



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

December 17, 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
Joy Levy, Administrator (ALPP)
Lisa O'Brien, Senior Assistant County Solicitor

Guest: Joe Rutter – Resident
Don Reuwer Jr. – Resident
Kathy Johnson – EDA

Mickey Day called the meeting to order and conducted introductions.

Action Items

1) Minutes from the meeting of October 1, 2018

Mickey Day called for the approval of the 10/01/18 meeting minutes. No additions or corrections. Cathy Hudson motioned to approve and it was seconded by Jamie Brown. All members in attendance approved of the minutes.

Discussion Items

1) Program Updates – James Zoller

Mr. Zoller and Ms. Johnson went over the agricultural survey items. This is a survey the Agricultural Sub-Cabinet has been working on. The Agricultural Sub-Cabinet includes members from Soil Conservation, EDA, DPZ, and OCS. They are working on getting more accurate information from the Howard County farm community. The survey will be completed

on-line and will include information they don't get from the census. They are also considering mailing out the survey too. They currently do not have a good email list, but they are working on getting it together. Mr. Day asked what the goal was? The goal is to get EDA some real-time information on Howard County farms and to figure out how they can help the agriculture community.

Some of the questions on the survey are how many acres of farm land do you lease from another land owner, how many acres of land do you lease from another farmer and how many non-contiguous farms are you operating? Mr. Day stated that the farmers he knows are not usually willing to give information on their operation. He stated that the census is anonymous, which is why they are more willing to answer those questions. It was stated that with this survey the farmers do not have to give them their personal information. They ask for that information, because it makes it easier to communicate with the people involved in the survey, but it is not required. It was also stated that by the time they receive the census information it is outdated, because the information is a few years old. Also, they found out they are not getting all the farmers in the census data and realized this after speaking to farmers who stated they never received the census questionnaire. They can do emails for the farmers they have and send letters to the ones they don't have. The goal while sending out the mail would be to get emails, so they can communicate more frequently with the agricultural community. Soil Conservation has a list of 1100 people.

There are currently thirty-three questions on the questionnaire. One concern is that a landowner may fill out more than one survey. They are discussing a way to try to eliminate multiple questionnaires being filled out by the same person or operations. Mr. Zoller went over some of the questions that were being asked on the survey and there were some suggestions made by the board. One suggestion, was to make sure when asking the questions is to specify this is for Howard County farms, because some farmers have operations outside of the county. It was suggested that they should ask how many employees they have in addition to the questions of how many family members farm. It was also suggested that at the end of the survey to provide links of where they can find information of areas farmers maybe interested in. There are also questions regarding the farmers participation on various programs such as the Agricultural Preservation Program (APP) and the Maryland Agricultural Land Preservation Foundation (MALPF) program. It was suggested they should put other too, because there are other programs they could be involved in outside of the APP and MALPF programs. Ms. Levy suggested to put Howard County purchased, MALPF and everything else as other. Mr. Zoller stated they are going to re-write the survey with the feedback they received and will bring it back for review again.

Action Items cont.

2) Request for Approval, Agricultural Subdivision, FAL Properties, LLC property, 13-79-05Ce, 81 +/- acres and Reuwer Family Resource Trust, Deborah L. & Megan L. Reuwer, trustees, property, 13-79-05Ces1, 214 +/- acres (APAB)

Ms. Levy went over the request from Don Reuwer Jr. who is in attendance to represent the request. It involves three separate parcels. Two of them are under MALPF easement and one is a separate one acre lot. The two MALPF easements are adjacent to one another and the one acre lot has been carved out of one of the easements. There are three separate parcels listed in terms of ownership, farm location and the easement designation. In the first aerial map, it gives an idea for what is being proposed, which is an agricultural sub-division. The Reuwer Family Resource Trust owns parcel 221, which is the northern parcel on the map and is 211 acres. Parcel 14 is the southern parcel on the map, which is owned by FAL properties and is about 84 acres. There is also Lot 1, which is owned by Reuwer Family Holdings. All the land at one time was one farm and came into MALPF in early 1982 and put in by Long Valley Farm Inc. In 1998, there was an agricultural sub-division that created the current parcel configuration, except for the one acre lot. Lot 1 was released as an owner's lot in March of 2000 and after that change you have the configuration as seen on the maps.

There are two dwellings on parcel 221, which is the pre-existing principle dwelling and there is also a tenant house, which MALPF approved in November 2003. Parcel 14 is unimproved and there is a house on Lot 1. The proposal before the board is considered an agricultural sub-division, which is what MALPF calls it. What is happening is the parcel lines are being reconfigured, so they are basically shifting acreage from parcel 221 to parcel 14 and lot 1 is being merged back into parcel 14. The reason this is being proposed is, according to Mr. Reuwer, the current boundary lines do not follow

existing fence lines and splits some of the paddocks in half. The proposed boundary line would be more in keeping with what is out there with the fence line and the paddocks. The new line would add the paddocks to parcel 14. One question MALPF wants to know, on the agricultural sub-division being proposed, is what impact it would have on the future viability of the two parcels independently. Right now, the land is being operated as one large horse boarding operation. Mr. Reuwer has indicated that doing this reconfiguration will help set things up, so that in the future if it ceases to be one large operation, it would be more likely somebody would be interested in these as individual parcels. In addition, that gets back to how the fence lines and how the paddocks are set up now versus how they would be after the agricultural sub-division. Also, the reason for merging lot 1 back into parcel 14 is because parcel 14 is unimproved. If lot 1 is merged into parcel 14 then parcel 14 would be all under easement with a principle dwelling, which would be unsub-dividable. From MALPFs perspective that is a benefit, because it helps for the long-term management of the property and the viability of the farm, because there is a dwelling that is associated with the parcel. Lastly, the way the parcels are currently configured the boundary line for parcel 14 cuts across the access lane for lot 1. It isn't a huge issue now, because they are owned by a common ownership, but in the future, that could be problematic. This proposal eliminates that problem, gives an unsub-dividable principle dwelling for parcel 14 and creates two parcels that would be better as independent operations.

MALPF wants to make sure the resultant parcels meet their criteria for soils capabilities classes and according to the documentation they do. Parcel 221 would have 57% classes 1, 2 and 3, which MALPF requires 50% 1,2 and 3. The new configuration for parcel 14 is 95% classes 1, 2 and 3. Based on that, Ms. Levy thinks Mr. Reuwer has made a good case for the agricultural sub-division and her recommendation for to those who serve on the MALPF advisory board is for them to make a recommendation to the MALPF board for approval of the request.

Mr. Reuwer is there to answer questions. One question asked was how does ownership of the lots change. Mr. Reuwer stated that lot 221 is owned by his wife in trust and FAL Properties LLC own the bulk of the lot 14, which is 100% controlled by Mr. Reuwer. The house is in a trust and once they are combined FAL will deed their property to the trust that owns the house. Right now, it is three owners, but after this is done it will be two. It was asked if MALPF would require an entirely new easement on this and how will this eliminate future sub-division on these parcels. Ms. Levy stated they would require corrective easements. Mr. Reuwer stated they agreed to not cutting the houses out in the future. It was asked if they could further sub-divide parcel 14 when it is 102 acres and Mr. Reuwer stated "no" they couldn't do that. He stated there are only two parcels here and a lot, so once the lot gets combined it will still be only two parcels. Mr. Reuwer stated there is no sub-division potential. It was asked if that would be specified in the deed of easement and Ms. Levy stated they would put it in the corrective deed. Another question the board wanted to know was what it would do to the tenant house rights. There are currently two tenant house rights, Mr. Reuwer stated. One stays as a bigger piece and the other one will be cut into smaller pieces. The smaller piece will go from 84 to 102 and will gain the right and the other one will lose the right. You will have two farms each with a primary and a secondary.

Mr. Day asked if there were any other questions. Mr. Day advised that only those on the MALPF board to vote. Jamie Brown motioned to approve and it was seconded by Cathy Hudson. All MALPF board members in attendance approved and there were no objections.

3) Request for Decision, Visual Screening Buffer, Carroll property, HO-11-01-E, 500 +/- acres (APB)

The owners of the property in question are Camilla Carroll and Phillip Carroll. The property is located on Manor Lane in Ellicott City. This is a Howard County easement and it 500 acres. Joe Rutter is in attendance to represent the Carroll's tonight. The request is to review a forest conservation buffer.

The summary is Camilla Carroll and Phillip Carroll placed 500 acres of the 892 acre Doughoregan Manor property into the APP program in July of 2011. That acreage has been planted in corn and soy beans for many years. Ms. Levy referred the board to look at the protected lands maps. In addition to the 500 acres that is in the APP easement there is about 94 acres that contain all the of the historic dwellings and other structures. It is encumbered by a Howard County Conservancy easement and it was encumbered in August 2011.

Ms. Levy went over the layout of the map and the different color codes and what they meant. The issue before the board is a forested buffer on the Carroll agricultural easement to provide visual screening from Westmount. Ms. Levy thinks using the aerial map would be the most helpful way to walk through the request. Mr. Rutter also provided two maps in the packets and they will go through all three of them together. There are going to be two landscape buffers planted. One buffer is located on the Westmount parkway that is in the Westmount right of way and Ms. Levy explained where it was located on the aerial map. They are planting street trees along the edge of the property buffer to shield the view from the historic buildings to the Westmount development and this project has already begun. Also, there is a planting on the Carroll portion at the edge of the historic easement and Ms. Levy explained on the maps where it was. There is a memorandum of agreement between Westmount, the Army Corp of Engineers and the Maryland Historic Trust. In addition to the planting on the Carroll/Howard County Conservancy Easement the MOA is seeking an additional forested buffer, which is a 35-foot forested buffer. She explained where it was located on the aerial map. It is on the eastern edge of the Carroll agricultural easement property. That is the subject of what the board is looking at tonight, because the first forested buffer is on the Westmount property and the second buffer is on the Howard County Conservancy easement.

It is mentioned in this MOA and the information in the packets provided to the board that the proposed buffer, the one that is on the Carroll agricultural easement property, is to provide a vegetative buffer along the entrance road if it is approved by the board. It indicates a good faith effort should be made to plant this buffer. Ms. Levy states the board usually reviews requests for impact on agricultural operations. All of this has to do with visual screening, which isn't something the board typically looks at, because it doesn't, per se, have impact on the agricultural operation. There is nothing in the code or rules and procedures that provide guidance on how to review this request. One of the potential impacts of the 35-foot physical separation is the potential to reduce trespassing and/or non-farm conflict between the two properties. It will also remove approximately 20,000 square feet of land from production. The proposed buffer supplements other physical barriers between the two properties, which also mitigates for some of those conflicts. There is no recommendation from staff other than the board review it and decide regarding a need for the forested buffer.

Mr. Rutter took questions. He was asked why was the Army Corp of Engineers was involved in the Section 106 review. In doing the sub-division they negotiated with the County and the Federal Government National Park Service to preserve the signer of the Declaration of Independence homestead and almost 700 acres is permanently preserved, which was in exchange for 221 acres being developed to provide the funding to preserve the remainder of it. A DRRRA developer rights responsibility agreement was entered between the Carrolls and the County. In that document there was a requirement that the Carrolls would put the 500 acres in agricultural preservation and they would put the 94 and ½ acres into a conservation easement. Their concern was they didn't want it all in agricultural preservation because of the other things that could happen if they did that. They felt comfortable with the Conservancy and the leadership of the Conservancy, which prohibits sub-division of that area. When they went through the development process they had three streams they had to cross to bring the Westmount roadway in. The plan had to be in conformance with the plan that was included in the DRRRA, which has the parkway running along the border of the agricultural land. That was at the insistence of the Carrolls, after having generations of experience with adjoining residential developments that thought the fence line was where you throw garbage, clippings, leaves and everything else. They wanted a physical barrier with nobody backing to the farmland. That is why the road is where it is. To cross the streams, MDE came out first, said there are orders of the U.S. which involves the Corp of Engineers out of the Baltimore office. Joe DaVia, a Chief of the Army Corp of Engineers, came out with his staff and designated what would be considered streams and how they would be crossed. The first two are small and they could use pipes and the third crossing is larger where they stated they couldn't touch and would have to cross completely over it. In exchange for that, because it is a historic landmark property, even though the 221 acres isn't part of the remainder anymore, it is still part of what was designated as a historic landmark. This involved the National Park Service and the Maryland Historic Trust (MHT) who called in the Section 106 review. They met on-site many times with the Corp Staff and the MHT staff. He went over the maps and explained what they proposed.

Mickey Day asked if there were any more questions. Ms. Jones has concerns about taking land out of an easement to serve a development. She thinks there is a precedent here that when you have land next to another development going

in, to just get whatever they need out of the farm that has been preserved next to it. Ms. Jones also stated two lines of trees are already going in, one up by the historic buildings and one next to the parkway. She also stated the Carrolls had originally said they were very careful of making sure they wouldn't be in the view shed of the manor. She thinks this will be in the view shed of an historic barn. She stated again the precedent being set is what really bothers her. Mr. Brown asked Ms. Levy can the board stop them from planting trees there, because he doesn't think that they can. She thinks the way it is being presented is that is it up to the board to make that decision, because the way the MOA has been written. Mr. Brown doesn't want to set a precedent that everyone would have to come to the board to plant a line of trees.

It was asked who wanted this and it was advised that the Army Corp of Engineers wanted this. Mr. Rutter advised it is a condition of the permit that was drafted by Corp of Engineers. They are required to consider all the comments of the National Park Service, which are generated by the Maryland Historic Trust and work their way up. The condition is for Mr. Rutter to come to the board and make a good faith effort to get the board to allow them to put a forest strip up. Mr. Brown doesn't understand how you can put something already in Agricultural Preservation into Forest Conservation without getting money back. Mr. Brown stated they got paid for everything here, except what they donated to the Conservancy. Mr. Rutter advised they got paid for the 500 acres, they sold the easement by the EEO exchange on 77 acres and the 94 and ½ acres is a Conservancy easement. Ms. Levy stated to Mr. Brown, that to his point, the overlay of Forest Conservation or Agricultural Preservation is something that the Board does allow, but the policy is specific of where it can happen, which is the stream buffers, wetland, wetland buffers and steep slopes. Mr. Brown stated this is none of those. Mr. Rutter referred to the map and showed where a wetland was located. Ms. Hudson asked why couldn't more trees or bushes be planted on the development side. Mr. Rutter went over where the map and showed where the planting would be located at and why they were requesting that area.

Mr. Day asked if there were any other discussions or questions. Ms. Hudson motioned to deny and Ms. Jones seconded the motion. Mr. Day asked again if there was any other discussion before they voted and there were none. Mr. Day asked all those in favor in denying the request please signify by saying I and those opposed to denying the request say nay. All board members in attendance were in favor of denying the request. The request was denied.

Discussion Items

Agricultural Legislative Breakfast

Ms. Levy spoke about attending the Agricultural Legislative Breakfast. Mr. Zoller, Ms. Hudson, Mr. Plummer, Mr. Feaga and maybe Mr. Walter are going to be sharing information with new elected officials. Three out of the five County Council members have confirmed they will be attending. If the other two are not able to attend, their aides will attend. About 4 or 5 state legislators are going to attend. Mr. Zoller advised that the County Executive will not be able to attend the breakfast and he is not sure if any of his aides will show up either. Mr. Zoller thinks it is more important for the council member to attend, since they are all new. Deb Jung is attending, Opel Jones is a maybe, Christina Rigby is a maybe, Liz Walsh is attending and David Yungmann is attending.

APB Meeting Schedule

Mr. Zoller stated an item they need to go over is the APB schedule. Ms. Hudson stated they discussed not doing the third Monday of the month, because it is also when the County Council meets. She thinks if they are going to be a testifying board they need to be available to testify. Three out of the twelve Mondays conflict with the County Council meetings. She wants to know if it is possible to go to a Tuesday on dates that conflict or for April possibly changing that to the 2nd Monday in May, since there is no meeting scheduled for May? Ms. Levy stated that in the past, anytime there was a potential conflict, the board just checked what worked for the majority for that month. Ms. Levy asked if they would want to update it as the dates got closer. Mr. Zoller stated he would rather have it scheduled ahead of time. Mr. Brown asked how many times do they have to meet and Ms. Levy stated every fourth Monday and they can't miss. Mr. Brown stated that skipping the April and October meetings only affects, Mr. Patrick, Mr. Day and himself. He would rather put them back in and miss a meeting elsewhere. Ms. Levy stated the board created that and it is something they

can change. He proposed having 12 months on and if there is nothing on the Agenda they can skip the month. He suggested skipping December and the members in attendance agreed with that. They will put April and October back in and take out May and December.

Mr. Brown proposed that they make the no meetings months in 2019 May 20th and December 16th and he wants to add in meetings for April and October. It was seconded by Cathy Hudson. Mr. Day asked if there was any other discussion and there was a concern about the Easter Holiday and schools being in session. The board members in attendance didn't seem concerned with that. Mr. Day asked again if there were any other discussions and there were none. Mr. Day asked all those in favor to say I and any opposed to say nay. All members in attendance approved the meeting dates.

Solar Review

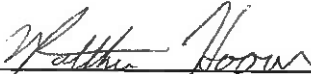
Mr. Day asked if there were any other program updates or discussions. Ms. Brown stated he wants the board to revisit solar. Ms. Levy asked how they wanted to do that and if the board wanted to adjust what they have already done. Ms. Brown stated he thinks the board should revise it and realized this after the review of the Warfield farm and the issues the board had with it. Mr. Day asked was the concern with allowing solar on Agricultural Preservation ground or is the concern with the placement. Mr. Brown stated originally his concern was with allowing solar on Agricultural Preservation ground, but they made the regulations and they accepted them. His concern now is with the placement. Mr. Day stated if they could amend the legislation, like they do tenant houses and building lots, it needs to minimize the impact on good farm ground. It was stated that the board policy looks at the percentage of coverage and the soils. They think that where they have some latitude is the secondary criteria which was maintaining the integrity of the agricultural easement. Ms. Levy thinks that one was giving them the latitude to question what was being placed on Warfield farm and to have the solar company go back to do a re-evaluation. The board doesn't trust a re-evaluation being completed by the same solar company who proposed it. Ms. Levy stated the legislation came down that it can be up to 75 acres. Since the board is the first stop in the approval process and the board came up with their review criteria based on the language in the legislation. The numbers the board came up were after a lot of discussion but the difference now is they have now reviewed some projects and the board has some new members. Ms. Levy advised that the board is going to be making their recommendations based on whatever the policy is and she feels like that would weigh heavily in the conditional use review process. From everything they have been told is that during the current hearings the examiner does take the recommendation seriously. Mr. Brown asked if any they have approved went through public hearing yet and it was stated that "no" they haven't. He knows that the best farming land will be taken out of production from where they proposed the solar facility on the Warfield property, because he has farmed on that land. He feels there is nothing they can do about it by the way the policy is written. It was asked if the solar company went back and re-evaluated and it was advised they did. The solar company stated they couldn't do it and they mapped out a little more area. Mr. Brown doesn't want to take away from what the farmer is going to get out of it, but he doesn't think the solar company would pay enough for the ground they are taking. He heard the Harmon property was \$2000 an acre a year. He thinks it is a lot better than rent, but at the end of the day you are taking up ground that may be needed to grow food. It was also stated that it may affect the ability for the farmers to sell their farms because it won't look like a farm anymore. It was advised there is very broad language in the zoning regulations, which is that the petitioners should submit a proposed conditional use plan for a commercial solar facility on a parcel or parcels, in the Agricultural Preservation program, to the Howard County APB for advisory of the use as to whether the siting of the commercial solar facility on the parcels or parcels supports the primary agricultural purpose of the easement property, or is an ancillary business which supports economic viability of the farm. Mr. Day stated that it says "advisory" and doesn't sound definitive. It was advised that the board would be looked at as the expert on this aspect of it and in terms of the boards credibility of what their advice is and it will be given a great deal of weight. Mr. Brown wants to see one go in front of the public to hear their opinion on it. Mr. Brown thinks they can break the discussion up into a couple meetings and thinks the board is more of a consensus now, because they already reviewed some requests. Mr. Day asked if they needed a motion for that and it was advised that all they had to do was put it on the agenda. Ms. Levy stated she can resend the board the staff reports by email to help refresh their memories as to the specifics of each one and how they felt about each one. Mr. Brown thinks the board members that were not in attendance, during those meetings, should

review the staff reports and the meeting minutes to get an idea of what they went through to get to where they are at now. Ms. Levy thinks that is a good suggestion and she can send out the minutes from those meetings too.

Washington County Solar Energy Generating System decision

It was advised that a decision from the court of special appeals on a Washington County solar energy generating system was emailed to the board members. There is a lot of activity that is happening on that legally. It was adopted as a reported decision meaning that it does carry precedential weight. Washington County has applied for the highest court in the state, the Court of Appeals, to review it. The type of operation that this was dealing with was a huge production. The bottom line is the production didn't require any zoning approval at the local level. She thinks if that isn't going to be turned away by the Court of Appeals, then maybe the board would want to look at what their requirements are in terms of an exemption that would be made if the energy generated by the commercial solar facility is used on that property. Should it go down a different shoot if that is the case. This would be about zoning interest and not easement interest. Is that something that we would need a legislative fix for because right now the code is silent on that aspect of it. It was asked if the energy generated would only be used for that property and it was advised that it would be used for other properties. There is a lot going on in the state that the board may want to look at. Mr. Brown stated there are a lot of people who own farms in the county that have never been a farmer in their life. You offer them \$150 to \$200 acre compared to \$2000 acre a year and they will take the \$2000, because it is more money and it doesn't really matter what is on the land.

Mr. Day asked if there were any other items to discuss this evening. Ms. Jones moved to adjourn and Mr. Brown seconded the motion and the meeting was adjourned.


Matthew Hoover, Administrative Aide
Office of Community Sustainability