TITLE: Impact Fee Waiver for Family Farm's

FILE NUMBER: N/A

REQUEST: Information
This text amendment to the Development Impact Fee ordinance is to be presented for information and comment only

PROJECT INFORMATION:
LOCATION: 
ZONE: 
REGION: 
WATER/SEWER: 
COMP. PLAN/LAND USE: 

APPLICANT/REPRESENTATIVES:
APPLICANT: Board of County Commissioners
OWNER: 
ENGINEER: 
ARCHITECT: 
ATTORNEY: 

STAFF: Jim Gugel, Planning Director

RECOMMENDATION: Information only

Enclosures:
Staff memo
Draft Text Amendment
TO Frederick County Planning Commission
FROM Jim Gugel, Planning Director
DATE August 27, 2014
SUBJECT Impact Fee Waiver for Family Farms

ISSUE
Staff will provide an informational briefing of a proposed amendment to the Development Impact Fee Ordinance (Chapter 1-22) regarding impact fee waivers for family farms.

BACKGROUND
At a BOCC meeting on March 20, 2014 Commissioner Young discussed the idea of providing a waiver of impact fees for farm owners who provide a building lot for a family member. In a letter dated May 1, 2014 to Commissioner Young, the Linganore Grange and Frederick County Pomona Grange expressed support for the concept of an impact fee waiver.

At a work session on July 15, 2014, the BOCC voted to take it to public hearing and to send it to the Planning Commission and agricultural organizations for review and comment. This amendment would only be subject to a public hearing before the BOCC, which is currently scheduled for September 25, 2014.

How the Waiver Process Would Work
1. An application for a waiver would be submitted to the Community Development Division with all required supporting documentation.
2. The waiver application would be reviewed by staff.
3. If approved, additional documentation would be needed prior to the issuance of the building permit.

Proposed Waiver Requirements and Eligibility
1. Waiver would only be available to immediate children of the farm owner.
2. Would require the waiver recipient to agree to live in the house for at least five (5) years.
3. Waiver recipient: would need to provide a description of how they support the farm operation.
4. There must be an established agricultural activity on the farm and this activity must be conducted by the owner and not a lessee.
5. The farm parcel from which the lots were subdivided from shall be a minimum of 25 acres in size.
6. The lots for which the waiver would apply shall be < 2 acres in size.
Subdivision and Building Process
To understand where this waiver would fit in the process, the basic steps to subdivide a lot, transfer ownership, and build a house are described below. While the following description focuses on a property assumed to be zoned Agricultural, farms that could be subject to an impact fee waiver could have any type of zoning and would not be restricted to those zoned Agricultural.

Step 1 – Subdivision
A parcel zoned Agricultural (A) may have subdivision potential of 3 lots plus a remainder depending on the status of the original agricultural tract. Parcels that existed on August 18, 1976 generally have this agricultural subdivision potential and, if the tract is greater than 25 acres in size, may also have cluster lot potential providing an additional lot per 50 acres. This would typically follow a minor subdivision process (if five or fewer lots have been subdivided since 1965). If more than 5 lots have been subdivided since 1965, this would be considered a major subdivision and be subject to review/approval by the Planning Commission.

Owners of parcels that are under an existing agricultural easement may also be able to create lots specifically for their children, assuming the parcel still has subdivision potential per the Agricultural zone and under the terms of the specific easement.

In addition to the ability to apply this waiver on newly created lots, it is expected that existing lots of record subdivided from the farm could also be eligible for the waiver.

It should be noted that this waiver would not create new subdivision potential on farm parcels.

Step 2 – Transfer of Ownership
Once the lot has been created, whether it is “gifted” or sold to the child is up to the farm owner. Neither the County’s Subdivision Regulations nor the Zoning ordinance requires that a lot be sold at a fair market value to a family member. The application of an impact fee waiver would not be affected by whether the lot was gifted or sold to the family member.

Step 3 – Development of the Lot (Building the House)
Payment of the impact fees is required at application for a building permit. Any waiver would be applied for at this step, with whatever documentation is required. The application for a waiver would be reviewed and approved or disapproved by the Zoning Administrator.
Potential Impact of a Waiver on Impact Fee Revenue
As a method to gauge how many impact fee waiver requests may be made each year, staff evaluated data from the Forest Resource Ordinance, which allows for intrafamily transfer exemptions. These exemptions are permitted when a newly subdivided lot is being created for the purpose of transferring to the owner or to a child of the owner. While some of these lots may not be zoned Agricultural and be part of a farm operation, a majority are zoned Agricultural and therefore, this data provides a suitable proxy for the possible number of farm family impact fee waivers. The data below is for each fiscal year and provides the total amount of impact fees that would be waived based on the current FY 2015 (effective July 1, 2014) impact fee of $14,208 for a single-family dwelling for both schools and library.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Number of Intrafamily Transfer Exemptions</th>
<th>Possible Amount of Impact Fees Waived(^1)</th>
</tr>
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<tbody>
<tr>
<td>2014</td>
<td>12</td>
<td>$170,496</td>
</tr>
<tr>
<td>2013</td>
<td>7</td>
<td>$99,456</td>
</tr>
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<td>$298,368</td>
</tr>
<tr>
<td>2010</td>
<td>9</td>
<td>$127,872</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>64</strong></td>
<td><strong>$909,312.00</strong></td>
</tr>
</tbody>
</table>

1. Assumes a total impact fee for a single-family dwelling of $14,208 (school and library fee)

Next Steps
The proposed ordinance will be considered by the BOCC at a public hearing, tentatively scheduled for September 25, 2014.

**STAFF RECOMMENDATION**
This is an informational briefing only. The Planning Commission may choose to provide comments, which the staff will communicate to the BOCC at or before the public hearing.
THE EFFECTIVE DATE OF THIS ORDINANCE IS OCTOBER 1, 2014

ORDINANCE NO. ________________

RE: Impact Fee Waiver for Certain Farm Lots

PREAMBLE

WHEREAS, pursuant to Section 20-703 of the Local Government Article, Annotated Code of Maryland, the Board of County Commissioners of Frederick County is authorized to fix, establish, impose and collect development impact fees to finance, in whole, or in part, the capital costs of additional or expanded public works, improvements, and facilities which are necessary to accommodate new construction or development.

WHEREAS, pursuant to Section 1-22-7 of the Impact Fee Ordinance, the BOCC may grant a waiver in whole or in part of development impact fees, provided that the amount of the development impact fees waived is supplied by the County from non-development impact fee funds.

WHEREAS, the Board of County Commissioners desires to implement an impact fee waiver related to certain farm lots that are transferred from a farmer to the farmer’s child, as those italicized terms are defined herein, if certain conditions are met.

WHEREAS, the County Commissioners held a duly advertised public hearing concerning this Ordinance on Thursday, September 25, 2014. The public had an opportunity to comment on this Ordinance at the public hearing.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that Section 1-22-7 of the Frederick County Impact Fee Ordinance is hereby amended to add subsection (G) as shown below:

§ 1-22-7. EXEMPTIONS/WAIVERS.
(A) **Filing of application.** Petitions for waivers from specific development impact fees shall be filed with the County Commissioners on forms provided by the county.

(B) **Effect of grant of exemption.** If an exemption from the application of the provisions of this chapter is authorized by the terms of a specific impact fee ordinance, the county shall not be required to provide any funds equal to the amount of any development impact fee which would have been due without such exemption.

(C) **Effect of grant of waiver.** If the County Commissioners grant a waiver in whole or in part of development impact fees otherwise due, the amount of the development impact fees waived shall be provided by the county from nondevelopment impact fee funds, and such funds shall be deposited to the appropriate development impact fee account within a reasonable period of time consistent with the applicable county capital improvements program.

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(G) **IMPACT FEE WAIVER FOR FARM LOTS.**

(1) **DEFINITIONS** – FOR THE PURPOSES OF THIS SUBSECTION, THE FOLLOWING TERMS SHALL HAVE THE DESIGNATED DEFINITIONS:

(a) **FARM** – A PARCEL OF LAND NOT LESS THAN 25 ACRES IN SIZE ON WHICH AN AGRICULTURAL ACTIVITY, AS DEFINED IN §1-19-11.100 OF THE ZONING ORDINANCE, IS BEING ACTIVELY CONDUCTED AS OF THE DATE OF APPLICATION FOR THE FARM LOT WAIVER.

(b) **FARMER** – A PERSON WHO OWNS AND OPERATES A FARM.

(c) **FARM LOT** – A LOT, NOT MORE THAN TWO (2) ACRES IN SIZE, WHICH HAS BEEN SUBDIVIDED FROM A FARM BY A FARMER.

(d) **CHILD** – A PERSON’S OFFSPRING, WHETHER NATURAL OR LEGALLY ADOPTED.

(2) IMPACT FEES COLLECTED UNDER THIS CHAPTER SHALL BE WAIVED FOR FARM LOTS IF THE FOLLOWING CONDITIONS ARE MET AT THE TIME THAT THE WAIVER IS APPLIED FOR:

(a) THE FARM LOT MUST HAVE BEEN TRANSFERRED DIRECTLY FROM A FARMER TO THE FARMER’S CHILD;

(b) THE FARMER’S CHILD MUST SHOW PROOF THAT HE OR SHE CURRENTLY PROVIDES SUPPORT TO THE FARM, WHETHER BY PHYSICAL OR ADMINISTRATIVE WORK, OR BY FINANCIAL SUPPORT.
(3) IF THE FARMER’S CHILD SELLS OR OTHERWISE TRANSfers THE FARM LOT (EXCEPT BY REASON OF HIS OR HER DEATH) WITHIN 5 YEARS AFTER THE DATE OF ISSuANCE OF THE BUILDING PERMIT TO WHICH THE IMPACT FEE WAIVER HAS BEEN APPLIED, THEN THE FARMER’S CHILD SHALL BE OBLIGATED TO REPAY THE TOTAL AMOUNT OF THE WAIVED IMPACT FEES TO THE COUNTY.

(4) IF THE FARMER’S CHILD SELLS OR OTHERWISE TRANSfers THE FARM LOT MORE THAN 5 YEARS AFTER THE DATE OF ISSuANCE OF THE BUILDING PERMIT TO WHICH THE IMPACT FEE WAIVER HAS BEEN APPLIED, THEN THE OBLIGATION TO REPAY THE WAIVED IMPACT FEES SHALL NOT APPLY.

(5) THE OBLIGATION TO REPAY THE WAIVED IMPACT FEES SHALL BE MEMORIALIZED BY A RECORDED LIEN ON THE FARM LOT, WHICH SHALL, BY ITS TERMS, EXPIRE FIVE (5) YEARS AFTER THE DATE OF ISSuANCE OF THE BUILDING PERMIT TO WHICH THE IMPACT FEE WAIVER HAS BEEN APPLIED.

AND BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that this Ordinance shall take effect on October 1, 2014.

The undersigned hereby certifies that this Ordinance was approved and adopted on the 25th day of September, 2014.

ATTEST: BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND

By: ______________________
Lori L. Depies, CPA
County Manager

By: ______________________
Blaine R. Young
President