

Agricultural Advisory Committee (AAC)

Minutes of May 15, 2012

Attendance: David Weitzer, Linda Lewis, Tim McGrath, Jane Evans, Robert Beall, Ben Allnutt, Drew Stabler, Eddie Kuhlman,

Guests: Debbie Belt Benson, Charlotte Ruppert, Michele Rosenfeld

Staff: Jeremy Criss, Katherine Holt, Qi Duan

The meeting was called to order at 7:00 pm.

Introductions: Everyone introduced themselves.

Approval of Minutes April 17, 2012:

The Committee was asked if any changes or corrections were needed to the AAC minutes from March 20, 2012. Linda Lewis said her name was listed twice for the attendance. Hearing no additional changes Eddie Kuhlman motioned to approve the minutes as corrected, and Drew Stabler seconded the motion and it passed.

Update on the UME-Agronomy Educator Position:

The Committee learned that DED has not received a response from the Dean on the proposal to fill the Agronomy Educator Position for the UME-Central MD Cluster-Frederick, Howard, and Montgomery counties. The proposal would fill the position in FY13. The commitment of local funding for the position in FY13 is still pending for Howard and Frederick Counties and Montgomery County has offered to front funding for both these two counties for FY13 contingent upon these counties providing their full share in FY14 and beyond. Criss said that Howard County Farm Bureau questions the need for the position that has been vacant for several years. Howard County farmers have been obtaining their technical assistance for agricultural crops from other sources than the UME. The Howard Soil Conservation District believes the Howard County Council will want to see data that shows why the position is needed when it has been vacant all this time. Criss said the Dean will be attending the UME Volunteer Recognition dinner tomorrow night and that he would mention the proposal to the Dean. The Committee discussed the atmosphere of UME in the State of Maryland and how the level of support to agriculture has decreased. Drew motioned for the AAC to write a letter to the Dean recommending support for the proposal offered by Montgomery County as a one time funding plan and Robert Beall seconded the motion and it passed.

Discussion on Chapter 22A Forest Conservation and the Outcome of the Dr. Mess Federal District Court Case:

The Committee thanked Michele Rosenfeld for coming to the AAC meeting to explain the outcome of the court case surrounding the Dr. Mess property and Danny Miller the

logger. The Committee is considering a recommendation to the County Government to amend the Chapter 22A Forest Conservation Law. Michele reviewed the facts surrounding the case where Dr. Mess owns approximately 120 acres of forestland and he contracted with Danny Miller to harvest 5 percent of the trees. Under section 22A-5 Exemptions- the DEP and MNCPPC rejected the permit to harvest the trees each time Danny Miller tried to address the concerns of these agencies. The case was filed to resolve the rejections of the permit. Both the Lower Court and the Federal Court of Appeals ruled that Danny Miller and Dr. Mess have no legal standing to harvest the trees. The court ruled that the County has discretion to deny the timber harvest permit and that there is no recourse for the denial. Michele said even if the case was reentered with Dr. Mess joining the case the courts would rule the same way. Michele said this outcome should concern anyone that owns timber that wants to harvest the trees. The question for timber owners in the County-the harvesting of timber is an agricultural activity and source of income; however, there is no way to appeal the Governments denial of timber harvest permit. The Committee asked why the County Government would do this. Michele said the Mess property is located in a MNCPPC Master Plan that recommends the forestlands on the Mess property be dedicated to the County for free. The property owner and the logger have no recourse. Michele suggested that a resolution process should be created to appeal the decisions of County agencies. Robert Beall asked if the State Forester had been involved in the beginning of the process would the Mess property timber harvest permit have flowed through the process? Michele said the process was not clearly defined or spelled out in the code at the beginning of the case. At one point the DEP Arborist recommended “increase the decrease in spacing between the harvested trees and no one understood what this meant. Robert Beall explained his experience in working with Bill Bond more than 10 years ago to harvest some timber on his farm and the process went smoothly. Michele said the DEP staff repeatedly requested additional information and each time the request changed the information that was previously requested. Drew Stabler suggested that the tactic of the County was to make the property owner do this, and then that, and eventually the property owner will give up and quit. Drew Stabler questioned how a property along Route 108 was cleared of forestland for housing development. Linda Lewis asked how much the timber was worth. Michele said at the time of the contract the timber was worth \$250,000. Drew Stabler said that it has been his experience that you could turn Danny Miller loose in the forest and you will not know that he was there the following year. Linda Lewis asked if Dr. Mess was aware of the Master Plan designation for his property and Michele said she was not sure if he knew although Dr. Mess has owned the property for 30 years. Michele said the Preliminary Plan of Subdivision process involves the MNCPPC-you give us the forestland acres and we will approve the development plan to proceed on the remainder of the property. David Weitzer asked Michele what was she was recommending the Committee do. Michele said in the future someone will be in the same position and there is no administrative remedy. If you want a second opinion the code must be changed. Michele suggested that there is a question of middle ground and how the State verses the County should have an administrative review process. Jane Evans asked if the Mess property was specific to the recommendations in the Master Plan and how does this impact property outside of the Master Plan. Michele said that as the case moved forward the DEP developed the interim standards including the inventory of forest, the types of trees,

and the number of trees, to meet the County's objectives. Michele said these standards apply to all owners of timber in the County. After additional discussion David Weitzer suggested the AAC form a sub-committee to discuss the matter further and make recommendations to full committee. The following folks agreed to serve on this sub-committee-Drew Stabler, Linda Lewis, Michele Rosenfeld, and Debbie Benson. Robert Beall suggested that David Plummer should also be involved.

AAC recommendation- LMA G-909 For R-10/TDR Receiving Area in Bethesda:

The Committee was asked to turn in the packet regarding the AAC recommendation surrounding the Local Map Amendment G-909- R-10/TDR receiving area in Bethesda that is being considered for either Planned Development PD-88 Zone or PD-100 Zone both of which do not require the purchase of TDRs. The Committee was recommending against the Planned Development zoning and to recommend the existing zoning should remain in place. Tim McGrath asked if Excess TDRs could be combined with BLT TDRs. Drew Stabler recommended against this because we need to have clearly defined and separate receiving areas for Excess verses BLT TDRs. David Weitzer said that if they support our recommendation, 51 TDRs could be used on the site. Eddie Kuhlman said that he is aware of two developers that are using the TDRs in their vault- floating TDRs that have already been created, serialized and severed from farms for their development projects. After additional discussion Tim McGrath recommended approval of the AAC letter to the County Hearing Examiner, Drew Stabler seconded the motion and it passed. Linda Lewis asked if TDRs get split equating to one TDR = more that one development unit? Criss said that TDRs can be used in Multi-family dwelling units like garden apartments where one TDR can equate to 2 dwelling units although these types of TDR receiving sites are very limited in the County.

New Appointments to the AAC:

The Committee was asked to turn in the packet handed out to see the new Appointment notice from the County Executive. The County Council confirmations are scheduled sometime next week.

Recommendations on the Zoning Rewrite Process and changes to Intent of the RDT zone:

The Committee was asked to turn to the packet outlining the AAC recommendations to the Zoning Advisory Panel. Jane Seigler responded back to Pamela Dunn at MNCPPC regarding the proposed changes impacting agricultural uses. The Committee discussed the letter from the Commission on Health advocating support the DED-ZTA for agricultural and horticultural uses in the County.

Proposed ZTA for Solar Installations in the RDT zone:

The Committee was updated on the proposed Zoning Text Amendment that may allow solar installations in the RDT zone. The County Attorney is reviewing the proposed ZTA that may allow both Net-Metered and None-Net-Metered solar installations. The ZTA

will only address free standing solar panels and not impact solar panels that are attached to existing structures. Criss reviewed some of the proposed conditions for free standing solar panels. The installations for Non-Net-Metered will have more restrictions than Net-Metered installations.

Discussion on the County Development Impact Tax:

The Committee was asked to turn in the packet for the AAC letter to the County Council requesting an amendment to the Development Impact tax-DIT and the way it is calculated for accessory dwellings-farm tenant dwellings. The AAC recommends that DIT should be reduced for accessory dwellings and that it should total only 30 percent of the full DIT for the principle dwelling.

Agricultural Reserve Conference-Farming at Metros' Edge-Sustaining Agriculture in Frederick and Montgomery Counties-Friday and Saturday November 9 and 10, 2012 <http://mocoalliance.org/2012/03/farming-at-metros-edge-conference-full-brochure/>

The Committee was updated on the proposed conference in November 2012 that will promote Agriculture in Frederick and Montgomery Counties. The purpose of the conference is to discuss what is needed for agriculture to remain viable in these counties. The DED is participating on a Planning Committee with other organizations and representatives that are sponsors for the conference. Criss said that he has been inviting different farmers to each of the meetings that are scheduled to develop the conference program. Criss said he may ask each of them to participate in the planning of the conference for farm tours and round table discussions on a variety of agricultural topics.

AAC response to Bill 32-11 CREB:

The Committee was asked to turn in the packet for the AAC response to Bill 32-11 including the justification to continue the AAC after the Sunset date of December 2012. The CREB plans to submit a final report to the County Council in September. Mr. Qi Duan suggested that he and Criss work closely together to make sure the responses surrounding the AAC are complete.

AAC recommendation on the FY 2013 Fuel/Energy Tax Rates:

The Committee was asked to turn in the packet to the AAC letter to the County Council surrounding the Resolution to increase the Fuel/Energy Tax rates for FY 013. The Council had previously approved higher rates for FY 2012 that were supposed to be reduced in FY 2013 and return to the FY 2011 lower rates. The County Executive recommended the rates should not sunset and he recommended maintaining the higher FY 2012 rates.

Public Hearing Bill 16-12 Trees Vegetative Management :

The Committee was asked to turn in the packet for the Bill 16-12 that will create a new process for all utility providers to submit a plan, and obtain prior approval from the DOT Chief of Tree Maintenance, before any vegetative management or tree trimming is done in Montgomery County. Drew Stabler suggested the proposed Bill 16-12 will result in the County doing the same thing to utility providers that they did to Dr. Mess by not approving the plan. After additional discussion Drew Stabler recommended the AAC submit a letter and testimony to the County Council opposing the Bill 16-12 and Eddie Kuhlman seconded the motion. The public hearing is scheduled for June 12, 2012 at 7:30 pm.

Farmland Preservation Update:

The Committee was asked to turn to the agenda showing the outcome of the easement purchase periods for the Agricultural Easement Purchase program-AEP and the Building Lot Termination program-BLT. The AEP program accepted 8 applications totaling 688 acres at an estimated cost of \$4,295,713 and only \$2.0 million in GO bonds available. The BLT program accepted 9 applications totaling 646 acres at an estimated cost of \$4,230,000 and there was only \$2.0 million of funds allocated. Criss said the APAB will be making their recommendations on easement offers to be made to the applicants. Drew Stabler said that Jim Clifford mentioned the BLT program is being gutted by someone down there and he asked Criss to look into the matter. Criss said he is aware of the different variations of the CR zone in White Flint where BLTs are not required in the CRN zone. Criss said he would also ask Margaret Chasson her take on the issue.

The next meeting of the AAC is June 19, 2012@ 7:00 pm in Germantown.
The meeting was adjourned at 8:50 pm.

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