

Agricultural Preservation Advisory Board

Regular Meeting Minutes

July 13, 2021

7:00 p.m.

Attendance: Michael Jamison, John Fendrick, Chuck Gingrich, Nick DeLuca

Staff: Mike Scheffel, Kristin Fisher

Guests: Stuart Barr representing Belt Farm estate, Peter & Lauren Huyser from Comus Farm, Steven Fistere from Farm at Home in Poolesville, David McKee civil engineer representing Belt Farm estate, Charlie Jamison, a broker, joined for the Belt discussion. Sandy – representative of the estate.

The meeting was called to order at 7:02 pm.

1. Approval June meeting minutes

Fendrick made a motion to approve the June meeting minutes, as written; Jamison seconded.

2. AEP Easement Program

a. Huyser - Agritourism request

The Huysers are seeking APAB approval for a subordinate agritourism use to the existing farming operation. Bobby Johnson farms the majority of the property and they have no intention of changing that arrangement. They are looking at using about 10 acres in the immediate area around the farmhouse for celebratory events like weddings, bar mitzvahs, retreats, and farm stays. They have renovated the entire property and are looking to generate income to maintain and support the farm. The Huysers are reviewing their plans with the APAB before submitting anything to DPS so that the whole process will hopefully proceed more smoothly. They previously came before the APAB to get approval for a hemp farming operation, which they pursued, but the hemp market was flooded with product and collapsed, and current regulations are not easy to negotiate. Jeremy Criss and Mike Scheffel visited the Huyser's farm in June and discussed parking, the need for bathrooms, and the requirement that their agritourism operation be an accessory use to agriculture and to have a direct nexus to agriculture. The Huysers submitted a business plan to provide the nexus to agriculture, which was provided to the APAB. There are two parking areas: one around the existing greenhouse, which can accommodate about 50 cars, and a grassy area along the driveway that could accommodate 100 cars, which is more than they would need. They have a 5-stall bathroom pump-out trailer, 3.5 bathrooms in the existing farmhouse, and some handicapped accessible bathrooms planned in the barn, which is being renovated. They have maintained pathways throughout the farm for hayrides, which are used to educate visitors about crop rotation and farming, forest conservation, and the agricultural

preservation easement. The Huysers plan to use produce, flowers, eggs, and other local products from the farm and surrounding farms for their events.

Jamison made a motion to approve the business plan put forth by the Huysers; Fendrick seconded.

b. Beverly/Broad Creek Run Farm, LLC - P&P inquiry

Park & Planning has a signed contract with the current landowner. In order to fulfill the requirements in Chapter 2B of the County Code, Parks must buy the farm and then reimburse the County at the present-day value of the easement for the easement to be terminated. The question has become how to determine the present value of the easement. Scheffel has requested three appraisals from DGS-approved appraisers (those who are familiar with appraising easements, as happens for MALPF easement valuation). One appraisal came back at \$700,000. The County paid \$1.95 million in 2001; the difference is that OAG used the Easement Valuation System instead of an appraisal to determine the price of the easement in 2001. Jamison asked what happens to TDRs and building rights when an easement is terminated? This easement has 6 development rights: 1 for the existing farmhouse and 5 for child lots that were never executed. Vickie Gaul believes those 6 TDRs are available if the easement is terminated; the TDR easement that extinguished 100 TDRs are not back on the table – they are permanently extinguished. This does potentially set a precedent for Park & Planning to buy property, terminate the agricultural easement, and then possibly sell the property years later with building rights attached. The Board discussed the appraised value of \$700,000 not including 6 buildable lots – only the 1 existing house. The Board wants the County to retain the unexecuted TDRs if the purchase price is \$700,000.

c. Fistere – agricultural building request

Daniel Fistere is seeking approval for a new agricultural building to support an on-site farm market. The Fistere farm has been offering pick-your-own blueberries for the last 15 years, and has expanded infrastructure (deer fencing) and introduced pumpkins and vegetables in the past few years. The proposed building would be sited along Partnership Road and would include a farm market, a walk-in produce cooler, an area for packing fresh vegetables from the farm, and an office area. The barn that currently exists at the back of property would be used for storing equipment. Right now, the Fisteres are servicing the PYO operation out of a small corner of that barn with folding tables, and there is just not enough room. In addition, the road back to the existing barn is narrow and it is difficult to accommodate cars coming in and out at the same time. The Fisteres are hoping to use that as a service entrance for equipment, pesticide storage, and move the farm market closer to the road with a separate ingress/egress. There will be no public bathrooms; only for employee use. The farm has portable toilets for the public. The APAB has to approve the location and size of the agricultural building to ensure it is not

adversely affecting the agricultural areas of the farm. Soils in the area require sand mounds, and you cannot farm over the top of sand mounds. Therefore, the Board has to approve the location of the building, necessary ingress/egress, and sand mound locations. The Board discussed that any future processing of agricultural goods would require appropriate septic accommodations. The proposed curved driveway would take land out of production. Scheffel will put Fisteres in touch with soil conservation for updating the soil conservation plan for the agricultural building.

Fendrick made a motion to approve the plan presented by the Fisteres with the condition that they minimize driveway infringement on agricultural land and choose the sand mound location that is the closest to the new proposed infrastructure; the motion was seconded by Jamison.

d. Belt – saving and excepted lots FCE request

Jamison recused himself from this discussion because of personal knowledge of and involvement in the situation.

Updated maps of the proposed forest conservation easement were supplied to the Board. Just over 7 acres are proposed for the FCE within an existing stand of trees right along the stream corridor, in the most environmentally sensitive area of the farm. This area is made up of floodplain and wetlands and so cannot be farmed because of nutrient management setbacks. Trees cannot be harvested because of what MDE requires for forest management plans.

The farm is 291 acres, and 257 of those acres were encumbered by an agricultural preservation easement in 2009. Four portions of the farm were excluded from the easement: 27 acres that encompassed a composting operation and three smaller properties, about 2 acres each, which were intended to be subdivided for houses. These three lots will be created through the administrative subdivision process. The farm is under contract to sell all but these three lots to the purchaser, or about 284 acres. The purchaser wants to continue to farm the 284 acres, and they are including language in the settlement documents to ensure that the new landowner cooperates with the subdivision process that will create the 3 lots and place the required FCE on the farm. The representatives of the farm estate are meeting with the APAB and will then be meeting with Park & Planning staff to go over the transaction and subdivision details to make sure there are no problems anticipated from their point of view. Then, the farm estate will close on the sale.

Fendrick anticipated a problem with selling the farm property before recording the forest conservation easement on the farm. The Board needs to avoid setting a precedent in which a FCE can be recorded on a farm for the development of lots that are not for or associated with the farm owner. The FCE needs to be recorded when there is still a common owner. The farm estate representatives argued that the application would be a common application; the entire property will be on the application and the FCE

connection to the parent tract will be obvious. Fendrick and the rest of the Board restated that we do not want preserved farms to be vehicles for unrelated residential development. The Board advised the farm estate representatives to start the FCE process before selling the whole property so that there is common ownership.

The Board suggested placing a FCE on the excluded acreage, which is not forested. However, the purchaser does not want to plant trees there because the land will be used for farming.

The farm estate representatives discussed recording the FCE, possibly tied to the future approved subdivision, then selling the farm, and if the subdivision does not go through, including language that would terminate the FCE. That way, common owners are recording the FCE before selling the farm.

Fendrick made a motion to approve the FCE, provided that the following conditions are met: 1) the personal representative of the estate applies for the FCE and the document is recorded in the estate's name (or the representative's name); 2) to the extent possible, the FCE will be recorded prior to the sale of the farm; 3) the FCE will follow the stream valley corridor and encumber the most sensitive natural areas, those areas that cannot be farmed; 4) the FCE will be used to fulfill the requirements for subdividing the 3 lots on the Belt farm that were saved and excepted from the Ag Preservation easement, nothing else; and 5) the contract purchaser for the Belt farm understands the need for the FCE and is willing to have the FCE on the farm. Gingrich seconded the motion.

3. Maryland Agricultural Land Preservation Foundation

a. FY20 – Stanley update

Settlement of this MALPF easement is imminent.

b. FY21 – Dayhoff update

The County remitted our contribution to the State for this easement, so settlement on this MALPF easement will be soon.

4. RLP Easement Program

a. FY22 update

Scheffel has no update on the FY22 RLP at this time.

5. Legislative activities

a. Bill 10-21 Economic Development

No update on this bill.

6. Other business

a. River Road – DOT core sampling update

DOT had tests done on core samples from River Road. At least one sample contained asbestos. In response, the County Council sent a letter to the County Executive demanding action to address the issue. All nine members of the County Council signed the letter. This is a major liability issue for the County now.

b. Morning Sun Horse Park – BLT Easement - Farm market inquiry

Lana Wang and Ronald Meyer of Morning Sun Horse Park Corp. on Mullinix Mill Road bought the farm and had a misunderstanding of the existing development rights. There is one existing house on the property and no ability to build another because of two public BLTs and one private BLT. Now, they are trying to find a way to make money with the farm and may come to the Board at some point with a request.

c. Thrive 2050

This General Plan update is in draft form, and the section on agriculture has been moved to an appendix. The APAB submitted a letter opposing the placement of agriculture in the appendix; AAC sent something similar. There has been no response yet from Park & Planning.

d. SRA 21-01 Update

This subdivision regulation amendment would exempt agricultural land used for farm alcohol production or agritourism from the requirement to record a plat before issuance of a building permit. It looks like the subdivision regulation amendment will be approved when the County Council meets later this month. Nothing will change except that there will be no expense for the subdivision process for farm alcohol production and agritourism venues.

e. Senator Cardin Roundtable

Senator Carding wants to meet with farmers for a roundtable discussion on Friday, July 23rd via Zoom. He wants to discuss challenges with the H2A and H2B programs, high speed internet access in rural areas, animal processing issues, and maybe finding a solution to the White's Ferry dilemma.

f. Farm Bureau Farmside Chat

The last Farmside Chat discussed why chemical controls are needed in agriculture. Only three elected officials and one aide attended, along with about 20 non-political people. The next Farmside Chat is in August; Bobby Jamison will discuss the deer issue in Montgomery County.

e. Black Rock Rd Solar Project

This is the first AR zone community solar project on a property that has communication towers on it. A DRC meeting to go over project is scheduled for July 20th. During this meeting, the ZTA requirements will be discussed with the solar company.

The meeting adjourned at 8:37 pm.