisa O'Brien, Senior Assistant County Solicitor, Office of Law Beth Burgess, Chief, Resource Conservation Division Mary Smith, Secretary, Agricultural Land Preservation Program

Ms. Moore called the meeting to order at 7:41 p.m. and conducted introductions.

Action Items

1) **Minutes from the April 28, 2014** – Ms. Levy stated that she hasn't completed the April 28 minutes yet, but that she will mail them to the Board prior to the June 30 meeting for their review.

2) **Minutes from the May 2, 2014 phone meeting** – Ms. Moore called for approval of the conference call minutes of May 2, 2014. Mr. Feaga moved to approve, which was seconded by Ms. Jones. The motion passed unanimously.

Discussion Items

1) **Presentation by Michael Calkins** - Ms. Levy introduced Michael Calkins with the Howard County Soil Conservation District (SCD). He distributed a flow chart that SCD staff recently completed to assist with the scoring of the status of the Soil Conservation and Water Quality Plan on the ALPP pricing formula. The chart was approved by the SCD Board at their last meeting, and will now provide SCD staff with a consistent approach for scoring this item. Mr. Calkins noted that since the stated purpose of the Plan status item is to reward property owners for long term stewardship of the land, it was not always clear how to score potential applicants who have never consulted the SCD before. He stated that owners of wooded parcels, for example, wouldn't necessarily have a reason to ask the SCD for a Plan, but may still utilize good stewardship practices.

Mr. Calkins ran through the specifics of the flow chart, stating that even a forested parcel with no history of a Plan could still get points if a site visit confirms that there are no resource management issues.

Ms. Levy noted that the scoring of the Plan status has been problematic for a while, because there is room for interpretation and because some people have figured out how to game the system. The situation has been even more pronounced in the current application cycle because in the absence of batching, a property owner with no Plan has the time prior to application to ask the SCD to write one, and maybe even get it implemented. In this way, someone could go from zero to 100 points between the request for a preliminary score and the submission of an application. This is not the intent and has been a source of frustration for both ALPP and SCD staff. Ms. Levy expressed her appreciation that the SCD staff took the time and effort to create the chart.

Several members asked Mr. Calkins for clarification regarding the logistics of the new chart and how it would work in different situations.

After additional discussion, the Board members thanked Mr. Calkins and the District for their work and ongoing assistance with the ALPP scoring.

2) **Program Updates** – Ms. Levy informed the Board that within the past month, all three Pfefferkorn properties and the Taro property have gone to settlement. Ms. Levy stated that she hopes to have the Pue and Egan properties before the County Council in July.

Ms. Levy stated that she recently completed easement inspections for MALPF and Rural Legacy. She noted that MALPF requires inspections of 10% of their properties each year, which amounts to four farms in Howard County. She stated that Rural Legacy requires their properties to be inspected every three years, and that there are only four Howard properties in that program.

3) **Easement Stewardship Program** (work session) – Ms. Levy stated that there hasn't been an inspection program for county easement properties since the mid-90's, and that the purpose of this discussion will be to draft a protocol and a form for reestablishing a monitoring and stewardship program. She noted that limited staff resources have kept this from happening sooner, and that there are over 220 county easements that would require routine inspections. She noted that one of the key things to be decided is how often each property would be visited, stating that even a relatively infrequent schedule, such as MALPF's, would still mean visiting over 20 properties a year.

Ms. Levy then introduced Adam Herod, who is the potential contingent employee who would be conducting the inspections this summer. Mr. Herod provided his professional and educational background, stating that he grew up on a farm and is looking for outdoors work during his summer off as a Howard County teacher.

Ms. Levy noted that per Ms. Moore's request, prior to the meeting she distributed sample deeds of easement from various time frames in the program's history. She indicated that Ms. Moore wanted to compare the easement documents and ensure that as we draft the inspection form, that we keep in mind that it should reflect only what the easement restrictions govern.

Ms. Moore confirmed that her main concern is that the overall purpose of the stewardship and monitoring program is to make sure that the terms of the easement are being upheld, and nothing else. There was discussion about how the easement document has changed significantly over time and the challenges that could present in drafting the form. Ms. Levy opined that while there have been many adjustments to the easement form to reflect programmatic changes, conceptually the deed provisions have remained fairly consistent.

Ms. Levy stated that the goal would be to work on a draft of the form tonight, which she could then finalize and bring back to the Board at the June meeting for final approval. Assuming Mr. Herod is hired, he would be starting around July 1 and would be with us for about seven weeks.

Ms. Levy stated that regarding the inspection protocol, she envisions that she would initially accompany Mr. Herod on the site visits, along with a representative from the SCD. She indicated that an SCD staff person has

always gone along on the MALPF inspections, and she has already spoken to Bob Ensor about committing staff to the county easement inspection program. She confirmed that Mr. Ensor was very supportive.

Ms. Jones made several suggestions about inspection procedures, based on her land trust experience. She had specific ideas about items the notification letter should contain, about what documents to take in the field and what to leave behind, and other helpful hints.

Ms. Jones noted that there is a significant amount of office time required prior and subsequent to the field visits. There was discussion about the protocol involved with notification of the property owner and what activities the inspection would actually include. Board members had many concerns about the property owner's privacy, and had questions about whether photos would be taken, and if so, would they be part of the property file and available to the public.

Mr. Feaga asked Ms. O'Brien for a legal interpretation as to who has access to the inspection form, particularly if there is a violation. He stated his concern about members of the public being able to view this information.

Ms. O'Brien stated her opinion that the form will only be documenting existing conditions and wouldn't contain anything that would be conclusive of a violation. That said, she opined that she doesn't see a way to keep this information out of the public view.

Mr. Bauer stated his opinion that we couldn't be picking a worse time to start inspecting the farms, because there is currently so much public scrutiny of how the agricultural community is operating. He also asked Ms. O'Brien if the language in the deed of easement that prohibits public access on the farms extends to written and photographic information. Ms. O'Brien responded that she would have to research how that has been interpreted, but her guess is that "public access" only refers to physical presence on the property.

Ms. Jones asked if we've established a priority for the order in which the farms get inspected. Ms. Levy stated that the priority hasn't been figured out yet.

There was a long conversation about the issue of junk being dumped on preservation properties. Board members noted that what constitutes "junk" is a very subjective determination and will be difficult to document. All agreed that the deed of easement clearly prohibits dumping.

The Board members discussed at length the question as to whether or not photos should be taken as part of the inspection. No clear consensus was reached.

Ms. Jones stated that we should make it clear to property owners that these inspections are not based on zoning, particularly in light of some of the current controversial issues that are zoning related but affect farmland. The deed of easement does not dictate how properties should be used for agricultural purposes so it should not be addressed on the inspection form.

Using the MALPF form as a template, the Board conducted a long and detailed discussion about the specific items that the form should contain. Each item of the MALPF form was considered, discussed and resolved as to whether it should be included, deleted or modified. Ms. Levy stated that she would incorporate their changes into a revised draft, and email it to the Board members for review at their next meeting.

Mr. Feaga motioned to adjourn, seconded by Ms. Jones. The motion passed unanimously. The meeting adjourned at 10:03 p.m.

Joy Levy, Executive Secretary
Agricultural Land Preservation Board

HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING
3430 Court House Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350

Marsha S. McLaughlin, Director

www.howardcountymd.gov
FAX 410-313-3467
TDD 410-313-2323

HOWARD COUNTY AGRICULTURAL LAND PRESERVATION BOARD AND STATE AGRICULTURAL PRESERVATION ADVISORY BOARD

June 30, 2014

Attendance:

Board Members:	Lynn Moore, Chair Ricky Bauer, Vice-Chair Mickey Day Howie Feaga Ann Jones Shirley Matlock Denny Patrick
Public:	Brenda Fleming-Warren Shirley Fleming Steven Fleming Ryan Higgins Stan Higgins Brian Warren
Staff:	Joy Levy, Administrator, Agricultural Land Preservation Program Lisa O'Brien, Senior Assistant County Solicitor, Office of Law Beth Burgess, Chief, Resource Conservation Division Mary Smith, Secretary, Agricultural Land Preservation Program

Ms. Moore called the meeting to order at 7:35 p.m. and conducted introductions.

Action Items

1) **Minutes from the April 28, 2014** – Ms. Moore called for approval of the April 28, 2014 meeting minutes. Mr. Feaga moved to approve. The motion was seconded by Ms. Matlock and passed unanimously.

2) **Minutes from the May 28, 2014** – Ms. Moore called for approval of the May 28, 2014 meeting minutes. Ms. Jones moved to approve. The motion was seconded by Mr. Feaga and passed with all members in favor, with the exception of Ms. Matlock, who abstained.

3) **Request for Approval, Child Lot, Fleming property, 13-82-06, 176 acres (APAB)** - Ms. Levy read the staff report, stating that the request from MALPF easement grantor Shirley Fleming is to release a one-acre lot for her daughter Brenda Fleming-Warren. Referring to the report's maps, Ms. Levy noted the proposed location of Brenda's lot, stating that it is sited immediately adjacent and to the north of Mrs. Fleming's lot, which has never been under the easement. Ms. Levy stated that although Brenda's lot release is the only one being requested at this time, the family has planned ahead and submitted a map showing the location of the other three potential Fleming child lots.

Ms. Levy stated that all of the potential child lots are clustered together and are located in the central portion of the farm, proximate to the existing dwellings and barns. Access to Brenda's lot would be from an extension to the existing farm lane.

Ms. Levy stated that staff recommends that the APAB vote to recommend approval to MALPF of the request for a child's lot, subject to the following conditions:

1. Applicant must repay $1,000 to the State for the released lot.
2. Applicant must go through the State's two-step lot release process.
3. Applicant must obtain all appropriate county and state permits and approvals, including the approval of a subdivision plat to be recorded.

Mr. Feaga moved to approve. The motion was seconded by Ms. Matlock and passed unanimously.

4) Request for Approval, Easement Stewardship Form – Ms. Levy informed the Board that Adam Herod, who will be conducting the monitoring program this summer, started work today. She noted that he has already drafted both the pre-visit scheduling letter to the property owners and the post-visit letter thanking them for their time. She stated that there are still a lot of logistics to finalize, most importantly the approval of the monitoring form. She noted that her current draft is based on the discussion from last month, which resulted in a consensus on the language for each of the items to be included. She stated that she also referred to the old monitoring form, which she found to be very similar in content and scope to what the Board is currently considering.

Ms. Moore requested Ms. O'Brien to report on her findings regarding the privacy of the form's content and any supporting documentation, like photos. Ms. O'Brien stated that any public record created is subject to disclosure upon request under the Maryland Public Information Act (PIA). She added that the circumstances that allow for an exemption to the PIA are narrow, opining that none of them are met in this case.

There was discussion regarding privacy protection under the law for various farm planning documents. This was follow up to statements made by Michael Calkins of the Howard Soil Conservation District at the May meeting, where he noted that the Soil Conservation and Water Quality Plans prepared by the District are not public. Ms. O'Brien stated that she researched the Maryland Code and only found provisions for Nutrient Management Plans, which are protected, but only for three years. She stated that she didn't see anything about Conservation Plans. Ms. Jones suggested that it may be covered by federal law due to the partnership between the NRCS and the Districts.

Ms. Levy asked Ms. O'Brien to opine on the previous month's question regarding how broadly the public access prohibition on easement property can be interpreted. Specifically, she was asked whether a photo of a property constitutes public access. Ms. O'Brien stated that public access is someone's physical presence on the property and nothing more. Mr. Feaga asked whether that includes the person doing the monitoring visits and Ms. O'Brien stated that a government representative isn't considered the public.

Ms. Moore stated that the easement documents from over the years have different language regarding the right to inspect, and asked if only those that contain an express provision grant the County the right. Ms. O'Brien stated that all easements have a provision for a remedy if there is a violation of the easement, and that there is no way to reach a conclusion that there is a violation of an easement unless you have access to the property.

Mr. Bauer stated that some of the easements, including his own, say that a complaint has to be filed in order for the County to have the right to inspect. No one present had an easement document with this language, so his assertion couldn't be confirmed. Mr. Bauer later stated that his easement doesn't specifically use the complaint language, but two attorneys he has consulted with have interpreted it that way.

Ms. Levy provided the Code Section from the pre-1993 version of the Code, which states that the "purchase of an easement does not entitle the owner to substantially reduce the agricultural value of the land by practices

unacceptable to USDA or MDA. The county shall be empowered to seek an injunction in circuit court to halt any such practices and seek monetary damages up to 25% of development rights." She stated that even though the right to inspect isn't explicitly stated, it is clear that the County has the right to enforce its easement.

Ms. O'Brien then read the post-93 Code language, which explicitly grants the right to inspect. A very long discussion followed about the implications of the different Code and easement language over time, with no clear consensus reached about how to approach the monitoring protocol. Some Board members did not dispute the County's right to inspect, but still have concerns about creating a record that is available to the public. Other Board members continued to question the County's right to inspect those properties whose deed of easement does not contain the express provision. The suggestion was made that the County only be able to inspect those properties with the specific language. Ms. O'Brien reasserted that the right is either explicit or implied and her advice is that all of the easements can be monitored.

Conversation turned to the form and whether the Board's intent that it includes only those items specifically addressed in the deed of easement has been met. Most of the Board members expressed approval of the majority of the form's content, agreeing that questions about lot and dwelling rights and the status of the Conservation Plan are clearly provided for in the easement.

However, most members are still uncomfortable with documenting the dumping of junk due to the very subjective nature of what that includes. The question of how the inspector would know whether a junk pile pre-dates the easement was raised. It was agreed that it could be very difficult to make that determination, and perhaps it should be approached as documenting the situation from the inspection date forward. Ms. Levy stated that if a junk pile was found, her main concern would be that it was removed prior to the next inspection. Regarding the form, there was discussion about deleting the three bullet points under the "Use of the Land" section, with particular concern about the dumping item. An alternative suggestion was made to keep the section, but get rid of the "yes" and "no" boxes, and instead use comment lines, so that there is an opportunity to describe the extent of the problem. The Board was reminded that was the intent of taking photos.

There was concern about whether Mr. Herod is knowledgeable enough about various farming practices to be able to determine if there are non-ag uses occurring or if certain items stored on a property constitute junk. Ms. Levy stated that there will always be a representative from the Soil Conservation District accompanying him, adding that her hope is that in most cases the property owner will also take part in the visit, allowing for an exchange of information and an opportunity to resolve any potential issues on the spot.

Mr. Day inquired as to what the protocol will be if a violation is detected. Ms. Levy stated that she anticipates that the majority of the property owners will be in compliance. She noted that since it has been so long since the County did a regular inspection program, her goal is for Mr. Herod to get a basic inventory of existing conditions on as many farms as he can. Once the summer is over, staff will review the completed forms, taking note of any potential problems. Depending on what the issue is, she will consult with other agencies as needed, such as the District or Zoning staff. There would then be a meeting with the property owner and whatever county personnel are required to address the problem.

There was discussion about whether the Board should get involved if a problem can't get resolved at the staff level. Everyone agreed that this is a good idea, as long as it was in an advisory role, since the Board does not have the authority to make a final decision.

Referring back to the form, there was a discussion about the language regarding tenant houses and how it would be determined in the field as to whether a tenant is fully engaged in the operation of the farm. Ms. Levy indicated that it might require discussion with the property owner to figure out what the status is. Mr. Bauer inquired whether the Zoning Regulations now allow for part time employees to qualify for tenant houses. Ms. Levy confirmed this, but reminded the Board that all of the deeds of easement over the years include language requiring that the tenant be "fully engaged" in the operation of the farm. Ms. O'Brien stated that the more restrictive provision rules. This generated a long discussion about what "fully" means and what it takes to meet that standard. The Board resolved the problem by deleting the word "fully" on the form.

Ms. Moore suggested that the Board review the form line by line to finalize the language. There was additional discussion about several of the items, particularly the three in the "Use of the Land" section. The Board resolved its concerns.

Mr. Feaga motioned for the Board to accept all of the agreed upon changes, which was seconded by Ms. Jones. The motion carried unanimously.

Ms. Levy asked the Board for input on how to prioritize the visits to the farms, noting that farms of the Board members should be visited first. There was some discussion about how frequently the farms should be monitored. Ms. Burgess stated that once we see how many Mr. Herod gets done, we can evaluate and decide. Regarding the order, the Board agreed that staff can make that decision.

Mr. Feaga motioned to adjourn, seconded by Mr. Day. The motion passed unanimously. The meeting adjourned at 10:13 p.m.

Joy Levy, Executive Secretary
Agricultural Land Preservation Board

HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING
3430 Court House Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350

Marsha S. McLaughlin, Director

www.howardcountymd.gov
FAX 410-313-3467
TDD 410-313-2323

HOWARD COUNTY AGRICULTURAL LAND PRESERVATION BOARD AND STATE AGRICULTURAL PRESERVATION ADVISORY BOARD

August 25, 2014

Attendance:

Board Members:	Lynn Moore, Chair Mickey Day Howie Feaga Ann Jones Denny Patrick
Public:	Bob Ensor Tim Feaga Brenda Fleming-Warren Bob Stabler Randy Stabler Brian Warren
Staff:	Joy Levy, Administrator, Agricultural Land Preservation Program Lisa O'Brien, Senior Assistant County Solicitor, Office of Law Beth Burgess, Chief, Resource Conservation Division Mary Smith, Secretary, Agricultural Land Preservation Program

Ms. Moore called the meeting to order at 7:35 p.m. and conducted introductions.

Action Items

1) **Minutes from the June 30, 2014** – Ms. Moore called for approval of the June 30, 2014 meeting minutes. Mr. Day moved to approve. The motion was seconded by Ms. Jones and passed unanimously.

2) **Request for Approval, Relocation of Child Lot, Fleming property, 13-82-06, 176 acres (APAB)** - Ms. Levy stated that the Board reviewed and approved a child lot request for Brenda Fleming-Warren at their June meeting. Ms. Levy read the staff report, noting that the current request is to relocate the previously approved lot. The relocation is necessary due to a swale running through the approved lot area. Ms. Levy stated that Mike Van Sant of Van Mar Engineering suggested moving the lot slightly to the west. The revised location has more favorable topography and has had successful perc testing in the past.

Referring to the aerial map in the staff report, Ms. Levy reminded the Board that even though Brenda is the only child currently requesting a lot, the map shows the proposed clustered locations for her three brothers as well. She noted that Brenda's lot is in the northwest corner of the cluster, and is not immediately adjacent to her mother's parcel. She stated that MALPF staff has expressed concern about the relocation of Brenda's lot because it would be isolated if her brothers never develop.

Ms. Levy stated that if this was a county easement, even as an independent lot, the proposed location would be consistent with the Board's lot location policy, since it will take access off the existing farm lane, it is clustered with all of the other farm buildings, and it is bordered on two sides by woods.

Ms. Levy recommended that the APAB vote to recommend approval to MALPF of the request for a child's lot in the revised location, subject to the following conditions:

1. Applicant must repay $1,000 to the State for the released lot.
2. Applicant must go through the State's two-step lot release process.
3. Applicant must obtain all appropriate county and state permits and approvals, including the approval of a subdivision plat to be recorded.

Mr. Day asked for confirmation of the full extent of the farm lane relative to the various buildings on the farm.

Ms. Moore asked about the two acre provision in MALPF's policy. Ms. Levy stated that the zoning allows up to a maximum of 1.2 acres, if the Health Department requires it for well or septic. Since that is the maximum allowed by zoning, the largest that a MALPF lot could be is 1.2 acres.

Ms. Moore asked whether the lot would have fee access out to the road. Ms. Levy stated that almost all lots have access easements in Howard, including this one. She stated that MALPF's two acre allowance is partially in place to accommodate counties that require fee access.

Mr. Feaga moved to approve. The motion was seconded by Ms. Jones and passed unanimously.

3) Request for Approval, 3 Unrestricted Lots, Patrick Family LP II property, HO-07-01-E, 166 acre (ALPB) - Ms. Levy read the staff report, stating that the property was placed in the ALPP by Calvin Murray in 2007. There have been no previous requests and the current request is to release three unrestricted lots.

Referring to the aerial map in the staff report, Ms. Levy noted that the applicant has located the lots in the woods so as to minimize any disruption of agricultural activities. Access to the lots will be a common driveway off of Florence Road. Ms. Levy noted that the majority of the property, and all of the tillable ground, is on the east side of Florence, with the west side being all woods.

Ms. Levy recommended approval to release the three (3) one-acre unrestricted lots subject to the following conditions:

1. An amended deed of easement is to be prepared, executed, and duly recorded in the land records of Howard County. The amended deed of easement will reflect the release of a portion of the easement for three unrestricted lots.

2. Applicant must repay $120,000 to the County for the three lots released ($40,000 per lot).

3. Applicant must obtain all appropriate county and state permits and approvals, including the approval of a subdivision plat to be recorded concurrently with the amended deed of easement.

Ms. Moore called for discussion.

Mr. Howie Feaga asked if the location shown on the map is the exact location where the three lots will be.

Mr. Tim Feaga stated that it is unlikely, and that he anticipates coming back to the Board once the percs have been established. He noted that this general area will work because of the topography and because it meets all of the COMAR requirements in terms of well to septic setbacks. Also, the storm water management can be accommodated here. Mr. Feaga stated that there are still working on a safe access point from Florence Road. They have it narrowed down to two possible areas.

Ms. Moore asked about bringing the lots closer to the road. Mr. Feaga noted that the soils in that area won't work.

Ms. Jones motioned approval of the three lots in the approximate location as presented, as long as they remain in the wooded area on the west side of Florence Road. The motion was seconded by Mr. Howie Feaga and passed unanimously, with Mr. Patrick abstaining.

4) Request for approval, 1 Unrestricted Lot, P64 & P70-RNS, LLC and P64 & P70-BAS,LLC, 53 acres (ALPB) – Ms. Levy stated that Calvin Murray donated the easement on this property on the east side of Florence Road in November 2010. She noted that this is the only time the ALPP has received a donated easement.

Ms. Levy read the staff report. Referring to the aerial map, she noted that the lot is located in the southwestern corner of the property, adjacent to Florence Road, to minimize any disruption of agricultural activities.

Ms. Levy recommended approval of the request to release a one-acre unrestricted lot, subject to the following conditions:

1. An amended deed of easement is to be prepared, executed, and duly recorded in the land records of Howard County. The amended deed of easement will reflect the release of a portion of the easement for one unrestricted lot.

2. There is no repayment for the lot release because the easement was donated to the ALPP.

3. Applicant must obtain all appropriate county and state permits and approvals, including the approval of a subdivision plat to be recorded concurrently with the amended deed of easement.

Ms. Moore called for discussion.

Ms. Jones asked if there is the right for a principal dwelling. Ms. Levy confirmed, stating that the farm is currently unimproved.

Mr. Day motioned approval, seconded by Mr. Feaga. The motion passed unanimously, with Mr. Patrick abstaining.

5) Request for Approval, Exchange of Land Under Easement for Land Not Under Easement, Patrick Family LP II property and P64 & P70-RNS, LLC/P64 & P70-BAS, LLC property (ALPB) – Ms. Levy noted that the Board just approved the number of unrestricted lots that each of the subject properties are entitled to by right. She stated that the current request is for an exchange of land under easement for land not under easement, or more simply, a land swap between the two parcels. Ms. Levy stated that the applicants wish to transfer the lot right that is associated with the 53-acre farm to the 166-acre farm, and place it adjacent to the three unrestricted lots the Board just approved. The end result would be the consolidation of all of the by-right unrestricted lots for both farms clustered together in the wooded portion of the larger property.

Ms. Levy stated that Section 15.515 of the Howard County Code provides the very specific conditions under which an exchange can happen, including a determination that the ALPP would benefit from allowing it. Ms. Levy noted that clustering all of the available lots from two farms in a wooded area is a benefit to the agricultural potential for both properties.

Ms. Levy explained that the logistics of the exchange will involve a complicated, multi-step process that will phase all aspects so that each step is legal and justifiable from both the agricultural preservation and the subdivision standpoints.

Ms. Levy noted that although Section 15.515 isn't technically meant to facilitate the transfer of lot rights, the request does meet the Code provisions. She stated that a very similar request was previously approved in 2005, so there is precedent for allowing it.

Ms. Levy recommended approval of the request to exchange land under easement for land not under easement subject to the following conditions:

1. Amended and restated deeds of easement are to be prepared, executed, and duly recorded in the land records of Howard County. All remaining rights will be restated.

2. Applicant must obtain all appropriate county and state permits and approvals, including the approval of a subdivision plat to be recorded concurrently with the amended deed of easement.

Ms. Moore called for discussion.

There were questions about the specific provisions for allowing an exchange, particularly regarding adjacency.

Ms. O'Brien read the Code section, confirming that the properties involved with an exchange must be adjacent to one another.

Ms. Jones expressed her initial concern with the request, wondering about the potential unforeseen consequences of allowing lot rights to be transferred from one parcel to another. She then stated that her concerns were addressed, knowing that the properties must be adjacent, and that the Code requires the ALPP to benefit from the exchange.

Mr. Day motioned approval, seconded by Mr. Feaga. The motion passed unanimously with Mr. Patrick abstaining.

Discussion Items

1) Discussion with Bob Ensor of the Soil Conservation District (SCD) regarding privacy of Soil Conservation &Water Quality (SCWQ) Plans – Ms. Levy stated that she invited Mr. Ensor to help clarify the issue of public access to the SCWQ Plans prepared by his staff. She noted that in the Board's deliberations regarding the monitoring and stewardship program, one of the main concerns was the privacy of information gathered during the inspections. She indicated that the Board is aware that the SCWQ Plans are not available for public review, and the members would like Mr. Ensor to address this.

Mr. Ensor distributed and discussed the pertinent COMAR regulations, noting that by law, the SCD must maintain information in a manner that protects the identity of the person for whom the Plan is prepared. He stated that Plan information has to be made available to the Maryland Department of the Environment for enforcement actions, but other than that, there is no public access at all. He contrasted the SCWQ Plans with Nutrient Management Plans, which are also private, but only up to three years after they're written. He stated that the NMPs are updated yearly, so the only information that is publicly available is outdated.

Mr. Feaga questioned whether the ALPP inspection form is protected since it references the SCWQ Plan. The consensus was that it is not.

Ms. Moore asked Mr. Ensor about the use of photographs as part of the SCWQ Plan process. He discussed the limited circumstances in which photos would be a part of a Plan, noting that since the Plan is private, so are any photos of the property.

Members then discussed the relative merits of using photos for the ALPP inspections, expressing their concerns that without any privacy protection, photos could be accessed by the public and potentially used against the farmer.

Mr. Ensor suggested proposing legislation to the County Council that would make the ALPP inspection records private.

Ms. Burgess inquired as to the frequency and content of neighbor inquiries regarding SCWQ Plans. Mr. Ensor stated that there are usually only about a handful each year.

Ms. Moore reiterated her position that the inspection process should be kept as simple as possible by only addressing what the deed of easement covers. Mr. Ensor agreed.

Ms. Levy reported on Mr. Herod's summary of the inspections he completed this summer. She stated that he reported that of 35 inspections, 25 were fine and had no issues. Six had outdated Plans, and only four had problems that might require follow up. She stated that she hasn't had time to review his work, but she would keep the Board informed if their expertise is needed to help resolve anything.

Ms. Moore mentioned the letter she received from Alex Adams, which included his concerns about many aspects of the ALPP program, including inspections. Ms. O'Brien stated that she responded to the letter's specific issue regarding the right to inspect. Ms. Moore stated that she had a subsequent conversation with Mr. Adams, which was also very broad in nature. She noted that the discussion reaffirmed her belief that the ALPP must stay within the parameters of the easement and not overstep its bounds.

Ms. Jones stated her opinion that photos can be very helpful in protecting the farmer, by offering evidence of existing conditions that can be referred back to in the future if there is ever a dispute. It was agreed by all that it is unfortunate that any documentation has to be considered in light of its use against the farmer.

Ms. O'Brien noted that the County has a historical record of aerial photography. There was discussion about the appraisals that were done in the early days of the program, and how they would offer evidence of existing conditions at the time of the easement, if needed.

Mr. Day opined that we should consider introducing legislation to formally establish the stewardship and monitoring program, which could include privacy provisions. Ms. Moore asked Ms. O'Brien to look into the possibility of county legislation.

Ms. O'Brien stated that the Maryland Public Information Act would not allow for inspections of this type to be kept from the public. She stated that neighbors don't have standing to sustain a suit against the farmer under the easement. She also said that the Right to Farm law requires mediation prior to a lawsuit. Ms. Moore requested to have the new Right to Farm Act e-mailed to Board members.

Mr. Ensor suggested making the Soil Conservation District responsible for the ALPP inspections, which would then be protected through the SCWQ Plan. Ms. Levy asked Ms. O'Brien to opine on whether this is possible. Ms. O'Brien stated she would need to review it.

Ms. Burgess stated that she received many positive comments regarding Mr. Herod's professionalism. Ms. Levy distributed copies of the inspection protocol that was mailed prior to Mr. Herod's visits, which provided information to the property owner about what the inspection would and would not include.

Ms. Levy stated that she would be on leave for the regularly scheduled September meeting. The Board discussed alternatives. Ms. Jones motioned for adjournment at 9:38 p.m., seconded by Mr. Feaga. The motion passed unanimously.

Joy Levy, Executive Secretary
Agricultural Land Preservation Board

HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING
3430 Court House Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350

Marsha S. McLaughlin, Director

www.howardcountymd.gov
FAX 410-313-3467
TDD 410-313-2323

HOWARD COUNTY AGRICULTURAL LAND PRESERVATION BOARD AND STATE AGRICULTURAL PRESERVATION ADVISORY BOARD

October 27, 2014

Attendance:

Board Members:	Shirley Matlock, Acting Chair Mickey Day Howie Feaga Ann Jones
Public:	Robert Davis and family
Staff:	Joy Levy, Administrator, Agricultural Land Preservation Program Lisa O'Brien, Senior Assistant County Solicitor, Office of Law Beth Burgess, Chief, Resource Conservation Division Mary Smith, Secretary, Agricultural Land Preservation Program

Ms. Matlock called the meeting to order at 7:34 p.m. and conducted introductions.

Action Items

1) Minutes from the August 25, 2014 – Ms. Matlock called for approval of the August 25, 2014 meeting minutes. Mr. Feaga moved to approve. The motion was seconded by Mr. Day and passed unanimously.

2) Request for Approval, Tenant House, Davis property, HO-06-09-PPSC, 57 acres (APAB) - Ms. Levy read the staff report, stating that Mr. Davis is requesting a tenant house for his 52-acre property located at 991 Morgan Station Road. Mr. Davis is the current owner and the original grantor of this dedicated agricultural easement.

Ms. Levy provided the background for the process by which the farm became encumbered, first through density sending in 2006 from a 38.25-acre portion of the property, and then the remainder to support four cluster lots created in 2011. The lots are undeveloped and are being farmed.

Ms. Levy stated that there is an existing principal dwelling on the property. A woman who manages several acres immediately surrounding the house resides there. The request is for a tenant house for Mr. Davis and his family.

Ms. Levy stated that per Section 15.514 of the County Code, the Board may approve the location of a tenant house after determination that the location minimizes any disruption of existing or potential future agricultural activities. Ms. Levy noted that in addition, the Code permits tenant housing based on the Board's determination that the dwelling is necessary to house a farm worker fully engaged in the operation of the agricultural use of the property.

Ms. Levy stated that on the application Mr. Davis submitted he explained that he is in the process of taking over the farming of the tillable ground. The lease with the current renter will expire after the current harvest. Next year,

he will be the one planting the 39 acres of tillable ground, and raising cattle and/or planting trees on the 13 acres of pasture. The caretaker in the existing house raises 4-H animals and maintains approximately 5 acres around the dwelling. Mr. Davis has indicated that he is requesting the new tenant house because he is unwilling to displace the caretaker, and the existing home would require extensive modifications to accommodate his family.

Ms. Levy noted that Mr. Davis is requesting a house no larger than 2,300 square feet of livable space. She showed the Board members the proposed location of the house and the access to it on the aerial map. Mr. Davis noted that the land in that area of the farm is not tillable and that access will be off an existing farm lane.

Ms. Levy recommended approval of the request to locate a tenant house, subject to the applicant obtaining all of the appropriate county and state permits and approvals.

Ms. Matlock called for discussion.

Ms. Jones asked for an explanation of the right of an easement owner to be able to live in a tenant house.

Ms. Levy provided the history of the former policy that owners can't be tenants of their own land, noting that an attempt several years back to codify the policy failed, and that in the process the County Council also overturned the policy.

Mr. Davis explained the history of the farm, noting that he grew up there and that his grandfather bought it in 1908. When Mr. Davis built his present home elsewhere, he did not own the farm. It was left to Mr. Davis and his brother, and he subsequently bought his brother out using the proceeds from the density sending sale. He stated his strong preference to not have to use any of the four cluster lots to build his house since he intends them for his children when they get older. He added that he created the lots now to protect himself against future changes to the county development regulations.

Mr. Davis stated that he does not want to displace the caretaker and he would use one of the lots for his own house before doing that. He offered the size restriction to help demonstrate that it's a legitimate request.

Mr. Feaga stated that he does not want to restrict the maximum size of the house.

Ms. Jones expressed her concern about future tenant house requests regarding maximum square footage.

Mr. Feaga moved to approve the request to build the tenant house in the location as presented.

The motion was seconded by Mr. Day and carried three to one, with Ms. Jones voting against.

Discussion Items

Program updates – Ms. Levy stated that the County is ready to go to settlement on both the Egan/Sharp and Pue properties, and is hoping they will settle by the end of the year. She noted that two new properties have applied and she anticipates having them before the Board in November.

Ms. Jones moved to adjourn, which was seconded by Mr. Day. The meeting adjourned at 8:19 PM.

_____

Joy Levy, Executive Secretary
Agricultural Land Preservation Board

HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING
3430 Court House Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350

Marsha S. McLaughlin, Director

www.howardcountymd.gov
FAX 410-313-3467
TDD 410-313-2323

HOWARD COUNTY AGRICULTURAL LAND PRESERVATION BOARD AND STATE AGRICULTURAL PRESERVATION ADVISORY BOARD

November 24, 2014

Attendance:

Board Members:	Lynn Moore, Chair Rickey Bauer, Vice Chair Mickey Day Shirley Matlock Ann Jones Denny Patrick
Public:	Bob and Nancy Berman Jan and Dale Chiorini Jeremy Rutter
Staff:	Joy Levy, Administrator, Agricultural Land Preservation Program Beth Burgess, Chief, Resource Conservation Division Mary Smith, Secretary, Agricultural Land Preservation Program

Ms. Moore called the meeting to order at 7:34 p.m. and conducted introductions.

Action Items

1) **Minutes from the October 27, 2014** – Ms. Moore called for approval of the October 27, 2014 meeting minutes. Mr. Day moved to approve. The motion was seconded by Ms. Jones and passed unanimously.

2) **Request for Recommendation on Easement Acquisition, Berman property, 51 acres (ALPB) -** Ms. Levy read the staff report, stating that the Bermans own three contiguous parcels of land on the north side of Rt. 99 in Woodstock. The three parcels will be merged into one 50.1 acre property prior to the acquisition. She stated that the property contains 44 acres of woods, 6 acres of pasture and no tillable ground. Currently there is one dwelling and two barns on the property.

Ms. Levy referred the Board to the zoning item on the score sheet, noting the score of only 28 points. She stated that this is unusual because typically the score is either 100 points for RC zoned land or 0 points for RR zoned land. The RC and the RR are the only two zoning districts in the Rural West, and we've never purchased an easement in the East. She explained that the Berman property is split-zoned with only 28% in the RC zoning district. The remainder is in the R-ED (Residential: Environment Development) district, which doesn't get scored because it is not in the Rural West.

Ms. Levy stated that when the Bermans first expressed interest in the ALPP, once she discovered the zoning situation, she had to research the Code to see if there was anything that would specifically prohibit them from applying. The eligibility criteria do not address the zoning of the property, so they were allowed to apply, with the

understanding that they would only be given points for the RC zoned land. In answering a question about the purpose of R-ED zoning, Ms. Levy noted that it is meant for relatively low residential development that contains or is proximate to resource land.

Ms. Levy pointed out that the Berman property does very well on both items on the score sheet that give points for adjacency to protected land. She noted that 80% of the Berman property is immediately adjacent to land under protection, most of which is Patapsco State Park. She also noted that there are 1,100 acres of preserved land within a mile of the property.

Ms. Levy stated that according to the Soil Conservation District (SCD), there is a recently created Soil Conservation and Water Quality Plan in place on the property that is considered to be fully implemented because there are no resource issues or concerns. The most desirable feature of this property is its proximity to other protected land.

There was discussion about the Green Infrastructure (GI) score. Ms. Levy stated that prior to the meeting, she emailed the Board the detailed GI score sheet developed by DPZ's Environmental Planner, Susan Overstreet. Ms. Levy noted that this property scores very high for GI (90 out of 100 points) due to its proximity to the Park and the large amount of resources on the property and nearby. She also noted that the property is part of a GI hub, due to the Park, and is getting hub and corridor points.

Ms. Levy said that the application meets all eligibility criteria for acquisition of an agricultural preservation easement and recommended approval.

Ms. Moore called for questions and discussion.

Ms. Jones asked if there is anything in the deed of easement that would prohibit a future owner from selling it to the Park. Ms. Levy stated that the deed of easement doesn't specifically address this so it would not be prohibited.

Ms. Moore noted that the deed of easement states that the land must be kept available for farming, so it wouldn't be consistent for it to be owned by the Park. It was also noted that the property is currently not being farmed nor is it in a state to be used for that purpose. Ms. Levy confirmed that the deed of easement does not require the land to be farmed, but the owner can't do anything that would preclude its use for agriculture.

Ms. Moore questioned why the ALPP is interested in acquiring an easement on land that is heavily wooded and not agriculturally active.

Ms. Levy explained that there isn't anything that makes a property like this ineligible for the program. She stated that changes made prior to this cycle, like adding the GI scoring criteria, have encouraged the participation of properties that may not have applied in the past.

Jeremy Rutter, representing the Bermans, stated that the County doesn't have a program similar to the ALPP to acquire development rights on environmentally sensitive land, so this is the only alternative to development. He noted that since most of the property is zoned R-ED, it could accommodate a fair amount of residential development, which would not be ideal for a wooded parcel adjacent to the Park. He noted that Mr. Berman has relinquished both tenant house rights, so there will be no additional dwellings on the property other than what is currently there.

Mr. Rutter distributed photos of the property, noting that there should be fee access to it through an adjoining subdivision but that didn't happen when the lots were platted. Mr. Berman added details about the subdivision being approved but never built, adding that the lack of access to his property has restricted his options, since he only has a deeded right of way. Mr. Rutter noted that they have considered asking for a rezoning of the R-ED land to RC to increase his ALPP points, but have decided against it.

The applicants noted that there is a principal dwelling on what is now known as the Sears parcel, and no dwellings on the Berman property. The parcels will be merged into one 50-acre parcel with the one principal dwelling, no tenant houses, and the right for one unrestricted one acre lot.

There was a long discussion about why the property is entitled to tenant house rights if by releasing the one unrestricted lot the property will be dropped below 50 acres. Ms. Moore stated that the rights situation should be "either/or", but we're giving them both. Ms. Levy disagreed, stating that until the unrestricted lot right is actually used, the parcel is 50 acres and has the entitlement to the two tenant houses.

There was further discussion about how the law has changed over the years regarding tenant houses and the density at which they are allowed. There was also discussion about changes in the Zoning Regulations and policy regarding the need for a principal dwelling on the property in order to have a tenant house.

Mr. Day motioned to accept the staff recommendation, which was seconded by Ms. Matlock. The motion passed unanimously.

Mr. Bauer stated his concern regarding a recorded right of way for access to the Berman parcel in the deed. Ms. Levy stated that it's the property owner's responsibility to ensure access, but that if there are any irregularities, it should come up during the title work process.

3) **Request for Recommendation on Easement Acquisition, Chiorini property, 27 acres (ALPB)** – Ms. Levy read the staff report, stating that this 27 acre parcel is a horse boarding operation with the majority of the land in pasture. Referring to the preservation map, she noted the long, narrow strip of 100 year flood plain that runs along the east side of the Chiorini property that is considered preserved land. It was dedicated to Howard County as part of the adjacent subdivision in 1980. In an effort to ensure consistency with how the immediate adjacency criteria has been calculated in the past, this strip of land counts and explains why the points in this category are higher than what might be anticipated. The southern edge of the property is adjacent to WSSC land.

According to the SCD, there is a current Soil Conservation and Water Quality Plan that is partially implemented. A high percentage of the property is in agricultural use, which is the most desirable feature of this property. The property owners are the operators of the farm.

Ms. Levy stated that the application meets all eligibility criteria for acquisition of an agricultural preservation easement and recommended approval.

Ms. Moore called for questions and discussion.

Mr. Bauer asked how many tenant houses this property is entitled to. Ms. Levy stated that based on the acreage there would be the potential for one, which the Chiorinis have elected to retain.

Ms. Moore questioned if there is currently a principal dwelling and if the Chiorinis live there. Both were confirmed.

Mr. Day motioned to accept the staff recommendation, which was seconded by Ms. Matlock. The motion passed unanimously.

4) **Request for Recommendation on Easement Acquisition, Wheeler property, 30 acres (ALPB)** - Ms. Levy stated that Our Forsythe, LLC is the owner of record of the property, which is comprised of Greg and Suzanne Wheeler and Mr. Wheeler's sister, Christina Rizzutto. Ms. Levy read the staff report, stating that the property is approximately 30 acres, and has recently been transitioned from an equine operation run by the Wheeler parents to a produce and livestock operation run by the members of Our Forsythe, LLC. The property is mostly pasture and woodland with some cropland.

According to the SCD, there is a current Soil Conservation and Water Quality Plan that is partially implemented. The most desirable feature of this property is the high concentration of preserved land within a mile. It is also worth noting that this is a situation where the next generation of the family has taken over the daily operation of the property and is starting a new venture.

Ms. Levy stated that the application meets all eligibility criteria for acquisition of an agricultural preservation easement and recommended approval.

Ms. Moore called for questions and discussion.

Ms. Jones asked for clarification about the GI item because different versions of the score sheet show it as either 5 or 10 points. Ms. Levy explained that the difference between the two has to do with the corridor width the Wheelers choose to protect, and that they have made the decision to go with the narrower width, which grants 5 points.

There was a long discussion about dwelling rights for this property. Since it is unimproved and less than 50 acres, there is no right to construct a principal dwelling. Without a principal dwelling, the current Zoning Regulations state that there can't be a tenant house unless the Director of DPZ grants an exception based on a compelling need. Given that, in this particular situation, the Wheelers don't have a tenant house right unless given the DPZ exception. Several members opined that we shouldn't be acquiring properties that are not and cannot be improved.

The conversation continued at length regarding the many different aspects of the problems pertaining to the rights for principal and tenant dwellings, without resolving the issues. The Board agreed to disagree about several items, but decided to continue to try to work through it. Ms. Levy stated that with a new County Executive, we have an opportunity to address this and other shortcomings in the Program.

The Board members began to express their frustration with having to approve the acquisition of properties that are not truly farms. Ms. Levy stated that the law provides minimum size and soils requirements, and as long as a property meets them, the Board legally has no basis to not approve the acquisition.

Mr. Bauer motioned to deny acquisition of the Wheeler property. There was no second. The motion died for lack of a second. Ms. Jones moved for approval, which was seconded by Mr. Day.

Ms. Moore called for questions and discussion.

Ms. Jones stated that she moved to accept this recommendation because so far this evening it is the only applicant that is part of a big block of agricultural land.

Ms. Moore called for vote. All members present other than Mr. Bauer voted to approve.

5) Request for Recommendation on Easement Acquisition - Approval of Revised Per Acre Price, Cattail Meadows property, 167 acres (ALPB) – Ms. Levy stated that this property was previously approved by the Board in August 2013. It is back due to additional information that was not known at the time. Ms. Levy stated that when the property was originally before the Board, it was reviewed as one parcel because that was what SDAT information indicated. She stated that subsequent review of the property deeds showed that it is in fact three parcels of record. Additionally, when the Board first reviewed this property, the applicant had not made a decision about the relinquishment of tenant house rights and parcel division rights, so there were no points awarded to these two categories. Those decisions have since been made.

Ms. Levy stated that she has been discussing the various options for this property with the owner and his representatives for the past year. Given that there are three deeded parcels, the main issue is how they are going to be reconfigured and/or merged, and how the associated dwelling and lot rights will be distributed.

Ms. Levy noted that Dr. David Huber, who is the managing member for Cattail Meadows, LLC, has decided to merge the three parcels into one parcel prior to easement settlement. He wants to retain the post-easement right to then divide the farm into two 50+ acre parcels, with a house on each. There is currently a 20,000 square foot principal dwelling on one parcel and a 3,000 square foot principal dwelling on another.

In order to achieve the maximum benefit financially, the three current parcels must be merged into one property prior to the easement settlement. An easement property can only have one principal dwelling, so for the purposes of identifying the dwellings that are currently on the farm, one must be designated the principal dwelling and one must be designated the tenant house. Since the smaller dwelling on the farm has and will never be used as a tenant house, the decision was made to exclude it from the easement. In a similar manner to two other acquisitions in this cycle, we will punch a hole in the easement around the smaller house. Ms. Levy stated that the house will not be on a separate lot of record, it just won't be included in the easement.

In order to facilitate the future parcel division of the merged farm into two parcels, Dr. Huber is retaining one of his parcel division rights. In addition, he is relinquishing five out of six tenant house rights.

Ms. Levy stated that the easement will be placed on one parcel of 167.82 acres, with one principle dwelling, the right for three unrestricted lots and the right for one tenant house.

Mr. Bauer stated that since he farms the property, he must recuse himself. This presented the situation of a lack of quorum, since Ms. Matlock had to leave earlier in the night. As discussion continued about the relative merits of the applicant property, efforts were made to reach Mr. Feaga by phone so that he could participate in the discussion and vote.

There was a great deal of discussion about the various scenarios that Dr. Huber has considered and the ramifications of each. Board members expressed their concerns about the maximizing of rights and wanted to make sure that there weren't any "extra" rights being given as a result of the somewhat confusing final proposal advanced by Dr. Huber. The main concern raised by Mr. Day was that the remaining tenant house right could be asked for post-easement, and become a de facto principal dwelling on the divided farm, which the property is not entitled to.

Ms. Levy recommended approval of the revised price per acre, which is $39,508 (as opposed to the previous per acre figure of $37,115.20 approved on August 26, 2013). The revised figure incorporates one less acre of land, but gained additional points for the relinquishment of rights.

Mr. Day motioned to accept staff recommendation pending Ms. Levy's review of the exclusion and the issue regarding a potential additional right. Ms. Jones seconded the motion. Four members voted to approve and Mr. Bauer abstained. Mr. Feaga was reached by phone and voted to approve as the fifth vote.

Discussion Items

1) **Meeting dates and times -** Ms. Levy stated that several Board members have asked to start the meetings earlier. Different times were discussed with 7:00 PM being the preferred time. It was agreed upon that Ms. Levy would follow up with the absent members and confirm the new time, starting in 2015.

There was also a long discussion about having no meetings during the busiest months for the farmers, being April and October. The members agreed to this schedule, pending phone approval by the absent members.

Ms. Jones moved to adjourn, which was seconded by Mr. Bauer. The meeting was adjourned at 10:15 PM.

_____

Joy Levy, Executive Secretary
Agricultural Land Preservation Board