

Agricultural Preservation Advisory Board

Regular Meeting Minutes

February 9, 2021

7:00 p.m.

Attendance: Mike Jamison, John Fendrick, Bob Cissel, Nick DeLuca, Chuck Gingrich

Staff: Mike Scheffel, Kristin Fisher, Jeremy Criss

Guest: Pam Spadin and Otto Anderson representing the Anderson Family Trust.

The meeting was called to order at 7:01 pm.

The Board held an Executive Session from 7:57pm until 8:15pm.

1. Approval January meeting minutes

Fendrick made a motion to approve the minutes as written; Cissel seconded.

2. AEP Easement Program

a. Sugarloaf Equestrian update

There was a misunderstanding about whether Mr. O'Connell had begun construction on his farm building and received a visit from DPS. This did not happen. Mr. O'Connell has contacted District about the farm building, but hasn't started to build yet.

3. Maryland Agricultural Land Preservation Foundation

a. Update on FY 20 Applicant and process

Scheffel worked with MALPF to straighten out some language included in the Stanley's offer letter related to subordinating the forest conservation easement that exists on the property. This language has been removed and the Stanleys are moving forward with finalizing the settlement process.

b. County Matching Funds FY21

OAG received the letter from Finance that approved up to \$50,000 of Agricultural Transfer Tax collections to be used toward settlement of the Dayhoff MALPF easement to help make a full easement offer.

c. Spates and Slaysman Land Swap

This land swap was approved by MALPF staff and Spates and the Slaysmans have received a letter from MALPF outlining next steps. Scheffel has sent an

email to both parties to reiterate that they are responsible for next steps, but that OAG is happy to assist with any questions they may have.

4. RLP Easement Program

a. Updates on FY20 awards

The Stabler RLP easement will be settled next week. The settlement for Greenfield View Farm LLC will be set up soon after some additional information is received.

b. FY22 Application due February 9th

Scheffel and Fisher submitted this application yesterday.

c. Anderson Farm – request

Pam Spadin and Otto Anderson joined the meeting to discuss their request to divide the Anderson farm into four farm parcels to sell separately. None of the heirs to the property live in Maryland and so management of the property is difficult despite having very good farm tenants in the Savages. The Anderson family feels that selling the property in smaller pieces will make it more affordable for farmers to purchase and keep the property in agricultural use. The property did retain enough TDRs to include one building right with each parcel so that there would be no orphaned parcels without a homestead. The parcels all meet the requirement for containing at least 50% Class I, II, and III soils. The Board discussed with the Anderson family questions of intent for the subdivision request, ingress/egress, and Board policy related to no orphaned parcels. Criss clarified that the Board can only operate under Chapter 2B of the county code related to agricultural easements, and that other agencies would have to comment on the ingress/egress issues to various parcels.

The parcels included in the Anderson farm were consolidated under one deed before settling the agricultural RLP easement to maximize the easement valuation and ultimate offer from RLP. At that time, the family wished to maximize the value of the agricultural easement. Dividing it now, even along currently existing tax parcel lines, would constitute an agricultural subdivision under the easement and would have to meet the requirements for soils, be a minimum of 50 acres in size, have the ability to construct a house, and be able to support a viable agricultural operation on its own.

Criss suggested one avenue forward may be to request that the five houses be clustered in one area of the farm in exchange for a covenant restricting further development. He is not sure whether this is possible, but it is an avenue that can be explored if the Andersons are interested.

The Anderson family will submit a more detailed request to Scheffel that provides details on their request, including the aforementioned agricultural subdivision requirements. Once that request is received, Scheffel will be able to consult with OAG's attorney to determine whether the request is legally possible.

d. RLAC

Margaret Giblin, who previously worked with RLP, contacted Scheffel to ask whether any private citizens in Montgomery County would be interested in serving on the Rural Legacy Advisory Committee. Scheffel is aware of three people who were interested, and all three may have applied to the position. It would be good for Montgomery County to have a resident on this committee.

5. Legislative activities

a. ZTA 20-01 Solar Collection Systems in the AR Zone – Update and Discussion

A straw vote was taken on 1/26 to approve an amendment restricting solar collection systems on Class I and II soils and to require Conditional Use approval for this in the Ag Reserve. This was not the final vote. The ZTA has since been pulled, but Criss received correspondence that it might be brought back to discuss on Feb 23.

An amendment to have an appeal sent directly to the Circuit Court instead of first appealing to the Hearing Examiner, and then the Circuit Court, did not move forward.

Another amendment would include reporting requirements by OAG and others. Criss asked for the status of the wording on that amendment and OAG is still waiting to hear back on that.

b. Development Impact Tax – next step

As a reminder, in 2020 the development impact tax change was approved to require no tax for agricultural storage or processing buildings. It was vetoed by the County Executive, was reintroduced, and will pass again. The next step will be to pursue a reduction in the development impact tax for agricultural retail rate from its current rate. Scheffel and Criss will work with Council and Executive staff to pursue this.

c. Subdivision Regulation Amendment – potential issue with MDE regulation

As proposed, this amendment would exempt unplatted parcels in the AR zone from going through subdivision when the pursuing a Farm Alcohol Production building, Farm Market, or other commercial agricultural building. In discussion with well and septic people at DPS, OAG learned of an MDE regulation that

states that MDE will not issue a septic permit on a deed of record that was created after November 18, 1985. MDE interprets “Deed of Record” as a platted lot (one that has gone through subdivision). This interpretation would be problem because Montgomery County would run counter to this with the current subdivision regulation. OAG asked DPS to ask MDE to clarify their interpretation of the term “Deed of Record”.

The Board had a consensus to ask Mike to draft a letter of support from the APAB for the March 2nd public hearing on the subdivision regulation.

d. Septic Legislation

DEP is proposing a bill that would require septic tanks to be pumped every 5 years, including a financial incentive to repay \$100 of the \$300-400 total cost of pumping. This is the County’s way of demonstrating that the septic sector is trying to meet WIP goals under MS4 permits. Representatives from DEP will joining the APAB’s March 9 meeting to help get the word out to AR zone leaders about this new regulation. DEP says that there are 20,000 residences in the county that are on septic systems.

e. MD General Assembly Updates

HB577 – Health & Welfare of H-2 Visa and Migrant Workers – COVID-19 Pandemic. This bill would have required varies housing, health, and safety regulations for H-2A and H-2B workers during the pandemic, but would have been repetitive with current requirements as well as onerous and expensive for agricultural operations.

HB472 – A proposed ban on glyphosate, died in committee

HB229 from the 2020 legislative session was a ban on the use of chlorpyrifos. It passed but was vetoed by the governor. Yesterday, the senate did not vote to override the veto, so the ban did not go into effect. However, MDA issued regulations related to chlorpyrifos, so this should be checked before using it.

HB 1069 – This is a water quality bill for those on septic. It proposes to create a new division within MDE to monitor properties on well and septic and require all sales of such properties to require a water test. To fund the new division in MDE, the bill proposes to impose a new real estate transfer tax of 2.31% on all houses sold with well water.

HB581 - Hazard pay bill would require essential employees to be paid an extra \$3/hr retroactively for the duration of the public health emergency. Just based on the approximately 10,000 agricultural workers in Montgomery County, Scheffel estimated that this bill would cost agricultural businesses \$74 million. This

number only covers the wages; it doesn't include insurance, leave, and other associated expenses.

HB991 was introduced to change the language in the forest conservation law so that existing forests could be used as mitigation banks. This would address the opinion of the attorney general regarding forest mitigation credits that was deleterious for farmers by changing certain language in the law.

f. Bill 5-21 – Ag Land Preservation – Solar Collection Systems

This bill would dedicate business personal property tax revenue received for a solar collection system built in the Ag Reserve. The public hearing on this was postponed because the solar ZTA it was tied to was postponed. The Board reached a consensus to ask Scheffel to draft a letter of support for Bill 5-21 because the hearing will probably be scheduled before the next APAB meeting and coincides with the solar ZTA that we think will come back before council on 2/23. Criss reported that the analysis was that the bill would generate about \$340k/year or \$3.4 million over 10 years.

Jamison made a motion to adjourn the meeting at 8:55 pm; Deluca seconded.