

HOWARD COUNTY AGRICULTURAL LAND PRESERVATION BOARD

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Lynn Moore, Chair
Ricky Bauer, Vice Chair

Jamie Brown, Member
Mickey Day, Member
Howie Feaga, Member
Ann Jones, Member
Denny Patrick, Member

Joy Levy, Executive Secretary

2016 Agricultural Land Preservation Board Meeting Minutes

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

Note: No meetings are typically held in April and October due to the planting and harvesting seasons.



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

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

February 17, 2016

Attendance:

Board Members:

Lynn Moore, Chair
Rickey Bauer, Vice Chair
Jamie Brown
Howie Feaga
Ann Jones
Denny Patrick

Public:

John Zirschky

Staff:

Valdis Lazdins, Director, Department of Planning and Zoning
Amy Gowan, Deputy Director, Department of Planning and Zoning
Joy Levy, Administrator, Agricultural Land Preservation Program
Beth Burgess, Chief, Resource Conservation Division
Mitch Ford, Planning Technician, Agricultural Land Preservation Program
Kim Pruiam, Special Assistant, Office of Council Chair Dr. Calvin Ball

Ms. Moore called the meeting to order at 7:10 p.m. and conducted introductions.

Discussion Items

1) **SB 236: Amendment to *PlanHoward 2030* to Amend the Growth Tiers**

Ms. Gowan gave a presentation on a current proposal to amend *PlanHoward 2030* by changing the existing Growth Tiers structure for Howard County. In 2012, the Maryland General Assembly passed Senate Bill (SB) 236, which was legislation intended to protect the Chesapeake Bay and its watersheds by limiting the amount of development that could occur on septic systems. The Bill required counties to classify land in one of four Growth Tiers that would determine future growth for an area based on certain characteristics such as utility services, agricultural usage, locally designated growth areas, and natural features. After considering several different Growth Tier mapping proposals, the County Council approved Council Bill 1-2013, which became effective in April 2013.

The Tiers map that was approved in 2013 restricted the development rights of many citizens in the RC (Rural Conservation) zoning district in western Howard County by placing them in Tier IV. This limited the maximum number of lots that could be created on any parcel to four, which is the most that are allowed as a minor subdivision. Those properties in the RR (Rural Residential) zoning district kept their full development potential. Ms. Gowan explained that the current legislation would amend the Tiers map so that Tier III would include all properties in the RC and RR, except for those that are permanently preserved, which would remain Tier IV. Tier

III would also include properties encumbered by the Maryland Agricultural Land Preservation Foundation (MALPF) program, since these easements are not technically in perpetuity.

Ms. Gowan continued the presentation by explaining the Impact Data Chart. The Chart analyzed how many additional lots could be created if all of the current Tier IV properties over 21.25 acres that are available for additional development were changed to Tier III. The 21.25 acre figure is the minimum amount of acreage needed to create a major subdivision, which is anything 5 lots or greater. There are 53 Tier IV parcels totaling 2,330 acres that would currently yield 204 lots. If Tier IV were to be lifted, the potential units would increase to 498, representing a net increase of 294 units of added capacity. This analysis does not include any site development constraints, nor does it include any properties under MALPF easements that could potentially terminate. Ms. Gowan stated that the proposed legislation is meant to keep development decisions on a local level, and provide relief from additional development restriction from the state. She concluded by saying that the current measures in place to monitor and control growth in the West, such as the Adequate Public Facilities Ordinance and the Housing Allocation Chart, would continue to serve that purpose.

After Ms. Gowan completed the presentation, Mr. Feaga stated his concern about the administration making the decision to exclude the MALPF properties from Tier IV. He noted that the draft version of the legislation that he presented to the Farm Bureau did not include the MALPF exclusion provision. Mr. Lazdins explained that there was some lag time between the initial draft proposal and what County Executive Kittleman wants to now include. Mr. Lazdins stated that the Executive believes that if a property owner is able to successfully petition to be released from the terms of the MALFP easement, they should have the opportunity to develop their land.

Mr. Bauer and Ms. Jones had questions about whether the various State agencies know about the proposal and what their reactions have been. Mr. Bauer opined that this will encourage MALPF property owners to try and terminate their easements. Ms. Jones stated that the County and the State are supposed to be working together to further the goals of the MALPF program and this sends the completely wrong message, not only in the County but statewide.

The Board members expressed their concern and frustration over the proposed amendment. They were particularly displeased with the MALPF provision, but also concerned about how the proposed change might have a larger effect on the County's ag preservation program and the farming community. Ms. Moore stated that by reversing the Tiers, the proposal would undermine the entire program by furthering the placement of residential communities adjacent to working farms. She noted how challenging the recent conflicts over permitted uses on farmland have been for the agricultural community.

Mr. Bauer stated that most farmers try to make long term plans for their operations, while the county continues to change its stance on how the West should develop. He noted the challenges this presents to the farming community. He contrasted this to other counties that have developed policies to support ag preservation and stuck to them. Ms. Moore followed on this point, by questioning the premise of the preservation program itself if the County can't maintain a consistent position on developing rural land in Western Howard County. Mr. Brown commented that the inconsistency in zoning under the proposed amendment could be viewed as discrimination towards the farmers in the ALPP, and that all preservation farmers should be Tier III, if the MALPF properties will be.

There was an extensive conversation with Mr. Zirschky about the two parcels his family is attempting to preserve, and the circumstances that have created a situation where the County cannot acquire easements on either property based on lack of development potential. Ms. Levy attempted to explain that it is the combination of the Tiers restrictions and the number of subdivisions that have already occurred that has resulted in our inability to move forward.

There was discussion about the MALPF termination process and how this would affect future requests. Ms. Moore opined that the County has never had a strong policy that protects agriculture. There was agreement that the Tiers brought that to us, but now it's going to be taken away unless the MALPF properties can be added back in.

Ms. Jones stated her concern that it's not just the potential disparity in development potential that concerns her, but also the uses that are allowed on different properties. She gave as an example a dairy farm that wants to expand to produce ice cream and is told they needed a separate septic system to accommodate the new use. Since the purpose behind SB236 was to restrict septic systems in Tier IV areas, an ALPP farm in Tier IV could be prohibited from diversifying to stay viable, while a farm in Tier III would have no such restriction.

Ms. Jones read the language that defines Tier III, stating that if MALPF farms become Tier III, they will be considered land that is, "not planned for sewer service, not dominated by agriculture or forest, and planned for large lot subdivision." She stated her strong objection that this language should apply to MALPF easement properties.

Mr. Bauer stated his opinion that it's naïve to think that the perpetuity clause in the ALPP easements will never be challenged, particularly if the legislation passes as currently proposed.

Mr. Lazdins encouraged the Board to attend the Planning Board meeting tomorrow night. He summarized the Board's main concerns to confirm that he could capture the essence of their input when he reports back to the Administration.

2) ZRA 164: Zoning Regulations Amendment, Conditional Uses, Commercial Solar Facilities

Ms. Gowan introduced the next discussion item by giving an overview of Zoning Regulation Amendment (ZRA) 164 for the Conditional Use of Commercial Solar Facilities on ALPP land. In early December 2015, Council President Ball filed the ZRA with the County Council. Typically, the Department of Planning and Zoning (DPZ) will seek input from other agencies or departments that have technical expertise on the ZRA subject matter to assist DPZ in drafting a Technical Staff Report for submission to the Planning Board. Since it has the potential to significantly impact ALPP properties, DPZ staff wanted to give the ALPB an opportunity to review and comment on the proposed legislation. Ms. Gowan explained that the proposed ZRA would eliminate the current 2% maximum coverage restriction for commercial solar facilities, as is currently provided for in the Conditional Uses subsection of Section 106.1.

Ms. Pruum elaborated on the proposal by stating that the ZRA would expand the Conditional Use that was previously passed in Comprehensive Zoning. Specifically, the ZRA amendment would increase the size from the current maximum of 2% coverage of the property, to up to 75 acres of the parcel. In addition, Ms. Pruum highlighted the newly added Section M of the ZRA, which states that the Board "shall review any conditional use petition which proposes a commercial solar facility on parcels which are in the ALPP prior to approval by the Hearing Authority."

Mr. Feaga stated that this program would be good for unproductive tracts of land. However, he voiced concern over the distance from the property to the nearest transmission lines. In order to connect to the closest substation to operate the solar facility, the new construction of transmission lines could exceed as much as \$1,000,000 per mile. Ms. Pruum stated that Council Chair Ball is cognizant of this issue, and recognizes that various criteria must be considered to determine how viable any particular site is.

Mr. Bauer commented that a percentage of the parcel would be a more appropriate constraint, rather than a flat acreage amount. He took issue with the idea of pristine farmland being used for solar production. The Board

agreed that this was an important concern, and that land with superior agricultural soils should be prioritized for agricultural production, and not the construction of a solar facility.

Ms. Pruum addressed this concern by stating that Council Chair Ball's Office has taken a global approach in researching practices of intercropping underneath solar panels. Although it can be done, she conceded that its success depends on a variety of factors (i.e. sun, shade, etc.). Ms. Moore found this statement to be idealistic from her experience in the farming industry. Ms. Burgess added that certain livestock could graze amongst the solar panels (i.e. turkeys, chickens, lambs, etc.).

Ms. Jones commented on the ZRA proposal by saying that there are two things to think about when considering a commercial solar facility: 1) the amount the County paid for the easement originally, which was partially determined by the percentage of prime and productive soils, and 2) the types of uses tangential to farming that are appropriate on preservation ground, and where should they be located to minimize conflict.

Ms. Moore asked whether the Board would have the opportunity to create criteria. Ms. Pruum stated that is how the ZRA is drafted, and that Dr. Ball is open to their comments. Ms. Levy asked for clarification as to whether the Board would be reviewing each application on a case by case basis. Ms. Pruum confirmed that the Board would offer recommendations on each application. Ms. Moore asked how much weight the recommendations would have. Mr. Lazdins answered by saying that the Board's recommendations would be included with DPZ's written testimony, so that their opinions would be heard before the Hearing Examiner made a final decision.

Ms. Moore asked whether their specific criteria could be included in the legislation. Ms. Pruum said that Dr. Ball wanted to keep things broad, but is open to other approaches. Board members expressed a variety of opinions as to how to proceed.

Ms. Jones commented that having bonds in place for full removal of the equipment is important if the solar company was to ever go bankrupt. Ms. Pruum stated that the ZRA draft addressed this issue under Section G.

Towards the end of the discussion, Ms. Moore summarized by stating that it would be worthwhile for the Board to create a policy that would outline specific criteria that would allow for a thorough evaluation of each application. Mr. Lazdins agreed that having criteria that evaluates environmental conditions (i.e. soils, topography, etc.) would further the goals of the Board and the ALPP. The Board agreed that they will move forward on drafting an official list of criteria during upcoming Board meetings.

3) Alternate Funding for the Storm Water Management Fee

Per Mr. Feaga's request, the proposed elimination of the Storm Water Management Fee was added to the meeting agenda. Mr. Feaga opened the discussion by stating that in lieu of the Fee, the transfer tax used in funding the ALPP has been proposed as a replacement for meeting State requirements for storm water management. Mr. Feaga opined that this proposed replacement of funds is not fair to the ag community since the farmers have been practicing good storm water management activities for a long period of time.

Mr. Feaga stated that the commercial sector in the County is complaining because of the financial burden they have incurred due to this fee. It was the general consensus of the Board that agriculture is contributing a much higher percentage of their individual profits toward this goal than the 20% annually that the commercial sector claims they are responsible for.

Ms. Pruum stated that Howard County faces two questions to think about when confronted with the proposed elimination of the Fee: 1) can the County meet MS4 Permit requirements without the contribution of private property owners, and 2) what incentives are there to help encourage storm water management stewardship by the general public.

The Board generally agreed that the current Fee structure should remain in place, and that commercial owners should be mandated to pay the amount like everyone else. They supported this viewpoint by claiming that farmers have been on the forefront of storm water and nutrient management long before other parties became involved.

Ms. Levy spoke of the financial situation of the ALPP, and how it related to the sourcing of the alternate funding for the Fee. Specifically, Ms. Levy mentioned that the bulk of the program's installment purchase agreements that were acquired in the early 1990s will start to become due in 2019. The disbursement for these payments is expected to last until 2024 or 2025. Once the majority of these obligations are paid off, ALPP funding will become more flexible for other purposes. However, at this time, she stated that diverting the funding should be done carefully, if at all.

4) Application of Neonicotinoids on Howard County Park Property

Ms. Levy described the policy written by the Howard County Department of Recreation and Parks which prohibits the application of the insecticide known as neonicotinoids, commonly referred to as neonics, on Howard County park property. Currently, agricultural operations that lease county park land are exempt. The Board members stated that they thought this policy is already in place and questioned whether it is being proposed as legislation. Mr. Brown cited that if the neonicotinoids prohibition were to become a bill, it would be a major concern for the agricultural community, because what starts as a prohibition on county property expands to include all property.

Ms. Moore commented on the neonicotinoids situation by noting the resistance factor that certain pesticides have on a species. She stated that having a broader range of choices of different pesticides helps to mitigate species resistance. Moreover, Ms. Moore expressed concern about the manner of application, which is handheld spraying at the individual's discretion. This method leads to a lack of calibration and moderation of the insecticide. Ms. Moore also commented that there are already significant regulations passed by the Environmental Protection Agency enforcing pollinator protection measures in the agricultural industry. Therefore, any additional regulation related to neonicotinoids is unnecessary.

Mr. Feaga moved to adjourn the meeting, which was seconded by Ms. Jones and carried unanimously. The meeting adjourned at 9:49 pm.



Joy Levy, Executive Secretary
Agricultural Land Preservation Board



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

March 28, 2016

Attendance:

Board Members: Lynn Moore, Chair
Jamie Brown
Mickey Day
Howie Feaga
Denny Patrick

Public: Mark Burchick, Environmental Systems Analysis, Inc.
Theresa Bethune, Freedom Broadband
Thom Bethune, Freedom Broadband
Michelle Cable, Administrator, Maryland Agricultural Land Preservation Foundation
Lee Fleming, Elm Lee Farm
Stephen Fleming, Elm Lee Farm
Katy Voss, Chanceland Farm
Sam Zantzing, Community Energy Solar, LLC

Staff: Amy Gowan, Deputy Director, Department of Planning and Zoning
Joy Levy, Program Administrator, Agricultural Land Preservation Program
Lisa O'Brien, Senior Assistant County Solicitor, Office of Law
Beth Burgess, Chief, Resource Conservation Division
Mitch Ford, Planning Technician, Agricultural Land Preservation Program

Ms. Moore called the meeting to order at 7:10 p.m. and conducted introductions.

Action Items

1) Minutes from the November 23, 2015

Ms. Moore called for the approval of the November 23, 2015 meeting minutes. Mr. Day moved to approve. Mr. Feaga seconded the motion, which passed unanimously.

2) Minutes from the February 17, 2016

Ms. Moore called for the approval of the February 17, 2016 meeting minutes. Mr. Feaga moved to approve. Mr. Patrick seconded the motion, which passed unanimously.

3) Request for Approval, Wetland Mitigation Easement, Rhodes Property, HO-03-02-PPSD; 55 acres (ALPB)

Ms. Levy read the staff report, stating that Mr. Frank Rhodes is the current owner of the subject property, which was placed in the Agricultural Land Preservation Program (ALPP) on February 12, 2003 by the Talley Family Limited Partnership, LLLP. The request is to create a wetland mitigation easement area, totaling 0.6 acres. The proposal also includes a forest planting of 100 1-inch caliper trees along the eastern boundary of the proposed wetland and an existing summer pasture. Most of the area subject to the request is currently in active cow pasture along a tributary of Cattail Creek in the Patuxent River watershed.

Ms. Levy stated that the property was evaluated by Patriot Land & Wildlife Management and Environmental Systems Analysis, Inc. (ESA) for its suitability for both wetland creation and forest conservation planting. According to Mr. Burchick, at present the site is active cattle pasture, situated on low ground in between Cattail Creek and an emergent wetland. The proposed mitigation plan will create a 0.6 acre wetland cell, directly abutting an existing emergent wetland, and within the cattle pasture. The site has relatively straight boundary lines, so that disturbance to the surrounding pasture is kept at a minimum. The proposed site contains Codorus and Hatboro Silt Loam soils, and has 0 to 3% grade slopes, creating a dipped floodplain. As a result of this topography, the site is very poorly drained, with water observed from 10 inches deep to the surface. Once the forested wetland has been planted, fencing will be constructed to keep livestock out of the new wetland area. Other agricultural best management practices may also be considered, such as stabilizing the soil at the southwest side of the concrete ford stream crossing. Mr. Burchick indicated in the mitigation concept plan that ESA has been coordinating with the Maryland Department of the Environment to ensure that state standards are met for this project prior to construction.

Ms. Levy referred to the Board's Wetland Mitigation policy regarding the creation of wetland areas on land that is encumbered with an ALPP easement, noting the requirement that any proposal be reviewed by the Soil Conservation District (SCD) to make sure that the amount of land suitable for pasture or cropping is kept to a minimum, and is justifiable based on sound management practices. Wes Earp with SCD reviewed the Board's policy and the plan proposed by Mr. Burchick, and has given his approval.

Ms. Levy stated that the Board's Forest Conservation Planting policy allows forest to be created on ALPP encumbered land along stream buffers, wetlands and their buffers and on steep slopes. According to ESA, the planting is to occur within the proposed and existing wetland and associated wetland buffers, so this part of the project would meet the second criteria. ESA has noted that the trees are a voluntary proffer that will serve to provide thermal closure to enhance the water quality of Cattail Creek. This creek is a naturally reproducing trout system, and the planting is an above and beyond measure to fully utilize this mitigation opportunity. ESA stated that although some areas of the planting may also fall within the first criteria due to them being within 100 feet of Cattail Creek, the vast majority of the work will fall under wetland buffers. Steep slopes are not applicable.

Ms. Levy noted that the land owner will receive compensation in exchange for allowing the perpetual 0.6 acre wetland mitigation easement. Mr. Rhodes is willing to sign a "Declaration of Restrictive Covenants" stating that the area in question must remain as a wetland and that this agreement will run with the land, whereby any future owner must abide by and adhere to the restrictions, and allow the created wetland to remain as a natural area, left undisturbed.

Ms. Levy reviewed the supplemental information of the staff report by explaining the map set provided by the Department of Planning and Zoning (DPZ), as well as schematic designs and information provided by ESA. Additional attachments included the Non-Tidal Wetland Mitigation (WM) Policy and the Forest Conservation Planting (FCP) Policy. Ms. Levy called the Board's attention to the elevation drawings provided by ESA that showed the existing and proposed conditions of the site. She noted that the perspective of the elevation view

clearly displayed the proposed changes in regards to the delineation between the current cattle pasture and the proposed wetland and forest planting areas.

Based on the proposal being consistent with the WM and FCP Policies, staff recommended approval of the proposed wetland mitigation easement on the Rhodes property.

Ms. Moore called for questions and discussion.

Ms. Moore asked for clarification on the soil excavation component of the project. Mr. Burchick explained that by reducing the current elevation by six inches, the ground would intersect with the existing groundwater table level of the nearby tributary. Essentially, the excavation would strengthen the annual water budget and sustain the wetland for the long term. Ms. Moore questioned the reasoning for using prime agricultural top soil in the wetland. Mr. Burchick explained that the top soil is important in supporting the success of the wetland over the initial five-year performance maintenance and monitoring period. Furthermore, organic soil is fundamental to the success and vitality of the new wetland vegetation. ESA would like to achieve a level of 5-8% organic soils, which is considered ideal for a wetland ecosystem.

Mr. Feaga asked where the extra soil was going to be placed. Mr. Burchick stated that the excess soil would be used on site to veneer the existing cow pasture to the east of the wetland mitigation area. Mr. Patrick agreed that the pasture to the east of the wetland site would be the best location for the excavated soil.

With no further discussion or questions, Mr. Feaga moved for approval, which was seconded by Mr. Patrick. The motion passed unanimously.

4) Request for Approval, Wireless Broadband System on Existing Silo, Fleming Property, 13-82-06e, 176 acres (APAB)

Ms. Levy read the staff report stating that the property is located on Watersville Road, just south of the Carroll County line. Shirley Fleming is the current owner of the subject property, which was placed in the Maryland Agricultural Land Preservation Foundation (MALPF) Program on May 20, 1985. The request is to create a wireless broadband antenna apparatus on an existing silo on the property, also known as a “silo mounted access point.” The proposal includes mounting two sector broadband antennas that would support a Backhaul Dish and Omni Unit. The proposed antenna structure will signal the nearby Century Water Tower in Mt. Airy, and strengthen the wireless broadband network of Western Howard County and surrounding areas. The silo structure that is subject to the request would remain operational for agricultural use once the antenna is mounted.

Per the Maryland Agricultural Code, §2-501, the legislative intent of the MALPF is “. . . to preserve agricultural land and woodland in order to: provide sources of agricultural products within the State for the citizens of the State; control the urban expansion which is consuming the agricultural land and woodland of the State; curb the spread of urban blight and deterioration; and protect agricultural land and woodland as open-space land.”

MALPF’s counsel has determined that the MALPF Board has the authority to allow nonfarm commercial uses as long as they have no effect on the property’s open-space land or its ability to produce agricultural products. In previous cases similar to the current request, it has been determined that the commercial use of a silo mounted antenna is permitted as long as it does not violate any of the preservation values described in §2-501. In particular, MALPF should insure that the antennae or equipment does not occupy a farm field or in any way interfere with the agricultural operation of the farm. Since the wireless apparatus will be mounted to an existing silo that will retain its agricultural function, it appears that the proposal will not interfere in any way with the farming operation on the property.

Per Section 128.0.E.4 of the Howard County Zoning Regulations, “Commercial Communications Antennas Attached to Structures,” the proposal on the subject property successfully meets the required zoning standards. In general, the existing silo structure and proposed antenna meet height and coloring requirements, and do not include any lights or signals. Overall, the proposed structure complies with the current Howard County Zoning Regulations for the Rural Conservation Zoning District.

Ms. Levy exhibited the schematic elevation of the proposed silo mounted access point by stating that the proposed site will be on the easternmost silo of the twin silos, adjacent to the existing barn on the property. The existing silo structure stands at 90 feet. Together, the silo and antenna equipment will total 94.56 feet.

Based on the proposal being consistent with the current Howard County Zoning Regulations and the history of approval for similar devices on MALPF properties, staff recommended approval of the proposed wireless broadband antenna on the Fleming property to the State Agricultural Preservation Advisory Board members.

Ms. Moore called for questions and discussion.

Mr. Feaga asked the representatives of Freedom Broadband about site access to the antenna. Ms. Bethune replied by stating that wireless broadband antennas require significantly less maintenance compared to that of a cellular tower. Additionally, Freedom Broadband would be the only party that would require access to the site. At most, a company truck or small work van would need access to the site in such a situation. Mr. Fleming added that the site can be accessed directly from the driveway, and that the road is in good condition.

Mr. Feaga asked about the size of the new service area that would be enhanced by the proposed silo mounted access point. Ms. Bethune explained that the new antenna would take advantage of the line-of-sight to the Century Water Tower in Mount Airy, strengthening the local network. At this time, Freedom Broadband does not know the exact coverage area that the new antenna will service due to the varying factors of radio frequencies and geography.

With no further discussion or questions, Mr. Feaga moved for approval, which was seconded by Mr. Brown. The motion passed unanimously.

5) Election, Chairman and Vice Chairman of the ALPB

Ms. Levy called the Board’s attention to their annual duty of electing a chairman and vice chairman for the 2016 ALPB term. Currently, Lynn Moore serves as Chairman and Ricky Bauer serves as Vice Chairman. None of the appointed members of the Board are set to expire this year.

With no further discussion or questions, Mr. Feaga moved for approval to keep the incumbents, which was seconded by Mr. Day. The motion passed unanimously. Ms. Moore accepted the position of Chairman of the Board for the 2016 term.

Discussion Items

1) Addendum to SB 236: Amendment to *PlanHoward 2030* to Amend the Growth Tiers

Ms. Gowan updated the Board on the revisions made to the proposed Growth Tiers Amendment. In summation, the addendum now states that all MALPF properties will remain in Tier IV. MALPF properties are no longer being designated as Tier III, as outlined in the previous proposal that was presented to the Board at the February meeting. All preserved properties in the Rural Conservation (RC) and Rural Residential (RR) Zoning Districts, and all land that does not have major subdivision potential will be protected under Tier IV. Properties that are

considered to have major subdivision potential are defined as unencumbered and are 21.25 acres or more. The properties of Bon Secours Conference Center in Marriottsville and The Shrine of Saint Anthony in Ellicott City will also be placed in Tier III, although it is not anticipated that they will be developed in the immediate future.

Ms. Gowan noted Exhibit B of the DPZ Technical Staff Report which listed all of the properties that would be impacted by the Tiers change. Specifically, the proposal calls for moving 49 properties from Tier IV to Tier III, yielding a net development potential of 293 units. Ms. Gowan also presented a new map of the proposed Growth Tier structure to the Board. Ms. Gowan informed the Board that the Department will be presenting the proposed amendment to the Planning Board on April 7, 2016.

Ms. Moore called for questions and discussion.

Mr. Feaga questioned the County's ability to make this Growth Tier change on individual parcels, rather than larger areas. Ms. Cable of the Maryland Agricultural Land Preservation Foundation (MALPF) commented that there have been instances where individual parcels are designated differently from their surroundings, despite the legislative intent of developing Growth Tier regions. Ms. Gowan explained that DPZ has been communicating with the Maryland Department of Planning (MDP) in developing the proposed change. If the new Tier structure is officially adopted by the County Council, the MDP Secretary will issue a formal comment on the proposed change. If MDP disagrees with the proposed change, a public hearing will take place on the State's comments.

Ms. Moore commented that she preferred the existing Growth Tier plan. She expressed her desire to minimize the impact of development, and maintain the agricultural dominance in western Howard County. Mr. Patrick added that the County must keep in mind the rights of farmers when contemplating the Growth Tier change. He stated that the recent mulching controversy illustrates how residential neighbors hinder the farmer's ability to use their property as they see fit to stay viable. He added that this is not a new problem, but additional neighbors will make it worse in the future. Mr. Feaga and Ms. Moore agreed that this is a major issue for the farming community.

Ms. Levy pointed to the Design Standards language in Sections 104 and 105 of the Zoning Regulations for the RC and RR Zoning Districts. The text encourages new cluster subdivisions to be designed in such a way that the potential adverse effects on existing farm operations are minimized. Mr. Feaga took issue with the term 'existing', since numerous farms change their operation from time to time. In general, the goal should be to increase flexibility for farmers, rather than for the residents. He closed by stating that this issue has been overlooked by the County for a long time and that it should be addressed.

2) Continued Discussion on ZRA 164: Zoning Regulations Amendment, Conditional Uses, Commercial Solar Facilities

Ms. Gowan updated the Board on the status of the proposed Zoning Regulations Amendment (ZRA) by stating that the current regulations do not allow commercial solar facilities on ALPP properties, but the ZRA would eliminate this restriction, allowing up to 75 acres of panels on encumbered ground. Ms. Gowan announced that the proposed ZRA will be presented to the Planning Board on April 28, 2016. Ms. Gowan reminded everyone that the ZRA was amended from its original form to include review authority by the ALPB.

Mr. Feaga commented that if the ZRA passes, the Board would like to review proposals for new solar operations on ALPP property early on in the approval process. The Board would then be able to provide guidance on the placement of the solar facility directly to the farmer, noting the importance of its impact on the surrounding farmland.

Ms. Gowan spoke in-depth about the anticipated submission procedures. A property owner in the ALPP who wishes to create a solar operation would submit a conditional use petition to DPZ. After Zoning staff reviews the request, it would be sent to the ALPB for evaluation. Using a set of criteria that has yet to be determined, the Board would make a recommendation to DPZ, perhaps about issues such as location and size of the facility. The Board's recommendation would be incorporated into the DPZ staff report, and would carry significant weight. However, the Hearing Authority would have the final say on any requests for commercial solar facilities on ALPP land.

Ms. Cable added that a few years ago, the State passed *HB 861/SB 259: Agricultural Easements – Renewable Energy Generation Facilities* that supported alternative energy on up to five acres of property in the MALPF program. She noted that the state regulations for these uses would be a good resource for the Board to use in developing their own criteria, and that they would be available for public comment by April 1, 2016. Ms. Cable noted that the State's criteria are based on characteristics such as footprint and location of the panels, as well as site access to the generating facility.

Ms. Burgess noted that it would be helpful to know the potential yield that is granted from the amount of acreage used for a solar facility. In regards to the MALPF limitation, Ms. Cable shared that MDA has found that five acres is insufficient for a standalone solar operation. Mr. Zantzing of Community Energy Solar, LLC agreed with Ms. Cable that five acres does not warrant a worthwhile solar operation. For now and the foreseeable future, a five acre facility generates the equivalent of 1 megawatt. As a result of this minimal production, most solar companies would not invest in constructing such a facility.

Mr. Zantzing spoke in detail about his industry and the science of solar technology, stating that on average, most companies will construct a solar facility on approximately 10 to 20 acres. The facility size is dependent on a variety of factors including the type of technology being used, the existing electrical infrastructure, and the site itself. He noted that Maryland currently has a market for solar electricity, proving the need for more facilities. Fundamentally, the sustainable nature of solar energy complements the State's goals and mandates for renewable energy.

Ms. Cable commented that the potential loss of the agricultural tax assessment should be considered when constructing commercial solar facilities on active farms. Mr. Brown stated that the balance between agriculture and solar on a property becomes an even greater issue with smaller farms where space is limited.

Ms. O'Brien stated that the Board could provide additional criteria concerning the acreage limitation by establishing a certain percentage of the farm that could be used in tandem with the current 75 acre maximum. Presently, the language does not have a percentage limitation, so in theory, a 75 acre farm could be used to construct a 75 acre solar facility.

Mr. Brown remarked that the proposed 75 acre maximum in the ZRA is excessive, especially given that there are numerous parcels in preservation that are less than 75 acres. Mr. Feaga stated his skepticism that a 75-acre solar farm could be achieved, due to the lack of electrical infrastructure needed to support the generated wattage. Mr. Zantzing agreed with Mr. Feaga's opinion by stating that it's very challenging for all of the requirements to be met when constructing solar facilities of that size. He reiterated that solar is largely based on the current electrical infrastructure, as well as the energy capacity that can be managed from the output.

Mr. Feaga stated that he supports the farmer having the opportunity to earn additional profit from solar generation, but at the same time he is concerned about too much tillable ground being covered with solar panels. He cited the similarity between constructing solar panels and constructing homes on farms in that both uses reduce agricultural potential. He supported granting the Board more discretion regarding the placement of solar panels, so that the agricultural operation would be the primary consideration.

Ms. Voss of Chanceland Farm noted that she has been considering a solar facility on her property in West Friendship. The proposed site would be a rectangular strip in between a horse track and Interstate 70. Depending on setback restrictions from the highway, the solar facility could be anywhere from 8 to 17 acres on her 191 acre farm. She explained that the solar company would still be interested in constructing the facility on only 8 acres if that were to be the case.

Moving forward, members of the Board still have the option to testify at the Planning Board meeting to voice their concerns about, or support for, the proposal. The Board decided that they will hold off on any policymaking decisions until the passage of the ZRA is resolved.

3) Discussion on Proposed Revisions to Section 15.518 of the Howard County Code

Ms. Gowan updated the Board on the proposed revisions to Section 15.518 of the Howard County Code that provide for the Board's responsibilities. She stated that generally, the Administration and DPZ are very supportive of the Board having a more active role in making recommendations on policy. Ms. Gowan asked the Board to clarify their intent in provision #5, which states: "Serve in an advisory capacity to the Department of Planning and Zoning on agricultural issues, including the evaluation of uses and/or reported violations on farms." She expressed her concern that there wouldn't be support for the Board to be involved with individual zoning cases.

Ms. Moore addressed this question by speaking from her own experiences as Chairman of the Board, and as a representative of the farming community. She referenced a violation hearing she attended where the atmosphere was intimidating and unbalanced from the farmer's perspective. This impression stemmed from the County's lack of familiarity with agricultural practices, and the farmer's lack of understanding of regulatory law. For example, what the County may deem as rubbish on a farm may in fact have utilization to the agricultural operation. Overall, this absence of agricultural background leads to unjust consequences when interpreting zoning violations.

Ms. Gowan noted that when it comes to Zoning Code enforcement, the Department must exercise extreme caution in sharing case information with others. If by chance a Code enforcement case goes to court, anyone who has had involvement in the case may be called in to testify.

Ms. Gowan asked the Board if there is a way that agricultural expertise could remain a component of the evaluation of the violation, but keep it outside the active state of a case. Ms. Moore suggested that the Board could highlight certain codes that could be considered as standard agricultural practices. Ms. Gowan noted that it would be better to interpret common issues in general, rather than individual cases. Ms. Moore agreed that a broader discussion on certain code language would be beneficial for both the farmers and the county.

Mr. Feaga stated that he would like to see the Board's role expand from just serving properties in preservation to the County's farming community in general. The Board could serve as a resource for farmers who have technical questions about their operations. Ms. O'Brien suggested that the word 'practices' be inserted after the word 'issues' in provision #5. This change would broaden the purpose of the Board's advisory capacity and their ability to comment on evolving agricultural practices in the future. The Board and Ms. Gowan agreed that this word change would be constructive. Ms. Burgess added that the Howard County Historic Preservation Commission regularly has residents come in for design advice, and that she could see a similar role being a positive component of the Board's future service.

Mr. Feaga commented on the proposed redaction to provision #7 of Section 15.518 which states, "Solicit donations of funds to be used in this program from all appropriate sources and to solicit donations of easements

on land.” He questioned the possibility of using surplus program funds to help individuals in the agricultural community, such as assisting with legal fees related to agricultural cases. Ms. O’Brien clarified that the money coming from tax sources must be used for its designated public purpose. She cited that a support network similar to the Farm Bureau would be better suited to serve the purpose suggested by Mr. Feaga. Ms. Levy asserted that there is no need for the provision, since the program does not require fundraising, and that it is not a responsibility of the Board.

Having the Board in agreement with the proposed changes to Section 15.518 of the Howard County Code, Ms. Levy concluded that revisions would be made based on the Board’s discussion and would be returned for comment over the next few weeks.

4) Program Updates

Ms. Levy provided an overview of program updates. She presented the Board with a chart and map that featured property acquisitions that have occurred since the current cycle began in 2013. There are currently five properties in the acquisition process. They include one applicant into the ALPP purchased program, three density sending parcels and one applicant into the State program. Since 2013, twelve properties have been settled, totaling 727.21 acres in preservation. Out of the twelve settled properties, eleven are ALPP and one is MALPF. Financially speaking, the total amount of county funds used in these acquisitions was \$26,924,727 out of the available \$55,406,832 in appropriated funds.

The chart also illustrates those properties that have been scored but have not moved forward for various reasons. There are several properties that are non-developable, a handful that are being developed instead of preserved and about 13 that haven’t pursued any option. Ms. Levy concluded by stating that the Program has seen a lot of activity during the past three years since the current cycle opened.

Mr. Feaga moved to adjourn the meeting, which was seconded by Mr. Brown and carried unanimously. The meeting adjourned at 9:43 p.m.



Joy Levy, Executive Secretary
Agricultural Land Preservation Board



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

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

June 20, 2016

Attendance:

Board Members:

Lynn Moore, Chair
Rickey Bauer, Vice Chair
Jamie Brown
Howie Feaga
Ann Jones

Public:

George "Chip" Doetsch, Jr.
George Doetsch III
Sang Oh, Talkin & Oh, LLP
Teresa Stonesifer

Staff:

Joy Levy, Administrator, Agricultural Land Preservation Program
Mitch Ford, Planning Technician, Agricultural Land Preservation Program

Ms. Moore called the meeting to order at 7:10 p.m. and conducted introductions.

Action Items

1) Revisions to Minutes from the meeting of February 17, 2016

Ms. Moore called for the approval of the February 17, 2016 meeting minutes. Ms. Jones moved to approve. Mr. Brown seconded the motion, which passed unanimously.

2) Minutes from the meeting of March 28, 2016

Ms. Moore called for the approval of the March 28, 2016 meeting minutes. Mr. Brown moved to approve. Mr. Feaga seconded the motion, which passed unanimously.

3) Request for Approval, Tenant House, Doetsch property, HO-90-04-E, 99.23 acres (ALPB)

Ms. Levy read the staff report, stating that George L. Doetsch, Jr. is the current owner of the subject property known as Marama Farm, which was placed in the Howard County Agricultural Land Preservation Program (ALPP) on June 15, 1990 by Albert & Virginia Spokes. The Spokes exchanged their lot rights per an amended deed of easement dated November 8, 1994, that provided for the right to a maximum of three unrestricted lots and four tenant houses. The deed was amended again on May 22, 1997 to release all three unrestricted lots. Mr. Doetsch purchased the property from Virginia Spokes on May 29, 2008. As the contract purchaser at the time, Mr. Doetsch was granted approval from the ALPB on April 14, 2008 to re-designate the existing dwelling as a

tenant house, in exchange for a new principle dwelling. Currently, Wanda and Billy Jones occupy the tenant house as the barn manager and horse trainer, while Mr. Doetsch lives in the new main house. Mr. Doetsch's son, George Doetsch III, is requesting a tenant house for his own use as the equine operation's part-time manager and breeder.

Ms. Levy stated that per Section 15.514 of the Howard County Code, the Board may approve the location of a tenant house after determining that the location minimizes any disruption of existing or potential future agricultural activities. 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. Marama Farm is primarily a thoroughbred horse breeding operation but also offers boarding, particularly for layup race horses. Mr. Doetsch III is requesting a tenant house for his personal use when he is on the farm and responsible for running it in his father's absence. Furthermore, Mr. Doetsch, Jr. travels extensively and is not available for the many day to day decisions and other farm management functions for long stretches of time.

Ms. Levy noted that the ability of Mr. Doetsch III to fill in while his father is gone will be impeded by his family's imminent relocation from Arnold to St. Michaels. Due to the need for Mr. Doetsch III to be on site, the applicant is requesting a relatively modest tenant house of about 2,060 square feet of living space. He is also proposing an additional 2,655 square feet of garage area that will be for farm equipment and personal vehicle storage.

Ms. Levy indicated that this request is a bit unusual in that typically tenant houses are requested for farm employees who are performing the manual labor for the operation, like the Jones couple on this property. However, the language in the Deed of Easement provides that this right extends to those who are "fully engaged" in the operation of the farm. The easement doesn't give much guidance as to what that encompasses the amount of time devoted to the operation, or to the range of acceptable responsibilities. In this case, Mr. Doetsch III is completely in charge of running the farm and managing the horse breeding operation in his father's absence, which can last as long as three months at a time. The proposed location is in keeping with the Board's general preference for the siting of tenant houses proximate to an existing farm lane and/or other residential or agricultural structures.

In closing, Ms. Levy explained that she has considered this request carefully and has decided to not make a recommendation. In support of approving the request to locate a tenant house, it is clear that while Mr. Doetsch III is in residence he will have a level of involvement that justifies the "fully engaged" requirement stated in the easement. On the other hand, this is a part time situation and raises the question as to whether an additional house is needed on the property. Ms. Levy requested that the Board members consider all of the facts of the request, ask questions of the property owner and make their own determination.

Ms. Moore called for questions and discussion.

Ms. Jones asked Ms. Levy whether there were any size limitations for garage space in tenant houses. Ms. Levy stated that no limitations currently exist for tenant houses on ALPP land.

Ms. Jones asked the applicant why the proposed tenant house was so far away from the agricultural operation. The proposed site for the tenant house is located north of the driveway, and is adjacent to the garage of the main house. Mr. Doetsch explained that the site was chosen so he could better assist his aging father in the coming years. Mr. Feaga, an equine operator himself, added that the proposed site is favorable due to the various vermin that can be found in the barn area.

Ms. Moore asked for clarification on Mr. Doetsch's future living situation, since his family is in the process of moving to the Eastern Shore. Mr. Doetsch replied by saying he will be living in Howard County five days out of the week. By doing this, he will be able to manage the horse breeding operation on site.

Mr. Brown stated that he found no issues with the proposed location, since the tenant house would be constructed within the woodland on the property, and away from the agricultural fields.

With no further discussion or questions, Mr. Bauer moved for approval, which was seconded by Mr. Brown. The motion passed unanimously.

Discussion Items

1) Program Updates

Ms. Levy informed the Board that the last property currently in the acquisition pipeline, Cattail Meadows, has not yet gone to settlement.

2) Council update – pre-filing of amendments to Section 15.518

Ms. Levy informed the Board that the pre-filing of the amendments to Section 15.518 would be pre-filed for the July 18, 2016 County Council meeting. **County Council consideration has been extended to September 2016.**

Questions from the Public

1) Commercial Solar Facilities & Agricultural Tax Assessment, Maryland Route 32 Widening

Teresa Stonesifer, a landowner in the ALPP, had a few issues she wished to discuss with the Board at the end of the meeting. She noted that she has received several inquiries from solar companies regarding her potential interest in having a solar farm on her property. She stated that even though the pending legislation has not yet been introduced to the County Council, it seems as though the solar companies are assuming it will pass and are contacting many farm owners. Ms. Stonesifer expressed concern about how agricultural properties will be assessed by the State Department of Assessment and Taxation (SDAT) if they elect to construct a solar commercial facility on their property.

Due to the fact that solar farms are a relatively new operation on preserved agricultural properties in Maryland, there has yet to be legislation and regulation to reflect the change. Moreover, Governor Hogan's veto of the *Clean Energy Jobs Act of 2016 (SB 921/HB 1106)* will most likely impede state agency regulation adjustments for solar energy on preserved land. The Board members agreed that SDAT probably doesn't know yet how to assess agricultural properties that include commercial solar facilities, and that the agricultural community will have to wait until the veto is overridden by the State Legislature.

In addition, Ms. Stonesifer informed the Board of the proposed condemnation of a portion of her farm from the Maryland Route 32 widening project. She noted that her property will be significantly impacted by the Frederick Road interchange with the new highway.

Mr. Feaga moved to adjourn the meeting, which was seconded by Ms. Jones and carried unanimously. The meeting adjourned at 8:52 pm.



Joy Levy, Executive Secretary
Agricultural Land Preservation Board



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

July 25, 2016

Attendance:

Board Members:

Lynn Moore, Chair
Rickey Bauer, Vice Chair
Jamie Brown
Howie Feaga
Ann Jones
Denny Patrick

Public:

Julia Dunn, Trustee, Iglehart Living Trust
David Godley, Southeast Construction Manager, Resource Environmental Solutions LLC
Thomas Iglehart
Chris Iglehart
David Patrick, Maple Dell Farm, Inc.
Carol Shelton
Luke Starks, Boy Scouts of America

Staff:

Joy Levy, Administrator, Agricultural Land Preservation Program
Lisa O'Brien, Senior Assistant County Solicitor, Office of Law
Beth Burgess, Chief, Resource Conservation Division
Mitch Ford, Planning Technician, Agricultural Land Preservation Program
Lindsay DeMarzo, Sustainability Projects Manager, Office of Community Sustainability
Phil Nichols, Executive Assistant to the Chief Administrative Officer

Ms. Moore called the meeting to order at 7:05 p.m. and conducted introductions.

Action Items

1) Minutes from the meeting of June 20, 2016

Ms. Moore called for the approval of the June 20, 2016 meeting minutes. Ms. Feaga moved to approve. Mr. Brown seconded the motion, which passed unanimously.

2) Request for Recommendation on Easement Acquisition, Iglehart Living Trust property, 29.62 acres (ALPB)

Ms. Levy read the staff report, stating that the property is located at 3844 Jennings Chapel Road in Woodbine. The farming operation on this property is primarily hay with a few horses. According to the Soil Conservation District, there is a current Soil Conservation and Water Quality Plan that is partially implemented. There is a

very high concentration of preserved land within a mile of the farm. The property is improved with a tenant house which is resided in by Thomas Iglehart, who farms the property. There is also a principal dwelling that is resided in by Thomas's son. There are many agricultural structures on the property. Overall, the property has met all of the eligibility conditions for an agricultural preservation easement.

Ms. Levy called the Board's attention to the attached application materials, including the standard map set (aerial, soils, and land preservation), property score sheet, and the separate score sheet for the Green Infrastructure Network (GIN), and noted that the property scored 55 (GIN) points. She also stated that the property has a very high concentration of preserved land within a mile. With no further remarks, Ms. Levy recommended approval of the property acquisition to the Board.

Ms. Moore called for questions and comments. Mr. Bauer inquired whether or not the neighboring properties facing Jennings Chapel Road were originally subdivided from the Iglehart property. Mr. Thomas Iglehart responded by stating that the frontage lots were subdivided by the previous landowner, and not during his family's ownership. He explained that his father purchased the property as a 55 acre parcel in 1969. Several years later, the state of Maryland purchased the southern end of the property abutting Triadelphia Reservoir as a way to protect the Patuxent River watershed.

With no further questions, Mr. Feaga moved to approve. Ms. Jones seconded the motion, which passed unanimously.

3) Request for Approval, Stream Restoration Easement, Patrick property, 13-80-06-Dex1; 91 acres (APAB)

Ms. Levy read the staff report, stating that Mary Patrick, along with her two sons, B. David and James, placed the farm in the Maryland Agricultural Land Preservation Foundation (MALPF) program on May 31, 1983. Mary and James have subsequently passed away. The farm is currently owned by David and his two sons, Denny and Michael. Previous requests include a child lot for Denny, and a lot around a pre-existing dwelling that is resided in by James's widow. The current request is to place a stream restoration overlay easement on approximately 15 acres along 6,182 linear feet of stream. The project will also include the selective harvesting of 10.6 acres of trees to establish new pasture, and the installation of 4,527 linear feet of new fencing around the pastures.

Maple Dell Farm is a 93-acre active dairy and row crop farm, one of three remaining dairy farms in Howard County. It is located on either side of Cattail Creek, within the Brighton Dam subwatershed of the Patuxent River. Two smaller channels merge on the northwestern portion of the farm to form the mainstem of Cattail Creek, which continues east through the farm directly to the Triadelphia Reservoir, a major drinking water source for over a half million residents in Montgomery, Prince George's and Howard counties.

Historically, the 190 dairy cattle would roam throughout the floodplain on the property, including having full access to nearly the entire length of the stream channel. They are currently limited to specific areas in compliance with relevant state laws. However, the damage to the stream over the years is irreversible without intervention. Because of the heavy use this land has seen, erosion is evident along the entire stream and heavy sedimentation is visible in the stream. The majority of the channel has no trees or vegetation lining the banks and averages a 4 foot eroded bank throughout the property. A few sections of the stream bank have been compacted and slope down to the stream where the cattle regularly accessed, wallowed or crossed. Significant levels of nitrogen and phosphorus enter the stream from waste while the cattle are in the stream and floodplain, as well as waste runoff from the adjoining pasture.

The cattle feeding areas are roughened concrete floors, which are scraped and cleaned according to the property's nutrient management plan. However, the ridges in the floor prevent full removal of manure and urine, which is then washed off during precipitation events into the stream.

Ms. Levy explained the different aspects and benefits of the proposal:

- 1) The project will fence cattle out of approximately 15 acres of floodplain, currently used as pasture. All in all, 13,560 linear feet of fencing will be constructed enclosing the cattle pasture areas and stream restoration easement area. Three cattle stream crossings will be improved and fenced off to prevent upstream and downstream access along the stream. Specifically, the stream crossings include one 40 foot wide ford crossing, one 35 foot wide ford crossing, and one 60 foot wide culvert crossing.
- 2) A new water system will be installed for the cattle to access clean water from troughs placed throughout the pastures. The service provider will install or provide funds for up to 7 watering stations for the cattle. In addition, the existing well on the farm will either be repaired or replaced.
- 3) Natural stream channel restoration of the entire 6,182 linear feet of stream and riparian wetland will include riffle grade controls and bank modification. Field areas adjacent to the stream and restored wetland will temporarily hold, infiltrate, and treat stormwater flow, restoring the groundwater table and hopefully returning the land to the original wetland hydrology.
- 4) A best management practice (BMP), likely a catch basin that will be pumped to the existing lagoon, will be installed northeast of the feed lot and barn area to intercept runoff from the concrete floors and greatly reduce nutrients entering the stream. Additionally, new roof gutters will be installed on the barn as a way to direct and mitigate stormwater runoff.
- 5) Native plant communities will be reestablished in the project area to create a stream buffer, reduce erosion, filter nutrients, and slow stormwater flowing to the stream. The restored wetland areas will support shallow vernal pool habitat.
- 6) Approximately 10.6 acres of timber will be thinned and cleared on the western boundary of the farm to create new pasture to offset the loss of pasture in the floodplain. This work will be responsibly undertaken with any required permits and consultation with local, state and federal agencies as needed. The steeper slopes will remain forested to prevent erosion and also provide shade. The remnants of timber, including the cut trees and stumps, will be utilized in the stream restoration work as much as possible. The thinned and cleared areas will be immediately stabilized with temporary and permanent pasture grasses and mulched.

Ms. Levy noted that if approved, the proposed work will be completed during 2017 and 2018 by Resource Environmental Solutions, LLC (RES). RES has coordinated project planning efforts with the Howard County Office of Community Sustainability (OCS) and the Howard Soil Conservation District (SCD). SCD has assisted RES by completing a baseline soil survey of the property. The Howard County OCS is the primary point of contact agency for RES and is responsible for ensuring that the project area will be protected by a perpetual easement.

Lastly, Ms. Levy reiterated that the subject property is encumbered by a MALPF easement, so this project must be determined by the MALPF Board to be consistent with their laws and policies. MALPF does not have a specific policy for a stream restoration overlay easement, so there has been discussion with MALPF staff and counsel about the applicability of other similar policies or laws to this project. The issue at hand is that the closest relevant type of easement, which is for forest conservation, has a 10 acre overlay maximum. MALPF's wetland mitigation policy has a 5 acre maximum. MALPF staff's position so far has been that the current proposal, which will affect approximately 15 acres of stream and stream buffer areas, is excessive relative to what their existing laws and policies allow. The County's position is that the forest and wetland mitigation guidance documents are not directly applicable to the proposed stream restoration easement for a number of reasons, including the fact that the stream restoration project is not for mitigation purposes. It is also important to note that the forest and wetland mitigation easements involve the removal of land from agricultural use,

whereas this project includes the stream, which as a water of the State, is not open to agricultural use. Consequently, the County has worked with several cooperating agencies to create guidelines, based on existing State and local law, and MALPF policies, which justify the use of stream restoration easement overlays on MALPF easements.

Ms. Levy explained the attachments to the Board, including the standard map set (aerial map, soils map, and land preservation map), a zoomed-in aerial showing the project specifications and limitations, a letter from County Executive Allan Kittleman to MALPF Director Carol West, a legal analysis produced by the Howard County Office of Law explaining the plausibility of the project given existing MALPF policy, and an internal memorandum from the Office of Community Sustainability to County Executive Allan Kittleman entitled, "Rationale of a Site Selection – Stream Restoration on Maple Dell Farm, Inc."

In closing, Ms. Levy recommended to the Board to recommend approval of the stream restoration overlay easement to the MALPF Board as presented as 15.0 acres and no less.

Ms. Moore called for questions and comments. Ms. Jones asked Ms. DeMarzo of the Office of Sustainability (OCS) about the County's intentions for TMDL (Total Maximum Daily Load) credit gained from the proposed project. Ms. DeMarzo explained that the County will be taking the credit for impervious acres treated only. At least 62 acres of impervious acreage will be generated from the project, and will be applied towards the County's MS4 (Municipal Stormwater) permit for the Urban Sector. Ms. Jones then asked if it would be possible in the future for the Patrick family to expand their operation under TMDL restrictions (i.e. add more dairy cows). Ms. DeMarzo responded by stating that decision would be decided by the Agricultural Sector, and that the County is only concerned with the stream restoration area.

Mr. Brown asked how much the County will be funding the project. Ms. DeMarzo stated that the County will be paying for the entire project. In addition, the contracting company, Resource Environmental Solutions LLC (RES), has contributed funds for fencing and land surveying. RES will also be contributing towards a cost-share for the BMPs (Best Management Practices) that will be installed on the property. Moreover, the OCS is hoping to finalize approximately \$700,000 from the Washington Suburban Sanitary Commission (WSSC). OCS has also been approached by the Maryland Department of Natural Resources (DNR) for contributing possible grant funding towards the project. Mr. Godley added that RES is planning to begin construction on the watering system, as well as salvaging the fallen wood from the June 21, 2016 tornado once the project is approved by the State.

Mr. Feaga asked Denny and David Patrick if they were in agreement with the project, to which they replied that they are. Mr. Feaga added that the Howard County Farm Bureau has endorsed the project. He elaborated by stating that MALPF needs to change their policies in order to reflect the federal regulations that are currently being imposed on farmers.

Ms. Levy stated that these types of stream restoration projects will become increasingly common in the coming years. Ms. DeMarzo concurred by adding that Howard County needs to treat approximately 2,000 impervious acres by 2019 in order to meet the MS4 permit, and that 70% of this impervious acreage is on private property. The Patrick farm will be the County's pilot project on private land.

Ms. Moore asked how the 62 acres granted from the project is counted towards impervious surface elsewhere. Ms. DeMarzo explained that the State has a number of expert panels that review stormwater treatment practices such as stream restoration, bio-retention ponds, rain gardens, and others. After thorough review of each project, the panel develops a number of ratios to calculate the impervious acreage treatment. For this case, the ratio is factored to be approximately 62 acres because the stream restoration spans 6,200 linear feet. Ms. DeMarzo highlighted that there are 105 acres of impervious surface upstream from the project that drains into Cattail

Creek. The Patrick stream restoration project will be treating quantity by slowing down the stormwater flow in the creek, as well as runoff nutrients coming from upstream.

Ms. Moore asked Mr. David Patrick if he is getting enough pastureland back from the project. Mr. Patrick stated that their farm does not need a large amount of pasture. He added that the new wooded pasture created from the project will be more than sufficient for the operation, as well as advantageous for their livestock.

Mr. Godley displayed a large-scale map of the project to the Board, explaining in detail all of the design aspects.

With no further discussion or questions, Mr. Brown moved for approval, which was seconded by Mr. Feaga. The motion passed unanimously. Mr. Denny Patrick recused himself.

Discussion Items

1) Program Updates:

1a) Changes to Moderate Income Housing Units (MIHU) & Agricultural Preservation Restricted Lots

Ms. Levy informed the Board about the new Howard County Moderate Income Housing Unit (MIHU) policy relating to agricultural preservation properties. Essentially, the MIHU is a requirement in the Zoning Regulations that states 10% of each residential development must be set aside for moderate income housing units. In 2013, the MIHU requirement was applied to the Rural Residential (RR) and Rural Conservation (RC) zoning districts. Since its implementation, the MIHU requirement has been applied to building permits for new homes in all subdivisions. This requirement has also been applied towards properties in the ALPP/MALPF that subdivide and construct housing on restricted lots (i.e. child lots, grantor lots). In this case, a fee-in-lieu has been assessed based on the square footage of the dwelling being constructed on the lot. This situation was brought to the ALPP Administrator's attention after communicating with a MALPF landowner in the process of subdividing a child lot. The landowner argued that MIHU should not apply to dwellings on restricted lots, since they are designated for specific individuals and are not saleable lots. The Departments of Planning and Zoning and Housing agreed with the landowner that ALPP/MALPF landowners should be exempt from the MIHU requirement (fee) when building dwellings on their own restricted lots.

Mr. Feaga asked if this fee exemption will still be applied to unrestricted lots. Ms. Levy stated that the MIHU requirement will continue to be assessed for building on unrestricted lots since they are considered market lots, and are not designated for a family member. Typically, the farmer doesn't pay the MIHU fee anyway, since they subdivide the lot and the purchaser of the lot is the one who builds the house. It is at the building permit stage where the fee-in-lieu would be paid.

1b) ALPP Property Acquisitions

Ms. Levy informed the Board about potential new ALPP acquisitions. Along with the Board's approval of the Iglehart farm, several other properties have shown interest in coming into the Program.

Mr. Brown inquired as to how many development rights the ALPP was actually purchasing on the Iglehart property, since it's only 30 acres. Ms. Levy responded that as a Tier IV property, it could achieve four cluster lots. Mr. Brown expressed his concern that we're spending a lot of money for a property with minimal development potential. Ms. Levy stated that the current eligibility criteria include minimum size and soil capability requirements, and that the property is developable. So even if there is the potential for only a few lots, the Code provides that the property is eligible for acquisition, assuming all other criteria are being met. There was then a discussion about whether applicant properties should be evaluated for eligibility based on their true development potential, rather than the current method of theoretical density based on property size. Ms. Levy

stated that with the Tiers system in place, the most any Tier IV property can achieve is four lots, regardless of size. She noted that historically, the ALPP didn't require property owners to incur the expense of engineering the farm to determine true development potential. She noted that she doesn't see this changing.

Ms. Moore asked if there have been property owners that have inquired about applying but have been turned down since the 2013 changes to the Program. Ms. Levy stated that there have been a few properties that don't meet the basic criteria that haven't been eligible to apply. She reminded the Board about several properties that have no development potential for one reason or another, and one property that didn't meet the soils criteria.

Mr. Bauer asked about the acquisition status of the Cattail Meadows property. Ms. Levy stated that the property is still on hold at the moment, because the landowner wants to change the terms of the Installment Purchase Agreement.

1c) Monitoring & Stewardship Program: Summer 2016

Ms. Levy informed the Board that the Monitoring & Stewardship Program is in its third summer with Adam Herod, Mitch Ford, and Kristal McCormick conducting inspections. At this point, just over 100 inspections have been completed by staff as of July 25th. Ms. Levy stated that approximately 50 ALPP purchased properties remain to be inspected, and that Mr. Herod will also be inspecting the ALPP dedicated easements. Ms. Levy stated that she has always done the MALPF properties, as required by state law.

Ms. Jones inquired about the general status of the recent inspections. Ms. Levy stated that they've been going well so far. The most common problem encountered by staff is out-of-date Soil Conservation & Water Quality (SCWQ) plans. The SCWQ plans need to be less than ten years old to be considered current, and updating it is simple. All the landowner needs to do is contact Ms. McCormick.

Ms. Levy added that only a few properties have had issues regarding excessive debris and trash. Staff inspected these properties primarily due to complaints filed by community members. By and large, the debris ranges from scraps of rusted metal, oil drums, unlicensed vehicles, and other similar items. Ms. Burgess stated that the Department's goal is to see incremental progress shown by the landowner in removing the debris and trash during a six month cleanup period.

1d) County Council hearings: Section 15.518 of the Howard County Code, Zoning Regulations Amendment 164: Commercial solar facilities

Ms. Levy informed the Board that the changes to Section 15.518 of the Howard County Code have been pushed back by the County Council to the September session. Mr. Feaga inquired about the status of the County Council hearing for the Zoning Regulations Amendment that would allow commercial solar facilities on ag preservation properties. Ms. Levy told the Board that the bill has not yet been introduced, but she believes it will be sometime this fall.

1e) Agricultural Preservation budget changes

Ms. Moore asked if any funding has been shifted towards funding the Stormwater Remediation Fee. Ms. Levy replied that there was legislation that went through in June 2016 that allocated one million dollars from the ALPP budget, which would be redirected towards the Stormwater Remediation Fee for Fiscal Year 2018. Ms. Levy explained that DPZ has made the case to the Administration and the County Council that the ALPP budget needs to be managed cautiously due to the large number of installment purchase agreements coming due starting in 2019 through 2024 for the large number of acquisitions purchased from 1989 to 1994.

Ms. Moore expressed her frustration that the Board wasn't notified about the legislation before it went through the County Council. Ms. Levy replied that she was unaware of the proposal. Ms. Moore stated her concern regarding the lack of communication from the County to the Board on matters that affect the Program.

1f) Howard Ag

As a way to increase communication of information to the Board, Mr. Ford announced that the *Howard Ag* newsletter is in the process of being revived and distributed to the agricultural community. Additionally, the Department is working on establishing a Facebook page for the newsletter, so information can be shared quickly through various forms of technology. Ms. Levy also announced that the ALPP webpage has been updated with new information and resources.

2) Deed of Easement language regarding inspections

Ms. Moore began a discussion of the inconsistent language in the Deeds of Easement (DOE) regarding the County's right to inspect ALPP properties over time. Ms. Levy stated that most of the DOEs have language which very explicitly gives the County the right to inspect, however the ones that were written between 1989 and 1992 have language that is not as straightforward. During this timeframe, the documents state that the property must be managed in accordance with sound agricultural practices, and give the County the right to seek an injunction and/or monetary damages if the integrity of the farm is compromised.

Ms. Moore stated that the inconsistencies between the different DOEs are confusing, and she asked if something can be done to eliminate them. Mr. Feaga stressed that it is important to recognize that the DOEs are individual contracts with individual owners. He stated that even though the basic language evolved over time since the program's inception, it's the contract that dictates what happens with each property. Mr. Feaga and Mr. Brown both indicated that they wouldn't want to change their DOEs because that is what was signed when they entered the Program years ago, and that it may or may not be to their advantage to change to current provisions.

Ms. Moore stated that she is uncomfortable with the fact that there is so much interpretation built in to the process of how the program is implemented. There was discussion about the relative benefits of flexibility versus a strict interpretation of the DOE, regarding inspections and other aspects of the ALPP, such as permitted uses. Mr. Feaga noted that even though he falls within the implied language time frame, he chose to have his farm inspected, but that he understands, why Mr. Bauer, for example, did not, based on the problems he has had with neighbors trying to dictate how he uses his farm. Mr. Brown disagreed, suggesting that a property inspection would help alleviate neighborhood tension since it legally confirms compliance with County regulations. He went on to say that he did not understand how denying the County the right to perform an inspection would help the landowner.

Mr. Bauer agreed with Mr. Feaga's opposition on the issue. He noted an analysis he performed on the conflicting DOE language several years ago with his attorney. They concluded that the right to inspect is not legally binding across the spectrum, and that the 1989-1992 DOEs only allow access if there's been a complaint. Furthermore, Mr. Bauer stated that he disapproves of the public having access to his property information through ALPP records, as well as having photographs taken on site during inspection. Mr. Feaga remarked that Mr. Herod has only taken photographs when unsure of a property issue. Ms. Burgess asserted that the Monitoring & Stewardship team has been very patient and cooperative with the agricultural community.

Ms. Levy read the DOE language for the 1989 to 1992 time period:

“The Grantor shall manage the Land in accordance with sound agricultural soil and water conservation practices so as not to substantially reduce the agricultural value of the land by use of practices unacceptable to the Department of Agriculture or the Maryland Department of Agriculture; provided, however, that if Grantor ceases to own the Land, the obligations of this paragraph D (2) are enforceable only against the owner of the Land responsible for violating the obligations. The County shall be empowered to seek an injunction in circuit court to halt any such practice and to seek monetary damages of up to twenty-five (25) percent of the value of Development Rights.”(Deed of Easement Section D, subsection 2)

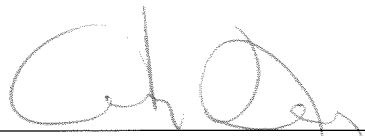
There was extensive discussion about the meaning of this provision and if it allows proactive monitoring or only complaint driven inspections. The frustration among the Board members is that the County is interpreting this ambivalent language in its favor regarding its right to inspect. Ms. Levy stated that the whole goal is simply to provide good stewardship on a regular basis.

Mr. Brown and Ms. Jones both commented that the lack of systematic inspections over the years has hampered the County’s authority of inspection enforcement of ALPP properties. Ms. Levy agreed that property inspections have only occurred a few times during the course of the program, mostly due to the lack of administrative support. Ms. Levy noted that the stewarding of easements has become an important topic nationwide, and that other jurisdictions and non-profits have been in a similar situation to us, where most of the effort has been focused on acquisition and monitoring has been neglected. She stated that without regular monitoring of preservation easements, the value of the investment can become questioned and easily threatened.

Mr. Feaga noted that the Soil Conservation & Water Quality (SCWQ) Plan should suffice in terms of the need for monitoring on the farm. Ms. Levy noted that although the DOE requires an updated Plan, what it contains is voluntary. Also, there are items that the ALPP inspection that are not covered in the SCWQ Plan.

Ms. Moore restated her frustration at a process involving so much interpretation. She cited the meeting where two County attorneys disagreed over how the Code and DOE should be interpreted regarding the use of an ag preservation property. Mr. Feaga reiterated his opinion that the 1989-1992 language can’t be interpreted to provide the right to inspect. Ms. O’Brien stated that the County’s view is that there is a right to inspect ALPP properties through the DOE language and Section 15.513 of the Howard County Code, but how that relates to individual properties remains to be seen.

Mr. Bauer moved to adjourn the meeting, which was seconded by Ms. Jones and carried unanimously. The meeting adjourned at 9:28 pm.



Joy Levy, Executive Secretary
Agricultural Land Preservation Board



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

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

August 22, 2016

Attendance:

Board Members:

Lynn Moore, Chair
Rickey Bauer, Vice Chair
Jamie Brown
Mickey Day
Howie Feaga
Ann Jones
Denny Patrick

Public:

Pat Pitrone, RE/MAX Advantage Realty Westminster
Bruce Pickett, Trustee, Stanley M. Pickett Revocable Trust
Mark Pickett, Stanley M. Pickett Revocable Trust

Staff:

Joy Levy, Administrator, Agricultural Land Preservation Program
Amy Gowan, Deputy Director, Department of Planning & Zoning
Mitch Ford, Planning Technician, Agricultural Land Preservation Program

Ms. Moore called the meeting to order at 7:10 p.m. and conducted introductions.

Action Items

1) Minutes from the meeting of July 25, 2016

Ms. Moore called for the approval of the June 25, 2016 meeting minutes. Mr. Feaga moved to approve. Ms. Jones seconded the motion, which passed unanimously.

2) Request for Recommendation on Easement Acquisition, Stanley M. Pickett Revocable Trust property, 109.86 acres (ALPB)

Ms. Levy read the staff report, stating that the property is located at 755 East Watersville Road in Mount Airy. The farming operation is primarily row crops and hay. According to the Soil Conservation District, there is a current Soil Conservation and Water Quality Plan (SCWQ) that is not fully implemented. There is a high concentration of preserved land within a mile of the property. The farm is rented out and there is a very high percentage that is in active agricultural use. The property is improved with two dwellings, a 1998 rancher and the original farmhouse, which is in tear down condition. There is no Green Infrastructure on the property.

Ms. Levy called the Board's attention to the attached application materials, including the standard map set (aerial, soils, and land preservation), and property score sheet. With no further remarks, Ms. Levy recommended approval of the easement acquisition.

Ms. Moore called for questions and comments. Ms. Jones complimented the property for its prime soils, large size, and traditional farming operation. Mr. Feaga asked about the 20 points related to tenant house rights. Ms. Levy explained that there is currently one tenant house on the property, leaving the potential for three additional tenant houses. She stated that the landowners have decided to relinquish two of the three tenant house rights. As a result, they receive 20 extra points in the scoring and will have the potential for one more tenant house. She stated that the property owners have elected to keep the parcel division rights, which explains why they have zero points in that category.

Ms. Moore made a request to the landowner to fully implement the partially completed SCWQ Plan in order to proactively safeguard the farm's soils.

With no further questions, Ms. Jones moved to approve. Mr. Feaga seconded the motion, which passed unanimously.

Mr. Bauer inquired as to whether a creditor can put a lien on an agricultural preservation property. Ms. Jones stated that a subordination agreement must be completed by any lienholder before settlement on the ag easement. Ms. Levy agreed and noted that this establishes the easement's superior position in title should a property foreclose. She went on to state that the Pickett family is hoping to sell the farm before the end of 2016, and that the easement agreement will be with the future owner.

2a) Motion to permit staff changes to easement acreage based on the existing cell tower on the Pickett property without the Board's approval

Mr. Patrick pointed out that there is an existing cell tower on the Pickett property, and inquired whether this would have an impact on the total easement acreage. Ms. Levy stated that she had missed this information on the application and that the existing tower site would most likely have to be excluded from the easement. She noted that typically, the easement is already in place and then an owner requests permission to have a tower, in which case there is a specific provision in the Ag Code that allows for the release of up to one acre for what is considered a public interest use. She indicated that she would speak to the ALPP attorney to confirm whether an existing tower on an incoming easement property needs to be excluded up front. If so, she stated that the acreage would need to be recalculated and the score sheet would need to be revised.

Ms. Jones introduced a motion to permit staff to revise the total easement acreage to account for the existing cell tower site on the Pickett property, without the need for the Board's approval. The motion was seconded by Mr. Feaga, and passed unanimously.

Discussion Items

1) Program Updates:

1a) Ag Board News

Mr. Ford circulated a new handout for the Board entitled "*Ag Board News*". He stated that this one-page document will serve as a newsletter for the ALPB, providing important program updates for each meeting. *Ag Board News* will contain recent news about the ALPP, relevant legislative items and agricultural community events. For the August issue, *Ag Board News* highlighted recent property acquisitions into the Program since the cycle began in 2013.

Ms. Moore praised the newsletter for providing a beneficial map showing recent acquisitions. She noted that this type of map could prove useful in encouraging other farmers to come in to the ALPP. Ms. Levy remarked that there are approximately 10 to 15 properties that have been scored, but have not applied to the Program. Ms. Levy stated that she would reach out to these landowners to see if perhaps they are still interested. Ms. Jones added that it would be advantageous to send program information out to all the remaining uncommitted property owners, as a way to boost interest in agricultural preservation across the county.

1b) Analyzing the ALPP

Ms. Moore initiated a discussion regarding several aspects of the ALPP, which was inspired by her experience on the Mulch Task Force. She stated that there was a lot of misunderstanding amongst Task Force members about the Program and she would like to take a proactive approach in ensuring that the Board and the County are on the same page. Ms. Moore raised three key questions to formulate the conversation:

- 1) What rights does the County purchase when a property comes into the ALPP?
- 2) Where does the funding come from for the ALPP?
- 3) What does the future hold for the ALPP?

Ms. Moore stated that as spokespeople for the farming community, the Board members are often questioned about various issues pertaining to the ALPP, and she wants to be able to accurately and adequately respond.

Rights Purchased by the County

Ms. Levy distributed an analysis that Ms. Moore had requested comparing certain language within the Deeds of Easement (DOEs) over time. The two DOE sections pertained to the development rights that are relinquished when a property owner enters the ALPP, and also how agricultural uses are defined. Ms. Levy stated that the primary relinquished right is to develop the property for purposes other than agricultural uses, which are generally described in the DOE, but are more specifically enumerated in Section 106.1 of the Zoning Regulations (ZRs). Ms. Levy summarized that the language itself has remained fairly consistent over the years, even though the DOE form differs stylistically.

Ms. Moore inquired if the DOEs are revised when changes are made to the permitted uses. Ms. Levy explained that the DOEs are not amended, but revisions and updates to the ZRs govern the scope, scale and conditions under which certain uses can occur. Ms. Moore then asked if the DOE is considered updated when changes are made to the ZRs. Ms. Levy stated that the ZRs expand upon the DOE language.

Mr. Day asked if the County can add or restrict a use. Ms. Levy stated that either is a possibility, but that over the course of the Program's history, the overall direction has been to increase the number and types of uses available to farmers to help them stay economically viable. She noted that during the Comprehensive Rezoning process, which occurs every ten years, staff attempts to examine trends in farming so that the new uses that are added to the ZRs include not only what farmers are currently doing, but what they may be transitioning into in the future. She noted that it is also an opportunity to add activities the farmers are already doing that are new since the last Comp Zoning update, using Community Supported Agriculture as an example. She noted that it is rare to have a use added to the ZRs and then subsequently prohibited, like what happened in the mulching situation.

Program Finances

Ms. Moore noted that she's not sure how the Program is funded, and she believes there are misconceptions in the non-farm residential community as well. She expressed her concern that if the perception is that tax dollars fund the program, then non-farm neighbors will believe they have partial ownership of preserved properties and

can dictate how those properties are used. She noted that there were heated discussions on this topic during the Mulch Task Force meetings and she felt at a disadvantage without full knowledge of the facts.

Ms. Levy clarified by stating the Program has been funded by a portion of the local Transfer Tax since its inception in 1984. The ALPP receives a quarter of the 1% tax on any property sale, which includes residential, commercial, or industrial parcels throughout the county. Ms. Levy indicated that the remainder is divided up between other programs/agencies, but she wasn't sure of who gets what. Ms. Jones requested that she investigate that and report back.

Mr. Feaga commented that the transfer tax was originally created to make the County a better place to live. Ms. Levy added that the Program's funding system was a very innovative approach for preserving farmland at the local level. She noted that many other Maryland counties only participate in MALPF, due to the lack of a local dedicated funding source. Ms. Levy noted that Howard's funding mechanism is development paying for preservation. Ms. Jones commented that Howard County has a lot to be proud of when it comes to farmland preservation.

Mr. Brown asked about the origins of the Installment Purchase Agreement (IPA). Ms. Levy responded that from 1984 to 1989, payment was given in cash up front, and then the IPA began in 1989. This structure became a very effective method for both the County and participating landowners, since the funding was distributed over time and allowed the County to leverage funds into the future while acquiring easements in the present.

Future of the Program

Mr. Bauer expressed concern about neighbors trespassing on his land, stating that they don't understand that it's private property. He reiterated Ms. Moore's opinion that these same people feel entitled to have a say as to how private property is used. Ms. Levy recognized that there is a disconnect between residential neighbors and farmers. However, there have been numerous educational programs to help address this issue, such as the Howard County Fair, the Farm City Celebration, and Farm Academy. Mr. Brown noted that there needs to be a diverse and varying attendance at these education events in order for them to be truly effective.

Ms. Levy asked the Board what tactic should be taken for establishing an agricultural educational dialogue with the community, and who should be responsible for this effort (i.e. the County or farmers). Mr. Brown stated that the homeowner associations should be approached first, and that both the County and the farmers should undertake the engagement. He noted that programs like the Farm Academy are a good start, but the audience tends to be farmer friendly already. The people that need the outreach the most aren't getting it.

Ms. Moore commented that it would be proactive to use newspaper and social media outlets as a way to improve communication about agricultural preservation. Ms. Gowan stated that the Kittleman Administration is working on improving these communication issues through the creation of the new Agricultural Liaison position, and an Agricultural Cabinet. The new position and cabinet will be a beneficial approach in unifying all of the key players and agencies involved with agriculture in the County.

Ms. Moore moved to adjourn the meeting, which was seconded by Ms. Jones and carried unanimously. The meeting adjourned at 8:28 pm.

Joy Levy, Executive Secretary
Agricultural Land Preservation Board



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

November 28, 2016

Attendance:

Board Members:

Lynn Moore, Chair
Rickey Bauer, Vice Chair
Jamie Brown
Mickey Day
Howie Feaga
Ann Jones

Public:

Michael Calkins, Howard Soil Conservation District
Tim Dertzbaugh, Bluefin Solar
Joseph M. Kelly, Sun East Development
Sharon Sachs, Many Blessings Farm
Leslie Apgar
Gina Dubbé

Staff:

Joy Levy, Administrator, Agricultural Land Preservation Program
Amy Gowan, Deputy Director, Department of Planning & Zoning
Lisa O'Brien, Senior County Solicitor, Office of Law
Beth Burgess, Resource Conservation Chief, Department of Planning & Zoning
Mitch Ford, Planning Technician, Agricultural Land Preservation Program

Ms. Moore called the meeting to order at 7:10 p.m. and conducted introductions.

Action Items

1) Minutes from the meeting of August 22, 2016

Ms. Moore called for the approval of the August 22, 2016 meeting minutes. Mr. Feaga moved to approve. Mr. Day seconded the motion, which passed unanimously.

2) Request for Recommendation on Easement Acquisition, Sachs property, 20.56 acres (ALPB)

Ms. Levy read the staff report, stating that the property is located at 1401 Woodbine Road in Woodbine. There is a small horse boarding operation on this property that is run by the owner. According to the Soil Conservation District, there is a current Soil Conservation and Water Quality Plan that is fully implemented. There is a very high concentration of preserved land within a mile of the farm and a high percentage of the land is in pasture. The property is improved with a principal dwelling that is resided in by the owner. The application meets all eligibility criteria for acquisition of an agricultural preservation easement. Staff recommends approval.

Ms. Moore called for questions and comments. Mr. Feaga asked what type of easement is located south of the property. Ms. Levy stated it is an environmental preservation parcel owned by the Murray family.

With no further questions, Mr. Feaga moved to approve. Mr. Day seconded the motion, which passed unanimously.

Discussion Items

1) Program Updates:

1a) Transfer Tax Fact Sheet

Mr. Ford circulated a fact sheet handout detailing the transfer tax, at the request of the Board from the August meeting. In addition to describing the background of the tax, the fact sheet also explained the local transfer tax appropriations breakdown. Specifically, the ALPP receives 25% of the tax income, while the rest is designated for the Board of Education (25%), Department of Recreation & Parks (25%), Fire & Rescue Services (12.5%) and the Department of Housing & Community Development (12.5%).

Ms. Moore praised the fact sheet for its clear interpretation of the tax, and how each designated source is distinguished from the other.

1b) 2017 Agricultural Land Preservation Board Meeting Schedule

Mr. Ford confirmed the Board's receipt of the 2017 ALPB Meeting Schedule. Ms. Levy added that the 2017 schedule is also available online on the ALPB's webpage at:
<https://www.howardcountymd.gov/Departments/Planning-and-Zoning/Boards-and-Commissions/Agricultural-Preservation-Board>.

1c) Council Update on Cattail Meadows, Iglehart, and Pickett Property Acquisitions

Ms. Levy informed the Board that the County Council heard staff testimony at the November 21 public hearing for the Cattail Meadows, Iglehart, and Pickett properties. The final vote for the properties will occur Monday, December 5. The Sachs property will likely go to Council early next year.

1d) Departmental Updates on ZRA 160 NWWR/Composting, SB 236-2013 Growth Tiers Amendment

Before beginning the main discussion of the evening on commercial solar, Mr. Feaga asked Ms. Gowan about the status of ZRA 160: Natural Wood Waste Recycling (NWWR) "Mulching/Composting". Ms. Gowan stated that the ZRA is currently on hold due to DPZ's heavy workload and the Planning Board's docket. The ZRA will most likely not be going to Planning Board before February 2017.

Ms. Gowan commented that she will present a debriefing of DPZ's technical review of the ZRA for the ALPB, prior to the Planning Board hearing. Ms. Moore asked if the Planning Board will review the subject over multiple meetings. Ms. Gowan stated that it will most likely require multiple meetings, but it depends on public attendance and testimony.

Ms. Jones inquired about the status of the SB 236-2013 General Plan Amendment to the County's Growth Tiers. Ms. Gowan commented that the Growth Tiers amendment will be brought to Council early next year. She explained that DPZ made amendments to remove 11 properties that are included in the Upper Patuxent Watershed Rural Legacy Area. The amendment seeks to move several dozen properties from Tier IV to Tier III, granting them the ability to develop into a major subdivision.

2) Discussion on Review Criteria for Commercial Solar Facilities on ALPP Properties

Law Review

Ms. Gowan reviewed the legislation, *CB 59-2016 Commercial Solar Facilities*, in particular Councilwoman Sigaty's amendment (Amendment No. 2) detailing the Board's review process, as well as their criteria in assessing commercial solar facilities on ALPP land. Ms. Gowan began by emphasizing the Board's primary role outlined in Section M.1, where:

CB 59-2016, Amendment 2 (Section M, subsections 1-5):

M. THE HOWARD COUNTY AGRICULTURAL LAND PRESERVATION BOARD SHALL REVIEW ANY CONDITIONAL USE PETITION WHICH PROPOSES TO BUILD A NEW COMMERCIAL SOLAR FACILITY ON PARCELS WHICH ARE IN THE AGRICULTURAL LAND PRESERVATION PROGRAM PRIOR TO APPROVAL BY THE HEARING AUTHORITY. PRESERVATION PROGRAM PRIOR TO APPROVAL BY THE HEARING AUTHORITY IN THE FOLLOWING MANNER:

(1) PRIOR TO SCHEDULING AND CONVENING A PRESUBMISSION COMMUNITY MEETING PURSUANT TO HOWARD COUNTY ZONING REGULATIONS SECTION 131.0.F.1, THE PETITIONER SHALL SUBMIT A PROPOSED CONDITIONAL USE PLAN FOR A COMMERCIAL SOLAR FACILITY ON A PARCEL OR PARCELS IN THE AGRICULTURAL LAND PRESERVATION PROGRAM TO THE HOWARD COUNTY AGRICULTURAL LAND PRESERVATION BOARD FOR ADVISORY REVIEW AS TO WHETHER THE SITING OF THE COMMERCIAL SOLAR FACILITY ON THE PARCEL OR PARCELS SUPPORTS THE PRIMARY AGRICULTURAL PURPOSE OF THE EASEMENT PROPERTY OR IS AN ANCILLARY BUSINESS WHICH SUPPORTS THE ECONOMIC VIABILITY OF THE FARM.

In essence, the Board will need to make one of two findings when reviewing requests for commercial solar facilities. They must justify: 1) whether the siting of the commercial solar facility on the parcel or parcels supports the primary agricultural purpose of the easement property, OR 2) whether the commercial solar facility is an ancillary business which supports the economic viability of the farm. Ms. Gowan suggested that the Board could use certain physical and economic criteria in evaluating the findings needed in order to reach a recommendation of approval or denial of a proposal.

Ms. Gowan read the rest of Section M, where additional legal requirements were outlined:

(2) THE MATERIALS SUBMITTED FOR REVIEW SHALL INCLUDE, AT A MINIMUM, A COPY OF THE AGRICULTURAL LAND PRESERVATION PROGRAM EASEMENT, A COPY OF THE HOWARD COUNTY SOIL CONSERVATION AND WATER QUALITY PLAN, AND A COPY OF THE PROPOSED CONDITIONAL USE PLAN.

(3) THE BOARD'S ADVISORY REVIEW SHALL BE IN WRITING.

(4) THE PETITIONER SHALL MAKE THE BOARD'S ADVISORY REVIEW AVAILABLE AT THE PRESUBMISSION COMMUNITY MEETING.

M.2) These are the minimum materials required from the petitioner. The Board can ask for additional materials, if desired.

M.3) The Board's advisory review can be completed in the form of a motion.

M.4) The ALPB will be the first step in the process, prior to the pre-submission community meeting.

Ms. Gowan continued to explain the rest of the process outlined in the legislation. Once the pre-submission community meeting is held, the petitioner will have one year to submit a plan to the County. After receipt by DPZ, a technical review of the proposal will be conducted. Lastly, the Hearing Examiner will make the final decision, taking into account the recommendations of the Board, DPZ, and members of the community.

Ms. Gowan ended with Section M.5, which details the Department's role in evaluating the ALPB's review of the proposed commercial solar facility:

(5) THE DEPARTMENT OF PLANNING AND ZONING'S TECHNICAL STAFF REPORT ON THE PETITION SHALL INCLUDE AN EVALUATION OF AND A RECOMMENDATION ON THE BOARD'S ADVISORY REVIEW OF THE PETITION AND SHALL INCLUDE AS ATTACHMENTS THE BOARD'S ADVISORY REVIEW AND A COPY OF THE AGRICULTURAL PRESERVATION EASEMENT."

Mr. Feaga posed the question of whether or not harnessing solar energy is an agricultural endeavor. He also inquired how the State Department of Assessments and Taxation (SDAT) will assess farms that participate in commercial solar activity. Ms. Gowan replied that DPZ would most likely not evaluate a commercial solar facility as an agricultural use. She also indicated that she couldn't speak for the State regarding property assessments.

Mr. Brown inquired whether the portion of ALPP land being used for a commercial solar facility would be released from the easement, in a similar manner as cell towers. Ms. Levy stated that the ALPP law doesn't currently provide for the release of anything greater than one acre and it must be for a public interest use. She stated that it would require legislation to amend these provisions.

Map Analysis

Mr. Ford presented two maps to the Board to help facilitate the discussion. The analysis studied a projected commercial solar facility access area in the Rural West, alongside soil classification analysis map of the same access area. Based on industry research, Mr. Ford outlined several major road arteries that have the infrastructure needed to support larger solar facilities (20+ acres). A 1 mile buffer surrounding the road corridors was created, due to the high costs of constructing electrical wiring (~\$1M/mile). This particular study only focused on an area that would be serviced by the Baltimore Gas & Electric Company (BGE). Overall, the analysis included much of the north-central part of the county surrounding the major roads of Route 32, Route 97, Route 99, Route 144, Folly Quarter Road, and Sheppards Lane.

Mr. Calkins explained the map depicting the different soil classification areas included in the projected area. The map featured soils from Class I, Class II, and Classes III & IV. Classifications were determined based on agricultural productivity and profitability, where Class I is seen as the most productive and Class IV is seen as the least. Classes III through IV are generally found on steep slopes (i.e. Patapsco River Valley) and pavement (i.e. Interstate 70). Class II soils dominated the map, followed by Classes III & IV, and Class I showing the least amount of land area.

Ms. Levy remarked that it is surprising to see how little Class I soils there are present, compared to Class II. Mr. Calkins replied by saying that ratio is fairly common throughout Maryland.

Industry Questions

Ms. Jones requested clarification regarding her understanding that solar facilities beyond a certain size may not be subject to local zoning and only governed by the Maryland Public Service Commission (MPSC). Mr. Dertzbaugh of Bluefin Solar replied by stating that the MPSC has a threshold oversight of 2 megawatt/acre, translating into an approximately 15 to 20 acre facility size. If it's below this amount, the developer can be subject to local zoning. Ms. Jones commented that the Maryland Association of Counties is currently working on state legislation that would incorporate local zoning requirements in a comprehensive manner. Currently, MPSC regulations can override local zoning.

Mr. Kelly of SunEast Development spoke about the possibility of having multiple uses on a commercial solar facility. He mentioned that it's been common in Europe to have smaller livestock such as sheep graze around the solar panels. At the moment, his company is looking to create pollinator habitats surrounding solar panels, in an effort to encourage honeybees. Ms. Jones commented that the trend in the southeastern United States has been to construct industrial fencing around commercial solar facilities. This barrier alone prevents the integration of agricultural uses alongside solar production.

Mr. Calkins asked how long the contract usually lasts with the solar developer. Mr. Dertzbaugh stated that it depends on financing, but generally speaking, the contract lasts 20 to 30 years to earn back the costs of

installation and the returns for investors. Mr. Kelly stated that SunEast Development typically sets a 20 year initial term, with 4 to 5 year extensions allowing access to the property. He added that the company ensures that there is funding available to return the site to its previous natural state, if needed. Overall, the larger the solar developer, the more likely they are to follow these types of clauses. Mr. Feaga asked if these clauses are bonded, which Mr. Dertzbaugh confirmed. Ms. Gowan clarified that the local code does not require the return of the property's natural state, even if the lease agreement requires the company to do so.

Ms. Moore asked about the level of soil disturbance that takes place during the installation of the facility. Mr. Dertzbaugh stated that the installation of metal pilings and stormwater management trenches are usually the only projects that will disturb the soil. The metal pilings used to mount the solar panels have a girth of 3 to 4 inches, and are driven 4 to 5 feet into the ground.

Subsequently, Ms. Moore asked about cabling to the facility, and Mr. Dertzbaugh said it could be overhead or underground depending on how the ordinance is written. He added that most of these projects would be alongside a thoroughfare, such as Old Frederick Road, and that it is unlikely for a 75 acre solar facility to be built due to the substation infrastructure available in the county.

Workshop

The Board began the workshop session of the discussion. Staff facilitated the workshop by recording the Board's thoughts on two writing pads, categorized based on the two evaluation findings cited in Section M.1:

Pad 1: SITE

"The siting of the commercial solar facility on the parcel or parcels supports the primary agricultural purpose of the easement property"

Pad 2: ECONOMIC

"An ancillary business which supports the economic viability of the farm"

10-75 AC
Margin 20'

SITE SOILS

The siting of the commercial solar facility on the parcel supports the primary purpose of the Ag. Easement.

- Minimize impact on prime and productive soils (Class I)
- Stream Buffers > 35-50' from stream
- Eligibility Criteria (Program Entry)
 - 50% class I-III & 66% class I-IV
- Soils in class I-IV
- A % can become a Solar CSF
- Balance of the farm under CSF must meet the requirements of the ALPP (productive enough to enter ALPP today)

n/a - L in balance

ECONOMIC

An ancillary business which supports the economic viability of the farm.

- 0% of land - 15-20%?
- Subordinate in area, intensity & purpose - 2R
- 15-20 average size of project
- < 50% in order to technically be ancillary
- lessor of 49% or 20 acres
- Must be able to continue farming operation

35% → 34%

RESULT: In determining if the siting of the commercial solar facility supports the primary purpose of the easement, it must have a remaining soils balance of 50% USDA Classes I-III and 66% USDA Classes I-IV.

RESULT: In determining if the commercial solar facility is ancillary to the farm, it must be equal or less than 34% of the property size.

After much deliberation, the Board tentatively settled on the criteria for each of the two categories. Ms. Jones began the conversation with the siting category by highlighting the current soils eligibility criteria listed in the property scoring sheet. In order to enter the ALPP, a property must meet the soils requirement of at least 50% USDA Classes I through III, and 66% USDA Classes I through IV. For solar, this measurement was adopted as review criteria in regards to the siting finding. This calculation would apply to the property after the commercial solar facility area is subtracted from the easement area. Ms. Jones and Ms. Moore both suggested that by doing this the rest of the property would theoretically be eligible to enter into the program under today's standards. In this way, the commercial solar facility will minimize the impact on prime and productive soils (i.e. Classes I-III).

Under the economic criteria, Mr. Brown suggested the concept of establishing a percentage in determining whether or not a commercial solar facility would constitute an ancillary business. Ms. Gowan stated that in the Zoning Regulations, an ancillary use is subordinate in area, intensity, and purpose to the principal use or structure. The Board discussed numerous percentage points, but finally settled on 34% as an ancillary economic limitation for commercial solar. This percentage would be the maximum amount of area allowed on the property for the commercial solar facility, with a ceiling size of 75 acres.

When discussing placement, Mr. Brown suggested looking at solar in a similar approach to the Board's policies on lot releases and tenant houses. Ms. Jones mentioned that the facility should be compact, contiguous, and minimize disturbance to the agricultural operation. Furthermore, the Board brought up the placement factor of zoning setbacks for the facility, and how it might impact the farmer's eligibility to develop a facility.

Mr. Feaga and Mr. Bauer both commented that the farmer should have the right to participate in solar if they wish. By doing this, farmers will be able to make an additional source of income to support their operations.

Ms. Burgess asked the industry experts if two different property owners adjacent to one another could partner together to form a commercial solar facility on both properties. Mr. Kelly agreed that this could be a possibility.

Looking forward, the Board agreed that examining example properties would be helpful in determining detailed placement criteria. Mr. Brown suggested that his property would be suitable for a mock example, since a road cuts through the center of the property. He also requested for the applicable zoning setbacks to be included on the mock examples. Ms. Moore commented that taking a look at three different sized parcels (small, medium, and large) within the projected access area would provide the Board a better understanding.

The discussion was tabled for continuation until the Board's next meeting on December 19, 2016.

Ms. Jones moved to adjourn the meeting, which was seconded by Mr. Brown and carried unanimously. The meeting adjourned at 10:00 pm.



Joy Levy, Executive Secretary
Agricultural Land Preservation Board



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

December 19, 2016

Attendance:

Board Members: Lynn Moore, Chair
Rickey Bauer, Vice Chair
Jamie Brown
Howie Feaga
Ann Jones
Denny Patrick

Public: Martha Clark, Clark's Elioak Farm
Joseph M. Kelly, SunEast Development LLC
Ted Mariani, Oakdale Manor
Dennis Satnick, RER Energy Group
Teresa Stonesifer, Triple Creek Farm
George Streaker, Clearview Farm
George Streaker Jr., Clearview Farm
Harles Streaker, Clearview Farm
F. Reed Wills, SunEast Development LLC

Staff: Joy Levy, Administrator, Agricultural Land Preservation Program
Amy Gowan, Deputy Director, Department of Planning & Zoning
Lisa O'Brien, Senior County Solicitor, Office of Law
Beth Burgess, Resource Conservation Chief, Department of Planning & Zoning
Mitch Ford, Planning Technician, Agricultural Land Preservation Program

Ms. Moore called the meeting to order at 7:10 p.m. and conducted introductions.

Action Items

1) Minutes from the meeting of November 28, 2016

Ms. Moore called for the approval of the November 28, 2016 meeting minutes. Mr. Feaga moved to approve. Mr. Brown seconded the motion, which passed unanimously.

Discussion Items

1) Program Updates

Ms. Levy noted that the three properties recently approved by the County Council (Cattail Meadows, Iglehart and Pickett-Frey) are now able to move toward settlement. The Sachs property is expected to go before Council in February 2017.

2) Discussion

2a) Continued Discussion on Review Criteria for Commercial Solar Facilities on ALPP Properties

Review

Ms. Moore began the discussion by reviewing the Board's progress made at the November meeting in developing evaluation criteria in response to *CB 59-2016 Commercial Solar Facilities*. Ms. Levy and Mr. Ford presented the Board with the two large notepads that were used at the previous meeting. Each notepad recorded criteria that the Board will use to support either of the two findings outlined in the legislation.

Pad 1: SITE

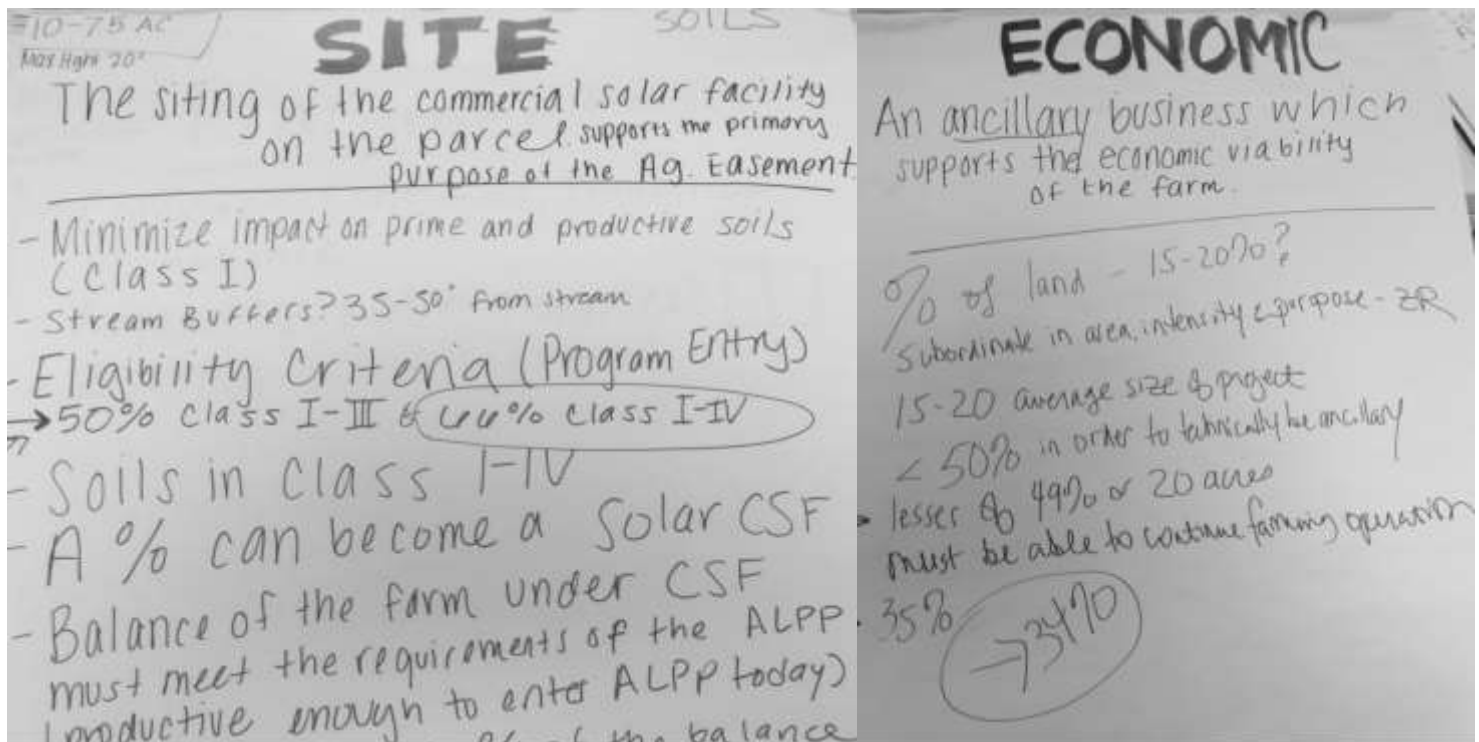
11/28/2016

"The siting of the commercial solar facility on the parcel or parcels supports the primary agricultural purpose of the easement property"

Pad 2: ECONOMIC

11/28/16

"An ancillary business which supports the economic viability of the farm"



SITE RESULT: In determining if the siting of the commercial solar facility supports the primary purpose of the easement, it must have a remaining soils balance of 50% USDA Classes I-III and 66% USDA Classes I-IV.

ECONOMIC RESULT: In determining if the commercial solar facility is ancillary to the farm, it must be equal or less than 34% of the property size.

Following this review, Ms. Levy moved on to discuss the Board's objective of how they will determine the placement of the commercial solar facility, as well as what supplementary features will be included within the conditional use area (i.e. access roads, landscaped buffers, stormwater management facilities, etc.).

Map Analysis

Mr. Ford presented three case study maps to the Board to help facilitate the discussion. For this analysis, DPZ asked permission from three of the board members to use their ALPP properties as an illustration to determine placement criteria. Specifically, the maps showcased the environmental features of the Howard County Green Infrastructure Network (GIN), slope areas that are greater than 25%, and a 100 foot buffer surrounding streams and wetlands. A 50 foot property line setback was added for planning the conditional use area. Each map also depicted the configuration of soils, by classification, as determined by the Howard Soil Conservation District.

Case Study	Property Size	Potential Solar Area <i>(34% of the property size)</i>
1A “Small/Adjacent to 1B”	54.77 acres	18.62 acres (combined A/B: 42.38 acres)
1B “Small/Adjacent to 1A”	69.91 acres	23.76 acres (combined A/B: 42.38 acres)
2 “Medium”	85.18 acres	28.96 acres
3 “Large”	345.14 acres	75.00 acres maximum

Mr. Ford explained to the Board that each map listed the property size in acreage, along with the potential solar area that would be calculated from the 34% threshold criteria developed at the previous meeting (see chart above for breakdown). By doing this, the Board was able to better understand how much acreage would be available for a commercial solar facility, and how much would be left over for agricultural purposes. The first case study was unique in that it also featured a “dual adjacency” element. Specifically, two smaller ALPP properties were directly next to each other, allowing for the possibility of a solar facility crossing property lines. Even though the two farms individually would likely be considered too small for a viable project, together they could potentially yield a facility of 42.38 acres.

Mr. Ford reported that the third case study map, featuring the largest property at 345.14 acres, reached the 75.00 acre maximum since it surpassed the 34% land area amount. He noted that this provided an opportunity to analyze the placement of a simulated commercial solar facility at the maximum acreage amount. In the concept plan map he distributed, the facility was placed alongside the road frontage of the property. The 75.00 acre facility included 70.25 acres of solar arrays, a 2.43 acre stormwater management area located along a ravine, a 1.42 acre landscaped buffer along the road frontage, and an access road measuring 3,370.15 linear feet for facility maintenance. A soils analysis was calculated on the remainder of the property, following the proposed procedure outlined by the board at the November meeting. The results indicated that the remaining 270.14 acres of farmland did not meet the second program eligibility requirement for soils (66% USDA Classes I-IV). The randomized placement of the facility caused the remaining soils balance to be just under 66% at 65.92% Classes I-IV. Even though the study determined ineligibility, the composition and layout of the facility could be slightly altered in order to comply.

Workshop

With maps on the table, the Board continued their discussion about commercial solar facility placement, and what would be included within the 34% commercial solar facility area. *(See page 4 for notepad photos)*

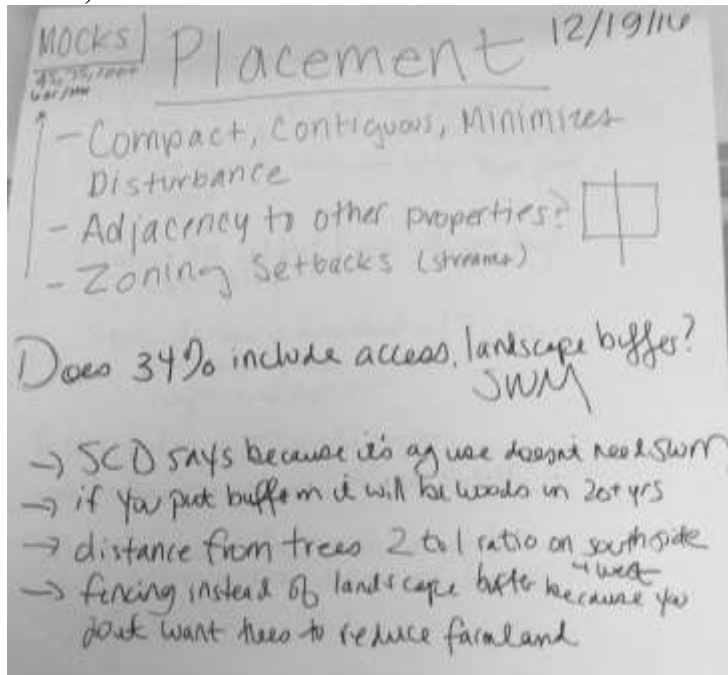
Mr. Brown noted concern about the conditional use setback of 50 feet, and inquired if it would be doubled in the dual adjacency scenario outlined in first case study. Most of the Board members agreed that this scenario would create a lot of “dead space” with a doubled setback of 100 feet. Ms. Gowan commented that the Hearing Examiner could possibly grant a variance to minimize this setback, if requested. However, Ms. O’Brien stated that it may not be possible to grant a zero setback variance.

Mr. Kelly and Mr. Wills of SunEast Development commented that a 50 to 100 foot setback buffer would not be necessary to conduct maintenance, and could possibly inhibit efficiency due to additional wiring needed. Ms. Moore inquired about the average size of a solar facility and Mr. Wills replied that it would be in the 15-20 acre range. Mr. Wills stated that the size depends on numerous factors such as the distance to the existing wire, electrical infrastructure, and site restrictions. He added that it will be common to see these facilities alongside roadways.

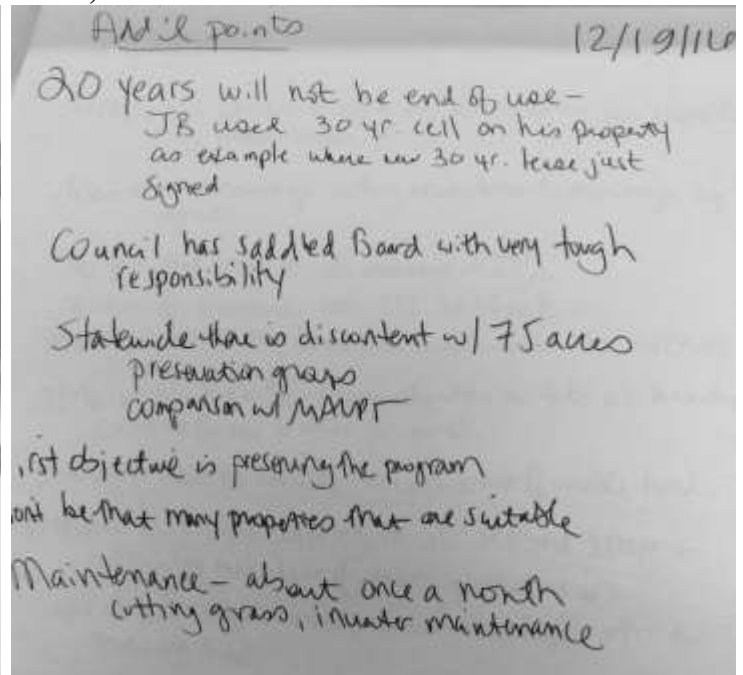
Ms. Gowan asked whether the Board would like to see road access included within the 34% facility area. Current Zoning Regulations include road access within the conditional use area. Ms. Gowan went on to say that it will be helpful to clarify what the Board plans to include within the 34% area, so that DPZ knows what to specifically ask for from the petitioner upon submission of the conditional use plan.

Ms. Levy facilitated the discussion by recording notes on Pad 1 ("Site"). Notes related to the placement of the commercial solar facility were recorded on Sheets 2, 4, & 5. Additional points were listed on Sheet 3.

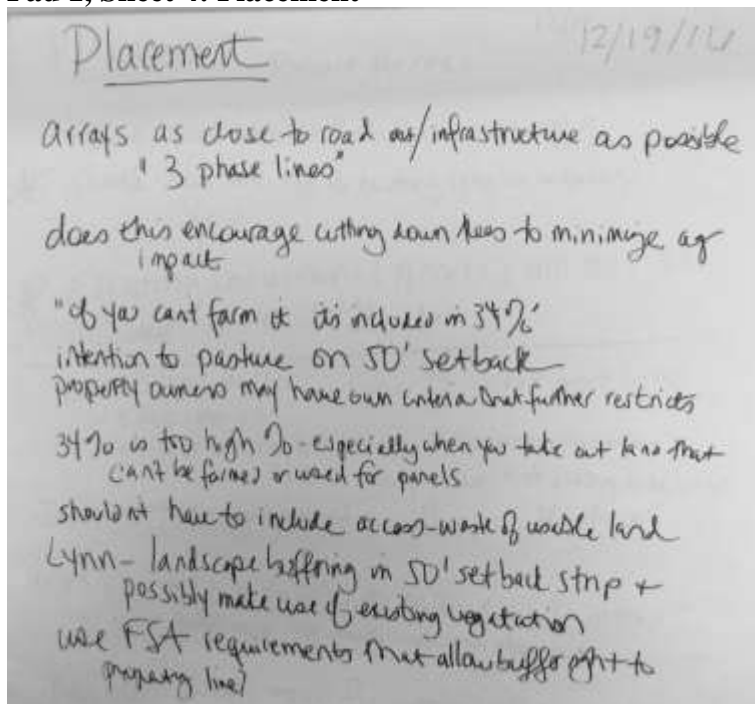
Pad 1, Sheet 2: Placement



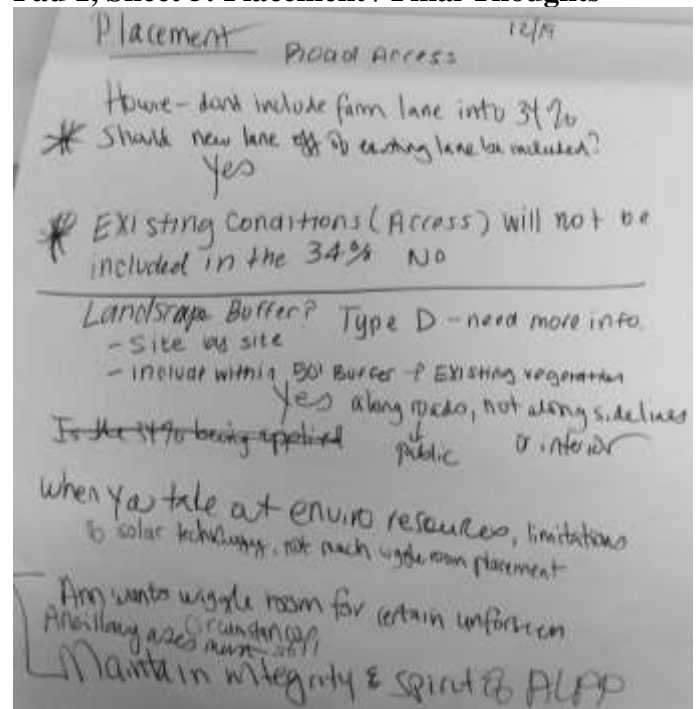
Pad 1, Sheet 3: Additional Points



Pad 1, Sheet 4: Placement



Pad 1, Sheet 5: Placement / Final Thoughts



PLACEMENT RESULTS:

1. **New road access that must be constructed to access the facility will be included in the 34% calculated facility area. Existing road access will not be included. This includes existing dirt, gravel, or paved farm lanes.**
2. **Landscape buffers should be placed along public roads and within the 50 foot buffer (if possible), and not along sidelines or the property interior. When present, existing vegetation should be used as a landscape buffer. This may include existing hedgerows, fencerows, woodlands, and shrubs.**
3. **Environmental resources should not be disturbed. This includes any area within the Green Infrastructure Network (GIN), steep sloped areas that are greater than 25%, and area within 100 feet of any stream, waterway, or wetland.**
4. **The commercial solar facility should maintain the integrity and spirit of the Agricultural Land Preservation Program.**

Mr. Satnick of RER Energy Group commented that the Board should refrain from “boxing themselves in” since they are in an advisory role under this legislation. He also questioned whether creating additional criteria would go against the legislative intent of the bill, which he believed to be meant as an additional financial opportunity for farmers. Ms. Moore clarified that the Board members understand the intent of the legislation but they are also trying to preserve the intent of the ALPP, which is to preserve farmland for agricultural use, and that a balance must be struck.

Mr. Feaga inquired if it is necessary to include the landscaping buffer in the conditional use area, and stated that the requirement is counterproductive to preserving fertile ground.

Ms. Gowan read the conditional use requirements for a commercial solar facility from the Zoning Regulations, which state that it must include a Type D landscaping buffer that covers the perimeter of the proposed commercial facility, unless the Hearing Examiner determines an alternate buffer is sufficient. In addition, all security fencing must be located in between the landscaping buffer and the solar facility. Ms. Gowan clarified that just because the conditional use has these requirements, the Board has the option to not include the buffer within the 34% area, as well as recommend lesser landscaping to the Hearing Examiner. Most of the Board was in agreement that this would be an appropriate action, in order to save agricultural land from becoming wasted space.

Ms. Jones asked whether stormwater management will be included in these types of facilities. Ms. Gowan replied that it usually is required if there is greater than 5,000 square feet of disturbance. Mr. Bauer stated that the Howard Soil Conservation District has decided to view commercial solar as an agricultural use in reaction to the Council’s decision, therefore stormwater management will not be necessary as long as there are Soil Conservation & Water Quality and Nutrient Management plans in place. Mr. Patrick stated that these facilities will need to be monitored after installation and questioned who would be responsible for the monitoring.

Mr. Brown brought up the topic of access roads to the facility. Mr. Brown and Ms. Jones believed that new roads being constructed to access the facility should be included within the 34% area. Mr. Feaga disagreed, saying that farmers could use these new roads to assist with the primary agricultural operation.

The public in attendance voiced their concerns to the Board. Approximately half expressed support and half in opposition of creating more restrictive regulatory criteria for road access and landscaping buffers.

After much deliberation, the Board agreed that only newly constructed access roads to the facility would be included within the 34% area. Existing roads will not be included within the 34% area. Landscaping buffers should be included within the 50 foot conditional use buffer, if possible. Landscaping buffers should only be required along the road frontage, and not along sidelines or the interior. Environmental features shown on the case study maps are considered unbuildable and off limits. An additional statement was added by the Board that would provide flexibility in interpreting each case, with the purpose of making sure that the integrity and the spirit of the ALPP is maintained.

With the Board reaching consensus on most of the placement elements, they were in agreement with staff that a policy document would be drafted and voted on during the January meeting. Petitioners requesting approval for a commercial solar facility could be heard starting with the February meeting, after the policy is in effect.

2b) HB 8-17: Howard County – Use of Transfer Tax Revenue – Stormwater and Flood Control Projects

Ms. Jones announced that the Howard County Delegation has proposed taking 10% of the Howard County Transfer Tax to designate towards stormwater and flood control projects outlined in *HB 8-17*. This proposal would reduce the ALPP County tax funding from 50% to 40%. Generally, this change in appropriation would cover the funding needed to meet the Stormwater Remediation Fee on the county level.

Ms. Gowan commented that County Executive Kittleman will be recommending a 5% reduction, making it 45% instead of 50%. By doing this, the County will be able to secure its financial obligations for both the ALPP and the Stormwater Remediation Fee.

Ms. Jones showed the Board the *1976 Howard County Farmland Report*. She mentioned that this report could be used as a reference in determining the future of agricultural preservation in the county, as well as other areas of funding that could benefit farmers.

Ms. Jones recommended that the Board should notify the Howard County Delegation to vote against HB 8-17, which was scheduled to take place on Wednesday, December 21, 2016 in Ellicott City. Ms. Moore remarked that the Board should have been given sufficient notice of this legislation by the delegates. The Board was in agreement in opposition, and planned to testify against the bill.

Mr. Brown moved to adjourn the meeting, which was seconded by Mr. Bauer and carried unanimously. The meeting adjourned at 10:00 p.m.

Joy Levy, Executive Secretary
Agricultural Land Preservation Board