

**Montgomery County Agricultural Advisory Committee
Meeting Minutes
September 21, 2021**

Attendees: Jane Evans, Lori Larson, Debra Tropp, Aliza Silver, Amanda Cather, Doug Lechluder, Pete Driscoll, Russ Allnutt, Eleanor Leak, Ben Butler, Jordan Cissel, John Brewer

Staff: Jeremy Criss

Guests: Adam Darkins

1. **Call the Meeting to Order-Introductions:** 7:03 PM
2. **Approval of the July 20, 2021, AAC meeting minutes.** Approved as corrected (Leak/Evans)
3. **COVID-19 Update:**

The Agricultural Activities Center is open for agricultural agency employees. The public can visit the Agricultural Activities Center by appointment. The doors will remain locked, and staff will greet you at the door for your appointment etc. To enter the building everyone must provide proof of COVID-19 compliance.

72.9 % of the County's population have received one dose of the vaccine and 66.6% are fully vaccinated.

[Data - COVID-19 Information Portal - Montgomery County, Maryland \(montgomerycountymd.gov\)](https://montgomerycountymd.gov/Data-COVID-19-Information-Portal-Montgomery-County-Maryland)

4. **Proposed Acquisition by County Parks of the Broad Run Creek Farm II LLC.**
Please see attached correspondence from the Office of Agriculture.

In May, Mike Reilly, the Director of County Parks, contacted OAG to explore the acquisition of the 553-acre Beverly farm, adjacent to the NIH animal hospital, just to the south of Eleanor Leak's farm. The Beverly family sold the farm to Broad Run Creek Farm II LLC. The current owners have been working for a number of years to get a forest bank and forest stewardship timber harvest plan approved by P&P, which they have now achieved. The property includes 335 acres of deciduous forest, half of which serves as a forest bank that will be preserved. The other half will have a select cut for forest management, removing diseased trees, etc. P&P has always desired to own this farm. P&P approached OAG's predecessor in 2007 to buy the farm subject to the easement. The county attorney ruled in 2007 that the easement prohibits public access, so P&P couldn't purchase it; P&P could not comply with the County Code Chapter 2B since they are a public agency with condemning authority.

In 2021, P&P approached OAG and saying P&P would reimburse the Ag Preservation Fund at the present value of the easement, which an appraiser determined is \$600,000 (since there are 6 TDRs attached to the property, which they valued at \$100,000).

OAG asked how the deal would be structured once the easement would be terminated; P&P assured OAG that it would be outlined in the contract with the present property owner. OAG needs to know how to treat the property and its retained TDRs if the easement is terminated. The Beverly family chose not to build the permitted houses (for the children) on the property which means the sale of the property will convey the 6 TDRs without the personal covenant on the property. Therefore, in order for the County to determine the present value of the easement, they need to know how the 6 TDRs will be used. P&P says they can't tell OAG as that will be part of the contract. Yet OAG and P&P are supposed to negotiate on the present value of the easement. The OAG cannot negotiate if OAG doesn't know the terms and conditions of the retained 6 TDRs.

OAG ordered 3 appraisals to demonstrate why the county, since 1988 (when Jeremy started as the farmland preservation administrator) doesn't use appraisals to determine values. The County instead uses the "added value formula."

Montgomery County paid over \$1, 954,000 million in 2001 (when the Beverly family owned the farm) for this easement. That's really the benchmark number to start from to determine the present value of the easement. Since the easement was purchased, easement values have only increased.

The Ag Preservation Fund would need to be reimbursed at least what the County paid for the easement. The three appraisals that OAG ordered were all lower. One was \$200k, one was \$750k, one was \$1.8 million. This demonstrates why the County stopped relying on appraisals to purchase easements.

The OAG believes the retained 6 TDRS will become buildable lots if the easement is terminated.

P&P is not interested in acquiring the whole farm; they only want 473 acres for their stream valley park. They propose to allow the current owners to retain about 63 acres, which is not a public purpose. P&P won't tell OAG how the 6 TDRs will be applied and which acres they will be tied to.

OAG has made the PHED committee aware, as well as Andrew Friedson (the property is in his district), Hans Riemer (chairman of the PHED committee), and Will Jawando.

OAG has proposed changes to chapter 2B for how they can review these kinds of properties in the future.

Marc Elrich said he may be willing to terminate the easement if 4 TDRs are created, serialized, severed, and given to the County and that the remaining 2 would be retained on the 63 acres.

This whole matter reflects the agricultural community's initial concern about the Condemnation section 2B-10 of the County Agricultural Easement Program enabling legislation. We didn't want it to create a backdoor to buying farmland at extra cheap prices. Jeremy has made sure that Michael Jamison (the Chairman of the Ag Preservation Board) and Lonnie Luther (president of the Montgomery County Farm Bureau) are aware.

AAC Discussion: Lori asked what the public purpose is for P&P's desired purchase of the property. Jeremy replied that P&P wants to turn it into a park. Lori is troubled by the use of taxpayer dollars for this. If the County refuses to sell then 1) P&P could use their condemning authority to go to the courts and show that they will provide adequate compensation (fair market value) to use their condemning authority to terminate the easement and purchase the remaining interest in the land, and 2) P&P has to prove that the reason they're making this purchase is going to satisfy a public purpose. This second test could be difficult to prove as they don't even want the whole property.

Amanda Cather and John Brewer expressed concern that this would create a precedent. Lonnie Luther apparently shares this concern. The precedent is that the government would now be getting into competition for the acquisition of land. It would also be the first condemnation of an entire property with an easement in the State of Maryland. Many AAC members are concerned that we aren't able to see the terms of the contract and amount the property would be sold for.

A number of members raised the desire to send a letter to appropriate individuals and the County Executive outlining our concerns for him to have in his arsenal to say no to the purchase to Parks without transparency. Undervaluing the asset, divide the land so it's not optimally used for a public purpose (lack of public purpose). (Evans/Leak) Unanimous vote to approve.

Doug encouraged everyone to send their points/concerns in writing to Jeremy and him to help them make sure they nail the letter's intent. Jeremy will circulate the letter for the AAC's feedback before he sends it in on behalf of the Committee.

5. Update on the MCDOT staff report for the Gravel Portion of River Road. *Please see the attached correspondence from the MCDOT staff.*

Jeremy distributed correspondence to the OAG from County DOT. The County wants to move forward on the work they propose to replace 8 culvert pipes and remove the asbestos at one of the 12 locations where they found asbestos when they did the testing on May 28. They asked Jeremy to inform the community. Jeremy sent them back the minutes from the May 6 meeting about this issue for them to send notice themselves. 20 residents were at the May 28 meeting, following which DOT tested 12 samples. It appears that DOT only acquired 2 of the 12 samples with the boring machine before the machine broke. The remaining 10 samples came from simply gathering gravel at the surface. There were also apparently additional tests done in June, 4 of which came back positive for asbestos. Jeremy is just recently becoming aware of these additional facts.

Marc Elrich has told Jeremy that if the Rustic Roads Advisory Committee will support either using millings or encapsulating with tar and chip, then he'll consider a new surface for the Gravel portion of River Road.

Jeremy has suggested to County DOT that they 1) require their workers replacing the culverts to wear PPE, and 2) collect samples while they dig below the legacy gravel to access the pipes for replacement.

6. Update on the progress for Expanded Farm to Food Bank Program. *Please see the attached correspondence from the Manna Food Center*

Jeremy included shared correspondence that showed how The Manna Food Center, Montgomery County Food Council and OAG are moving forward with the program for the 2022 growing season. OAG is making sure the farmers are aware of the ag product pricing sheet that they developed for the farmers to be paid between the average wholesale price and average retail price on 60 different agricultural products listed on the sheet. This was the basis for 28 farmers to agree to grow more food to sell to Manna. OAG is reviewing the pricing sheet and any outstanding issues with certain types of products (ex: a bunch of herbs requires a more systematic way to quantify; in a bunch/by the pound, etc.). OAG needs some direction from the farmers on how to quantify these products. The partners are making a concerted effort to find funding to keep the program going in the absence of any COVID-19 relief (ex: the CARES money). The partners are working with the Department of HHS food task force which has oversight of the food council, and coordination with OAG. The program has been well received by the farmers. The partners can illustrate how much food has been grown and how much money has been spent.

7. 2021 MD/ VA Agricultural Marketing Professionals conference. *Please see the attached program for the conference in both Montgomery and Howard Counties.*

Starting next Tuesday, Howard County and Montgomery County will be hosting their annual conference. Doug Lechliger and Lori Larson have agreed for their farms to be included as part of the farm tours. Wednesday, the Montgomery County farms will be toured, and Thursday they will be touring farms and agricultural businesses in Howard County. There are 33 people registered so far, whereas there are typically between 40-50 participants. Thanks to Doug for sponsorship funding to help organize the event.

8. The Department of Environmental Protection Legislative Proposals-

Individual Water Supply and Sewage Disposal Systems-County residents that live in areas without public water and sewer were mailed the DEP post card to expand awareness to extend the life of their septic systems by pumping out their septic tanks. The proposed legislation has still not been introduced. The enforcement and penalties provision on lines 158-170 will be deleted entirely as stated by the

DEP Director “We think we can make significant progress without that provision.”

No updates on this item. No legislation introduced.

Introduction of Bill 16-21-Environmental Sustainability-Building Energy Use Benchmarking and Performance Standards – Amendments to Chapter 18 Environmental Sustainability. There was a public hearing on July 20, 2021, and several agricultural organizations provided letters outlining that all existing and new agricultural buildings should be exempt from this Bill 16-21.

<https://www.montgomerycountymd.gov/COUNCIL/OnDemand/testimony/20210720/item5.html>

The Director of DEP provided OAG with a list of equestrian facilities in the County with buildings 25,000 square feet in size or larger to assess the energy being used for lighting, heating, and air conditioning, etc.

There is a PHED committee work session on this next Monday. Jeremy and Mike Scheffel have met with all committee members to communicate unanimous support by all ag committees to exempt existing and new agricultural buildings from the benchmark standards.

Electric Lawn Care – The DEP has now proposed a more limited bill that will prohibit the use and sale of gasoline leaf blowers. The broader Electric Lawn Care bill will be delayed.

No update on this. Jeremy hasn't seen the legislation that would only prohibit the sale of gasoline leaf blowers. It hasn't been introduced.

9. **MD Farm Bureau and MCFB Farmside Chats:**

Have had good attendance at these. Del. Queen has a perfect attendance record for all of these!

Food Resiliency - Tuesday, June 8th at 9:30 AM - Butler's Orchard

Livestock Processing & Grain Farming - Thursday, July 1st at 9:30 AM - Seneca Ayr

Deer Damage - Thursday, August 5th at 7 PM - Jamison Farm

Forest Banking - Wednesday, September 8th at 9:30 AM - Willard Shop

Ag Reserve Solar - Wednesday, October 6th at 9 AM - Rockhill Orchard

Jeremy is putting together a document with all of the solar projects in the County, including the 2 in the AR zone. There are only 4 projects down county and only 1 of them is under construction. The OAG has been told that First Energy Corp./Potomac Edison has met their alternative/clean energy requirements under the tariff sheet and state mandated amount. For Potomac Edison to say they're not interested in purchasing the energy is bad because they are the largest energy service provider in the Agricultural Reserve AR zone. It is challenging to communicate with Potomac Edison. Pepco is easier to work with and BGE isn't a big energy service provider in the AR zone. Pepco doesn't legally have the ability to buy energy from a solar field outside their service area.

10. The County Council approved the Subdivision Regulation Amendment 21-01. New commercial buildings are now exempt from the subdivision process when the buildings are used for agritourism, on-site farm markets and farm alcohol production.

The amendment was approved. This means that all new commercial buildings no longer have to go through subdivision when used for ag tourism, farm alcohol production, or on-site farm markets.

11. Adjournment. (Leak/Driscoll). 8:24 pm.