



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

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

July 25, 2016

Attendance:

- Board Members: Lynn Moore, Chair
Rickey Bauer, Vice Chair
Jamie Brown
Howie Feaga
Ann Jones
Denny Patrick
- Public: Julia Dunn, Trustee, Iglehart Living Trust
David Godley, Southeast Construction Manager, Resource Environmental Solutions LLC
Thomas Iglehart
Chris Iglehart
David Patrick, Maple Dell Farm, Inc.
Carol Shelton
Luke Starks, Boy Scouts of America
- Staff: Joy Levy, Administrator, Agricultural Land Preservation Program
Lisa O'Brien, Senior Assistant County Solicitor, Office of Law
Beth Burgess, Chief, Resource Conservation Division
Mitch Ford, Planning Technician, Agricultural Land Preservation Program
Lindsay DeMarzo, Sustainability Projects Manager, Office of Community Sustainability
Phil Nichols, Executive Assistant to the Chief Administrative Officer

Ms. Moore called the meeting to order at 7:05 p.m. and conducted introductions.

Action Items

1) Minutes from the meeting of June 20, 2016

Ms. Moore called for the approval of the June 20, 2016 meeting minutes. Ms. Feaga moved to approve. Mr. Brown seconded the motion, which passed unanimously.

2) Request for Recommendation on Easement Acquisition, Iglehart Living Trust property, 29.62 acres (ALPB)

Ms. Levy read the staff report, stating that the property is located at 3844 Jennings Chapel Road in Woodbine. The farming operation on this property is primarily hay with a few horses. According to the Soil Conservation District, there is a current Soil Conservation and Water Quality Plan that is partially implemented. There is a

very high concentration of preserved land within a mile of the farm. The property is improved with a tenant house which is resided in by Thomas Iglehart, who farms the property. There is also a principal dwelling that is resided in by Thomas's son. There are many agricultural structures on the property. Overall, the property has met all of the eligibility conditions for an agricultural preservation easement.

Ms. Levy called the Board's attention to the attached application materials, including the standard map set (aerial, soils, and land preservation), property score sheet, and the separate score sheet for the Green Infrastructure Network (GIN), and noted that the property scored 55 (GIN) points. She also stated that the property has a very high concentration of preserved land within a mile. With no further remarks, Ms. Levy recommended approval of the property acquisition to the Board.

Ms. Moore called for questions and comments. Mr. Bauer inquired whether or not the neighboring properties facing Jennings Chapel Road were originally subdivided from the Iglehart property. Mr. Thomas Iglehart responded by stating that the frontage lots were subdivided by the previous landowner, and not during his family's ownership. He explained that his father purchased the property as a 55 acre parcel in 1969. Several years later, the state of Maryland purchased the southern end of the property abutting Triadelphia Reservoir as a way to protect the Patuxent River watershed.

With no further questions, Mr. Feaga moved to approve. Ms. Jones seconded the motion, which passed unanimously.

3) Request for Approval, Stream Restoration Easement, Patrick property, 13-80-06-Dex1; 91 acres (APAB)

Ms. Levy read the staff report, stating that Mary Patrick, along with her two sons, B. David and James, placed the farm in the Maryland Agricultural Land Preservation Foundation (MALPF) program on May 31, 1983. Mary and James have subsequently passed away. The farm is currently owned by David and his two sons, Denny and Michael. Previous requests include a child lot for Denny, and a lot around a pre-existing dwelling that is resided in by James's widow. The current request is to place a stream restoration overlay easement on approximately 15 acres along 6,182 linear feet of stream. The project will also include the selective harvesting of 10.6 acres of trees to establish new pasture, and the installation of 4,527 linear feet of new fencing around the pastures.

Maple Dell Farm is a 93-acre active dairy and row crop farm, one of three remaining dairy farms in Howard County. It is located on either side of Cattail Creek, within the Brighton Dam subwatershed of the Patuxent River. Two smaller channels merge on the northwestern portion of the farm to form the mainstem of Cattail Creek, which continues east through the farm directly to the Triadelphia Reservoir, a major drinking water source for over a half million residents in Montgomery, Prince George's and Howard counties.

Historically, the 190 dairy cattle would roam throughout the floodplain on the property, including having full access to nearly the entire length of the stream channel. They are currently limited to specific areas in compliance with relevant state laws. However, the damage to the stream over the years is irreversible without intervention. Because of the heavy use this land has seen, erosion is evident along the entire stream and heavy sedimentation is visible in the stream. The majority of the channel has no trees or vegetation lining the banks and averages a 4 foot eroded bank throughout the property. A few sections of the stream bank have been compacted and slope down to the stream where the cattle regularly accessed, wallowed or crossed. Significant levels of nitrogen and phosphorus enter the stream from waste while the cattle are in the stream and floodplain, as well as waste runoff from the adjoining pasture.

The cattle feeding areas are roughened concrete floors, which are scraped and cleaned according to the property's nutrient management plan. However, the ridges in the floor prevent full removal of manure and urine, which is then washed off during precipitation events into the stream.

Ms. Levy explained the different aspects and benefits of the proposal:

- 1) The project will fence cattle out of approximately 15 acres of floodplain, currently used as pasture. All in all, 13,560 linear feet of fencing will be constructed enclosing the cattle pasture areas and stream restoration easement area. Three cattle stream crossings will be improved and fenced off to prevent upstream and downstream access along the stream. Specifically, the stream crossings include one 40 foot wide ford crossing, one 35 foot wide ford crossing, and one 60 foot wide culvert crossing.
- 2) A new water system will be installed for the cattle to access clean water from troughs placed throughout the pastures. The service provider will install or provide funds for up to 7 watering stations for the cattle. In addition, the existing well on the farm will either be repaired or replaced.
- 3) Natural stream channel restoration of the entire 6,182 linear feet of stream and riparian wetland will include riffle grade controls and bank modification. Field areas adjacent to the stream and restored wetland will temporarily hold, infiltrate, and treat stormwater flow, restoring the groundwater table and hopefully returning the land to the original wetland hydrology.
- 4) A best management practice (BMP), likely a catch basin that will be pumped to the existing lagoon, will be installed northeast of the feed lot and barn area to intercept runoff from the concrete floors and greatly reduce nutrients entering the stream. Additionally, new roof gutters will be installed on the barn as a way to direct and mitigate stormwater runoff.
- 5) Native plant communities will be reestablished in the project area to create a stream buffer, reduce erosion, filter nutrients, and slow stormwater flowing to the stream. The restored wetland areas will support shallow vernal pool habitat.
- 6) Approximately 10.6 acres of timber will be thinned and cleared on the western boundary of the farm to create new pasture to offset the loss of pasture in the floodplain. This work will be responsibly undertaken with any required permits and consultation with local, state and federal agencies as needed. The steeper slopes will remain forested to prevent erosion and also provide shade. The remnants of timber, including the cut trees and stumps, will be utilized in the stream restoration work as much as possible. The thinned and cleared areas will be immediately stabilized with temporary and permanent pasture grasses and mulched.

Ms. Levy noted that if approved, the proposed work will be completed during 2017 and 2018 by Resource Environmental Solutions, LLC (RES). RES has coordinated project planning efforts with the Howard County Office of Community Sustainability (OCS) and the Howard Soil Conservation District (SCD). SCD has assisted RES by completing a baseline soil survey of the property. The Howard County OCS is the primary point of contact agency for RES and is responsible for ensuring that the project area will be protected by a perpetual easement.

Lastly, Ms. Levy reiterated that the subject property is encumbered by a MALPF easement, so this project must be determined by the MALPF Board to be consistent with their laws and policies. MALPF does not have a specific policy for a stream restoration overlay easement, so there has been discussion with MALPF staff and counsel about the applicability of other similar policies or laws to this project. The issue at hand is that the closest relevant type of easement, which is for forest conservation, has a 10 acre overlay maximum. MALPF's wetland mitigation policy has a 5 acre maximum. MALPF staff's position so far has been that the current proposal, which will affect approximately 15 acres of stream and stream buffer areas, is excessive relative to what their existing laws and policies allow. The County's position is that the forest and wetland mitigation guidance documents are not directly applicable to the proposed stream restoration easement for a number of reasons, including the fact that the stream restoration project is not for mitigation purposes. It is also important to note that the forest and wetland mitigation easements involve the removal of land from agricultural use,

whereas this project includes the stream, which as a water of the State, is not open to agricultural use. Consequently, the County has worked with several cooperating agencies to create guidelines, based on existing State and local law, and MALPF policies, which justify the use of stream restoration easement overlays on MALPF easements.

Ms. Levy explained the attachments to the Board, including the standard map set (aerial map, soils map, and land preservation map), a zoomed-in aerial showing the project specifications and limitations, a letter from County Executive Allan Kittleman to MALPF Director Carol West, a legal analysis produced by the Howard County Office of Law explaining the plausibility of the project given existing MALPF policy, and an internal memorandum from the Office of Community Sustainability to County Executive Allan Kittleman entitled, "Rationale of a Site Selection – Stream Restoration on Maple Dell Farm, Inc."

In closing, Ms. Levy recommended to the Board to recommend approval of the stream restoration overlay easement to the MALPF Board as presented as 15.0 acres and no less.

Ms. Moore called for questions and comments. Ms. Jones asked Ms. DeMarzo of the Office of Sustainability (OCS) about the County's intentions for TMDL (Total Maximum Daily Load) credit gained from the proposed project. Ms. DeMarzo explained that the County will be taking the credit for impervious acres treated only. At least 62 acres of impervious acreage will be generated from the project, and will be applied towards the County's MS4 (Municipal Stormwater) permit for the Urban Sector. Ms. Jones then asked if it would be possible in the future for the Patrick family to expand their operation under TMDL restrictions (i.e. add more dairy cows). Ms. DeMarzo responded by stating that decision would be decided by the Agricultural Sector, and that the County is only concerned with the stream restoration area.

Mr. Brown asked how much the County will be funding the project. Ms. DeMarzo stated that the County will be paying for the entire project. In addition, the contracting company, Resource Environmental Solutions LLC (RES), has contributed funds for fencing and land surveying. RES will also be contributing towards a cost-share for the BMPs (Best Management Practices) that will be installed on the property. Moreover, the OCS is hoping to finalize approximately \$700,000 from the Washington Suburban Sanitary Commission (WSSC). OCS has also been approached by the Maryland Department of Natural Resources (DNR) for contributing possible grant funding towards the project. Mr. Godley added that RES is planning to begin construction on the watering system, as well as salvaging the fallen wood from the June 21, 2016 tornado once the project is approved by the State.

Mr. Feaga asked Denny and David Patrick if they were in agreement with the project, to which they replied that they are. Mr. Feaga added that the Howard County Farm Bureau has endorsed the project. He elaborated by stating that MALPF needs to change their policies in order to reflect the federal regulations that are currently being imposed on farmers.

Ms. Levy stated that these types of stream restoration projects will become increasingly common in the coming years. Ms. DeMarzo concurred by adding that Howard County needs to treat approximately 2,000 impervious acres by 2019 in order to meet the MS4 permit, and that 70% of this impervious acreage is on private property. The Patrick farm will be the County's pilot project on private land.

Ms. Moore asked how the 62 acres granted from the project is counted towards impervious surface elsewhere. Ms. DeMarzo explained that the State has a number of expert panels that review stormwater treatment practices such as stream restoration, bio-retention ponds, rain gardens, and others. After thorough review of each project, the panel develops a number of ratios to calculate the impervious acreage treatment. For this case, the ratio is factored to be approximately 62 acres because the stream restoration spans 6,200 linear feet. Ms. DeMarzo highlighted that there are 105 acres of impervious surface upstream from the project that drains into Cattail

Creek. The Patrick stream restoration project will be treating quantity by slowing down the stormwater flow in the creek, as well as runoff nutrients coming from upstream.

Ms. Moore asked Mr. David Patrick if he is getting enough pastureland back from the project. Mr. Patrick stated that their farm does not need a large amount of pasture. He added that the new wooded pasture created from the project will be more than sufficient for the operation, as well as advantageous for their livestock.

Mr. Godley displayed a large-scale map of the project to the Board, explaining in detail all of the design aspects.

With no further discussion or questions, Mr. Brown moved for approval, which was seconded by Mr. Feaga. The motion passed unanimously. Mr. Denny Patrick recused himself.

Discussion Items

1) Program Updates:

1a) Changes to Moderate Income Housing Units (MIHU) & Agricultural Preservation Restricted Lots

Ms. Levy informed the Board about the new Howard County Moderate Income Housing Unit (MIHU) policy relating to agricultural preservation properties. Essentially, the MIHU is a requirement in the Zoning Regulations that states 10% of each residential development must be set aside for moderate income housing units. In 2013, the MIHU requirement was applied to the Rural Residential (RR) and Rural Conservation (RC) zoning districts. Since its implementation, the MIHU requirement has been applied to building permits for new homes in all subdivisions. This requirement has also been applied towards properties in the ALPP/MALPF that subdivide and construct housing on restricted lots (i.e. child lots, grantor lots). In this case, a fee-in-lieu has been assessed based on the square footage of the dwelling being constructed on the lot. This situation was brought to the ALPP Administrator's attention after communicating with a MALPF landowner in the process of subdividing a child lot. The landowner argued that MIHU should not apply to dwellings on restricted lots, since they are designated for specific individuals and are not saleable lots. The Departments of Planning and Zoning and Housing agreed with the landowner that ALPP/MALPF landowners should be exempt from the MIHU requirement (fee) when building dwellings on their own restricted lots.

Mr. Feaga asked if this fee exemption will still be applied to unrestricted lots. Ms. Levy stated that the MIHU requirement will continue to be assessed for building on unrestricted lots since they are considered market lots, and are not designated for a family member. Typically, the farmer doesn't pay the MIHU fee anyway, since they subdivide the lot and the purchaser of the lot is the one who builds the house. It is at the building permit stage where the fee-in-lieu would be paid.

1b) ALPP Property Acquisitions

Ms. Levy informed the Board about potential new ALPP acquisitions. Along with the Board's approval of the Iglehart farm, several other properties have shown interest in coming into the Program.

Mr. Brown inquired as to how many development rights the ALPP was actually purchasing on the Iglehart property, since it's only 30 acres. Ms. Levy responded that as a Tier IV property, it could achieve four cluster lots. Mr. Brown expressed his concern that we're spending a lot of money for a property with minimal development potential. Ms. Levy stated that the current eligibility criteria include minimum size and soil capability requirements, and that the property is developable. So even if there is the potential for only a few lots, the Code provides that the property is eligible for acquisition, assuming all other criteria are being met. There was then a discussion about whether applicant properties should be evaluated for eligibility based on their true development potential, rather than the current method of theoretical density based on property size. Ms. Levy

stated that with the Tiers system in place, the most any Tier IV property can achieve is four lots, regardless of size. She noted that historically, the ALPP didn't require property owners to incur the expense of engineering the farm to determine true development potential. She noted that she doesn't see this changing.

Ms. Moore asked if there have been property owners that have inquired about applying but have been turned down since the 2013 changes to the Program. Ms. Levy stated that there have been a few properties that don't meet the basic criteria that haven't been eligible to apply. She reminded the Board about several properties that have no development potential for one reason or another, and one property that didn't meet the soils criteria.

Mr. Bauer asked about the acquisition status of the Cattail Meadows property. Ms. Levy stated that the property is still on hold at the moment, because the landowner wants to change the terms of the Installment Purchase Agreement.

1c) Monitoring & Stewardship Program: Summer 2016

Ms. Levy informed the Board that the Monitoring & Stewardship Program is in its third summer with Adam Herod, Mitch Ford, and Kristal McCormick conducting inspections. At this point, just over 100 inspections have been completed by staff as of July 25th. Ms. Levy stated that approximately 50 ALPP purchased properties remain to be inspected, and that Mr. Herod will also be inspecting the ALPP dedicated easements. Ms. Levy stated that she has always done the MALPF properties, as required by state law.

Ms. Jones inquired about the general status of the recent inspections. Ms. Levy stated that they've been going well so far. The most common problem encountered by staff is out-of-date Soil Conservation & Water Quality (SCWQ) plans. The SCWQ plans need to be less than ten years old to be considered current, and updating it is simple. All the landowner needs to do is contact Ms. McCormick.

Ms. Levy added that only a few properties have had issues regarding excessive debris and trash. Staff inspected these properties primarily due to complaints filed by community members. By and large, the debris ranges from scraps of rusted metal, oil drums, unlicensed vehicles, and other similar items. Ms. Burgess stated that the Department's goal is to see incremental progress shown by the landowner in removing the debris and trash during a six month cleanup period.

1d) County Council hearings: Section 15.518 of the Howard County Code, Zoning Regulations Amendment 164: Commercial solar facilities

Ms. Levy informed the Board that the changes to Section 15.518 of the Howard County Code have been pushed back by the County Council to the September session. Mr. Feaga inquired about the status of the County Council hearing for the Zoning Regulations Amendment that would allow commercial solar facilities on ag preservation properties. Ms. Levy told the Board that the bill has not yet been introduced, but she believes it will be sometime this fall.

1e) Agricultural Preservation budget changes

Ms. Moore asked if any funding has been shifted towards funding the Stormwater Remediation Fee. Ms. Levy replied that there was legislation that went through in June 2016 that allocated one million dollars from the ALPP budget, which would be redirected towards the Stormwater Remediation Fee for Fiscal Year 2018. Ms. Levy explained that DPZ has made the case to the Administration and the County Council that the ALPP budget needs to be managed cautiously due to the large number of installment purchase agreements coming due starting in 2019 through 2024 for the large number of acquisitions purchased from 1989 to 1994.

Ms. Moore expressed her frustration that the Board wasn't notified about the legislation before it went through the County Council. Ms. Levy replied that she was unaware of the proposal. Ms. Moore stated her concern regarding the lack of communication from the County to the Board on matters that affect the Program.

1f) Howard Ag

As a way to increase communication of information to the Board, Mr. Ford announced that the *Howard Ag* newsletter is in the process of being revived and distributed to the agricultural community. Additionally, the Department is working on establishing a Facebook page for the newsletter, so information can be shared quickly through various forms of technology. Ms. Levy also announced that the ALPP webpage has been updated with new information and resources.

2) Deed of Easement language regarding inspections

Ms. Moore began a discussion of the inconsistent language in the Deeds of Easement (DOE) regarding the County's right to inspect ALPP properties over time. Ms. Levy stated that most of the DOEs have language which very explicitly gives the County the right to inspect, however the ones that were written between 1989 and 1992 have language that is not as straightforward. During this timeframe, the documents state that the property must be managed in accordance with sound agricultural practices, and give the County the right to seek an injunction and/or monetary damages if the integrity of the farm is compromised.

Ms. Moore stated that the inconsistencies between the different DOEs are confusing, and she asked if something can be done to eliminate them. Mr. Feaga stressed that it is important to recognize that the DOEs are individual contracts with individual owners. He stated that even though the basic language evolved over time since the program's inception, it's the contract that dictates what happens with each property. Mr. Feaga and Mr. Brown both indicated that they wouldn't want to change their DOEs because that is what was signed when they entered the Program years ago, and that it may or may not be to their advantage to change to current provisions.

Ms. Moore stated that she is uncomfortable with the fact that there is so much interpretation built in to the process of how the program is implemented. There was discussion about the relative benefits of flexibility versus a strict interpretation of the DOE, regarding inspections and other aspects of the ALPP, such as permitted uses. Mr. Feaga noted that even though he falls within the implied language time frame, he chose to have his farm inspected, but that he understands, why Mr. Bauer, for example, did not, based on the problems he has had with neighbors trying to dictate how he uses his farm. Mr. Brown disagreed, suggesting that a property inspection would help alleviate neighborhood tension since it legally confirms compliance with County regulations. He went on to say that he did not understand how denying the County the right to perform an inspection would help the landowner.

Mr. Bauer agreed with Mr. Feaga's opposition on the issue. He noted an analysis he performed on the conflicting DOE language several years ago with his attorney. They concluded that the right to inspect is not legally binding across the spectrum, and that the 1989-1992 DOEs only allow access if there's been a complaint. Furthermore, Mr. Bauer stated that he disapproves of the public having access to his property information through ALPP records, as well as having photographs taken on site during inspection. Mr. Feaga remarked that Mr. Herod has only taken photographs when unsure of a property issue. Ms. Burgess asserted that the Monitoring & Stewardship team has been very patient and cooperative with the agricultural community.

Ms. Levy read the DOE language for the 1989 to 1992 time period:

“The Grantor shall manage the Land in accordance with sound agricultural soil and water conservation practices so as not to substantially reduce the agricultural value of the land by use of practices unacceptable to the Department of Agriculture or the Maryland Department of Agriculture; provided, however, that if Grantor ceases to own the Land, the obligations of this paragraph D (2) are enforceable only against the owner of the Land responsible for violating the obligations. The County shall be empowered to seek an injunction in circuit court to halt any such practice and to seek monetary damages of up to twenty-five (25) percent of the value of Development Rights.”(Deed of Easement Section D, subsection 2)

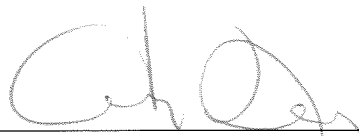
There was extensive discussion about the meaning of this provision and if it allows proactive monitoring or only complaint driven inspections. The frustration among the Board members is that the County is interpreting this ambivalent language in its favor regarding its right to inspect. Ms. Levy stated that the whole goal is simply to provide good stewardship on a regular basis.

Mr. Brown and Ms. Jones both commented that the lack of systematic inspections over the years has hampered the County’s authority of inspection enforcement of ALPP properties. Ms. Levy agreed that property inspections have only occurred a few times during the course of the program, mostly due to the lack of administrative support. Ms. Levy noted that the stewarding of easements has become an important topic nationwide, and that other jurisdictions and non-profits have been in a similar situation to us, where most of the effort has been focused on acquisition and monitoring has been neglected. She stated that without regular monitoring of preservation easements, the value of the investment can become questioned and easily threatened.

Mr. Feaga noted that the Soil Conservation & Water Quality (SCWQ) Plan should suffice in terms of the need for monitoring on the farm. Ms. Levy noted that although the DOE requires an updated Plan, what it contains is voluntary. Also, there are items that the ALPP inspection that are not covered in the SCWQ Plan.

Ms. Moore restated her frustration at a process involving so much interpretation. She cited the meeting where two County attorneys disagreed over how the Code and DOE should be interpreted regarding the use of an ag preservation property. Mr. Feaga reiterated his opinion that the 1989-1992 language can’t be interpreted to provide the right to inspect. Ms. O’Brien stated that the County’s view is that there is a right to inspect ALPP properties through the DOE language and Section 15.513 of the Howard County Code, but how that relates to individual properties remains to be seen.

Mr. Bauer moved to adjourn the meeting, which was seconded by Ms. Jones and carried unanimously. The meeting adjourned at 9:28 pm.



Joy Levy, Executive Secretary
Agricultural Land Preservation Board