



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

**Meeting Minutes  
November 23, 2009**

**Attendance:**

Board Members: John Komsa, Vice Chairman  
Ricky Bauer  
Howie Feaga  
Jim Eacker  
Shirley Matlock  
Lynn Moore

Public: Jim Dickey  
Patrick McCuan  
Judith Giangrandi  
Dave Carney, representing Ms. Giangrandi  
Wayne Newsome

Staff: Joy Levy, Administrator, Agricultural Land Preservation Program  
Mary Smith, Secretary, Agricultural Land Preservation Program

**Action Items**

1) **Calling of the Meeting to Order** – Vice Chairman Komsa called the meeting to order at 7:30 p.m. and everyone introduced themselves.

2) **Request for Approval, Parcel Subdivision (Section 15.514(d) of the Howard County Code), McCuan Farms, HO-89-05-E; 116 acres (ALPB)** – Ms. Levy stated that McCuan Farms, LLC is the current owner of the subject property, which was placed in the Howard County Agricultural Land Preservation Program (ALPP) in November 1989 by Jerold Hoffberger. The property has been operated as a horse farm since the time the grantor encumbered it. Mr. McCuan has expanded and improved the equine operation since he purchased it from Darrell Putman, successor in title to Mr. Hoffberger. In 2005, Mr. McCuan requested to replace and relocate the main farmhouse and to relocate one tenant house, which was approved by the ALPB. The owner is now requesting to subdivide the property into two 50+ acre parcels.

Ms. Levy stated that there is conflicting information in this property's file regarding the number of dwellings that existed at the time the easement was placed in the program. Some documents indicate that there were four houses and some indicate that there were five. While discussing the current request with Mr. McCuan, he explained that there were six dwellings when he purchased the property from Mr. Putman, in 2000. He stated that there was the original farmhouse, built in 1930 (which he has since razed) and the "Hoffberger House", which he believes the grantor built sometime in the 1970's and resided in while he owned the property. Ms. Levy stated that for all intents and purposes, there were two principal dwellings on the farm. According to DPZ Zoning staff, prior to a change in the Zoning Regulations in the late 70's, it was permissible to have more than one principal dwelling on a parcel. She said that this becomes significant when the current request to divide the parcel is considered in

regard to the right for each parcel to have a principal dwelling. Also, currently there are four tenant houses on the farm, all of which are resided in by full time employees.

Ms. Levy reviewed the aerial map showing locations of all four tenant houses, the Hoffberger House and the ALPB approved location for a replacement principal dwelling.

Ms. Levy stated that according to Section 15.514(d) of the Howard County Code, a landowner may subdivide a parcel of at least 100 acres into smaller parcels of at least 50 acres, if the Board has reviewed the request and determined that it meets the requirements of Section 15.514(d). This section of the Code technically applies only to post-1993 easements or pre-1993 easements that have exchanged rights. However, as a matter of policy the right to parcel division has been extended to all county purchased agricultural easements, as long as the conditions stated in the policy are met. It is the ALPB's responsibility to review the proposed parcel subdivision and determine whether:

- 1) The new property lines respect agricultural or natural features, such as field edges, fence lines, streams or driveways.
- 2) The proposal will create additional new residential dwelling or lot rights, which is not allowed.

Ms. Levy pointed out that in this case, the line of division follows the driveway for much of its distance as it cuts the property basically in half north to south. Where the division line diverges from the driveway, it is to encompass a house or arena on one parcel or the other. There is a segment of the division line that bisects a pasture area. At the very back of the farm, the division line follows a fence line.

Ms. Levy told the Board that since there are no lot or dwelling rights remaining, it is not necessary to designate which rights are associated with each parcel. However, the amended deed of easement to divide the farm will indicate which existing dwellings will be on each parcel. The way the division line is drawn, the new principal dwelling (approved in 2005, but not yet built) and two tenant houses will be on the 66-acre parcel, and the remaining two tenant houses will be on the 51-acre parcel, along with the "Hoffberger House".

Ms. Levy stated that staff recommends approval of the request for parcel subdivision, with the following conditions:

1. An amended deed of easement is to be prepared, executed, and duly recorded in the land records of Howard County. The amended deed of easement will reflect:
  - a. The division of the property into two parcels.
  - b. A confirmation of the existing dwellings on each parcel.
  - c. A statement that there are no lot or dwelling rights remaining on either parcel, other than what has already been approved by the ALPB.
2. Applicant must obtain all appropriate county and state permits and approvals, including the approval of a subdivision plat to be recorded concurrently with the amended deed of easement.

Chairman Komsa called for questions and discussion.

Mr. Feaga asked if the Board has to approve the placement of the tenant house that will be moved from Parcel B to Parcel A.

Mr. McCuan offered three potential places on Parcel A where the tenant house might be moved. The Board agreed that any one of them made sense as far as the equine operation is concerned, and would have minimal negative impact.

Mr. Feaga asked if the principal dwelling was going to be built.

Mr. McCuan indicated that his plan is to build it sometime in the not too distant future, if finances allow. He asked that if the request is approved that the motion clearly state that there are no additional rights except for the principal dwelling right which the ALPB has already approved.

Ms. Matlock asked Mr. McCuan why he wishes to divide the property. He stated that he is doing his estate planning and would like to have a portion of the farm for each of his two daughters.

Vice Chairman Komsa called for more questions. There being none Mr. Feaga moved to accept the staff recommendation and Mr. Eacker seconded the motion. The motion was unanimously carried.

**3) Request for Approval, Release of Two Unrestricted Lots and Location of Principal Dwelling (Section 15.514 of the Howard Code), Giangrandi property, HO-91-25-E, 62 Acres (ALPB)** - Ms. Levy informed the Board that Ms. Giangrandi is the current owner of the property, which was placed in the ALPP by Alexander and Betty Adams in December 1991. Mr. and Mrs. Adams exchanged their family lot rights for two unrestricted lots in April of 1995. Ms. Giangrandi purchased the property in June of 1997 and requested ALPB approval for a principal dwelling that same month. The Board approved the request and the home was built in 1999.

Ms. Levy referred to the aerial map showing the two proposed one-acre unrestricted lots, one of which is around the existing principal dwelling. Ms. Levy stated that Section 15.514(b) of the Code allows the Board to approve the release of a one-acre unrestricted lot from the easement after determining that the lot is located so as to minimize any disruption of agricultural activities. Ms. Levy noted that the applicant appears to have met these criteria by locating the new lot near the location of the lot that will encompass the existing house, in the woods on the north side of the property. She stated that the proposed new unsubdividable principal dwelling will be located in the woods on the south side of the farm. The existing farm lane will serve both lots and the new dwelling. If the Board approves the request to release the two unrestricted lots, the owner is required to pay the County \$12,000 (\$6,000 each) for the lots prior to recordation of the amended deed of easement and subdivision plat.

Ms. Levy stated that staff recommends approval of the request to release two (2) one-acre unrestricted lots and the location of a principal dwelling, subject to the following conditions:

1. An amended deed of easement is to be prepared, executed, and duly recorded in the land records of Howard County. The amended deed of easement will reflect the release of a portion of the easement for two (2) one-acre unrestricted lots.
2. Applicant must repay \$12,000 to the County for the two lots released.
3. Applicant must obtain all appropriate county and state permits and approvals, including the approval of a subdivision plat to be recorded concurrently with the amended deed of easement.

Vice Chairman Komsa called for questions and discussion.

Mr. Bauer asked what was planted in the fields. Ms. Giangrandi stated that she rents it out and it is planted in alfalfa and timothy.

Mr. Feaga made the motion to accept the staff recommendation, and Ms. Matlock seconded the motion. The motion carried unanimously.

**4) Request for Approval, Relocation of Previously Approved Child's Lot (Section 15.509(e)(3) of the pre-1993 Howard County Code); Jean Dickey property, HO-84-05-E; 292 acres (ALPB)** – Ms. Levy stated that Jean Dickey is the current owner and the original grantor of the easement on the subject property, which was placed in the ALPP in September of 1984. Per the original deed of easement, the grantor may release from the easement a lot for herself and for each of her children, not to exceed 1 lot per 20 acres or portion thereof. The

current request is for the relocation of a previously approved lot for her daughter, Jocelyn. This lot was first approved in June 2007, but was never released.

The Board has also previously approved the release of an owner's lot, and lots for four other children; Jennifer, Jeannine, Jonathan and Jim. As indicated on the attached maps, only 3 out of the 5 approved lots have been released (those for Jennifer, Jeannine and Jonathan). Ms. Levy stated that Jocelyn is the last of the Dickey children so there would be no further lot requests.

Ms. Levy referred to the aerial map and pointed out the released lots and the approved lots that have not yet been released. She then showed the previously approved location of Jocelyn's lot and the new location that is currently before the Board.

Ms. Levy noted that per Section 15.509 of the pre-1993 Agricultural Land Preservation Code, the Board may approve the release of a one-acre child lot from the easement after determining that the lot is located so as to minimize disruption of agricultural activities. The proposed lot location is in a wooded area close to Forsythe Road, and will take access from the existing farm lane. The previously approved lot location was on a knoll in a pasture area overlooking the farm. Ms. Levy stated that the previous location is not as consistent with the ALPB lot location policy as the proposed lot location.

Ms. Levy stated that prior to releasing the lot from the ALPP, the grantor is required to submit a Letter of Understanding stating that construction of the principal dwelling on the lot must commence within a year of the subdivision approval. Should the Board approve the request to release the lot, the owner is required to pay the County \$1,300 prior to recordation of the amended deed of easement and subdivision plat.

Ms. Levy stated that staff recommends approval of the request to relocate a previously approved one (1) one-acre child lot release, subject to the following conditions:

1. An amended deed of easement is to be prepared, executed, and duly recorded in the land records of Howard County. The amended deed of easement will reflect the release of a portion of the easement for one (1) one-acre child lot.
2. Applicant must repay \$1,300 to the County to release the lot from the easement restrictions, and must complete and sign the Letter of Understanding.
3. Applicant must obtain all appropriate county and state permits and approvals, including the approval of a subdivision plat to be recorded concurrently with the amended deed of easement.

Vice Chairman Komsa called for questions and discussion.

Ms. Matlock asked if the approved lot comes back into the farm. Ms. Levy stated that it was never released.

Ms. Moore asked how many lots still remain to be released. Ms. Levy stated that there are three approved lots left to be released - Mrs. Dickey's lot, Jim's lot and Jocelyn's lot.

Mr. Feaga motioned to accept the staff recommendation and Mr. Eacker seconded the motion. The motion carried unanimously.

## **Discussion Items**

**1) Wetland Mitigation** – Ms. Levy distributed a revised draft to the Board, noting that the original draft went to the Soil Conservation District (SCD) for comment. She stated that SCD provided feedback, including concerns about the difficulty in accurately delineating wetlands and establishing boundaries for fencing. Ms. Levy stated that she incorporated some of the SCD input into the revised draft currently before the Board.

Ms. Levy referred to the policy and stated that the mitigation areas could include hydric soils, certain types of vegetation and/or the presence of groundwater. Ms. Levy said that delineating wetlands is complicated because boundaries tend to vary from season to season and year to year based on rainfall and plant uptake. She noted that one of the revisions in the current version was the addition of a requirement for a 25' buffer, which would provide for variability of the water level.

Ms. Levy pointed out that even with a buffer there may still be boundary lines that are not straight or that create isolated pockets of tillable ground, and there might be the need for an additional 10% mitigation area, in a similar fashion to the forest conservation policy provision.

Mr. Bauer inquired as to whether anyone was waiting for the policy to be approved in order to get started with a mitigation project. Ms. Levy mentioned that Mr. Jim Morris of Ecotone, who initiated the request for a wetland mitigation policy, is interested in seeing a policy approved, but does not appear to have a specific project lined up and waiting.

Mr. Komsa mentioned Maryland's "no net loss" of wetlands law, stating his opinion that requests for mitigation will probably increase. He opined that wetland delineation is difficult because it's not a definitive science and different people define what constitutes a wetland differently. He indicated that he had this experience on his own farm, where two analyses determined two completely different areas that qualified as wetlands.

Mr. Komsa further stated that he and Mr. Wes Earp of SCD discussed the possibility of limiting wetland mitigation to those areas that were "prior converted" - cropland which at one time was wetlands but had been converted through the use of tiles or logs to create drainage networks. Mr. Komsa stated his concern with using "prior converted" as the standard is that the term applies only to fields that were previously cropped. This is problematic because if any other farm areas, such as pasture, had been converted, it's not recorded or part of a plan and would be unknown. He reiterated that his main concern is that there is some kind of limiting factor to what can be used for mitigation.

Ms. Levy stated that SCD will be reviewing any requests that come in and would make a determination on each proposal as to whether the mitigation area is appropriate.

Ms. Levy pointed to the first paragraph of the policy and asked the Board members if they approve of the language that says, "to avoid incursions onto productive land, restoration and/or enhancement projects would generally be appropriate and wetland creation projects would not".

Mr. Feaga mentioned a wetland reversion that occurred on Central Farm. It was a field that had previously been tilled, but then they let it flood again by blocking the drains. This brought the wetlands back, making the land unusable for farming. Mr. Feaga said that in this instance, he approved of the practice because the land originally was a wetland and had been restored. He indicated that he doesn't like the idea of creating a wetland where none existed to start with.

Ms. Moore said she isn't comfortable with the idea of added encroachment on usable farmland, and doesn't understand why the wetland areas on land that is being developed can't just be left alone in the first place.

Mr. Feaga agreed that wetlands on a development site should be left undisturbed so that developers don't have to look to the farm community to provide mitigation.

Mr. Komsa stated that wetland mitigation is going to be necessary, particularly now with the "no net loss" law, and that the Board should have a policy to address it.

Mr. Bauer agreed that we should allow mitigation but limit it, and emphasize that it's for restoration. He stated that at one time it was SCD policy to encourage drainage programs and provide cost sharing for doing it, but now they want wetlands restored.

Ms. Levy said that she would send this revised draft to Mr. Earp for his comments, incorporate them into a revision and then send that to the Board via email. She indicated that she would invite Mr. Earp to the January 11 meeting to answer questions, and perhaps the Board could vote on it at that meeting.

**2) Batch 14** - Ms. Levy reported that she hopes to send offer letters out soon. She indicated that the Finance Department is still analyzing the revenue and cost projections for affordability to determine how far down the list offers can be extended. Ms. Levy informed the Board that Finance must project the long term cost of the over 100 installment purchase agreements the County is already committed to, in addition to the potential additions from Batch 14.

Ms. Levy noted that the offer letters will give the property owners 30 days to respond. Those that accept the County's offer will then get a formal commitment letter from the County Executive with specific financial and legal details. Ms. Levy stated that those who respond favorably will then go for County Council approval, hopefully in March 2010.

**3) Farmland Forever Signs** -Ms. Levy was asked about the status of the signs and reported that they are still a work in progress. She stated that she is trying to determine who is going to do the frame creation and installation. She told the Board she would keep them updated.

**4) Preservation Map Legend** - Ms. Moore asked for an explanation of the legend on the preservation map. Ms. Levy ran through each color and pointed out which type of preserved land it represents. Mr. Eacker asked that a copy of the legend be sent to each Board member.

Ms. Levy mentioned that she is hoping to not have a December meeting, assuming that no property requests come in before Monday the 30<sup>th</sup>, which is the submission deadline.

Mr. Feaga made a motion to adjourn, seconded by Mr. Eacker. The motion carried unanimously. Vice Chairman Komsa called for adjournment at 9:05 p.m.

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Joy Levy, Executive Secretary  
Agricultural Land Preservation Board