



# HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

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

June 19, 2017

### Attendance:

Board Members: Ricky Bauer, Chair  
Jamie Brown  
Howie Feaga  
Ann Jones  
Savannah Kaiss  
Denny Patrick

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

Mr. Bauer called the meeting to order at 7:05 p.m. and conducted introductions.

### Action Items

#### 1) Minutes from the meeting of May 22, 2017

Mr. Bauer called for the approval of the May 22, 2017 meeting minutes. Mr. Feaga moved to approve. Mr. Patrick seconded the motion, which passed unanimously.

#### 2) Request for Retroactive Approval, Accessory Solar Panel System for Farm and Residence, Hanson & Lavine property, 13-02-02e, 21.22 acres (APAB)

Ms. Levy read the staff report stating James Hanson and Elizabeth Lavine are the original and current owners of the subject property, which was placed in the Maryland Agricultural Land Preservation Foundation (MALPF) program on October 22, 2003. The current request is to retroactively approve an accessory solar panel system for the farm and residence that has already been constructed.

Mr. Hanson and Ms. Lavine have owned the farm since 1999, and currently operate a horse boarding and breeding business on the property. In early 2017, the landowners planned to construct an accessory ground-mounted solar panel system to support their agricultural structures and principal dwelling to reduce operational costs and to diversify their methods of energy attainment. At the regularly scheduled MALPF inspection on March 30, 2017, the property owners indicated that the system would be constructed in early April. MALPF notified the landowners of the need for retroactive approval on May 19, 2017.

The solar panel system is approximately 2,750 square feet in size (55 feet by 50 feet), and is located southwest of the principal dwelling, just west of the in-ground pool. The system itself consists of 105 ground-mounted panels divided between two rows. It is grid connected, meaning surplus energy generated from the solar panels that is not used on the farm is returned to the main electric grid. Access to the system is provided by the property's pipestem driveway to MacClintock Drive, with direct access via the front and side yards of the residence.

The system is consistent with MALPF's "General Guidelines of Alternative Energy Requests" for easement properties. It is being used as an alternative source of energy to support the agricultural operation and the residence, and not for commercial use. The location of the system does not remove a significant amount of acreage from agricultural production, since it only slightly reduces the size of one of the farm's sacrifice lots, and area that is referred to that way due to the heavy use and grazing by the horses. In addition, the system is appropriately positioned in the backyard area of the residence, away from the agricultural operation and horse paddocks. The energy generated from the system will amount to approximately 86.6% of the energy being used on site, which is consistent with MALPF's maximum of 125%. BGE will provide the remaining electricity. Lastly, the system is only being used to support this MALPF easement, and no other properties in the area.

Ms. Levy noted the following attachments to the staff report: the standard map set highlighting the location of the solar panel system, a copy of the owner's request letter, map of the farm operation, copies of electric bills from BGE, and a photograph of the existing facility provided by Mr. Hanson.

Staff recommends that the Agricultural Preservation Advisory Board recommends approval to MALPF of the request to retroactively approve the accessory solar panel system for the farm and residence.

Mr. Bauer called on the Board for questions and discussion.

Mr. Feaga recommended approval commenting that the system is placed in a suitable location within the operation. Ms. Jones seconded the motion, which passed unanimously.

## **Discussion Items**

### **1) Program Updates**

Ms. Levy announced that the County Council will be voting on the acquisition of the Ziegler Family Trust and the Trust for the Benefit of Thomas Lee Carroll properties in late July. She added that she and Mr. Ford met with Natalie Ziegler to conduct a site visit for both properties. Mr. Ford announced to the Board that this would be his last meeting due to his resignation.

### **2) ALPB Open Meetings Act Training Presentation**

Mr. Ford circulated the ALPB Open Meetings Act Training Presentation packet, and then conducted the Power Point presentation, with Ms. O'Brien assisting with legal issues. Mr. Ford stated that all Howard County boards and commissions have recently conducted training presentations focusing on board rules, responsibilities and meeting management, as well as the Maryland Open Meetings Act.

Mr. Ford gave an organizational overview of the Department of Planning & Zoning (DPZ) and the ALPB. This portion of the presentation focused on history, background, and member composition of the Board. Key points included meeting format and pre-meeting preparation, ex-parte contact, recusal, and reasons for board removal. The general overview was followed by training on the Open Meetings Act (*Annotated Code of Maryland Sections 3-101 – 3-501*). The Open Meetings Act was established with the intent to

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expand the ability of the public to attend meetings of public bodies and to witness the phases of deliberation, policy formation and decision making to ensure the accountability of government to the citizens of the State. The presentation also highlighted best practices to ensure Open Meetings Act compliance, board professionalism, and Open Meetings Act enforcement.

Ms. O'Brien stated that at least one member of the Board must take the Open Meeting Act Training Webinar provided by the University of Maryland in order to fulfill the law's requirements. Then the certified Board member will be able to assist the Board with Open Meetings Act compliance.

Mr. Patrick asked counsel about the extent of ex-parte contact in context of the ALPB. Ms. O'Brien clarified by stating that ex-parte contact is more commonly an issue in a judicial environment, but still has some application to the ALPB. She stated that if Board members become aware of something relevant to an ALPB issue, they should disclose the information to the rest of the Board. Ms. Burgess added that Board members should consult with Ms. O'Brien if they have questions about recusal or any other procedural matters during a meeting.

Mr. Feaga asked if a Board member can provide information about ALPP policy and procedures to individuals in the community who have questions or concerns. Ms. Levy stated that people should contact staff directly on these matters due to their administrative and legal complexity. Mr. Feaga remarked that Board members may have different interpretations than staff when it comes to the ALPP law and policy. Ms. O'Brien stated that board members should make sure they are representing their own opinions, and not the County's position, when conversing with citizens about the ALPP.

Ms. Jones asked about the validity of Board communication outside of a meeting via social media and email to discuss alterations to the Board's testimony regarding amendments to pending County Council legislation. Mr. Bauer and Mr. Feaga agreed that there should be flexibility in developing ALPB testimony due to the dynamic nature of the legislative process. Ms. O'Brien said that this type of convening would be a close call when it comes to violating the Open Meetings Act. She suggested that the Board Chair contact the Program Administrator with proposed testimony changes. Ms. Levy would then contact the rest of the Board to ensure there is an open discussion and majority agreement.

Ms. Jones commented that the Board meetings should be able to provide an open forum for discussion with concerned citizens. Mr. Feaga strongly agreed and stated that farmers should be able to speak at a meeting without having to be placed on the agenda in advance of the meeting. Ms. Jones cited the example of the Howard County School Board's open forum where parents express concerns directly to the Board. She suggested that this open forum interaction would be the neighborly thing to do to.

Ms. Burgess remarked that an open forum discussion may interfere with the Open Meetings Act because all affected parties may not be present if there is no publicly posted agenda. Ms. O'Brien read the Board's rules and responsibilities outlined in Section 15.518(h) of the Howard County Code, and stated that Council would need to approve an amendment to the Board's purview to include this role.

Mr. Bauer questioned staff being the resource for people to go to for assistance. He opined that staff represents government, and government is not widely trusted, especially in the farming community. He stated that farmers should be able to come to a board of their peers. Mr. Brown disagreed with Mr. Bauer's statement regarding government, citing Councilmember Mary Kay Sigaty's attendance at the May 22, 2017 meeting to discuss solutions to the mulching and composting issue. He added that the Board should not be a place for everyone to raise their personal problems.

Ms. Burgess suggested that it would be helpful if the Board communicated to their peers that they are working in tandem with staff, who assist members of the agricultural community with various issues. She added that being on the ALPB is a privilege since members have increased awareness and communication regarding County business.

Ms. Jones expressed her discomfort with not allowing guests to speak openly about their own issues. Mr. Brown disagreed by stating that he appreciates the current meeting format, and would find an open forum to be very uncomfortable for ALPB decision making. He noted upcoming term expirations as another reason to refrain from major changes to the ALPB meeting rules.

Ms. Burgess reiterated that allowing people to show up and speak would be unfair to anyone else with an interest in the issue presented since they would not have the benefit of a posted agenda. Ms. O'Brien commented that she understands Ms. Jones's reasoning for wanting an open forum. However, she stated that the ALPB was not formed for that purpose, and cannot legally function in that capacity without the Council amending Section 15.518(h) as well as changes being made to the ALPB Rules of Procedure.

Mr. Brown moved to adjourn the meeting, which was seconded by Mr. Feaga and carried unanimously. The meeting adjourned at 8:45 p.m.



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Joy Levy, Executive Secretary  
Agricultural Land Preservation Board