



# 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. Pruim 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. Pruim 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. Pruim 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. Pruim 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. Pruim 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. Pruim 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. Pruim 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. Pruim 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. Pruim 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.

  
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Joy Levy, Executive Secretary  
Agricultural Land Preservation Board