



HOWARD COUNTY OFFICE OF COMMUNITY SUSTAINABILITY
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**HOWARD COUNTY AGRICULTURAL PRESERVATION BOARD (APB)
AND STATE AGRICULTURAL PRESERVATION ADVISORY BOARD (APAB)**

October 1, 2018

Attendance:

Board Members: Mickey Day (Chair)

Jamie Brown
Abby Gibbon
Cathy Hudson
Ann Jones (Vice Chair)
Savannah Kaiss
Denny Patrick

Staff:

James Zoller, Executive Secretary / Agricultural Coordinator (OCS)
Beth Burgess, Planning Manager
Matthew Hoover, Administrative Aide (OCS)
Joy Levy, Administrator (ALPP)
Lisa O'Brien, Senior Assistant County Solicitor

Guest:

Rob Vogel – Vogel Engineering, Civil Engineer Solar Projects
Kate Larkin – One Energy Renewables, Project Manager Solar Projects
Walter Beck – Holly House Farm
Janet Beck – Holly House Farm
Meghan Horsey – Holly House Farm
Richard Meyer – Howard County Resident
James Hurt – Hurt's Farm
Arlette Hurt – Hurt's Farm
Buck Warfield – Rocky Meadows Farm
Ida Warfield – Rocky Meadows Farm
Marni Carroll – One Energy Renewables

Mickey Day called the meeting to order at 7:09 p.m. and conducted introductions.

Action Items

- 1) **Minutes from the meeting of August 27, 2018**

Mickey Day called for the approval of the 8/27/18 meeting minutes. Jamie Brown motioned to approve and it was seconded by Cathy Hudson. All members in attendance approved of the minutes.

2) Request for Approval, Tenant House construction, Holly House Farm property HO-95-01-E, 717 Acres (APB)

Ms. Levy reviewed the staff report. Holly House Farm is located on the left side of Folly Quarter Road and it is 717 acres, which is the largest property in the Agricultural Preservation program. The request is to locate a tenant house. The Becks have a family run thoroughbred breeding and racing operation. Mr. Beck and Ms. Beck indicated, in a letter, that their ability to do manual labor has diminished and they are relying on the younger generations. The tenant house is being proposed for Meghan Marshall Horsey who is the granddaughter of Mr. and Mrs. Beck and all of them are in attendance. Along with her Aunt, Ms. Horsey is responsible for the Beck's operation. She cares for the horses, maintains equipment and other general farm duties. She currently lives an hour away, which makes it difficult for her to get to the farm. Holly House Farm came into the program in March of 1995 and was the original grantor of the easement. There are currently two tenant houses on the farm, which both pre-existed the easement. There have been three previous unrestricted lot requests and all were approved. Two of them have been sub-divided and released from the easement. The third unrestricted lot was initially intended for Ms. Horsey and her family, but the tenant house that is being requested is in lieu of the unrestricted third lot.

Ms. Levy did a quick walk through of the packet. There is the typical staff packet of maps, the aerial, the protect lands and the soils map. There is a letter from Janet Beck and included with that was aerial photos that indicates where the tenant house is proposed to be. Also included in the packet was the Tenant House application form.

Ms. Beck gave a detailed description in her letter of their equine operation and who does what on the farm. She noted that her daughter Robin Beck Turner and Ms. Horsey split most of the work of taking care of the horses and the property. Robin Beck Turner currently lives in one of the houses on the unrestricted lots that was mentioned earlier. Also, according to the letter, Ms. Horsey is going to be increasing her duties on the farm. She has been learning how to repair fences and how to operate some of the farm equipment. In one of the tenant houses currently on the farm Adrian, Ms. Beck's daughter, lives and she closes the barn at night. Samuel Clemmons does equipment repair, along with other duties, to assist the family and he lives in the other tenant house on the farm.

The proposed dwelling for Ms. Horsey and her family is going to be sited near the barn and proposed to be located currently where the corn crib is, which is going to be torn down. The house will be accessed by the existing farm drive.

It is section 15-514 of the code that gives the board the authority to review tenant house request and approve them. It is based on the location and determining that the dwelling is necessary to house a worker who will be fully engaged in the operation of the agricultural use on the property. The staff opinion is the Beck's have demonstrated that need by explaining Ms. Horsey's significant farm duties and her current hardship in getting to the farm. Also, the proposed location is consistent with the purpose of a tenant house being right next to the barn and the horses in her care. In addition, the existing farm lane is preferable for access of creating a new one. Ms. Levy's recommendation to the board is to approve the tenant house, subject to any county or state requirement and permits being approved.

Mr. Brown moved to approve and Ms. Gibbon's seconded the motion. All members of the board in attendance approved the tenant house construction.

3) Request Approval, Commercial Solar Facility (CSF), Hurt property, HO-89-06-E(S), 55 +/- acres (APB)

The property is located on the east side of Route 32, north of Old Frederick Road, and it is about 50 plus acres. Mr. Hurt is the easement grantor and the current owner of the property. The farm came into the program in December of 1989.

The request is being brought to the board for the recommendation to the County hearing authority in regarding consistency with the APB commercial solar facility policy. Also, the Board's recommendation will be considered by the County Executive during his review of the proposal for consistency with the terms of the easement.

In October 2016, the County Council approved the legislation to amend the zoning regulation to allow for commercial solar facilities up to 75 acres on properties in the County Agricultural Preservation Program. Council Bill 59-2016 requires the Board to provide advisory comments for conditional use petitions for submission to the county. The Board's recommendation is based on whether the proposal meets two criteria. One is the citing of the CSF on the parcel or parcels that it is an ancillary business, which supports the economic viability of the farm, or two the citing of the CSF on the parcel or parcels supports the primary agricultural purpose of easement property. The following is the criteria on how to evaluate those two guidelines. In determining if the CSF is ancillary to the primary farming operation the commercial solar operational area must be equal to or less than 34% of the property size. One, the operational area is defined as the entire area of the CSF that includes any equipment, spacing, structures or other uses that supports the CSF. It also includes any new roads that must be constructed to access it. Any existing roads that are used for access are not included in the 34% operational area. Two, the portion that is not included in the operational area must have a soils capability of more than 50% USDA classes 1 through 3 and more than 66% Classes 1 through 4. Additional standards are the fifty-foot conditional use set back area and is only required alongside public road frontage and not along sidelines with the properties interior. When present, the existing vegetation should be used as the landscape buffer. In addition, the operation area would minimize any impact on the existing environmental features or Green Infrastructure Network (GIN). And lastly, the operational area should maintain the integrity and spirit of the Agricultural Preservation program. These standards apply for both the CSF requests tonight.

Site analysis for the Hurt property. This applicant has provided documentation that the proposal meets those two primary standards. Included in the staff packet are the aerial maps, protected lands map, the soils maps, the APB policy, the request from Mr. Hurt, the larger scale maps from Mr. Vogel, the soils classification analysis map and the draft conditional use plan. From all that documentation provided, the requested lease area is 13.65 acres which is approximately 27% of the property and is below the 34% max. Regarding the soils capability of the land that is not included in the operation area, Mr. Vogel has calculated that 100% would be classes 1 through 3 and that exceeds the minimum requirement of 50%. Mr. Hurt reports that he has leased this land to Charles Gingrich for over 15 years. Mr. Gingrich has planted a corn and soy bean rotation during that time. He also farms another property that is owned by the Hurt family, which is to the south of the applicant property. The area proposed for the CSF falls within field number four. Also included in the packet was the Soil Conservation plan and that is where field number four is referred to on the first page of the plan. It shows that the field is currently used for grain. Mr. Hurt is proposing that he may convert the boarder around the CSF in the remaining portions of field to some non-typical farming activity or conservation use, so he may be able to see some additional income or apply for some grants. He has no plans to alter his lease agreement with Mr. Gingrich for the continuation of the crop farming. Ms. Levy's recommendation is for approval based on consistency with the ALPB policy.

Mr. Hurt clarified what the various structures on the land where. Mr. Brown asked why they placed panels hidden in the back of the farm. He was advised that various things go into deciding the location, such as close to electrical lines, away from environmental features, away from trees and trying to minimize the view from the road.

Mr. Day asked if the adjoining land owners have been notified and he was advised they will be through the process for the conditional use. He also asked if there will be a hearing process after this and Ms. Levy stated

yes. They voluntarily sent out letters to all adjoining land owners. It was asked if they received any feedback from the letters and they stated, "not from the Hurt property." Ms. Levy stated that notifying nearby residents wouldn't be something the Department of Planning and Zoning (DPZ) would do when it come times for the conditional use hearing, but It would be on the applicant.

It was asked if there was already a road and Mr. Hurt advised that there is. Mr. Hurt advised there is a proposal for widening and extending the road for construction. Ms. Hudson asked could the fence be put outside the 100-foot set back. It was stated they would be required to respect the 100-foot setback, so the fence would be on or outside the 100-foot setback.

Ms. Hudson asked what would happen to the grass waterway. It was advised the grass waterway was not in existence, but was proposed if the land was continued to be used as is currently, which is a crop rotation. The Soil Conservation Plan was updated to support this application. Since the solar facility would be planted in a warm season or pollinator grass mix, it would be approved by the Soil Conservation District and maintained as grass for the perpetuity of the project. They expect that to meet or exceed the guidelines for that area to be in a grass water way. It was mentioned that they don't have any intent to cut or harvest any woods during the process. It was asked what would happen when you run into a springhead in middle of the solar ray. It was advised the solar ray would be sitting up on racking and topography would be accommodated underneath it. It was advised they must do a full site development plan and full environmental assessment. If it is really a springhead it will be enforced as a springhead. When they do the site development plan they must follow the County requirements.

Jamie Brown moved to approve and it was seconded by Ann Jones. Cathy Hudson abstained. All other board members in attendance approved.

4) Request for Approval, Commercial Solar Facility, Warfield property, HO-85-04-E, 148 +/- acres (APB)

The Warfield property is on the east side of Route 32, north of Day road, and it is about 145 acres. The Samuel Lewis Warfield Trust is the current owner. The property was placed into the County Agricultural program in October of 1985 by Samuel and Ethel Warfield. Everything that Ms. Levy presented before regarding the standards for the Warfield property is the same for the Hurt property.

Staff analysis for the Warfield property was presented by Ms. Levy. In their packets, they have the aerial map, protective lands map, soils map and the board policy. Also, the letter from Mr. Warfield and the maps from Mr. Vogel are included in the packet. The board also received in the packet the Conservation Plan and the Deed of Easement, which was also in the Hurt packet.

The applicant has provided the necessary documentation that the proposal meets the two primary standards. The total requested lease area is 19.35 acres which is approximated 13.5% of the property size, and it is below the 34% max. In regarding the soils capabilities in the operation area, Mr. Vogel calculated that 91.3% would be classes one through three and 98.2% would be classes one through four. Those percentage exceed the minimum requirements stated in the Board policy.

Mr. Warfield gave some background on the farm which is also known as Rocky Meadows. The tillable land has been leased to Pete Clark of Edgewood Farms for over twenty years. Mr. Clark farms approximately 115 of the 146 acres. The remainder of the land is either woods or wetlands. Mr. Clark rotates between corn and soybeans on a yearly basis. In the proposed CSF, which has been hay, timothy and orchard grass will most likely continue. Although, Mr. Clark has the option to plant any crop that he wished. Mr. Clark allows the hay to seed out in that section and it regenerates hay for the next season. Mr. Clark has indicated that he will continue to crop the land minus the CSF area. According to Mr. Warfield that will cause a reduced lease because Mr. Clark will be losing about 20 acres. Mr. Warfield has also indicated that he still plans to farm as his family has done on

the property for over 85 years. Based on the APB policy, all the information provided by the applicant and the applicant's representatives, the staff recommends approval.

Mr. Brown asked where the tower was located and Mr. Warfield advised where it was located. Ms. Hudson wanted to know if they could show on one of the maps where the Green Infrastructure Network (GIN) is in the area. Ms. Levy advised that they could provide that in the future request and they can provide them for the ones already approved for educational purposes. Ms. Hudson asked if the construction laydown area needed to be fenced in. They stated they would prefer the construction area to be fenced and locked to protect the equipment that was staged there. One Energy Renewables is proposing a pollinator habitat for both solar projects, after the construction.

The board wanted to know why this area was chosen. Mr. Warfield advised the board that he gave them options of two different areas. Mr. Warfield stated the area selected is the best hay ground. The other land option was too close to the road, it slopes and it is very rocky. Mickey asked what are the restrictions of construction near the gas line. It was advised that there would be a set-back that had to be maintained. The board wanted to look at how they could adjust the plans, so that it would be easier to farm around. Solar Renewables advised they are open to modifications of the plan. They can site on slopes greater than 10% and up to 15% but it isn't preferred because you must space the rows out further for Stormwater management. They end up using more space for an array when it is sited on sloped land. Another thing they consider are views from major roadways and for this project the view from Route 32. Significant wetlands are on the property that they wanted to maintain their distance from too.

The Board wanted to know why they couldn't build on the right side of the driveway above the tree line. Mr. Brown asked Mr. Warfield if that was an area that he would entertain allowing them to put the CSF. Mr. Warfield advised him he would allow them to build it there if it fits their criteria. One of the main concerns was the visibility of the CSF from Route 32. Mr. Warfield stated it was tough to make that decision without an overlay to see how things would sit. Ms. Carroll stated they don't want to have to move a lot of earth around or change the topography. One of their goals is trying to disturb the topography as minimally as possible, which is one of the reasons they chose the left field in their plans. Energy Renewables stated if topography could be accommodated in the bottom right field they would be willing to look at it again. Letters were sent out to all the surrounding neighbors regarding the CSF and Mr. Warfield received no negative feedback. Four personally contacted him and said they were fine with it. Three of the four that contacted him are on his property line. The board's concern is that the area being proposed is on the best piece of farming land.

Ms. Hudson wanted to know if the board had to vote on it tonight, because she felt she didn't have enough information to decide. She wanted to see if they could explore the other option first. Ms. Levy advised they could make the motion, if the other area is feasible, then that would be the area they would approve, but if not they can approve the initially proposed area with tonight's vote. Energy Renewables said they would agree to the condition to reevaluate and show one way or another if the site is feasible. Mr. Warfield doesn't care if it goes to the front or the back.

Ms. Kaiss' motion was to approve the requested area, but only after they receive the documentation that other area the board likes better isn't an option. The motion was seconded by Ms. Gibbon. Everyone else from the board that was in attendance approved, except for Jamie Brown who abstained.

Ms. Levy clarified Ms. Kaiss' motion. In Ms. Kaiss' motion, the Board is approving, assuming the documentation Energy Renewables provides, that the proposed location is better or the other option is not feasible. If they get documentation back stating the alternative placement wouldn't work, the motion as stated of what was proposed is okay. If the engineers come back and state they can use the alternative area then the Board's motion is to use the alternative location if it meets the other Board criteria.

Discussion items

1.) No program updates

2.) Easement requests

Ms. Levy advised when applicants come to her with requests it is very rare that she would recommend denial. She tries to work with the applicant to sort out any issues that may arise with the board. Sometimes there are no issues such as the tenant house, because it was a great request and met all the requirements. She stated sometimes that is not the case and it can be more complicated. Ms. Levy stated the solar policy is more complicated and the policy the Board has dictates what the Board does, the approval, and what recommendations the Board makes. Ms. Levy advised that if the Board collectively feels the criteria needs to be adjusted, the board can review the policy again.

Jamie Brown asked what would happen if they changed the APB Policy and wondered if there would be any legal ramifications. Ms. Levy stated Ms. O'Brien would be able to go over the legal aspects of it. When creating the policy, it took about four or five months. Ms. Levy felt that when it was completed everyone felt good about how everybody came to a middle ground and that the board was proud of themselves that they could come up with a policy. Ms. Levy thinks there is reasonable backing for the criteria that the board decided on. She wanted to let the board know that there is often a lot of working with the applicant to bring requests to the board that are approvable. She states she is seeing the angst and wanted the Board to know they could reevaluate the criteria. Ms. Hudson stated she feels like the Board is learning as they go and sees the board as collecting data and going back to the council to reveal their findings. Mr. Brown stated he sees retired farmers that are renting their land to pay their taxes but that isn't covering it, so now they are considering putting solar arrays in. Mr. Brown thinks if something goes wrong with the solar arrays and they are on food production ground it will be an issue. Mr. Day didn't think anyone was happy with the plan, but it was tolerable result. He felt that the Warfield farm location was more about money because it is easier to put it on a flat piece of ground than a sloped piece of ground. He stated that Mr. Warfield advised it was on the best piece of farming land. Mr. Day asked how long the application process took for the two requests today and Ms. Levy advised it took about a month and a half. She stated these two were much smoother than the previous two because Mr. Vogel was part of the first two. There was a lot more back in forth on the first two because everyone was learning the process. It was mention by Ms. Hudson that if she was to change the policy that it would be 34% of the farming land and not the whole property. Mr. Day is worried, for the Warfield farm, that if they put in their 19 acres they can come back and put in the additional 20 acres, because it falls within the requirement. He stated that it also makes the argument that it is okay to put it in the bigger field, because it is already there.

Ms. Levy stated that in the County Executive review one of the things that will be included is not just the soils capabilities of the land that is outside of the operational area, but also the classes that are within it. There is other stuff too, such as Stormwater management. The question was asked how well will the County Executive understand soil capabilities. Ms. Levy stated Mr. Zoller will be used by the County Executive to help with questions like this.

Ms. Brown wants to know where they can build and what can't they build on. Where do they have to move dirt on a slope and when they don't have to move dirt on a slope. He believes there are answers to all the questions, which they need answer before they approve more.

Ms. O'Brien stated the board is focusing on two criteria and there are three underneath the two and the last one is very broad, which states is *"anything with keeping in consistency with the intent and the integrity of the Agricultural Preservation program."* All of what she heard the board members say could be put in that category, which is land that can't be farmed versus land that is farmed and soil usability at the end of the term, so the conversation doesn't have to be limited to percentages and acres. It can be more about these esoteric things.

Mr. Day asked if the Solar company wanted to come back to the Warfield property to increase the acreage would they have to go through the same process again. Ms. O'Brien said they would have to go through the process again.

Ms. Levy stated you can still have this discussion around the table, which they did tonight about the alternative location and if it works we want it to be there, because it would be better for farming.

Mr. Day wanted to know if they revisited this could the percentages be changed, so that it states the best 50% of the soils had to remain in agriculture. Ms. Levy stated it would be up to the Board if they wanted to do that.

3.) MALPF Water Resources Overlay Easement policy

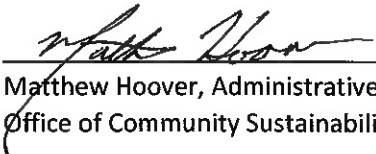
Ms. Levy stated that the Maryland Agricultural Land Preservation Foundation (MALPF) has been working to establish a water resources overlay easement policy. When the Patrick farm stream restoration project was proposed several years ago, it hit a roadblock with MALPF because there wasn't a policy in place to accommodate stream or wetland mitigation projects of this size and scope. Ultimately, MALPF approved the project, but as result recognized the need for an updated and expanded policy. A committee has completed a draft policy and distributed it to the county administrators to pass on to the local boards for comment.

Ms. Levy noted that MALPF would like local board review to be completed by the end of October so that the policy can be presented to the MALPF Board at their November meeting. Ms. Hudson referred to the criteria in 03.B.6.a., that details the size of the overlay easement. For a water resources buffer easement overlay, MALPF suggests a minimum buffer area of 35 feet from the edge of the water course, and no more than the area encompassing the flood plain. Ms. Hudson stated her preference for a minimum of 100 feet, but if not, at least 50 feet. Mr. Brown stated that he supports keeping it at 35 feet because larger buffers take up too much land. The Board members didn't have consensus on this issue so chose not to take a formal vote.

Ms. Hudson referred to criteria 03.B.9 and 03.B.10, which deal with mitigation credits, and stated her concern that the language in the original draft that requires the development site being mitigated for to be in a Priority Funding Area has been deleted in the current draft. She stated her belief that the mitigation should be done where development occurs, and the board members agreed. She made a motion that the original language be added back in. The board voted unanimously to include that as a ALPB recommendation.

Ms. Levy stated that the ALPB should draft a policy for the county easements sometime soon because there is at least one company that is interested in conducting stream restoration projects on county easement properties, and we don't have a policy to address this type of overlay. The company is currently working on two properties that are in the MALPF program, and company representatives served as advisors to the MALPF committee as they drafted their policy. Ms. Levy stated that the ALPB can use the MALPF policy as a framework for the county program. MALPF's policy is very in depth and they consider many factors. She suggested the November or December meeting to begin discussing it. Ms. Hudson suggested that the Environmental Sustainability Board could be helpful in reviewing the draft county policy.

Mr. Brown motioned to adjourn, Cathy seconded the motion and all Board members in attendance approved. The meeting adjourned at 9:08 p.m.


Matthew Hoover, Administrative Aide
Office of Community Sustainability