



## AGRICULTURAL PRESERVATION ADVISORY BOARD

February 19, 2016

The Honorable Nancy Floreen, President  
Montgomery County Council  
100 Maryland Avenue  
Rockville, Maryland 20856

RE: Agricultural Preservation Advisory Board (APAB) Written Testimony:  
Zoning Text Amendment 16-02, Agricultural Zone -Transfer of Development Rights (TDR)  
Requirement

Dear Council President Floreen:

On behalf of the Agricultural Preservation Advisory Board (APAB), please accept this correspondence as APAB testimony on Zoning Text Amendment 16-02, Agricultural Zone - Transfer of Development Rights (TDR) Requirement.

The Montgomery County Agricultural Preservation Advisory Board understands that the adoption of ZTA 16-02 will provide relief to certain landowners from the requirement of retaining transferable development rights (TDRs) under certain conditions. These conditions are based upon a different interpretation of the zoning ordinance that was first exercised in 2010 in association with the Barnesville Oaks Subdivision and later codified as part of the zoning rewrite process in 2014. While ZTA 16-02 is well intended, the APAB feels that **“the needs of many outweigh the needs of the few”** as the ZTA does not go far enough to provide the relief necessary to all stakeholders in the AR zone.

The APAB cannot support ZTA 16-02 as written. This issue is very complex and it impacts stakeholders in the AR zone in many different ways. The APAB understands the ZTA represents an avenue to address a critical need but does not address the needs of all stakeholders. The APAB feels that the best approach would be to assign this complex issue to a policy working group appointed by the County Council, to thoroughly vet this important land use issue. This policy working group should include a cross section of landowners, and organizations considered to be stakeholders and to work collectively by providing recommendations to the County Council with solutions that are workable for all concerned. The APAB believes this approach should be similar to that of the Ad Hoc Agricultural Policy Working Group appointed by then Council President Leventhal and Council in April 2006. This newly appointed working group would provide comprehensive advice on how to properly

understand the relationship between farm tenant houses for agricultural operations in the context with subdivision and agricultural land preservation.

The APAB understands that the Barnesville Oaks Subdivision prompted this change in interpretation but question why a TDR must be retained for a farm tenant dwelling when the farm tenant dwelling is not being subdivided as a newly created lot and will remain as an accessory use to the principal dwelling and the farm. The APAB can only assume that the Planning Board and staff believe that all subdivisions of agricultural land will result in a total loss of the farming operation and that the agricultural business would no longer exist. We know this is just not the case. Many landowners while exercising their subdivision rights choose to limit the size of subdivided lots in favor of keeping the agricultural productivity of the parent parcel intact. This can be demonstrated by the example in the case of the Barnesville Oaks Subdivision. This property totaled 840.13 acres in size and the subdivision proposed 21 new lots, three out lots and two farm remainder parcels totaling 780.8 acres with the nine existing dwellings. The farm remainder parcels represents over 90 percent of the total farm acres that would be restricted to agricultural use and not subject to future subdivision.

This example then begs the question, if after the subdivision, the farming enterprise continues, would it still be considered a farm? The APAB believes the answer is emphatically yes, it would still be farm. Therefore, if we accept that this means the land, despite being subdivided, is still considered a farming operation then why can't a farm tenant dwelling still remain as an accessory use to both a principal dwelling and the farm without requiring the retention of a TDR?

The APAB also believes this policy working group should confirm the relationship of Transferrable Development Right Easements (TDR) with agricultural preservation. There is some question as to whether or not a TDR easement constitutes an agricultural preservation easement. As we understand the Planning Board is offering an amendment that list only specific agricultural preservation programs under this ZTA, however TDR easements are not among the easement programs included. As part of the final report of the Ad Hoc Agricultural Advisory Working group, recommendations were made regarding the relationship to TDR easements and agricultural preservation. On page 11 and then again on page 38 the following recommendation was made:

*“B. Group Recommendation*

*We recommend the Council introduce and enact legislation to clarify in clear and direct terms the long standing legislative intent that the development of \*RDT- zoned parcels encumbered by TDR easements shall be limited to single family and agricultural and agricultural-related uses only” (\* renamed Agricultural Reserve Zone: AR Zone on October 31, 2014).*

This recommendation was ultimately codified on October 31, 2014 as part of the zoning re-write process (Section 3.1.5 Transferable Development Rights) This code reference provides “clear and direct terms” limiting uses on TDR easement properties only to single family and agricultural and agricultural-related uses. The APAB questions why TDR easements are not listed among the easement programs identified in the Planning Board’s amendments to the ZTA?

Furthermore in the recital section of every recorded Transferrable Development Rights Easement it states that the intended purpose of the Transferrable Development Rights easement is for “preserving agricultural land” The easement clearly establishes the intent of the easement is for preserving agricultural land, much like the other agricultural easement programs administered by the County. Therefore, the APAB questions again why aren’t TDR easements included in the Planning Board’s amendments to ZTA 16-02? The APAB believes this issue should be addressed by the policy working group and confirm the TDR easement is an agricultural easement as a matter of public policy.

In addition, the APAB is concerned that ZTA 16-02 may result in unintended consequences that can harm our agricultural industry. The APAB is charged with advising the County Council on all matters relating to the preservation of agriculture. We do this not only for the preservation of land but also the preservation of the agriculture as a business. County zoning must be agriculturally friendly. The APAB feels that ZTA 16-02 may create a conflict with the legislative intent of the AR zone. The intent of the AR zone is to promote agriculture as the primary land use. Farm tenant dwellings are an important part of the farm business as farm tenant dwellings provide housing benefits to permanent and seasonal farm workers that are needed in the day to day operation of the farm. Agriculture is constantly changing and the County zoning ordinance must be agriculturally friendly and promote not only agriculture as a land use but also as a business. As we encourage agricultural diversity and niche type farming operations, the use of farm tenant housing will become even more critical. Under the current interpretation of the zoning ordinance, a farmer would have to choose between assigning a TDR for a farm tenant dwelling or retaining that TDR for a future dwelling. We believe if forced to choose, a farmer will not want to jeopardize the equity of a future dwelling right in favor of retaining it for a farm tenant dwelling. This will discourage the application of farm tenant dwellings, and possibly encourage the subdivision of agricultural land. The APAB believes this is not the intent of the County code but the rather the product of a misguided interpretation that was incorporated in the code.

The APAB applauds the Council for being one of the largest advocates for agriculture in the County and we believe the Council can appreciate the APAB’s concerns regarding ZTA 16-02. No matter how well intended, the ZTA just doesn’t go far enough to preserve landowners’ property rights and ultimately agricultural businesses. Throughout the years, MNCPPC has provided guidance to AR zoned landowners in publications like “Plowing New Ground” which provides guidance to landowners on all matters concerning TDRs. On Page 10 of the MNCPPC publication it is clearly stated that all habitable residences and/or buildable lots subdivided from the parent parcel count against the density; however, any houses and mobile homes for tenants associated with the farm operation and remaining accessory do not count against the density. This appears to be in direct conflict with the new interpretation of the zoning code beginning in July 2010 and later codified in 2014. The majority of landowners in the AR Zone made decisions on the number of TDRs to be retained with their lands based upon this guidance well before the change in code in 2014. Should these landowners be penalized by this change in the code?

We do understand that the ZTA is a well intended attempt to address certain landowners’ immediate needs; however the APAB feels that it is our responsibility to conduct an objective analysis and provide recommendations that address the needs of all agricultural land owners and not just those landowners enrolled in farmland preservation programs. The APAB believes this

issue requires greater study and needs to embrace a greater cross section of stakeholders in the AR zone. The most reasonable way to approach these important land use issues is by the Council appointing a policy working group to vet these complex issues and then to report the findings with formalized recommendations to be presented to the Council for implementation.

On behalf of the APAB, we appreciate your consideration of our comments in opposition of ZTA 16-02 and our recommendations on how to move forward on these complex issues. We look forward to participating in the work session discussions and offering our assistance in understanding the best approach to resolve these complex AR zone land use issues.

Sincerely

A handwritten signature in black ink that reads "Michael B. Jamison". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Michael B. Jamison, Chairman  
Agricultural Preservation Advisory Board

cc: The Montgomery County Council  
APAB Board Members  
Jeremy Criss, DED, AS Manager