



# HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

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

February 26, 2018

### Attendance:

Board Members: Ricky Bauer, Chair  
Jamie Brown  
Mickey Day  
Howie Feaga  
Ann Jones  
Denny Patrick

Staff: Beth Burgess, Chief, Resource Conservation Division, DPZ  
Amy Gowan, Deputy Director, DPZ  
Lisa O'Brien, Senior Assistant County Solicitor

Guests: Mary Clay, Assistant to Mary Kay Sigaty  
Craig Glendenning, County Auditor  
Gary Kuc, County Solicitor  
Mary Kay Sigaty, County Council Chair  
B. Diane Wilson, Office of the County Executive  
James Zoller, Agriculture Coordinator, Office of Community Sustainability

Public: Erich Bonner  
Adam Foote  
Cathy Hudson  
Richard Meyer  
Mark Mullinix  
Keith Ohlinger

Mr. Bauer called the meeting to order at 7:03 p.m. and conducted introductions.

### Discussion Items

#### 1) Status of the Agricultural Land Preservation Program Fund

Mr. Glendenning noted the documents that were previously distributed to the Board concerning various budget items that pertain to the ALPP. He began by reviewing the cash flow analysis, pointing out the key elements, including the transfer tax revenue information, the expenses from easement acquisition, and the last column, which shows the end balance in the ALPP Fund for each year. Mr. Glendenning noted the years in the early 2020's where the final balance gets low.

Ms. Jones asked if the cash flow analysis accounts for the completed acquisitions and assumes no additional easements. Mr. Glendenning confirmed that this is the case.

Ms. Sigaty asked if these numbers take the recently passed APFO into account. Mr. Glendenning said that the analysis is current as of 7/1/16 and doesn't include APFO changes. Ms. Sigaty asked for revised figures in time for budget if they are available.

Mr. Glendenning stated that starting in 2020 there will be treasury strip income from the balloon payments on the zero-coupon bonds that were purchased 30 years ago, noting that will significantly help the Fund. He added that the County has been exceeding budget projections for the last several years in transfer tax revenues.

Mr. Glendenning reviewed the Fund's FY18 budget overview which shows a more detailed breakdown of the revenues and expenditures. He indicated the transfer tax and treasury note proceeds on the revenue side, and explained each line item for the expenditures. He specifically pointed out the "transfers out" item under the other financing sources, which funds the Soil Conservation District (SCD).

Mr. Brown requested details about the Ag Innovation Grant expenditures. Ms. Burgess stated that Kathy Johnson with EDA can make that information available.

Ms. Jones inquired whether the funding that was appropriated a few years ago had been spent. Ms. O'Brien confirmed that there was \$55 million in additional funding appropriated for future easement acquisitions prior to the current cycle opening, and that there is money left, although she wasn't sure of the exact amount.

Mr. Mullinix asked what happens to the ALPP money once there are no additional easements to be acquired. Ms. Jones opined that the funding should remain in the ALPP budget and be used for other ag related needs. She stated that the Board should be vigilant regarding proposals to divert the funding.

Ms. Sigaty opined that significant changes to how that money is spent should wait until after the bulk of the IPAs are paid off in the early 2020's.

Mr. Ohlinger asked whether there's currently a moratorium on easement purchases. He stated that Ms. Levy approached the SCD Board several months ago asking for input on potential changes to the items on the pricing formula that SCD staff have been responsible for scoring. He stated his concern that, to his knowledge, the ALPB had not been consulted.

Ms. Gowan stated that staff is working with the County Executive on potential revisions to the pricing formula. She noted that the revisions are in preliminary draft form, but that the intention is to bring a final draft to the Board for review. She added that there is no moratorium, and potential applicants are being advised that if they apply during the review period, DPZ staff can't guarantee what pricing formula will ultimately be used to score their property.

Mr. Ohlinger expressed his concern about any reductions to the maximum price per acre offer amount, and any changes to the proportion of the transfer tax that is dedicated to the ALPP.

## **2) Qualification for membership on ALPB**

Mr. Bauer referred to Code Section 15.518(c), which specifies the qualifications needed to serve on the Board. He inquired how potential members are being checked to make sure that 50% of their income

comes from farming. He also questioned whether the current requirement that three of the members are farmers should be increased to four.

Mr. Feaga stated that using the Schedule F tax form could be helpful to verify the 50% income requirement, however it would need to be compared to the rest of an applicant's income tax forms to demonstrate the proper percentage.

Ms. Gowan stated that in the past the verification has been done by self-certification. She questioned whether the current definition of farmer in the Code should be reexamined.

Mr. Brown raised the scenario of someone who is a full-time farmer, but whose spouse makes more than he does, so their Schedule F will show less than 50% from farming. He inquired whether this person would be ineligible.

Mr. Day questioned the definition of agricultural endeavor. All members agreed that this is a hard term to define. Mr. Day stated that he's on the Board as a non-farmer, but most of his income comes from a store that sells farm products. He stated his concern that there could be a legal challenge as to the make-up of the Board, so these terms should be reviewed and revised if necessary.

Ms. O'Brien confirmed that the language regarding agricultural endeavor has been in the Code since prior to 1993.

Mr. Feaga inquired why there is a stipulation regarding no income from farming for two members. He indicated his preference that, if anything, the Board should be all farmers. Ms. Burgess confirmed Mr. Brown's opinion that the County tries to foster diversity on its boards. Mr. Feaga inquired as to whether other boards include farmers. Mr. Brown stated that he serves on a board representing the farming community.

There was discussion about changing the language in 15.518(c)(3) from "no income" from active agricultural endeavors to "limited income."

Mr. Zoller was supportive of using the Schedule F as the guide to what defines a farmer, since it's straightforward and easily documented. Mr. Bauer mentioned that a Schedule F must be provided to qualify for agricultural vehicle tags.

Mr. Feaga made a motion to create a definition of agricultural endeavor to be something that warrants the filing of a Schedule F for federal income tax purposes. Ms. Jones seconded. The motion passed unanimously.

### **3) Roles and Responsibilities of County ALPB**

Ms. Sigaty stated that she was asked to consider what the duties and responsibilities of the Board should be now that their role is broader than just purchasing easements. She referred to the draft Section 15.518(h), which she prepared in consultation with several of the Board members using the Environmental Sustainability Board's responsibilities as a model. She opined that the expertise of the Board could be brought to bear in many ways in the community, and her goal is to change the Code to allow the Board to be able to fulfill that role as they see fit.

Mr. Day stated that another purpose of revising the Code section is to make it consistent with provisions in the Rules of Procedure. He specifically mentioned the proposed change to add language that would allow the Board to make recommendations on any proposal or request by an easement holder.

Mr. Feaga and Mr. Bauer provided information about their interactions with Mr. Welling, and described their concerns about not being able to present his questions regarding lot right exchanges to the Board.

Mr. Feaga stated that Mr. Welling approached him regarding the number of unrestricted lot rights he'd be entitled to if he exchanged. Mr. Feaga noted that Mr. Welling had been advised by Ms. Levy that he would be entitled to two lots under current law. Mr. Feaga advised Mr. Welling that he should be entitled to three lots, based on his knowledge of the subject, which was the law that was in place when his family exchanged their rights.

Mr. Bauer stated that Mr. Welling sent him and Ms. Levy a letter regarding his desire to be heard by the Board to clear up the discrepancy. Mr. Bauer discussed this with Ms. Levy, who told him that Section 15.518(h) only allows the Board to act on specific types of requests. Mr. Bauer stated that his interpretation of the Board's Rules of Procedure would allow an easement property owner to be heard on any subject. Mr. Bauer stated that Ms. Levy told him the current lot exchange issue is a staff matter and that Mr. Welling would not be able to address the Board.

Mr. Brown stated his concern that he was not aware of this situation, and that the involved Board members and staff should have made sure that everyone had the same information. Mr. Feaga stated that Ms. Levy would not let him speak to the Board on this subject.

Ms. Burgess reminded the Board that Mr. Feaga brought up the Welling situation at a previous meeting, when he stated that his interpretation of the Code provision regarding lot right exchanges was different than Ms. Levy's. She also stated that when Mr. Feaga brought the topic up, it was without the item being on the agenda and Mr. Welling wasn't present, so it wasn't appropriate for it to be discussed.

Mr. Brown stated his concern that the ex parte rules were broken in the Welling situation. Mr. Kuc stated that the Board does not serve in a quasi-judicial role, so ex parte rules don't apply. However, Mr. Kuc opined that it isn't wise for Board members to provide legal advice regarding easement provisions.

Mr. Brown asked Mr. Feaga if he gave Mr. Welling wrong information. Mr. Feaga noted that although he incorrectly advised Mr. Welling about the number of unrestricted lots he is entitled to, he believes that the Board members should be able to assist their fellow farmers.

Ms. Sigaty stated that her role is to facilitate the revamping of the Code to enable the Board to be more accessible and helpful to the ag community.

Ms. Burgess pointed out that a lot of the draft language refers to the agricultural community as a whole, above and beyond the scope of this Board in its role of overseeing the easements. Ms. Burgess asked if there should be a different board that has that larger role, particularly since DPZ staff expertise is with easements.

Mr. Bauer and Mr. Brown discussed their concerns that some of the proposed items should pertain only to easement properties.

Mr. Brown noted that with the existing responsibilities, there will always be a need for the ALPB. He stated his concern about hearing from property owners not under easement.

Ms. Jones stated that she wants the Board to be able to weigh in on how the ag preservation funding gets spent in the future, even if it's on things other than easements. She opined that the money should remain for agricultural purposes.

Ms. Sigaty referred to draft item 7, which would expand the Board's authority to listen to anyone's concerns about agriculture in the County. She stated that this is the language that would allow someone without a specific property request to address the Board, would give the Board the authority to consider financial issues like those raised by Ms. Jones, and would allow the Board to have input on the forthcoming Zoning Regulations re-write.

Mr. Kuc clarified that the current Code language gives the Board some authority to weigh in on larger issues besides just those dealing with easements, noting item #4, which states the Board can review and make recommendations on ALPP policy and ag policy in general.

Mr. Day read text from the legislative history of the creation of the Board in 1976, which provides for larger ag issues beyond the easements.

Mr. Ohlinger stated that other counties have a mediation board that is available to all citizens. He also talked about the state ACRS mediation program. He noted that this type of board could be an alternative to having the ALPB consider grievance situations.

Ms. Jones stated that it can be difficult to separate an easement only issue from larger concerns.

Ms. Gowan referred to draft item (3)(iv) and stated that there needs to be more specificity about what the Board wants to hear because DPZ staff get daily inquiries from a variety of people regarding rights under the easement.

Mr. Day stated that the Board members should be able to help recruit potential applicants, and requested the names of people who were scored but haven't applied yet.

Mr. Brown noted that the ALPP is a voluntary program, and he has concerns about what might be said to potential candidates, specifically the Board's ability to provide consistent information.

Mr. Kuc stated that the current Code language does not allow Board members to recruit. At a minimum, they would need authority to do this as a board. The Code would need to be specific about what the Board would do in performing this role. They can act as individuals, but not as individual board members. They have certain immunities from suit as a board, but this does not apply as individuals. He warned about things being misinterpreted, and the ramifications if that were to happen. Mr. Kuc stated that his concern was Board members speaking about specifics of the program.

Mr. Day restated his strong opinion that Board members should be able to contact people about coming into the program, noting that this role should be performed by the Administrator, but opining that it was not happening.

Ms. Gowan suggested drafting a generic letter from the Board to property owners.

Ms. Sigaty stated that another item for the list could be outreach to property owners who may be interested in preservation.

Ms. Jones stated that property owners need to be made aware of the various preservation options and not just the County program. She stated her belief that this isn't being done.

Ms. Jones questioned whether draft item (3)(iv) should fall under the “shall” language that applies to all 15.518 provisions. She doesn’t think that every request would be appropriate to come to the Board, using as an example things that have a very tight time frame, like permitted uses.

Ms. Sigaty suggested that the request should be from the easement property owner only, which would resolve the concern about having the new language as a required responsibility.

Mr. Bauer stated that contract purchasers of easement land have come before the Board in the past to get approval prior to purchase, and that they should continue to be able to do so.

Ms. Gowan suggested that (3)(iv) include requests from property owners and prospective purchasers.

Mr. Brown stated his concern about how the Board can handle questions that have immediate timelines.

Ms. Burgess stated that Mr. Brown’s concern is legitimate because Ms. Levy receives many calls that need to be resolved immediately, giving as an example real estate agents calling in when properties go on the market.

There was discussion about how the agenda should be set and who sets it. Ms. Sigaty described how this works for the County Council. Ms. Gowan confirmed that the Board should tell the Chair about the topics they want on the agenda, and that Ms. Levy puts on any requests or administrative items.

Ms. Hudson stated that anyone should be able to approach the Board.

Mr. Brown made a motion to table the Code changes until new members come on the Board.

There was no second to the motion.

Mr. Kuc stated that the motion failed for want of a second.

Ms. Burgess noted that with these proposed changes, the Board is going to most likely have larger agendas and they only meet ten times a year. There was a discussion about how agenda items would get prioritized. The concern is that with limited time at each meeting, that easement properties should be placed ahead of others.

Mr. Kuc stated that the order of the agenda would be at discretion of the Chair and Staff.

Ms. Jones made a motion to advance to Council the draft that Ms. Sigaty presented, but change item (3)(iv) to read, “proposals or requests pertaining to an easement brought by a property owner or agent.”

The motion was seconded by Mr. Feaga.

Ms. Gowan asked whether the same language should apply for easement enforcement in #5. There was discussion about easement and zoning complaints and what should come before the Board. Ms. Gowan stated that the current language allows the Board to review bigger picture policy issues related to zoning complaints, but not case specific items. She opined that perhaps the same should apply for easement enforcement if there are no legal issues.

Ms. Jones stated that she would accept an amendment adding a new item that would say “outreach to potential easement applicants, existing property owners and contract purchasers.”

Mr. Brown stated that he doesn't want to hear from everyone interested in buying a property. Mr. Bauer agreed, suggested adding contract holders. Mr. Bauer stated that someone with a contract should be able to get Board review of a dwelling or lot location prior to investing in a property. Mr. Brown agreed.

Mr. Brown restated his concerns about the item (#7 on draft) which would allow the Board to listen to anyone's concerns regarding agriculture in the County. Ms. Burgess stated that if this occurs, there would need to be a structured process, and suggested creating a form that could help organize and track the requests.

Ms. Sigaty stated that specifics about how to regulate the agenda can be determined, and should be in the Rules of Procedure.

The motion on the floor was voted on and passed unanimously.

Mr. Feaga moved to adjourn the meeting, which was seconded by Mr. Day and carried unanimously. The meeting adjourned at 9:48 p.m.



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Joy Levy, Executive Secretary  
Agricultural Land Preservation Board