



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

June 24, 2019

Attendance:

Board Members: Mickey Day (Chair)
Ann Jones (Vice Chair)
Abby Gibbon
Cathy Hudson
Savannah Kaiss

Staff: James Zoller, Executive Secretary / Agricultural Coordinator (OCS)
Lisa O'Brien, Senior Assistant County Solicitor
Beth Burgess, Chief, Resource Conservation Division
Amy Gowan, Deputy Director, Planning & Zoning

Guest: Megan Mills, Forestry Board President
Sue Ewing, Resident
Al Ewing, Resident
Mary Kittleman, representing Council Member David Yungman
Dan O'Leary, Greater Highland Crossroad Association
Therese Myers, Resident
Khaled Helmi, Resident
Bob DeLeauney, Resident
Leah Donovan, Resident
Ted Mariani, President, Concerned Citizens of Western Howard County

Action Items

1) Request for Approval, Meeting Minutes May 21, 2019

There were no comments or corrections. Ms. Hudson motioned to approve and Ms. Kaiss seconded the motion. All members in attendance approved the minutes.

Discussion Items

1) Discussion with Howard County Forestry Board

Ms. Mills gave a background of the Forestry Board. She has been the president of the Board for one year and has been on the Board for three years. They are in the process of re-organizing the board and their roles. They are also updating their website and brochures. Some projects the Forestry Board are involved with are tree giveaways and outreach.

Ms. Jones gave a background of the Agricultural Preservation Board. The board is mainly set up by the county to look at parcels for residents that want to put their property under a permanent agricultural preservation easement.

2) Discussion on upcoming agenda items

Mr. Zoller went over a couple items that needed to be discussed during future meetings. One item is about revisiting how the scoring is done for the Agricultural Preservation Program. The second item is the County Executive wants the board to look at ways they could encourage agriculture in urbanized areas. The Board decided they would review the scoring first and then discuss agriculture in more urbanized areas.

3) Program Updates

- a. Farm Academy: Farm Academy's primary objective is to educate the community. Two years ago, they started conducting tours at the County Fair. The first year they gave guided tours and the second year they had self-guided tours. This year they may extend it to groups and provide them with a tour guide. If they do this they are going to need to enlist volunteers to be tour guides.
- b. Roving Radish: The beginning of the Roving Radish season has been successful. They are buying turkey from Howard County farms and they are using two new Howard County beef vendors.
- c. Weekend Warriors: Weekend Warriors has begun. They provide snack packs to children when school is not in session. They may start providing agricultural educational material in the backpacks. They are discussing extending the program to run during the regular school year.

Public Testimony – Broadway Lane Commercial Solar Facility (CSF) proposal

Mr. Day asked if anyone from the Sierra Club was in attendance and there were none. Mr. Day emailed a written testimony from them to the board members.

Mr. Mariani the president of the Concerned Citizens of Western Howard County provided testimony for the Broadway Lane Commercial Solar Facility. They have objections to the bill that was passed allowing commercial solar facilities a conditional use on agricultural preservation properties. They don't believe the bill is in line with the goals of the Agricultural Preservation Program. They think the upcoming Broadwater Lane case is an example of how the guidelines failed to produce the desired result. (See written testimony below)

Mr. O'Leary of The Greater Highland Crossroads Association gave testimony about the Broadwater Lane CSF. He spoke about how in previous meetings the board spoke about their dissatisfaction or being unsure of some procedures regarding CSFs. He thinks an advisory board was created, but they never adopted rules and procedure for the advisory board. The law requires that there be a written review and he doesn't think they were completed on any of the four CSFs that have been reviewed. When they went to the Hearing Examiner's review they said she feels bound by what the APB has recommended and can't send it back. He thinks the review of these four properties are legally faulty. (See written testimony below)

Therese Myers is a resident whose house faces the hay field for the proposed Broadwater Lane CSF. She was advised that the land would remain agricultural land in perpetuity, which is why she purchased her house in 2007. The proposed CSF would be in front of her house and would wrap around it, so it will be on two sides of her property. She went over some of the new section of the commercial solar zoning regulations for land on an agricultural easement. It states, the board will review at minimum the copy of the Agricultural Land Preservation Program easement, the copy of the Howard County Soil Conservation and Water Quality Plan and a copy of the proposed Conditional Use Plan. The

petitioner, after the board looked at it, revised the plan and she thinks that is an issue. She believes it should go back to the board for review again, because changes were made to the plan. She looked up the Land Preservation Program easement for the property and it states they received \$83,000 in exchange for the owners relinquishing the rights to develop for any industrial or commercial purpose. Her concern is how can it be reconciled with the language in the easement when it states no commercial development?

Khaled Helmi, a resident that lives adjacent to the proposed solar farm on Broadwater Lane, opposes the project. Along with the Route 32 expansion and the proposed CSF he believes this will create issues with water drainage. He went to the Hearing Examiner and he advised that she stated the Agricultural Preservation Board approved it, so there is nothing she can do. He is requesting the board to reconsider their decision.

Mr. Day asked if there was any other discussion for the night and there were none. Ms. Jones moved to adjourn and Ms. Kaiss seconded the motion. All board members in attendance approved.

Testimony of Theodore F. Mariani FAIA PE MCRP
Before HC Agricultural Preservation Board. 24 June 2019
Re Conditional Use CSF on Ag Pres Property. (Power 52
5545 Broadwater Lane)

I am Theodore F. Mariani , Owner of Oakdale, a 180 acre farm
which I placed in the Ag Pres program almost 30 years ago.

A brief summary of my background includes:
Registered Architect, Professional Engineer, and Planner
Past Chair DC Zoning Commission
Past Chair Howard County Planning Board
Past President Howard County Historical Society
Served on numerous Howard County task forces including the
Howard County General Plan
Currently am President of Concerned Citizens of Western
Howard County

The CCWHC has from the outset opposed the concept of
allowing CSF.s on Ag Pres properties Over our objection and that
of other citizen organizations, a Bill allowing CSF.s as a
conditional use on Ag Pres properties was passed and became
enshrined in the zoning regulations.

We now have before us the first case under this provision of the
regulations and can see the dire results.

I will not attempt to re litigate the faulty bill that allowed this
Conditional Use, but rather focus on how this specific proposed
use fails to meet the intent of the county Ag program . The
underlying predicate of the program is that the predominant use
of any site in the program shall remain Agricultural in perpetuity,
This is codified in perpetual easements that run with the land and
which clearly prohibit commercial or industrial uses (Reference
recorded easements on this and all other sites in the program)

As a part of the council process to pass the bill the Howard County Agricultural Preservation Board was tasked with establishing guidelines to ensure that preserving Agriculture as the predominant use would be the case. I attended the Ag Board sessions where this matter was discussed and voted on. The board at that time seemed to be convinced that they had structured a process that would ensure this result. Unfortunately that board approved a policy that was inadequate to achieve their intent.

The upcoming Broad Water Lane case is an example of how these guidelines failed to produce the desired result. The Ag Board proposed that the area devoted to CSF should not exceed 34% of the site thus recognizing that the Agricultural use should be twice the area devoted to CSF use. The problem with this approach was that it failed to recognize that other site conditions would impact the suitability of the land for Agricultural use, such as: Steep slopes, wetlands, stream valleys utility easements, forested areas and the like.

In the Broad Water Lane case, of the 59 acre site approximately 21 acres is impacted by the afore going impediments to farming. This leaves only 38 acres that can be productively used for agricultural use.

The conditional use application enumerates the area devoted just to the solar array but does not indicate the extent of the area of the site devoted to buffer zones and access to the CSF. The combination of the solar array plus the buffer zone and access roads amounts to 22 acres. Thus the area remaining for farm use is only 16 acres. The result is that the CSF land use is 1.4 times the actual agricultural use, a complete reversal of what the Ag Board intended. Under the plan proposed the CSF will clearly be

the predominant use with the remaining Agricultural use an after thought. Thus even tho the application might meet the Board's current established criteria the intent of the Ag Pres Program will be thwarted if this application is approved.

There us another point that should be considered concerning the applicability of the Howard County zoning regulations allowing CSF.s on Ag Preservation land.

As a general principle of land use in Maryland, local regulations can be more restrictive than State regulations but not less restrictive when dealing with similar matters. In this case the State regulations preclude any CSF on MALPF (State Ag Pres Program) sites . Solar facilities are limited to just 125% of the actual demonstrated needs of the farm itself. This reinforces the concept that any solar installation should be of a minor order when compared to the predominant agricultural use.

In the Broadwater Lane case we have just the reverse. The CSF overwhelms the Agricultural use

Further the fact that the CFS developer Power 52, is the contract purchaser of the site portends that, if this Conditional Use is approved, the predominant use of the site will now and well into the future be essentially a Commercial Solar Facility and not a farm.

Also , this case being the first, of several in the pipe line,` it will be establishing a precedent for future cases and thus have far reaching impact on the Country Ag Pres Program .

Let me close by urging this Board to promptly reconsider your criteria for evaluating proposed CSF.s on Ag Pres sites so that the true intent of the program is preserved.



Greater Highland
Crossroads
Association

-- Minutes of Jan 28, 2019 and subsequent minutes show that the Board has not adopted rules of procedure. Therefore all actions of the Board are at a minimum legally Faulty.

-- Respectfully request that the Board adopt legal rules of procedure and re-review all the solar cases at a minimum.

-- The formulas adopted (perhaps without legal authority) to determine whether a CSF proposal meets the criteria of the Zoning Regs are faulty, erroneous and do not achieve the purpose and intent of the enabling legislation. The result of the Khademi property speak for themselves.

Section 131.N.52.m.1 states:

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.

-- How does a proposal for a CSF owned by a power company occupying well over 50% of the arable land leaving only a minor horse boarding operation in place for an undetermined time support an AG purpose or be considered ANCILLARY? Or meet the spirit and intent of the law?

Dan O'Leary, Chairman of the Board, GHCA