

# **Agricultural Preservation Advisory Board**

Regular Meeting Minutes

March 9, 2021

7:00 p.m.

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

Staff: Mike Scheffel, Kristin Fisher

Guests: Steven Shofar, DEP; Alan Soukup, DEP

The meeting was called to order at 7:01 p.m.

## **1. Approval February meeting minutes**

Cissel made a motion to approve the regular meeting minutes from February as written; DeLuca seconded.

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

## **2. AEP Easement Program**

### **a. Willard-Watkins Farm – American Farmland Trust request**

AFT contacted OAG because they are interested in finding case studies of Maryland row crop farmers who are using regenerative farming practices like no-till, cover crops, nutrient management, and conservation crop rotation. They want to quantify the economic, water quality, and climate outcomes of these investments in soil health. They are specifically looking for farms protected by FRPP money, so Scheffel put them in touch with Billy Willard, whose “Watkins” farm is preserved under that program. Willard was interested and has been in touch with AFT.

### **b. Chuck Gingrich easement**

A complaint was filed after Chuck cut down trees on his farm (the old Hyatt Farm) to both expand an existing field and to harvest timber and firewood. Yesterday there was a site visit with Park & Planning, DPS, and J. Harne, Chris & John Zawitoski from the Soil Conservation District. Scheffel explained that before 1994, the Hyatts owned a larger parcel and in 1994, a parcel was subdivided off. The subdivision required a forest conservation plan that apparently impacts the entire farm acreage and not just the subdivision. However, this forest conservation plan was never recorded in the land records, so when the farm was put into the AEP program in 2005, John Zawitoski ordered the title report and found no encumbrances. Now there is a question of what is legally binding. OAG will put together a timeline of events including the dates of subdivision,

forest conservation easement, and other plats and argue that the lack of recordation means the forest conservation plan is not legally binding and does not supersede the agricultural preservation easement. The primary position in the land records should be the agricultural preservation easement, which allows the harvesting of timber.

### **3. Maryland Agricultural Land Preservation Foundation**

#### **a. Update on FY 21 applicant**

Ida Dayhoff received an offer from MALPF and accepted it. OAG has now settled MALPF easements using FY19, FY20, and FY21 money, which is good progress considering the paucity of local funds at this time.

#### **b. Baker – grain bin location**

The Bakers are installing a 36-foot diameter grain bin on the impervious surface that's already there at the farm headquarters. This is just an FYI in case someone complains about it, but it is allowed under their easement.

### **4. RLP Easement Program**

#### **a. Updates on FY20 awards**

The FY20 easements on both the east and west side of the county have finally been settled. We are waiting to hear something back from RLP about the FY22 application that was submitted in February.

### **5. Legislative activities**

#### **a. ZTA 20-01 Solar Collection Systems in the AR Zone**

This ZTA was voted on by council, and the final version was really a best-case scenario for agricultural and conservation groups; Class I and II soils were excluded for siting eligibility, and projects must go through the conditional use of approval process.

#### **b. Septic Legislation – DEP Presentation**

DEP is proposing a legislative change that will require septic owners to pump out their septic tanks every 5 years. They will be offering a rebate of \$100 upon proof of pumping (total cost \$250-400), which will be available for each property once every 5 years. The funding will come from the Water Quality Protection Charge. There are 9,640 septic systems in the Ag Reserve, and a total of almost 20,000 in the whole county. Currently there is no mechanism for the county to provide guidance or any kind of periodic maintenance for septic systems after they have been permitted and installed. The benefits of regular pumping include extending the life of the system and promoting health and safety by avoiding backups. Many other jurisdictions have started well and septic

management programs; this started in Montgomery County in 2018. A database of existing septic systems is in the process of being built and outreach to property owners about operation and maintenance is starting. The Board asked about penalties for non-compliance. DEP responded that if property owners do not pump-out or provide demonstration of the pump-out (e.g., a copy of receipt from hauler) they will first get a reminder, which if ignored, could result in a citation. Other jurisdictions require an inspection of the septic system at the time of pump-out, but Montgomery County is not looking at that for now. Education is going to be part of the process and is already going forward parallel with this initiative.

Fendrick recommended the importance of education before action and voiced concerns about the proposed legislation. DEP said enforcement couldn't begin for at least 5 years after the legislation became effective because they wouldn't have records to prove a lack of pumping for at least 5 years.

c. MD General Assembly Updates

HB577 relating to H2-A and H2-B visa and migrant worker housing, safety, health, and welfare during the COVID-19 pandemic received an unfavorable report in committee, so it died.

HB472, the glyphosate ban, was withdrawn by sponsor.

MC15-21, the deer management permit pilot program, was withdrawn by Fraser-Hidalgo.

HB7 - Provided a \$75 credit off state income tax per deer butchered and donated; total eligible amount capped at \$600.

HB581 - Hazard pay bill would require essential employees to be paid an extra \$3/hr retroactively for the duration of the public health emergency. House committee is currently amending the bill. Supposedly they will remove ag from the list of businesses subject to this retroactive pay requirement; they want to focus on big box stores that were able to stay open during pandemic.

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.

Some new minimum wage requirements will not apply to workers of farm markets; they will be eligible for a lower rate.

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

There was a public hearing today. Three people testified: Mike Jamison and Randy Stabler spoke in support of the bill and Doug Boucher opposed it. The opposition was based on it not helping minorities.

e. Subdivision Regulation Amendment

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. Four voted in favor; none opposed.

**6. Other business**

a. TDR Broker/Buyer List – need to update

OAG needs to update the list of brokers/buyers of TDRs – it was last updated in 2016. Scheffel gets requests from developers or attorneys who want to find TDRs. He can't give specific names, so OAG has been maintaining a list of sellers, buyers, and brokers that can be shared. Cissel suggested putting it in alphabetical order and otherwise standardizing the format to indicate whether they are buyers, brokers, etc. Scheffel asked the Board to add to/edit the list and send back to him so he can start the update process.

Meeting adjourned at 8:09 pm