



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Courthouse Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350

Voice/Relay

Valdis Lazdins, Director

FAX 410-313-3467

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

June 18, 2018

Attendance:

Board Members: Ann Jones, Vice Chair
Jamie Brown
Abby Gibbon
Cathy Hudson
Savannah Kaiss

Staff: Beth Burgess, Chief, Resource Conservation Division, DPZ
Joy Levy, Program Administrator, Agricultural Land Preservation Program
Lisa O'Brien, Senior Assistant County Solicitor

Guests: James Zoller, Agriculture Coordinator, Office of Community Sustainability

Public: Luigi Gino, No Guts No Glory Farm
Marisa Gino, No Guts No Glory Farm
Jason Jannati, Power 52 Energy
Nelson Machado, Machado Construction
Gina Robb, No Guts No Glory Farm
John Robb, No Guts No Glory Farm
Steve Sachs, Chair of the County Executive's Spending Affordability Committee
Teresa Stonesifer, Triple Creek Farm
Gary Stonesifer, Triple Creek Farm
Rob Vogel, Vogel Engineering

Ms. Jones called the meeting to order at 7:03 p.m. and conducted introductions.

Action Items

1) Minutes from the meeting of May 21, 2018

Ms. Jones called for the approval of the May 21, 2018 meeting minutes. Mr. Brown moved to approve. Ms. Hudson seconded the motion, which passed unanimously.

2) Request for Recommendation, MALPF Easement Acquisition, Robb property, 26 +/- acres (APAB)

Ms. Levy read the staff report, stating that John and Gina Robb are the owners of this property and run a horse breeding operation. The farm is improved with a principal dwelling. About 81% of the property is currently in active agricultural use, and 95% of the soils are in Classes I-III.

Ms. Levy noted that according to the Soil Conservation District, there is a current Soil Conservation and Water Quality Plan that is fully implemented. The farm is across Morgan Station Road from a property that is already protected by a Howard County easement. There are over 930 acres of preserved land within a mile.

According to Section 2-510 of the Maryland Annotated Code, the county governing body must approve the sale of an easement to MALPF. The APAB's recommendation will be considered by the County Executive, who will propose legislation to the County Council. Ms. Levy noted that she hoped to get the application to Council in September, stating that they break in August.

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

Mr. Brown moved to approve the recommendation. Ms. Hudson seconded the motion. Prior to the vote, Ms. Jones asked the property owners if they wished to add anything, and they did not. The motion passed unanimously.

Commercial Solar Facility Requests

Ms. Jones asked Ms. Levy to review the background for commercial solar facilities (CSFs) prior to providing the specifics for the following two requests. Ms. Levy provided the legislative background and reviewed the policy criteria the Board developed subsequent to the passage of the bill. She then introduced the first CSF request.

3) Request for Approval, Commercial Solar Facility, Triple Creek LLC property, HO-89-07-E, 97 +/- acres (ALPB)

Ms. Levy presented the analysis from her staff report, stating that the applicant presented a preliminary proposal to the Board at their September 25, 2017 meeting because they didn't have the necessary submission materials prepared to request formal approval. The applicant wanted to get feedback from the Board prior to investing time and money into the required Conditional Use Plan. The proposal met the Board's criteria, and after being assured that the Stonesifer family intended to continue their beef cattle operation, the Board provided positive feedback regarding the design of the CSF.

The initial plan was that the applicant would return to the Board at their next meeting for a formal recommendation to the Hearing Authority. There were some issues that prevented the applicant from being able to proceed, and in the interim, a new solar company, Power 52 Energy, has become Triple Creek's representative.

Ms. Levy stated that the applicant has provided revised documentation that their proposal meets the two primary standards. The requested lease area is 27.54 acres, which is approximately 28% of the property size, well under the 34% maximum. Regarding the soils capability of the land not included in the solar operational area, the Howard Soil Conservation District calculated that 62.8% would be USDA Classes I-

III, and 71.3% would be Classes I-IV. These percentages exceed the minimum requirements of the ALPB policy of 50% Classes I-III and 66% Classes I-IV.

Ms. Levy recommended approval based on consistency with the ALPB CSF policy.

Ms. Jones asked who reviews the ALPB recommendation. Ms. Levy stated that the Hearing Examiner receives the recommendation through the DPZ staff report. Ms. Stonesifer noted that the County Executive reviews and approves as well. Ms. Levy confirmed, noting that there is a separate, but concurrent track for the Executive's review for consistency with the easement.

Ms. Hudson asked for clarification about why other conditional uses have a maximum of 2% land coverage when CSFs are allowed up to 34% coverage. Ms. Levy noted that the legislation allowing CSFs on ag preservation land permits up to 75 acres, and it is the Board's policy that provides for the 34% maximum property coverage.

Ms. O'Brien explained that the Zoning Regulations govern all conditional uses, adding that the ag easement gives the County a proprietary interest as well, which provides for the County Executive's review.

Ms. Hudson asked for clarification about the status of the IPA, the length of the term and what is allowed while the IPA is still in place. Ms. Levy stated that it's a 1989 easement with a 30-year term and they can go through the approval process while the IPA is still active, but there can be no construction until after maturation date.

Ms. Kaiss noted that the CSF is a large area and asked how the farming operation will be affected. Ms. Stonesifer said that she will still be able to graze her cattle and continue logging, adding that she's considering beekeeping within the CSF. There was additional discussion regarding different types of livestock that can be grazed within CSF areas.

Mr. Brown inquired about the length of the solar contract. Ms. Stonesifer stated that it is 25 years with two 5 year extensions. Mr. Brown asked what happens after the contract is up and Ms. Stonesifer indicated that the solar company will remove the panels and return the property to farmland. She added that there will be a bond in place to ensure the restoration.

Mr. Brown asked whether the electric hookup to the road is the same as the Board saw last fall, which would take it up the driveway and out to Rt. 144. Ms. Stonesifer said that it hasn't been decided yet whether it will be the original plan or if the connection will go through her woods to the Nixon Farm CSF.

Mr. Jannati noted that the original plan has been scaled back from 32 to 27.54 acres because they're using more efficient panels so they can get more output from a smaller area.

Mr. Brown stated his opinion that the required buffering isn't necessary due to the lack of visibility from neighboring properties. He said he'd rather have the fence closer to the panels to allow the cattle more room to graze. He stated that his recommendation to the County Executive would be to not have the buffering. There was discussion about whether it could be done away with entirely.

Ms. Hudson asked what happens if the owners stop farming. Ms. Stonesifer said when her father signed the ag preservation agreement it ensured the farm would always be in agricultural use. Ms. Levy clarified that the easement requires that the land be available for farming, not that it be actively farmed. Ms. Stonesifer noted that the land will always be farmed, detailing the sizable investments her family has made recently in barns and other improvements.

Ms. Hudson noted that the solar use must be ancillary to the farming operation. Ms. O'Brien agreed, stating that the Board is making their decision based on what is currently occurring. She stated that there could be a future enforcement action if farming ceased.

Mr. Brown moved to recommend approval of the request with the stipulation that there be as little buffering as possible except for around the neighboring homes. Ms. Hudson seconded the motion. It passed unanimously.

Ms. Jones stated that she is pleased that the County Executive would be reviewing for easement consistency, noting that one of her initial concerns with this process was that they would have to find a way to implement the Zoning Regulations irrespective of whether they thought it was an appropriate use on the easement.

4) Request for Approval, Commercial Solar Facility, Khademi property, HO-84-07-E, 59 +/- acres (ALPB)

Ms. Levy stated that Power 52 is the contract purchaser of the Khademi property, and that they would be establishing and operating the CSF. She presented the analysis from her staff report, stating that the total requested lease area is 19.14 acres, which is approximately 32.4% of the property size, slightly below the 34% maximum. Regarding the soils capability of the land not included in the solar operational area, the Howard Soil Conservation District calculated that 80.7% would be USDA Classes I-III, and 94.2% would be Classes I-IV. These percentages exceed the minimum requirements of the ALPB policy of 50% Classes I-III and 66% Classes I-IV.

Ms. Levy state that there is an existing horse boarding and training operation on the property, which is planned to remain. Mr. Janatti of Power 52 has spoken with the operator and she has indicated that the area she uses for pasture will not be affected by the CSF. In addition, the outdoor riding ring that can be seen on the aerial map as part of the CSF is not currently in use. There is an indoor arena in the large barn, which is also for stabling the horses. The smaller building to the left is an equipment shed. These two buildings will not be affected by the CSF.

Ms. Levy noted that the easement property is unimproved, stating that there is a dwelling on a separate, adjacent parcel that is not under the easement.

Staff recommended approval based on consistency with the ALPB CSF policy.

Mr. Brown asked if there is a right for a principal dwelling. Ms. Levy confirmed that there is.

Ms. Kaiss asked if there are regulations that protect the neighbors who are potentially impacted by the view of the panels. Mr. Jannati stated that this issue is usually addressed during the Conditional Use process, adding that even if a significant buffer isn't required, they want to be good neighbors and will try to reduce visibility. He indicated that they will be using a type D landscape buffer, which is the densest buffer available.

Mr. Brown asked for clarification about the status of the current renter. Mr. Jannati confirmed that she will continue her equine operation on the farm.

Ms. Gibbon asked how large the boarding operation is. Mr. Jannati stated that it varies, but that there are about a dozen stalls with nine horses currently on the property. Ms. Gibbon questioned whether there would be enough room for the horses to graze once the CSF is in place. Mr. Jannati stated the grazing area

is mostly behind the barn, and the operator was not concerned about the fields proposed for the CSF, as she doesn't currently use them. Ms. Gibbon inquired where people ride, specifically asking about the outdoor arena, which is proposed to be within the CSF. Mr. Jannati stated that the outdoor arena is not used and the riding takes place in the indoor arena inside the barn.

Ms. O'Brien asked Mr. Vogel if the applicant is intending to merge the adjacent lot with the subject parcel, noting her concern that the plan shows the CSF area extending into the boundary of the lot. Mr. Vogel stated that they are not intending to merge the parcels and that he would revise the drawing to show the CSF pulled back 50' from the lot's parcel line, to correct the error and account for the 50-foot landscape buffer.

Ms. Jones expressed her concern that there wouldn't be much farmable land left if the CSF is approved. Mr. Brown stated that this applicant is within the criteria and it is the same scenario as the Triple Creek proposal. Ms. Kaiss stated that the CSF appears very large relative to the property. There was discussion about the Board's policy allowing up to 34% of the area to be used for this purpose. Mr. Jannati stated that they tried to use as little land as possible but there were some challenges with the topography that resulted in this configuration.

Ms. O'Brien asked if there is an access easement for the driveway that services the existing house on the separate lot, noting that the lot's pipe stem doesn't appear to be improved, so not actually used for access to the house. Mr. Jannati stated that he doesn't believe there is an easement. Ms. O'Brien noted her concern that the maps show solar panels covering the farm lane that is used for access to the house. There was confusion about the documents that were made available to the Board and what they depicted regarding the panels on the driveway. Mr. Jannati stated that the panels are not intended to cover the driveway.

Mr. Brown moved that the pipestem driveway for the lot be improved before the solar array can be built because they are two separate properties and currently they're using the farm lane to get to the house. Ms. Hudson seconded. The motion passed unanimously.

Ms. Jones asked if there is a motion to approve the plan. Ms. Levy asked if the cleanup of the property line issue is included in Mr. Brown's motion. He indicated that was his intent. There was confusion as to whether Mr. Brown's motion was meant to recommend approval of the plan. Mr. Brown clarified his motion, stating that he recommends approval once the right of way is improved and the driveway is removed from the CSF. Ms. Hudson withdrew her second, stating that she doesn't like the plan. Ms. Kaiss seconded the motion. It passed unanimously.

Ms. Jones asked whether the County Executive's review for consistency with the easement was part of the process when the Board was deliberating their role. Ms. Levy stated that she believes the step for his review came after the Board created their policy. Ms. Jones agreed, stating her recollection that the CSF use was presented as inevitable because the Council passed legislation allowing it. She noted that the Board struggled to create the criteria given the legislation's provisions because some members felt that the use shouldn't be allowed on easement property. Mr. Brown stated that he was one of those members, but if the proposals fall within the criteria the Board developed, they need to recommend approval.

Ms. Hudson asked about the areas of the county that are suitable for CSFs. Mr. Jannati said he doesn't know the specific locations, but they can be sited anywhere the infrastructure exists to support it. There was discussion about the approval process through BGE.

Discussion Items

1) Presentation by Steve Sachs, Chair of the County Executive's Spending Affordability Committee

Mr. Sachs provided the history of the Spending Affordability Committee and its role in advising the County Executive about the status and projections of revenues and expenditures. He referenced the Committee's report and encouraged the Board to read it, particularly the first 11 pages. He noted that the Committee is charged with looking at the big picture and over the long term, beyond the election cycle.

He noted that the Committee has been striving to diversify and they are seeking a new representative of the farming community and the Associated Community Services (the non-profit sector). County Executive Kittleman gave each County Council member the opportunity to add a representative to the Committee, which helped with the diversity.

Mr. Sachs explained that the Committee is tasked with making recommendations to the County Executive on revenue projections, the debt ceiling, long-term fiscal outlook, and, as appropriate, other observations and recommendations on County revenue and spending patterns.

He noted that the Committee determined that a strengthening national economy has not translated into local revenue growth. Furthermore, expenditure growth and projected needs of the County continue to exceed projected revenues. As observed last year, revenue has not kept pace with the growing demands for County services and capital investment. He discussed the various reasons for this, and stated that the County faces significant challenges to funding both its capital improvement program (CIP) and operating budgets.

Mr. Sachs talked about several demographic and economic trends that will affect the County's financial situation, mentioning an aging population, continued growth in the school-age population and a shift in residential construction to multi-family housing. He noted that 90% of our revenue comes from property taxes and personal income taxes, and both will be affected by these economic trends.

He noted the summary of recommendations in the FY19 report:

- 1) Develop the FY 2019 budget based on a reduced projected revenue growth of 1.75% (\$19.05 million) over FY 2018 budget due to ongoing economic and other uncertainties.
- 2) Limit the amount of FY 2019 authorized General Obligation bond issuance to \$75 million.
- 3) Although the County's preliminary multi-year revenues projections show 3.4-3.6% growth annually for FY 2020- FY 2024, the Committee recommends that the County take a more conservative approach, recognizing uncertainties.

Mr. Sachs recommended that the Board members review page 7 of the report, which addresses the transfer tax. He said that the Committee had an in-depth discussion about the transfer tax, which is primarily designated to CIP. The current tax distribution formula set by the State allocates 25% to school capital projects, 25% to parks construction, 25% to agricultural land preservation, 12.5% to housing, and 12.5% to fire and rescue services.

There was discussion about efforts the past two years to redistribute the transfer tax, with members stating that from a strict business perspective that focuses on the bottom line, ag preservation will always lose out to schools and other needs. Ms. Jones spoke about the many intangible benefits of preserving land.

Mr. Sachs stated that during their meetings, the Committee frequently heard from various county departments regarding unmet capital projects. After careful deliberation, the Committee recommended that the County increase the transfer tax from 1.0% to 1.25% and submit the necessary legislation to the County's State Delegation for FY 2019 to meet unmet capital spending needs in the County. The increase in the tax will net approximately \$6.5 million in annual revenue and can leverage approximately \$80 million in capital over 20 years if using bond financing or fund \$130 million of capital projects in 20 years if using cash funding. This will help relieve pressure on some of the critical needs.

He stated that the Committee also discussed the creation of a county taskforce every four years that will review the revenue and distribution of the transfer tax and recommend any changes to the formula as needed. The Committee recommended that this taskforce be comprised of representatives of all appropriate stakeholders including county and state officials, private citizens, and individuals from businesses that are directly impacted by the transfer tax formula. Currently, all changes to the transfer tax must be made at the state level. The Committee is strongly recommending that the County Executive, in collaboration with the County Council, submit legislation to the State Delegation to assign the management of the tax to the County.

Mr. Sachs noted that there isn't a large amount of land available for preservation, so the Committee should look at the transfer tax distribution in that context. Ms. Jones noted that there will be other agricultural needs into the future to be taken into consideration.

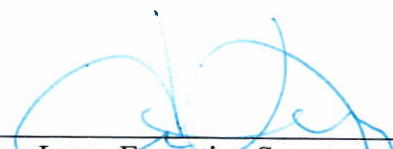
Mr. Brown asked if Mr. Sachs is looking for a recommendation for the farmer to be on the committee. Mr. Sachs indicated that the ALPB and the Farm Bureau should talk and come up with some names. He noted that the commitment is one morning a week from January through March.

2) Program Updates

a) The September meeting is tentatively rescheduled for Monday, October 1.

b) Mr. Brown asked about the email Ms. Levy sent out regarding the letter MALPF sent to Mark Mullinix and whether a new termination request has been submitted. Ms. Hudson asked for the context of the letter. Ms. Levy explained the background and stated that as far as she knows, a new request hasn't been submitted. She stated her understanding that Mr. Mullinix has been questioning the process that was used to review their 2012 request. Mr. Nielsen, Assistant Attorney General for MALPF, wrote the letter Ms. Levy distributed, in which he stated that the review process had been done correctly at both the county and state levels. Ms. Jones clarified that the State legislature passed a law this past session which changes the review process for the future, so that if the County denies the termination petition, it doesn't proceed to MALPF.

Mr. Brown moved to adjourn and Ms. Kaiss seconded. The motion passed unanimously and the meeting adjourned at 9:03pm.



Joy Levy, Executive Secretary
Agricultural Land Preservation Board

