



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING
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**HOWARD COUNTY AGRICULTURAL LAND PRESERVATION BOARD
AND STATE AGRICULTURAL PRESERVATION ADVISORY BOARD**

February 23, 2015

Attendance:

Board Members: Lynn Moore, Chair
Rickey Bauer, Vice Chair
Mickey Day
Howie Feaga
Shirley Matlock
Ann Jones
Denny Patrick

Public: Jim and Ruthie Welling

Staff: Joy Levy, Administrator, Agricultural Land Preservation Program
Lisa O'Brien, Senior Assistant County Solicitor, Office of Law
Michelle Cable, Administrator, MALPF staff

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

Action Items

1) **Minutes from the November 24, 2014** – Ms. Moore called for approval of the November 24, 2014 meeting minutes. Mr. Day moved to approve. Ms. Jones seconded the motion, which passed unanimously.

2) **Request for Correction of Easement acreage, Welling property, 13-82-05ex1, 103 acres (APAB)** – Ms. Levy read the staff report, stating that the current request is to correct an error made in the metes and bounds description of the original deed of easement to release land that was not meant to be included. Ms. Levy provided the history of the property, noting that Jim and Ruthie Welling are the current owners of the subject property, which was placed in the Maryland Agricultural Land Preservation Foundation (MALPF) program on June 5, 1984 by Walker and Emily Dawson.

Ms. Levy explained that prior to the easement being placed, and while the farm was still in District status, the Dawsons received permission to release an owner's lot in 1982 around the property's existing dwelling. The 1.039 acre lot was subdivided from the farm via Plat #5292 on October 15, 1982. Presumably as a clerical error, when the easement document was prepared, the metes and bounds description included the subject lot. The mistake was recently discovered while the file was being researched. In addition to the 1.039 acre lot, there are .15 acres of road right of way that were dedicated to the County at the time of the subdivision that must also be accounted for. Therefore, the total amount of the lot is 1.189 acres.

Ms. Levy noted that MALPF has been working recently to correct these types of errors in their older easements, and that the process to do so is relatively simple. According to COMAR Section 15.11.04.F, the local advisory

board is charged with reviewing the request first before sending its recommendation to MALPF staff for final review.

Ms. Levy recommended approval to the APAB to recommend approval to MALPF of the request to correct the description in the deed of easement by releasing the 1.189 acre lot known as TM 9, Parcel 320, subject to the following condition:

1. An amended deed of easement is to be prepared, executed, and duly recorded in the land records of Howard County. The amended metes and bounds description will reflect the acreage as is should be without the lot.

Ms. Jones moved to approve the staff recommendation. Mr. Feaga seconded the motion. The motion passed unanimously.

3) Request for Recommendation on Easement Acquisition, Carroll property, 52.95 acres (ALPB) – Ms. Levy read the staff report, stating that the farming operation on this property is a corn, wheat and soybean rotation. According to the Soil Conservation District, there is a current Soil Conservation and Water Quality Plan that is fully implemented. There is a very high concentration of preserved land within a mile of this property.

Ms. Levy noted that two cluster lots and the dedicated preservation acreage to support them are being excluded from the acreage on which the County will be purchasing an easement. The exclusion area is at the very southern tip of the property, which she pointed out on the attached aerial map. She stated that the property was scored using just the acreage that is being encumbered with a purchased easement.

Ms. Jones opined that it doesn't appear as if any development rights are being extinguished. Mr. Bauer confirmed that this property is Tier III and therefore has the right to develop at 1 unit per 4.25 acres, so Ms. Carroll would be forfeiting a significant number of lots by entering the ALPP.

The Board members asked for clarification regarding the process by which preservation parcel acreage must be dedicated to the County to support cluster lots. Ms. Levy explained the provisions of the Zoning Regulations that require 3.5 acres of preservation parcel debt to be established for every one acre cluster lot. She reminded the Board that the property was scored based only on the 52.95 acres that are not involved in the subdivision, noting that since the County gets the cluster lot dedicated acreage automatically, we're not going to pay the property owner for it.

Mr. Day asked who would own the 6.5 acre dedicated easement property. Ms. Levy confirmed that it could be sold at any time, or retained by Ms. Carroll. Ms. O'Brien stated that the 6.5 acre parcel would be non-buildable, which raised questions as to what non-buildable means and what uses would be allowed. The Board members asked Ms. Levy to confirm the allowable uses and report back. Ms. O'Brien confirmed that at the very least, farming is a matter-of-right use on RC zoned ground, so everything that falls under the definition of farming would be allowed.

Ms. Jones commented that she's glad this property is Tier III and still has development rights to sell, because she wouldn't be supportive if it was Tier IV. Ms. Levy stated that we've never assessed the development potential of the properties proposing to come into the program. Ms. Jones stated that perhaps we should.

Mr. Day stated his concern that we're creating a separate parcel for the 6.5 acre preservation parcel area, and inquired whether it had to be done that way. Ms. Levy stated her belief that the regulations require the separate parcel, but she will confirm it and report back.

Mr. Patrick noted that although he understands the Board's concerns about the separate parcel, the ALPP is getting an easement on everything except the 2 one-acre cluster lots, and only paying for 52.95 acres of it.

Ms. Levy stated that the application meets all eligibility criteria for acquisition of an agricultural preservation easement, and recommended approval.

Mr. Feaga moved to approve the staff recommendation. Mr. Patrick seconded the motion. Mr. Bauer recused himself. The motion passed unanimously.

4) Request for Approval, Release of Pre-Existing Dwelling, Patrick property, 13-80-06Dex1, 93 acres (APAB) – Ms. Levy read the staff report, stating that David Patrick is the current owner of the subject property, who along with his deceased brother James, placed the farm in the Maryland Agricultural Land Preservation Foundation (MALPF) program on May 31, 1983. There has been one previous request for a child lot for David's son, Denny. The current request is to release a lot around a pre-existing dwelling that is resided in by James's widow.

Ms. Levy stated that per Section 2-513.b.6 of the Maryland Annotate Code, on request to the Foundation, an owner may exclude from the easement restrictions one acre per each single dwelling, which existed at the time of the sale of the easement. There were two dwellings on the farm when the easement was placed in 1983. The house that is the subject of the current request has been resided in by James and Barbara Patrick for many years.

Ms. Levy explained that typically, the existing house is permitted to be released with an acre around it. Under certain conditions, MALPF will approve the release of up to two acres if required by the Health Department or other county agency. Howard County's Zoning Regulations allow for a maximum of up to 1.2 acres if required by the Health Department to accommodate the well and septic. So, even though MALPF will allow additional acreage than the County will, the more restrictive applies, allowing for a maximum size of 1.2 acres, which is what is being requested, and what the Health Department is requiring. Ms. Levy referred to the map submitted by the applicant showing a red hatched area that is the extra .2 acres.

Staff recommended approval of the request to release a 1.2 acre lot around an existing dwelling, subject to the following conditions:

1. Execution of MALPF's Release and Agreement process.
2. Applicant must repay \$195.65 to MALPF for the .2 acres above the one acre which the Patricks were not paid for. The easement value was \$978.27 per acre.
3. Applicant must obtain all appropriate county and state permits and approvals, including the approval of a subdivision plat to be recorded concurrently with the amended deed of easement.

Ms. Jones moved to approve the staff recommendation. Mr. Feaga seconded the motion. Mr. Patrick recused himself. The motion passed unanimously.

Discussion Items

1) Status of acquisitions – Ms. Levy provided an update on the progress of the four properties reviewed by the Board in November.

2) Status of Mullinix appeal – Ms. Levy and Ms. O'Brien shared the recent news that that the Mullinix family has dropped their appeal to MALPF's easement termination decision. Ms. O'Brien discussed the legal process and her opinions regarding the appeal.

3) Review of the ALPP – Ms. Levy stated that she would like to engage the Board in a discussion over the next couple of months about the strengths and weaknesses of the current program, with the hope of sharing the Board's opinions with the County Executive.

Mr. Day inquired as to how much funding is left, and when it expires, stating that we need that information to inform the rest of the discussion about where the program should go from here. Ms. Levy stated that she didn't have the figures with her, but would follow up after the meeting.

Ms. Jones inquired how much land is still uncommitted and available for acquisition. Ms. Levy stated that she was not sure of the exact number, but would confirm it and let them know.

There was some discussion about specific detail oriented suggestions from the Board, particularly as it pertains to the scoring system.

4) Mulch Task Force – Ms. Moore discussed the task force, stating that it has been a long and difficult process that appears to be winding down. She indicated that a current recommendation is that ag preservation land should be treated the same as unencumbered land in the RC and RR. She asked the Board if they are willing to support this recommendation. There was general discussion about the issue, with all Board members present indicating their support for Ms. Moore's recommendation.

5) Status of MALPF enforcement actions – Mr. Feaga asked about the status of the Long case. Ms. Cable and Ms. Levy offered the information they had, acknowledging that it might not be the most up to date. There have been recent developments that appear to further confirm the ongoing suspicion that Mr. Long is running a vehicle painting business in his garage. Ms. Levy stated that DPZ Zoning staff is actively working the case with MALPF's enforcement staff person. She said she would get an update and follow up with the Board.

Mr. Feaga asked for confirmation of the status of the Oak Ridge property, specifically whether they had received MALPF approval for their mulching operation. Ms. Cable confirmed that they had. Ms. Levy stated that they didn't get the conditional use approval they needed, per county zoning.

Mr. Bauer asked whether MALPF allows solar panels on their easements. Ms. Cable explained all of the latest regulations concerning solar and other alternative energy uses.

Ms. Levy recapped the various items the Board requested follow up on.

Mr. Feaga moved to adjourn, which was seconded by Ms. Jones. The meeting was adjourned at 9:03 PM.



Joy Levy, Executive Secretary
Agricultural Land Preservation Board



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

March 23, 2015

Attendance:

Board Members: Lynn Moore, Chair
Rickey Bauer, Vice Chair
Mickey Day
Howie Feaga
Shirley Matlock
Ann Jones

Staff: Joy Levy, Administrator, Agricultural Land Preservation Program
Lisa O'Brien, Senior Assistant County Solicitor, Office of Law
Beth Burgess, Chief, Resource Conservation Division

Ms. Moore called the meeting to order at 7:12 p.m.

Action Items

1) **Minutes from the February 23, 2015** – Ms. Moore called for approval of the February 23, 2015 meeting minutes. Mr. Feaga moved to approve. Ms. Jones seconded the motion, which passed unanimously.

2) **Request for Recommendation on Easement Acquisition - Approval of Revised per Acre Price, Our Forsythe, LLC, 29.85 acres (ALPB)** – Ms. Levy stated that this property, also referred to as the Wheeler farm, is located on the south side of Forsythe Road, west of Underwood. She noted that the Board reviewed this property at their November meeting. Tonight's request is a small revision to the price per acre. The family has decided not to take the Green Infrastructure Network (GIN) points. Ms. Levy said this decision changes the offer price from \$21,844 to \$21,644 per acre. Ms. Levy noted that the property didn't have many GIN points to begin with, and the family decided that the planting requirements were too extensive to make it worth participating.

Ms. Levy spent some time reviewing the concerns that Board members expressed about this property at the previous meeting and provided clarification on several key issues. These included the timing of the subdivision of the main farmhouse, whether there is the right for a principal dwelling and whether there are any tenant house rights. Ms. Levy noted that the Code prohibits an unimproved parcel less than 50 acres to construct a principal dwelling. She also stated that the Zoning Regulations don't allow tenant houses without a principal dwelling, so this property would remain unimproved. She stated that the Board's previous concern about awarding points on the score sheet for tenant house relinquishment has been addressed, referring to the revised scoring which shows that the property has no tenant house rights to give up, even though there would be two, based just on acreage.

Ms. Levy stated that all of the above clarification doesn't change the initial score approved by the Board at the previous meeting. The Wheelers had elected to not relinquish any tenant house rights when they were under the

impression they had two to give up, so that item has always been zero. So the only actual change in the scoring is the elimination of the GIN points.

Mr. Day moved to approve, which was seconded by Ms. Jones. Ms. Moore called for discussion.

Mr. Feaga questioned whether we want properties without any dwelling rights in the ALPP. Ms. Levy stated that there's nothing in the Code that would prohibit it, but perhaps this is an issue that the Board would want to consider when looking at other changes to the program. She noted that there wasn't agreement between the Board members as to whether it's necessarily a bad thing for there not to be a dwelling. The main issue of concern is whether an unimproved farm will be properly managed over time if there is no one living there.

Ms. Moore expressed her concern that this property was allowed to subdivide until it no longer had a dwelling or the right to one. Ms. Levy stated that Mr. Wheeler told her that his parent's home, which dates from the 1700's, was never on the parcel now being offered for easement sale. Mr. Day asked whether the applicant parcel would be buildable if not for the restriction in the Code that creates a 50 acre minimum. Ms. O'Brien confirmed, and stated that the 50 acre minimum probably goes back to when 50 acres was the minimum size to be eligible for the program, and that as the minimum has decreased for program eligibility, the minimum for principal dwelling eligibility doesn't appear to have changed. Ms. Moore suggested that this should be reexamined.

Ms. Moore stated that there was a motion and a second on the floor and called for a vote. The motion passed unanimously.

Discussion Items

1) Program Updates – Ms. Levy stated that the Council public hearing for the Cattail and Chiorini properties was March 16 and that the Council will vote on March 30. The title work has been ordered, so these two applications will continue to move toward settlement. Ms. Levy reported that the Berman property has been pre-filed for April Council introduction. The survey on the Wheeler property should be completed soon. If there are any changes in the acreage from what the Board previously approved, they will need to re-review the score sheet at a future meeting. Once the exact acreage is known, we will move forward with the commitment letter.

Ms. Levy stated that Genevieve Carroll's informal offer letter went out last week, after the issue regarding the subdivision of the two cluster lots was resolved. She noted that the Board's concern about an additional parcel being created to accommodate the preservation parcel debt is not going to occur, so that other than the two lots, the property will remain one parcel. Ms. Levy noted that once Ms. Carroll signs and returns the informal offer letter, the commitment letter will go out. Ms. Levy informed the Board that she has received a couple new scoring requests as well.

Ms. O'Brien provided an update about the Mullinix situation, stating that the Office of Law has placed a litigation hold on all of the Mullinix property documents, which means that Board members must preserve any documents they might have pertaining to the Mullinix termination request, including emails.

2) Review of current ALPP and discussion about ways to improve the program

- a) Mr. Day inquired about the current ALPP budget and whether the County Executive has asked for any figures regarding what has been spent and what remains. There was general discussion about the financial health of the Program and whether the funding that has been allocated to it is secure. Ms. O'Brien commented on the legislation that appropriates the funding and the length of time it is set aside for.
- b) There was discussion about the steps in the application process and whether the County Executive or the Council is able to deny an application. Ms. Levy stated that if the property meets the basic eligibility requirements as set forth in the Code, there is no basis to turn a property down. Board members expressed concern that without their 50 discretionary points, there is no mechanism to separate out very desirable properties from those that are not. Ms. Levy acknowledged that this is true, particularly in an open enrollment situation, since all properties will be acquired.

- c) There was a question as to whether parcels that may have limited development potential should be allowed to apply, which led to an extended discussion about zoning, the outcome of the Tiers situation, and to what extent it would be appropriate to make a property owner prove that their parcel could be developed. There was consideration given to theoretical density as opposed to actual density based on access, environmental features and other factors, as determined by engineering.
- d) Ms. Moore noted that helping to protect our farming operations through education of the non-farm neighbors would be a worthwhile pursuit for the Board to consider. Mr. Feaga stated that there is a need for the farmers to be able to diversify their operations without being condemned for it, because agriculture is changing and always will. Ms. Levy agreed, and stated that now more than ever the farming community needs a collective voice. Mr. Feaga stated that he believes there is a collective voice with a consistent message, but it is not being heard.
- e) Ms. Moore stated that her experience on the Mulch Task Force was quite eye opening in that there is a huge disconnect between what the non-farm residents believe about various aspects of farming, including the specifics of the ALPP, and what actually occurs. She noted that the residential neighbors believe that they have a say as to what activities the farmers can engage in because they think property taxes were used to purchase the ag easements. Ms. Moore reported that despite her efforts to convince them otherwise and explain that the ALPP only gets a small portion of the transfer tax, the perception is that ag preservation is using general fund money and is therefore competing with other services the County provides, like schools. She also frequently heard that it is believed that the farmer is paid indefinitely, not just a term payment, or in the case of the older easements, a one-time lump sum. Her concern is the empowerment the non-farm neighbors feel that they can dictate how the farmers make their living, which could easily put the farmers out of business.
- f) Ms. Moore proposed that the Ag Board serve as a panel of experts to assist the Hearing Examiner and the Zoning enforcement staff when there are questions or disputes that involve farming practices that they may be unfamiliar with. Board members agreed that they collectively have a lot of diverse knowledge and experience in farming that could be very valuable in these situations. Ms. O'Brien noted that the Board's current authority doesn't include this type of role, so an expansion of the provisions in Section 15.518 would be necessary in order to facilitate that change. She noted that currently their role is mostly restricted to the acquisition and administration of easements. Ms. Levy noted that she and Ms. O'Brien have previously discussed amending this section to be more reflective of what the Board actually does. She stated that perhaps the Board could work collectively with staff to draft amendments to this section to give it more weight. There was agreement to do this, but Ms. O'Brien suggested that in addition to whatever assistance the farmers receive from government, they should explore other means of advocacy as well, like Farm Bureau, for example.
- g) Ms. Jones inquired who in the County responds to nuisance complaints, and wondered how many there typically are. There was discussion about what protections the county and state Right to Farm laws actually provide, which led into an evaluation of how the complaint process currently works and how the Board could be incorporated. Ms. Levy brought up recent situations where either through complaints or inspections, county staff became aware of a potential zoning violation where the use was deemed commercial, but had an ag component. She noted that the Zoning Regulations don't really accommodate such situations, and may need to be reevaluated in light of the goal of trying to be more farmer-friendly. The Board members agreed that they want to be consulted about potential violations before the problem escalates.
- h) Ms. Levy stated that having a new administration with a farmer-friendly County Executive provides a good opportunity for the Board to raise the issues and suggestions they have in general, and with the ALPP in particular. Ms. Moore offered to meet with the Executive and asked for assistance from staff with talking points. Ms. Levy agreed to draft them and asked the Board for the parameters of what they want Ms. Moore to cover.
- i) The Board discussed some of the elements of the scoring sheet, including Green Infrastructure. The Board questioned wooded properties being given extra points since they're being managed for habitat and not farmed, or whether wooded properties should be eligible for the program at all. Other items the Board discussed included the maximum price per acre and how it gets established, the loss of their 50 points, the RC/RR distinction and the relevance of the road frontage criteria. There wasn't any clear consensus on any item that had to change or in what way.

- j) Ms. Levy passed out the spreadsheet that listed all uncommitted parcels in both the RC and the RR, which the Board reviewed and commented on. Ms. Levy pointed out that most of the properties in both districts are relatively small and the few large properties on the list are either current applicants or aren't interested. The main conclusion is that there is very little land left that is available for easement acquisition, which raised the issue of whether it is worth making major changes to the program at this point.

Ms. Moore summarized the items that the Board may want to pursue with the elected officials:

- 1) Adjustments to the score sheet
- 2) Expansion to the role of the Board to serve as an advisory panel for complaints coming before DPZ and the Hearing Examiner
- 3) Length of the open enrollment period

Ms. Levy stated that she would draft talking points for Ms. Moore.

Ms. Moore mentioned the Ag Disclosure document that Keith Ohlinger has been working on and said she would distribute it for review and comment.

Ms. Jones moved to adjourn, which was seconded by Mr. Feaga. The motion passed unanimously.

The meeting adjourned at 10:00 PM

Joy Levy, Executive Secretary
Agricultural Land Preservation Board



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

May 27, 2015

Attendance:

Board Members: Lynn Moore, Chair
Rickey Bauer, Vice Chair
Jamie Brown
Mickey Day
Howie Feaga
Ann Jones

Public: Corey Blanton
Rosa Elena Cunningham
Luis V. Cunningham
Thomas V. Cunningham
Terri Geelhaar
Rob Geelhaar
Tim Keane
Rob Vogel
Natalie Ziegler
John Zirschky

Staff: Joy Levy, Administrator, Agricultural Land Preservation Program
Lisa O'Brien, Senior Assistant County Solicitor, Office of Law
Beth Burgess, Chief, Resource Conservation Division
Mary Smith, Secretary, Agricultural Land Preservation Program

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

Action Items

- 1) **Minutes from the March 23, 2015** – Ms. Levy distributed the March minutes, apologizing that they are late. Ms. Moore called for a motion to approve the March minutes at the next meeting. Mr. Brown made the motion and Ms. Jones seconded it. The motion passed unanimously.
- 2) **Request for Recommendation on Easement Acquisition; Trust FBO of Thomas Lee Carroll, et al property; 61.5 acres (ALPB)** - Ms. Levy read the staff report, noting that most of this 61.5 acre farm is tillable ground and is in a corn, wheat and soybean rotation. According to the Soil Conservation District (SCD), there is a current Soil Conservation and Water Quality Plan that is fully implemented. Ms. Levy noted that there is a very high concentration of preserved land immediately adjacent and within a mile of this property.

Ms. Levy pointed out that the scoring for the immediate adjacency item was calculated as if tonight's other applicant property is already preserved, giving both properties the benefit of coming in together. She noted that this was previously done for the three contiguous Pfefferkorn properties. Ms. Levy stated that the properties must move through the approval process together in order to receive the increased points. She stated that once the acquisition occurs on the other property, the subject farm will be 100% surrounded by other ag preservation land.

Ms. Levy recommended approval, stating that the applicant property meets all eligibility criteria for acquisition of an agricultural preservation easement.

Mr. Day moved to approve, which was seconded by Ms. Jones. Ms. Moore called for discussion. There being none, Ms. Moore called for vote. The motion passed unanimously with Mr. Bauer abstaining.

3) Request for Recommendation on Easement Acquisition, Ziegler Family Irrevocable Trust property. 50.1 acres (ALPB) – Ms. Levy read the staff report, noting that this property is entirely wooded with selective timbering. According to the SCD, there is a current Conservation Plan that is fully implemented. The property is immediately to the east of the property just approved, and Ms. Levy reiterated the adjacency scoring calculation as noted with the previous applicant.

Ms. Levy recommended approval, stating that the applicant property meets all eligibility criteria for acquisition of an agricultural preservation easement.

The Chair called for comments and questions.

Ms. Ziegler stated that she opted out of the Green Infrastructure Program because it would limit her ability to harvest the trees and manage the property how she might want to. She opined that since she is in the process of completing a Forestry Management Plan (FMP) that she should receive the full 50 points for the "Ownership and Operation" item on the score sheet. Although she recognized that a farm that is in crops is a much different and more intensive use of the land, she stated that between managing the invasives and the deer, she believes her efforts constitute an active operation and should be scored as such.

Ms. Levy stated that she awarded zero points for this category because the FMP is not complete, so even if one considers managing for invasives an operation, at this time there is nothing actively taking place.

There was discussion among the Board members as to how "managing" a farm should be defined and what level of involvement is necessary to be considered an active operation.

Mr. Feaga inquired as to why points weren't given for the woodland in the "Current Land Use" scoring item. Ms. Levy stated that the SCD has always scored based on percentage of cropland and pasture only and we need to be consistent, which Mr. Feaga questioned.

Mr. Day stated that the "Current Land Use" item raises the issue as to whether timbering is considered an agricultural activity, and noted that the USDA recognizes it as such.

Ms. Levy expressed her concern about making changes at this point to this item since we've been scoring so many others without counting woodland.

A long discussion followed about how to deal with both scoring sheet items.

Ms. Jones made a motion to approve the acquisition and to give the fifty points for the "Ownership and Operation" scoring item, based on the reasoning that this parcel and several of those surrounding it are essentially being managed as one by the same family.

Ms. Moore asked for a second. There was no second, so the motion died.

Mr. Brown stated his opinion that if there was a FMP in effect they should be given the points, but without it the points are unwarranted.

Ms. Moore suggested taking a closer look at the larger policy issues regarding woodland in some future program discussion.

Ms. Jones remade her motion, including the stipulation that a FMP must be in place by the time of settlement. Mr. Feaga seconded the motion.

Ms. Ziegler said she would be able to have the FMP completed prior to settlement.

Ms. Moore called for a vote. Mr. Feaga, Ms. Jones and Ms. Moore voted in favor. Mr. Day and Mr. Brown voted against. Mr. Bauer abstained. The motion carried.

4) Request for Approval, Location of Principal Dwelling; Mullinix property, HO-00-07-PPSD (1); 41 acres (ALPB) – Ms. Levy read the staff report, stating that the farm is on the market and is unimproved. The principal dwelling request is coming from Terri and Rob Geelhaar, prior to them putting in a contract to purchase the farm. The property is mostly wooded, with a relatively small section of tillable ground near Mullinix Mill Road that is currently in soybeans and farmed by Jeff Winkler.

Ms. Levy noted that according to 15.514(c)(3) of the Code, the Board reviews dwelling locations to ensure minimal disruption of the farming operation. The applicant appears to have met the criteria by locating the dwelling relatively close to the woods line. Ms. Levy referred to the various maps within the staff report, showing the approximate dwelling and access locations. She noted that the exact location of the dwelling will be in large part determined by the siting of a suitable perc. Ms. Geelhaar has indicated that she foresees that the northern portion of the tillable ground will continue to be farmed, so the house and its access out to Mullinix Mill Road won't cause too much disruption to the agricultural use of the property.

Ms. Levy stated that she recommends approval of the request to locate a landowner's dwelling subject to the condition that the applicant must obtain all appropriate county and state permits and approvals.

Mr. Day asked if there could be a tenant house on the property. Ms. Levy stated that the deed of easement grants only a principal dwelling on this parcel.

Ms. Moore inquired as to whether the southern portion of the property will be farmed. Ms. Geelhaar stated that if they decide to reestablish their equine operation, that is where the horses would be, but for now, they just want the northern portion in crops.

There was discussion about the access and its potential impact. There was also a lot of discussion about various other driveways that appear to cut across this property.

Ms. Moore called for a motion. Mr. Feaga moved to accept staff's recommendation, which was seconded by Mr. Brown. Mr. Brown, Mr. Feaga and Mr. Day voted in favor. Ms. Jones and Mr. Bauer voted against. The motion carried.

5) Request for Approval, Release of Three Unrestricted Lots, Exchange of Land Under Easement for Land Not Under Easement and Location of Tenant House; Gratia Plena, LLC property; 162.07 acres (ALPB) – Ms. Levy read the staff report, stating that Gratia Plena, LLC is the owner of this 162 acre farm located on the west side of Sheppard Lane, represented by Mr. Cunningham and his engineering and development team. Ms. Levy noted that there are three different aspects to Mr. Cunningham's request that require Board approval. Ms. Levy stated that in addition to information regarding the requests, she included in her staff report Mr. Cunningham's overall plan for the property, which partially includes its use as a food hub. She noted that this is a zoning matter, but that information regarding his larger vision would assist the Board when reviewing the requests

before them, especially the tenant house. In reading the staff report, Ms. Levy listed all of the livestock already on the property, and Mr. Cunningham's plans for additional animals. He has been conducting regular visits to other local farms to discuss selling their products through his food hub.

Ms. Levy said the Board will review the location of three unrestricted lots, an exchange of unencumbered land for encumbered land, and the re-designation of an existing principal dwelling to a tenant house and the building of a new principal dwelling. She indicated that she would explain all of the requests first and then the Board could go back and vote on each one individually.

Location of three unrestricted lots

Ms. Levy noted that the 162 acre property is entitled to three one-acre unrestricted lots. Ms. Levy referred to the aerial map, stating that the three lots are proposed to be clustered together and proximate to the Chapel Woods community, which is immediately adjacent to the south. The three unrestricted lots would take access from an existing driveway at the terminus of Chapel Estates Drive. Due to this access location, there will be very little disruption to the farming operation. Preliminary perc testing in this area looks promising.

Exchange of unencumbered land for encumbered land

Ms. Levy informed the Board that Section 15.515 of the Howard County Code provides for the exchange of easements in very limited circumstances and only when the ALPP will benefit from the exchange. In this case, there are three 3-acre lots along Sheppard Lane that are not under the easement that also belong to LLC's controlled by Mr. Cunningham. The proposal is to merge and encumber the approximately 9+ acres in exchange for releasing from the easement restrictions 3 acres to create three more 1-acre lots, which would be located proximate to the three unrestricted lots. Ms. Levy referred to the aerial map to help explain the proposal, stating that if approved, the ALPP will gain approximately 6 acres of good quality farmland, in accordance with the Code provision requiring a benefit to the Program.

Tenant House

Ms. Levy referred to the aerial map to illustrate the request to re-designate the existing principal dwelling as a tenant house and build a new principal dwelling. She noted that Section 15.514(c) of the Howard County Code provides for the approval of a tenant house, based on the Board's approval of the need for the tenant and the chosen location. In this case, since the existing house will be the tenant house, it is actually the new principal dwelling the Board will be reviewing. Ms. Levy stated that based on the information provided, Mr. Cunningham will have a rather extensive and varied farming operation, one that could justify a full time tenant residing on site.

Ms. Levy stated that the proposed location for the new principal dwelling is approximately 600 feet to the north of the existing dwelling. It would be sited on a knoll close to the edge of a woods line. According to the owner, the proposed new house will be designed, sited and constructed to minimize the loss of productive agricultural land.

Staff recommended approval of all three requests.

Ms. Jones moved to approve the three unrestricted lots. Mr. Feaga seconded the motion. Ms. Moore inquired about the placement of the lots and wondered why they couldn't be closer to the woods line. Mr. Vogel stated that they couldn't get percs there. Mr. Cunningham stated that the area between the lots and the woods will be used for pasture. Ms. Moore called for a vote. The motion carried unanimously.

Regarding the exchange of easements, Ms. O'Brien inquired as to the merging of the parcels and the consolidation of ownership, and the timing of the conveyance with respect to the amended deed of easement.

Ms. Jones moved to approve the exchange of easements, with the stipulation that the intended access from Chapel Estates Drive is, in fact, the access used. Mr. Feaga seconded the motion, requesting to add the stipulation that all of the parcels that will be under the easement will be merged and under one ownership prior to the deed of easement being amended. The motion was so amended. Ms. Moore called for a vote. The motion carried unanimously.

Mr. Feaga moved to approve the redesignation of the principal dwelling as a tenant house, and the location of a new principal dwelling. Mr. Day seconded the motion. Ms. Moore called for a vote. The motion carried unanimously.

6) Request for Recommendation on Easement Acquisition - Approval of Revised per Acre Price, Our Forsythe, LLC, 29.85 acres (ALPB) - Ms. Levy informed the Board that they need to review this application again because the property survey has been completed and there is a slight reduction in acreage. As a result there is a small reduction in the total price offer. Ms. Levy reviewed the amended score sheet and recommended approval.

Ms. Jones moved to approve the revised score sheet and Mr. Day seconded the motion. The motion carried unanimously.

Discussion Items

- 1) Program Updates** – Ms. Levy gave an overall status of the various applicant properties and where they are in the process.
- 2) Review of current ALPP and discussion about ways to improve the program** –There was discussion about the proposed changes to Section 15.518. Ms. Levy stated that Mr. Feaga was the only one who sent in comments, which Ms. Levy has since incorporated. Mr. Bauer stated his opinion that the ALPB should be able to serve as an expert panel for all farms, not just for those within the ALPP. The Board agreed, but there was question as to whether the Board has the authority to make recommendations or decisions about farms not in the Program. Ms. O'Brien stated that the legislative process required for Code changes will be the determining factor, but the Board should propose what they ideally want to see.
- 3) Meeting with County Executive Kittleman** – Ms. Moore reported out on the meeting she and Mr. Feaga had with the County Executive that morning. She thought it went well and that he was receptive to their concerns about zoning complaints between neighbors, including the mulching situation. He also seemed to agree that it would be helpful to have the farmers on the Board serve as an expert panel on zoning issues and other complaint situations. She noted that they also discussed the definition of “commercial” as it pertains to the prohibition of certain uses, and how agriculture is by its nature a commercial use.
- 4) Need for Information for New Board Members** – There was a discussion about the fact that new members receive no information about the workings of the Board, and what information would be helpful for new members to have. Staff agreed to put together a binder with various documents for all of the Board members and distribute that at the next meeting. Ms. Levy also noted that there is a lot of information about the ALPP on the County's web site.
- 5) Request from Kathy Zimmerman regarding Office of Emergency Management Mapping** –Ms. Zimmerman is looking for various farmers to volunteer to have their farms mapped out for emergencies that show where chemicals are stored, animals are housed and various other aspects of the farm that might be important in an emergency situation. There was discussion about the value of this exercise and who the information that is gathered would be shared with.

Mr. Feaga moved to adjourn, which was seconded by Mr. Day. The motion passed unanimously.

The meeting adjourned at 10:00 PM

Joy Levy, Executive Secretary
Agricultural Land Preservation Board



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

June 24, 2015

Attendance:

Board Members:

Lynn Moore, Chair
Rickey Bauer, Vice Chair
Jamie Brown
Howie Feaga
Ann Jones
Denny Patrick

Public:

Patricia Strader Reed
Randall Reed

Staff:

Joy Levy, Administrator, Agricultural Land Preservation Program
Lisa O'Brien, Senior Assistant County Solicitor, Office of Law
Beth Burgess, Chief, Resource Conservation Division
Mary Smith, Secretary, Agricultural Land Preservation Program

Ms. Moore called the meeting to order at 7:10 p.m. and conducted introductions.

Action Items

- 1) **Minutes from the March 23, 2015** – Ms. Moore called for approval of the March 23, 2015 meeting minutes. Mr. Feaga moved to approve. Ms. Jones seconded the motion, which passed unanimously.
- 2) **Minutes from the May 27, 2015** – Ms. Moore called for approval of the May 27, 2015 meeting minutes. Ms. Jones moved to approve. Mr. Feaga seconded the motion, which passed unanimously.
- 3) **Request for Recommendation on Easement Acquisition, Strader property, 58 acres; (ALPB)** - Ms. Levy read the staff report, stating that the applicant was present on behalf of herself, her brother and their mother, the three owners of the property. Ms. Levy stated that Ms. Strader Reed has power of attorney for her mother, Madeline. She noted this 58+ acre farm is located on the north side of Rt. 70, east of Rt. 94 and is leased out with a corn, wheat, and soybean farming rotation. The property has a high percentage of tillable land, most of which is being farmed. According to the Howard Soil Conservation District, there is a current Soil Conservation and Walter Quality Plan in effect that is fully implemented. There is a relatively high concentration of preserved land within a mile. The property is improved with a principal dwelling that is rented out, and an old bank barn that is currently not in use.

Ms. Levy stated that the application meets all eligibility criteria for acquisition of an agricultural preservation easement and recommended approval.

Ms. Moore called for questions and comments.

Mr. Feaga inquired about the separate parcel of land adjacent to the farm. Ms. Strader Reed stated that it was deeded by her grandparents to her parents in 1975. There was also discussion about the property to the east and who the various owners have been over time.

Mr. Feaga moved to approve the acquisition, which was seconded by Ms. Jones. The motion carried unanimously.

4) Request for Approval, Forest Conservation Planting, Reuwer Property, 53 acres (ALPB) – Ms. Levy read the staff report, stating that Megan Reuwer is the owner of this 53 acre property which is located on the east side of Manor Lane, north of Rt. 108. The Scriveners placed the property in the program in 1988. The request is to plant a forest conservation bank. Ms. Levy referred to several aerial maps, the development plan provided by Fisher, Collins & Carter (FCC) and the Forest Conservation Planting (FCP) policy to explain the request. She noted that the applicant is proposing to plant 1.778 acres. The only FCP condition that applies to the planting area is 25% or greater steep slopes. She noted that when the request was initially submitted, it included about 4 contiguous acres but none of the FCP features were delineated. She informed FCC that the plan needed to show which policy conditions were being satisfied by the proposal. The revised version, as seen here, included a reduced amount of acreage that met the steep slopes condition, but which created the unusual configuration of the two horseshoe shaped areas that face each other.

Ms. Levy stated that her recommendation, based on the proposal technically meeting the FCP, is for approval.

Ms. Jones referred to the FCP and noted the provision that the plantings must allow for the efficient operation of farm machinery. She stated that there is no way that farm machinery could operate in and around the proposed area. She stated that from the aerial it looks like the area was in pasture or being farmed, so she can't figure out the location of the 25% slope.

Ms. Levy said it is her understanding that the slope area is a berm that was recently created. Various members expressed their concern with the fact that the berm was allowed to be built, and also with the applicant now seeking approval to use it for forest conservation mitigation.

Ms. Jones motioned for denial. Mr. Brown seconded.

Mr. Feaga asked where the dirt came from, expressing his opinion that he'd be more opposed to the current proposal if it came from offsite. Ms. Levy stated that she didn't know for certain and other members speculated about its source.

Mr. Feaga stated that the berm would be considered highly erodible. Other members agreed, but stated the applicant brought that problem upon themselves by building the slope in the first place.

Ms. O'Brien reminded the Board that there is a motion on the floor. The Board members indicated that they wanted to continue discussion.

There were lots of questions about how the berm was allowed to be created and when the berm was built. Ms. Levy attempted to answer their questions, stating that she personally was not happy that the berm was allowed to be built, but there was nothing to prevent the owner from constructing it. The applicant was able to get a Sediment and Erosion Control (SEC) plan approved by the Soil Conservation District. Although DPZ thought the amount of berming was excessive and expressed this to the owner, ultimately the Department didn't oppose it. Ms. Levy read an email from the file stating her personal concern to the owner that the SEC approval didn't necessarily mean that the berm is consistent with the Soil Conservation Plan, which is required under the easement. She advised the owner to contact the District and update the Plan, which they said they would. It appears the owners haven't complied with Ms. Levy's request.

Ms. Levy stated that she is not certain when the berm was created but she believes it is fairly recent since its purpose is to buffer the current property owner from the property to the north, which has opened a brewery operation in an existing barn. Ms. Reuwer acquired the farm in 2013. Board members questioned why the aerial map in the staff report doesn't show the berm and she stated that those maps were last updated in 2009.

Ms. Levy stated that when the current proposal came in, she had to consider it without taking the berm's existence into account, because the berm was already in place and the proposal had to be reviewed on its own merits.

Mr. Bauer inquired about the ownership history and the various requests that the Board has reviewed over time. Ms. Levy responded that the owner prior to Ms. Reuwer received approval in 2007 for a principal dwelling and a tenant house. One house was built, which she is assuming is the house that Ms. Reuwer is residing in.

Mr. Feaga concluded that they shouldn't be allowed to receive payment for forest conservation on a man-made berm built on a productive field. If they want to plant trees, that's their decision, but they shouldn't be able to get paid to do so.

Once Ms. Moore confirmed that there was no further discussion, she called for a vote on the motion to deny the Forest Conservation Planting proposal. The motion for denial of the request was unanimously approved.

5) Request for Approval, Amendments to Section 15.518 of the Howard County Code (ALPB) – Ms. Moore noted that some Board members haven't had much time to review the recommended amendments. Ms. Levy reminded her that they've had the language for several months and encouraged them to move it forward. She stated that she and Ms. O'Brien have listened to their concerns for a long time and have incorporated them into the amendments. But she stated that it's up to them how fast they want to get the changes through the legislative process. Ms. Levy stated that Mr. Feaga is the only member who provided comments and that she has addressed them all. So the version before them is ready for their approval, if they are so inclined.

Ms. Jones inquired about involvement in nuisance complaints. Ms. Levy stated that she removed the language, which was in a previous version. This was one of the recommendations that Mr. Feaga had made.

There was some discussion about whether the Board should have reviewed a situation like the previous request.

Ms. Moore questioned the ability of Board members to participate in the comprehensive rezoning process (Comp Zoning). She stated her opinion that being involved would give the Board more of an opportunity to have an impact on the uses permitted on preserved ground. Mr. Feaga stated that he appreciated the various meetings that DPZ conducted in the Rural West during the most recent Comp Zoning seeking input from the farmers, but that may not have been enough to fully represent the ag community's needs. Ms. Levy stated that one thing to consider is that the General Plan always precedes Comp Zoning, and the Plan is the overarching policy document. So the Board needs to think about whether they would want to be involved in the General Plan process as well.

Ms. O'Brien pointed out the language in item #4 that gives the Board the power to review and make recommendations on ALPP policy and agricultural policy in general. Ms. Levy added that item #5 empowers the Board to serve in an advisory capacity to DPZ on ag issues, including the evaluation of uses and/or reported violations. She stated that between these two provisions the Board is given a fair amount of latitude and it may not be necessary to specifically mention the General Plan or Comp Zoning in Section 15.518.

Ms. Jones moved for approval of staff's amendments, as is, to Section 15.518 of the Howard County Code, seconded by Mr. Bauer.

Ms. Moore questioned the language in item #4 regarding Ms. Levy's role as Executive Secretary in moving policies forward. Ms. Levy explained that typically Board recommendations come to her. Depending on the issue, it can be dealt with at her level, or she will elevate it higher up in the Administration if necessary. She stated that the more technical aspects of the program, for example the creation or refinement of policies such as Forest Conservation Planting, can be completed between the Board and staff. She noted that in the last couple of years, there has been a significant uptick in the issues that require input and/or decision making much higher up in the Administration than her level. In those cases, she has been a conduit between the Board and the Administration. She stated that item #5 gives the Board access to a wider range of decision makers, in addition to more breadth of responsibility.

Mr. O'Brien confirmed what Ms. Levy noted, then stated that in addition to their role as Board members, they are also citizens and can always contact their elected officials in that capacity.

Ms. Moore called for a vote on the previous motion to approve the amendments to Section 15.518 of the Howard County Code as presented. The motion carried unanimously.

Ms. Levy informed the Board of the remaining process for approval, stating that the County Executive and the County Council must both review and approve. Ms. O'Brien noted that both could make amendments.

Marsha McLaughlin arrived to bid farewell to the Board in light of her imminent retirement. The Board thanked her for all of her efforts and then engaged her in a long conversation regarding their potential expanded role and the complaints coming into DPZ about various farming operations. Ms. McLaughlin asked the Board members who met with the County Executive whether he was receptive to the Board having a more active role and they reported that he is.

Discussion Items

- 1) **Program updates** – Ms. Levy reported that there are several properties in various stages of the acquisition process. She noted that the Carroll property is being pre-filed this week for Council introduction next month.
- 2) **Presentation and review of Board's new Guide Book** – Ms. Levy and Ms. Burgess distributed a copy of the new ALPB Reference Binder to each member and provided a review of the various sections within it. Ms. Levy stated that this effort was in response to the suggestions made by Board members at the previous meeting regarding the need for more information about ALPP basics, especially for new members.

Ms. Jones moved to adjourn the meeting, which was seconded by Mr. Feaga and carried unanimously. The meeting adjourned at 8:28 pm.

Joy Levy, Executive Secretary
Agricultural Land Preservation Board



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

September 28, 2015

Attendance:

Board Members: Lynn Moore, Chair
Rickey Bauer, Vice Chair (By Phone)
Howie Feaga
Ann Jones

Public: Walter Beck
Janet Beck
Megan Horsey
Alan Sharp

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
Lisa O'Brien, Senior Assistant County Solicitor, Office of Law
Beth Burgess, Chief, Resource Conservation Division
Mary Smith, Secretary, Agricultural Land Preservation Program

Ms. Moore called the meeting to order at 7:30 p.m. and conducted introductions.

Action Items

1) **Minutes from the June 24, 2015** –Ms. Moore called for approval of the June 24 meeting minutes. Mr. Feaga moved to approve. Ms. Jones seconded the motion, which passed unanimously.

2) **Request for Approval, Unrestricted Lot, Holly House Farm, LLC property, HO-95-01-E; 717 acres (ALPB)**
Ms. Levy read the staff report, stating that the farm is on the west side of Folly Quarter Road and is the largest property in the program. Holly House Farm, LLC is the current owner and the grantor of the easement, which came into the program in March of 1995. The current request is to release one unrestricted lot. There have been two previous unrestricted lot requests, both of which were approved.

Ms. Levy stated that per Section 15.514(b) of the Agricultural Land Preservation Code, the Board may approve the release of a one-acre unrestricted lot from the easement after determining that the lot is located so as to minimize any disruption of agricultural activities. Ms. Levy referred to the aerial map in the staff report and noted that the applicant has met the criteria in several ways, by locating the lot in a wooded area on the edge of the farm property and adjacent to a great deal of residential development. Access to the lot will be directly from Triadelphia Road.

Ms. Levy referred to the Board's Lot Location Policy, stating that Ms. Horsey is requesting a location that is consistent with the policy in every way.

Staff recommended approval of the request to release one (1) one-acre unrestricted lot, subject to the following conditions:

1. An amended deed of easement is to be prepared, executed, and duly recorded in the land records of Howard County. The amended deed of easement will reflect the release of a portion of the easement for one unrestricted lot.
2. Applicant must obtain all appropriate county and state permits and approvals, including the approval of a subdivision plat to be recorded concurrently with the amended deed of easement.

Ms. Moore called for questions and comments.

Ms. Horsey asked for confirmation about the exact site as shown on the maps, stating that her desired location is a bit further to the left of what is shown. Ms. Levy stated that it is understood that it may not be exact, particularly given the scale of a one acre lot shown on a farm of over 700 acres.

Ms. Jones noted that in her time on the Board, this is the best placed lot location she has seen and moved approval. Mr. Feaga seconded the motion. The motion passed unanimously.

3) Request for Approval, Forest Conservation Planting, Strader property, 58.7 acres (ALPB) – Ms. Levy read the staff report, stating that this property, which is located on the north side of Rt. 70, east of Rt. 94, is currently owned by the Straders. The Board reviewed it as an applicant to the ALPP in June. Chuck, Denise and Alan Sharp are the contract purchasers of the farm, which they will acquire prior to the settlement on the ag easement. After the ALPP has acquired the ag easement, the Sharps are proposing to create several forest conservation planting areas.

Ms. Levy reviewed an aerial map provided by the Sharps showing the planting areas and noting that they are consistent with various elements of the Revised Forest Conservation Planting (FCP) policy. The proposal includes 5.3 acres of 100' stream buffer and a total of .5 acres of wetland buffer. In addition, the Sharps are proposing to utilize the 10% additional planting allowance provision to plant up to the maximum of .58 acres of trees that meet the conditions in the FCP. Ms. Levy indicated on the map how the proposed 10% areas fulfill the FCP's intent that the edge of planting lines shall be kept as straight as possible to allow for fencing to exclude livestock and allow the efficient operation of farm machinery.

Ms. Levy called the Board's attention to the attached Forest Stand Delineation (FSD) from Gutschick, Little and Weber that depicts the streams and wetlands, noting that the Sharp's request package included a letter from Wes Earp with the Soil Conservation District that he field verified everything shown in the FSD.

Based on the proposal being consistent with the FCP, staff recommended approval of the proposed forest conservation planting area on what will then be the Sharp property.

Ms. Moore called for questions and discussion.

Mr. Feaga inquired about what looked to be a pond on the adjacent property. Mr. Sharp confirmed that the pond handles the subject property's drainage. Ms. Moore inquired about a triangular shaped area that Mr. Sharp indicated is a grassed waterway in the southeast corner that isn't being farmed.

With no further discussion or questions, Mr. Feaga moved for approval, which was seconded by Ms. Jones. The motion passed unanimously.

Discussion Items

1) Program updates – Ms. Levy reported that there are several properties in various stages of the acquisition process. She noted that the Strader farm is being pre-filed this week for Council introduction in October. The Our Forsythe, LLC property went before Council in September and the vote should be in October. Ms. Levy mentioned that she and Ms. O'Brien did a site visit the previous Friday, and were given a tour of the very historic home of the part of the property not coming under easement.

Ms. Levy reported that each of the three properties that have already been approved by Council have various issues to resolve prior to acquisition, but that staff is working hard to get the Berman, Cattail Meadows and Carroll farms to settlement as soon as possible. She noted that the two Ziegler/Carroll properties are waiting on some survey work to be complete before the commitment letters go out. Ms. Levy informed the Board there are still about twenty farms that have been scored but have not applied as of now.

Ms. Jones inquired about whether the Barrow property has settled with MALPF yet. Ms. Levy indicated that she's not sure because there were a lot of title issues that had to be resolved, but that she suspects it will happen soon if it hasn't already.

Ms. Moore welcomed Mr. Lazdins and Ms. Gowan to the meeting and asked if they would like to speak. Mr. Lazdins noted that Ms. Gowan will be overseeing the Resource Conservation Division that Ms. Burgess supervises.

There was discussion about how innovative the ALPP was back in the early days, in terms of being the first in the state to have a local program, and also the first jurisdiction in the country to have an Installment Purchase Agreement, which has been a major key to the ALPP's success over the years.

Ms. Jones moved for adjournment of the meeting, which was seconded by Mr. Feaga and carried unanimously. The meeting adjourned at 8:28 pm.

Joy Levy, Executive Secretary
Agricultural Land Preservation Board



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Voice/Relay

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

November 23, 2015

Attendance:

Board Members: Lynn Moore, Chair
Rickey Bauer, Vice Chair
Jamie Brown
Mickey Day
Howie Feaga
Ann Jones
Denny Patrick

Public: Megan Mills, Natural Resources Program Manager, Department of Recreation and Parks

Staff: Joy Levy, Administrator, Agricultural Land Preservation Program
Lisa O'Brien, Senior Assistant County Solicitor, Office of Law
Beth Burgess, Chief, Resource Conservation Division

Ms. Moore called the meeting to order at 7:06 p.m.

Action Items

- 1) **Minutes from the September 28, 2015** –Ms. Moore called for approval of the September 28 meeting minutes. Mr. Feaga moved to approve. Mr. Day seconded the motion, which passed unanimously.
- 2) **Request for Approval, Forest Conservation Planting, Kittleman property, HO-92-09-E; 111 acres (ALPB)** - Ms. Levy read the staff report, stating that the farm is just west of Rt. 32 and is approximately 111 acres. Trent Kittleman is the current owner of the property, which was placed in the ALPP on October 8, 1992 by Robert H. Kittleman and Matilda Kittleman. Ms. Levy noted that previous approved requests include the creation of five child lots.

The current request is to create several forest conservation easement areas on the farm, and is being presented on behalf of the property owner by the Howard County Department of Recreation and Parks (DRP), as part of their Private Forest Conservation Easement (PFCE) initiative. Ms. Levy recognized Ms. Mills, who is the administrator of the PFCE program. Ms. Levy pointed out the various maps and supplemental information included in the staff report, noting that the maps provided by Ms. Mills were excellent and very clearly showed what was being requested. Referring to those maps, she stated that the proposed 6.13-acre total planting area is comprised of eight smaller areas scattered around the perimeter of the property, including two "10% policy" areas along the southern boundary. According to Ms. Mills, the 5.63 acres of standard planting are all based on the 100 foot stream buffer criteria in the Revised Forest Conservation Planting policy. The remaining .5 acres

comprise the 10% policy area, which will fill in the remainder of an abandoned stock field that has a fence and is partially wooded. She stated that the wooded areas won't be included. The 10% policy areas have no access for a tractor. Ms. Mills mentioned that although one of the two areas (Area "D") appears to be fully wooded on the aerial map, it only has a scattering of mature trees, many of which are dying, and there is no understory. She included a picture of Area D to clarify.

Staff recommended approval of the standard 5.63 acres and the additional .5 acres of the 10% policy area for a total of 6.13 acres of forest conservation planting.

Ms. Levy asked Ms. Mills if she has anything to add. Ms. Mills confirmed that everything is fairly standard except for the two 10% areas. She noted that DRP will be clearing the area of the invasive tree of heaven.

Ms. Moore questioned the lack of understory and asked about any deer control policy. Ms. Mills stated that tree covers will be used on each tree and Deer Pro spray will be used. She noted that when the planting is done, they will be using taller stock to increase the survival rate as the deer cannot rub on or browse the larger trees.

Ms. Moore called for questions and comments.

There being none, Mr. Day moved for approval which was seconded by Mr. Brown. The motion passed unanimously.

Discussion Items

1) **Program updates** – Ms. Levy reported that Ms. Smith has retired. She indicated that DPZ will be hiring an administrative person who will handle all of the Resource Conservation Division responsibilities, including three Boards, with the exception of the ALPB. We will also be hiring a Planning Tech position who will be devoted to the ALPP. This is a new position and will be responsible for mapping, database management, website updates, interaction with the ALPB and much more.

Ms. Levy reviewed the meeting schedule for 2016 and discussed some potential changes that may need to be made as the year progresses.

Regarding the status of easement acquisitions, Ms. Levy reported that Our Forsythe, LLC settled on November 18th. The Berman property did not settle as planned on the same day, but should within the next several weeks after they resolve several issues on their side. Ms. Levy stated that the settlement for the Genevieve Carroll property was scheduled for today; however her attorney has been questioning certain language in the deed of easement, so it is uncertain when the closing will occur.

2) **Evolution of easement language regarding permitted uses** – Ms. Levy noted that prior to the meeting, Ms. Moore requested that a discussion of the easement language as it pertains to permitted uses on preservation land be added to the agenda. Ms. Levy stated that she analyzed a sampling of how farming is defined in the deed of easement (DOE) at various points over the life of the program. She distributed the analysis, noting the new language that Mr. Adams is questioning in the Carroll easement, which states: "Agricultural Uses shall include those agricultural activities referenced in the Howard County Zoning Regulations." This language is consistent with Section 106.1, which was added to the Zoning Regulations during the recent Comprehensive Rezoning process. The purpose was to have all of the uses that are allowed on County easement properties addressed in one place, and for the regulations to have the force of law. Prior to the inclusion of Section 106.1, all permitted uses on ag easements were governed only by policy. Once the language was in the Zoning Regulations, it made sense to reference it in the DOE.

Ms. Levy referred to her analysis in which she compared the DOE language regarding permitted uses over the past 30 years. She highlighted several key years in the ALPP's history where there were major programmatic

changes, including: 1984 – the beginning of program; 1989 – the debut of the Installment Purchase Agreement form of payment; and 1993 – the complete overall of the program that, among other things, transitioned from family lots to unrestricted lots. She stated that she also included several more recent years that represented different real estate market conditions, and therefore varying interest levels in the ALPP. There were excerpts from 2002 and 2006, which reflected slow periods of acquisition, and lastly, language from the DOE in the current cycle, which has been very active. In Batch 13 (2006), we added to the DOE a listing of all farm structures on site, and the current cycle added the Zoning Regulations text reference above. Other than that, the core easement language regarding permitted uses has remained unchanged since 1993.

Ms. Levy stated that up until the recently, the DOE language that defined farming has always been somewhat vague in that it provides a general list of different types of agricultural operations, but doesn't give a detailed inventory of every allowable activity. The new addition to the DOE of the reference to the Zoning Regulations provides greater certainty and flexibility for farmers wanting to know what they can do on their properties. Since the easements are perpetual, this is beneficial as the industry changes and new types of farming arise. Ms. Levy gave Community Supported Agriculture (CSA) as an example, stating that even though farmers have been doing it for a while, it wasn't until the recent Comprehensive Zoning update that the use was included, as part of the new Section 106.1. Although the general language provided in the DOE would probably have allowed it, the new language referencing the Zoning Regulations very clearly does.

There was a long discussion about how different rules and regulations can be interpreted over time and concern about the County changing things in ways that are not beneficial to the farmers. Ms. Levy stated that as agriculture has evolved over the years, the County has always attempted to broaden and increase the opportunities available for farmers to stay viable.

Some Board members stated that despite the County's intentions, there have been situations where there is disagreement as to what regulations govern certain uses, causing concern and uncertainty for the farmers. The recent mulching debate has elevated this issue for the ag community.

Initially, it appeared that what Mr. Adams was trying to achieve was to guarantee that whatever regulations existed at the time that the DOE was placed would forever bind the property to those uses. Ms. Levy explained that not only would that be incredibly difficult to administer, but also unfavorable to the farmers. That would mean, for example, that the pick-your-own and agri-tourism operations that the Moores now have permits for would not be allowed, since they were not included in the Zoning Regulations at the time their farms went under easement.

There was more discussion on this point, where it became clear that what the Board would like to ensure is that they retain any rights they had upon entering the ALPP and all new permitted uses in addition. In other words, they could only gain, not have anything taken away.

Ms. Levy noted that although somewhat vague, the definition of farming in the DOE is inclusive enough to cover most operations. The flip side to the flexibility of the DOE language is that it can require interpretation if a particular use does not fit neatly into the definition. She stated that one of the advantages of Section 106.1 is that the uses are very specific. The flip side to having things defined in the Zoning Regulations is that regulations can change. Given the above, the County can't completely ensure that allowable uses won't change over time.

Mr. Brown stated that he likes the grey area in the easement language because it provides flexibility. Ms. Moore stated that she is concerned that the easement is not specific enough to protect the farmers. So, even among the Board members, there were various opinions and interpretations about how the easement language and the Zoning Regulation provisions interact. That said, all members seem to share the concern that there is too much uncertainty, given some of the recent conflicts over permitted uses on preservation land.

There was extensive discussion about what rights the County purchased when the easements were acquired. Ms. O'Brien explained that the easement extinguishes the right to use the property for residential, commercial or industrial purposes, and that this is, and always has been, standard language in the DOE. Ms. Levy noted that besides the limited retained residential rights, agriculture is the only acceptable use on easement properties. This initiated discussion about the meaning of commercial and how that relates to farming being considered a commercial use. Ms. Levy made the distinction between the uses that are allowed in 106.1, particularly the Conditional Uses, which aren't really ag related, but are allowed as a way to help the farmer stay profitable, as opposed to some of the uses permitted in the RC and RR zoning districts, but are not allowed on preservation land, because they are just too commercial.

Ms. Moore suggests creating policies to help articulate the intent of the program. She shared that she spoke to Mr. Kittleman and he had mentioned the opportunity of having an ombudsman on behalf of the Executive, which the Board thought would be a great asset.

Ms. Jones inquired as to the status of the Code provision that addresses the Board's role. Ms. Levy stated that the draft language the Board approved for Section 15.518 is under review by the Administration.

A suggestion was made to have the County and State laws and regulations align and complement each other as much as possible so there are minimal conflicts to cause contradiction and possible non-compliance by the farmer.

Prior to adjournment, the December 2015 meeting date was changed to Tuesday, December 22 at 7:00 pm.

Ms. Feaga moved for adjournment of the meeting, which was seconded by Ms. Jones and carried unanimously. The meeting adjourned at 8:58 pm.



Joy Levy, Executive Secretary
Agricultural Land Preservation Board