



# FREDERICK COUNTY PLANNING COMMISSION

October 8, 2014

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**TITLE:** Zoning Ordinance Text Amendment -  
Agricultural Subdivision Potential Transfer  
Option

**FILE NUMBER:** ZT 14-02

**REQUEST:** Recommendation to the BOCC

**PROJECT INFORMATION:**

ADDRESS/LOCATION: n/a

TAX MAP/PARCEL:

COMP. PLAN:

ZONING:

PLANNING REGION:

WATER/SEWER:

**APPLICANT/REPRESENTATIVES:**

APPLICANT: n/a

OWNER:

ENGINEER:

ARCHITECT:

ATTORNEY:

**STAFF:** Anne Bradley, Land Preservation Admin.

**RECOMMENDATION:** Staff recommends DENIAL of any text amendment option to permit an agricultural transfer option

**ATTACHMENTS:**

EXHIBIT 1- Farm Bureau letter

EXHIBIT 2 - Option 1 amendment

EXHIBIT 3 - Option 2 (staff draft) amendment

EXHIBIT 4 - Comparison of Criteria Agricultural Sub. Transfer Option

# STAFF REPORT

## ISSUE

Staff is presenting two alternative text amendments to the Zoning Ordinance (ZT 14-02) to establish an Agricultural Subdivision Potential Transfer Option. The Planning Commission is requested to make a recommendation to the Board of County Commissioners regarding the proposed amendment.

## BACKGROUND

In March 2013, the Farm Bureau submitted a request to the Board of County Commissioners to consider a proposed text amendment to the Zoning Ordinance to create an "Agricultural Rights Transfer Option". This text amendment would allow for the transfer of potential agricultural subdivision rights from a sending parcel to a receiving parcel. Unlike a conventional transfer of development rights (TDR) program which transfers development rights into a growth area, this transfer option would only be between parcels zoned Agricultural.

In August 2013 the BOCC directed staff to form a work group to evaluate the proposed agricultural rights transfer option with a 90 day deadline to return for direction from the Board. The work group included representatives from the Agricultural Preservation Board, the Land Use Council, Association of Realtors, Farm Bureau, Dept. of Business Development and Retention, and Community Development Division staff. Staff held meetings with the work group from September to December 2013.

Staff presented initial feedback from the work group at a BOCC work session on November 21, 2013. Another work group meeting was held December 6, 2013 prior to going back to the BOCC at a work session on December 19, 2013. At the December 19 work session, a representative of the Farm Bureau indicated that the Farm Bureau needed more time to review the proposal and present it to the general membership at the next meeting in March 2014. The BOCC did not give staff further direction in order to allow for more time for the Farm Bureau to review the proposal.

In a letter to the BOCC dated April 28, 2014 (See Exhibit 1), the Farm Bureau made it clear that it "does not endorse any specific proposal" but indicated support for further exploration of additional land preservation programs including this specific proposal.

While the Farm Bureau cites funding issues with the current programs, this is likely to be a temporary situation until the effects of the recent recession have cleared and budgets are close to or at pre-recession levels. With regard to an agricultural transfer Option 1 (Exhibit 2), staff would note the following:

1. This proposal would not result in a net gain of preserved land and will allow for major subdivisions in agricultural areas that could further compromise the ability for those areas to support existing agricultural activities.
2. The proposal may conflict with the text of the Septic Bill which could affect the County's Tier IV exemption status.
3. Neither the Agricultural Preservation Board nor the Agricultural Business Council supports this proposal.

Due to the lack of consensus with the work group about Option 1 staff has prepared an Option 2 amendment that addresses staff concerns to some degree and would be a preferred version if there is any consensus to support such an amendment. However, for reasons described under the Staff Recommendation, staff does not support any amendment that would create an agricultural subdivision transfer option. Option 2 (staff draft) is attached as Exhibit 3.

Below are staff comments regarding some of the major issues addressed in Option 2 that are absent in Option 1:

1. (Page 1): D (2)(e)- Requiring a minimum soil quality for sending parcels: The minimum soil potential requirement in this section was included by staff in order to maintain a minimum quality of agricultural soils for a parcel to be eligible to transfer development potential. This criterion is standard in our Purchase of Development Rights (PDR) programs and staff feels this criterion ensures that farms with less productive soils will not be the first to agree to transfer development potential, which could flood the TDR market with potential lots that would likely be bought for minimal values.
2. (Page 1): D(2)(g)- Requiring reasonable criteria to ensure sending parcel has development potential: This language requires sending parcels to have the actual ability to subdivide in order to be eligible to transfer development potential. Staff believes that if a parcel has, for example; 100% floodplain, 100% steep slopes, or it is landlocked, that the theoretical subdivision potential should not be transferred from that parcel. Without this criterion, this option may create more lots within the Agricultural Zone than could be ever actually being subdivided.
3. (Page 2): D(3)(b): Size criteria options for receiving parcels: Staff would prefer to see a 50 acre maximum for the receiving parcel that would protect the County's largest farms remaining in the Agricultural Zoning District from being targeted for increased density.
4. (Page 2): D(3)(d): Receiving parcel subdivisions follow Agricultural Cluster provisions: This language requires Agricultural Subdivision Potential lots developed on receiving parcels to follow the Agricultural Cluster provisions in the County's Subdivision Ordinance. This is supported by §9-206(m)(4) of the Environment Article of the Maryland Code, which requires that a property that receives a right to subdivide: (i) Is limited to a total of 15 lots; and (ii) Shall **cluster** the lots on the property." (Emphasis added.) It also provides a level of consistency and uniformity among subdivisions in the Agricultural Zoning District and will allow the Planning Commission to review the potential impact of increased density on each receiving parcel. Sending parcels will be taking advantage of the Agricultural Cluster provision when determining the amount of rights available to send. Therefore the application of the Agricultural Clustering provision should be utilized for the receiving parcels.
5. (Page 3): D(7): Agricultural Clustering language: This language prevents a property consisting of multiple contiguous parcels from developing multiple major subdivisions within the Agricultural

Zoning District. Under the current Agricultural Cluster provisions, the subdivision potential of each separate parcel can be transferred to one parcel to achieve a higher density. Staff believes allowing each parcel to accept 15 lots will result in a substantial amount of higher density in agricultural areas that could adversely impact adjoining agricultural operations. Without this language, an Agricultural property consisting of four separate parcels could be developed into four separate 15 lot subdivisions, creating a 60 lot subdivision.

Related to this are restrictions from the State's Septic Bill (specifically §9-206(m)) related to enacting a transfer of development rights program. While §9-206 allows for such programs, it includes the following restrictions;

- The receiving parcel is limited to a total of 15 lots and the lots must be clustered.
- The transfers can take place within Tier IV.
- Transfers cannot be from Tier III to Tier IV.

### **STAFF RECOMMENDATION**

Staff recommends DENIAL of ZT 14-02 for any agricultural subdivision rights amendment based upon the following;

1. There has not been any consensus or documented need for such an option to support broader agricultural preservation efforts.
2. An agricultural to agricultural transfer program will not result in a net preservation of agricultural land since the subdivision potential is just shifted from one parcel to another.
3. The shift of residential subdivision potential to agricultural areas, even if to parcels and areas considered marginal for agricultural use, may adversely impact the ability of adjoining agricultural activities to maintain their viability. This has the potential of creating another Green Valley type area where so much residential subdivision activity takes places that large areas of agricultural/rural lands could be converted to low density residential sprawl.
4. An agricultural transfer option and the resulting residential subdivision in agricultural areas could threaten the County's Tier IV exemption status.
5. This amendment is likely to create a significant administrative burden to maintain and track sending rights and receiving rights.

### **PLANNING COMMISSION ACTION**

#### **MOTION TO RECOMMEND APPROVAL**

I move that the Planning Commission recommend APPROVAL of ZT 14-02 Option 1 OR Option 2 to amend the Zoning Ordinance based on the findings and conclusions of the staff report and the testimony, exhibits, and documentary evidence produced at the public meeting.

#### **MOTION TO RECOMMEND DENIAL**

I move that the Planning Commission recommend DENIAL of ZT 14-02 text amendment to the Zoning Ordinance for an agricultural subdivision transfer option based on the findings and conclusions of the staff report and the testimony, exhibits, and documentary evidence produced at the public meeting.

April 28, 2014

Blaine Young  
President Board of County Commissioners  
Winchester Hall  
12 East Church St.  
Frederick, MD 21701

Dear President Young:

As you know the Farm Bureau has been on record for many years supporting farm land preservation efforts. Indeed, our policy document, voted on by the membership each year, contains the following statement:

We urge additional funding by private, state and county, including bond issuance, for farmland preservation programs, including but not limited to MALPF, Rural Legacy, Critical Farms Program, and Installment Purchase Program.

Consistent with that policy, the Board voted at it's meeting on January 28th, 2014 to support further exploration of the concept of a Transfer of Development Rights program for Frederick County.

I am very concerned that future funding for land preservation will continue to be diverted to fund non-preservation programs. Indeed, as the attached flyer from Partners For Open Space makes clear, the funds that should be available now and in the future have been diverted by the Governor and the Legislature to other projects which have nothing to do with Land Preservation. This diversion, according to an article "Md. Program Open Space escapes cap, suffers cuts", page 10 in the April 22, 2014 Delmarva Farmer, will "be the equivalent of a \$50 to \$75 million reduction in funds each year between 2016 and 2019". This combined with the fact that there will not be 2015 state funds for land preservation in Frederick County will seriously hamper local efforts to preserve farm land.

I am asking that you open for public comment the attached proposal that was reviewed by the TDR Working Group in it's final sessions. While the Farm Bureau does not endorse any specific proposal we are most anxious that you continue to advance the process of examining additional land preservation programs such as the ARTO discussed in the attached document.

Sincerely,



Charles E. Brault  
President Frederick County Farm Bureau

To be inserted in Section 1-19.7.300 of the Frederick County Zoning Ordinance:

(D) *Agricultural Rights Transfer Option (ARTO)*

(1) *Purpose and intent.*

(a) To further encourage the conservation of farmland, particularly in areas of the County known for prime agricultural soils, by permitting the transfer of existing development rights from one agriculturally zoned parcel to another, and further by limiting the parcels which will be eligible to receive the transfer of such rights to land zoned Agricultural and located in more densely developed areas of the County; and to provide an additional privately funded farmland preservation program.

(2) *Sending parcels.* Properties within the Agricultural zone which meet the following criteria are eligible to be sending parcels:

(a) The parcel has more than one (1) Agricultural subdivision right.

(b) The parcel must be within the Tier IV Area as defined in the Sustainable Growth & Agricultural Preservation Act of 2012, and as approved by the Board of County Commissioners (the "Tier IV Area").

(c) The minimum preservation parcel easement area shall be 50 acres for all sending parcels.

(d) A property consisting of one or more contiguous parcels or lots may be eligible to be a sending parcel if the parcels, when combined meet the size criteria specified in paragraph 2.c. All parcels that do not meet the size criteria specified in paragraph 2.c of this subsection must be combined at the time that the preservation easement agreement for the sending parcel is recorded.

(3) *Receiving parcels.* Any property within the Agricultural zone in the Tier IV Area is eligible to be a receiving parcel, except property that is located: (a) in a Priority Preservation Area (PPA); or (b) in a designated Rural Legacy Area.

If a portion of a receiving parcel is encumbered with a recorded easement that reduces or removes its development rights, the encumbered area shall be subtracted from the acreage of the parcel to determine the potential receiving area and density.

(4) *Uses Permitted as a Matter of Right.* Uses permitted as a matter of right in the Agricultural zoning district shall be permitted in the properties utilizing ARTO.

(5) *Accessory uses.* Accessory uses shall be as permitted in the Agricultural district.

(6) *Bulk requirements.*

(a) One development right must be retained for the sending parcel. Otherwise, all development rights associated with the sending parcel may be transferred, subject to Section 1-19.7.300. (D) (6) (d) below. In the event development rights are transferred from multiple contiguous sending parcels, the sending parcels may be consolidated into one or more parcels, provided that at least one development right is retained on each resultant sending parcel.

(b) The maximum density for the receiving parcel shall be one dwelling unit for every two gross acres.

(c) Density shall be based on Section 1-19.7.300(B) or (C). If additional density is transferred from the sending parcel to the receiving parcel based upon the utilization of the clustering provisions set forth in Section 1-19.7.300(C), then all procedural requirements of Section 1-19.7.300(C) shall apply to the development on the receiving parcel.

(d) If the sending and receiving parcels are both “used for agricultural activities” as defined in Md. Ann. Code, Environment Article, § 9-206(m), the sending parcel may only transfer up to seven (7) development rights to the receiving parcel, and the receiving parcel may only be subdivided to yield a total of up to fifteen (15) lots.

(7) An applicant wishing to utilize the ARTO shall submit an application seeking approval of the transfer on a form as provided by the DPDR.

(a) If no Agricultural clustering development is part of the ARTO application, then DPDR shall process and approve the ARTO application as part of the appropriate staff level review of the subdivision plat.

(b) If Agricultural clustering development is part of the ARTO application, then the same procedure set forth in Section 1-19-7.300(C) shall apply.

(c) If the sending and receiving parcels are both “used for agricultural activities” as defined in Md. Ann. Code, Environment Article, § 9-206(m), then clustering development of the lots must be used for the receiving parcel.

(8) A deed of easement, in a form as provided by DPDR, shall be required to be recorded for the sending parcel.

(9) The exchange of development rights shall take place as a private exchange between property owners, subject to approval of the sending and receiving parcels by DPDR in accordance with the procedures set forth herein.

## Zoning Ordinance – Text Amendment

ARTICLE VII: SUPPLEMENTARY DISTRICT REGULATIONS  
DIVISION 3. AGRICULTURAL DISTRICT  
§ 1-19-7.300. AGRICULTURAL DISTRICT

All of the following would be new text:

**(D) Agricultural Subdivision Potential Transfer Option**

(1) **Purpose and intent.** To further encourage the preservation of farmland, particularly in areas of the County known for prime agricultural soils, by permitting the transfer of agricultural subdivision potential (ASP) lots from one agriculturally zoned parcel (sending parcel) to another agriculturally zoned parcel (receiving parcel).

(2) **Sending parcels.** Properties within the Agricultural zone that meet the following criteria are eligible to be sending parcels. Eligibility criteria:

(a) The sending parcel must have the ability to be subdivided into at least one lot plus a remainder.

(b) The minimum size for a sending parcel shall be 50 acres. A parcel less than 50 acres in size may qualify as a sending parcel if contiguous to a property of 50 acres or greater which is already under a preservation easement, or, if multiple applications under separate ownership are approved simultaneously that meet the 50 acre requirement. Two or more contiguous parcels under the same ownership may be eligible to be a sending parcel if the parcels are combined by plat at the time the preservation easement agreement for the sending parcel is recorded and together they meet the 50 acre requirement.

(c) The sending parcel must be used for agricultural activities at the time of the transfer, as defined in §9-206(m)(1) of the Environment Article of the Maryland Code.

(d) The sending parcel shall not be completely encumbered by a permanent restrictive easement or owned by a government entity at the time of the proposed transfer. If a portion of a sending parcel is encumbered with an easement that limits subdivision potential at the time of the proposed transfer, the encumbered area and subdivision restrictions shall be subtracted from the parcel to determine the potential sending density.

(e) The sending parcel shall meet one of the following criteria as defined in the Frederick County Soil Survey:

(i) Minimum of 50% U.S.D.A. Class I, II and III soils;

(ii) Minimum of 50% U.S.D.A. woodland groups I and II;

(iii) A combination of farmland and woodland with a minimum of 60% U.S.D.A. Class I, II and III soils and U.S.D.A. woodland groups I and II.

(f) The sending parcel shall not be eligible to transfer more than seven (7) ASP lots to one or more receiving parcels.

(g) ASP lots shall not be transferred from parcels that could not otherwise achieve subdivision of lots due to factors including floodplain, waterbody buffers, inadequate fee simple road frontage, or a history of failed percolation testing.

(3) **Receiving parcels.** Properties within the Agricultural zone that meet the following criteria are eligible to be receiving parcels. Eligibility criteria:

(a) The receiving parcel must have the ability to be subdivided into at least one lot plus a remainder.

(b) The maximum receiving parcel size shall be 50 acres.

(c) The receiving parcel shall not be located:

(i) within a Priority Preservation Area (PPA)

(ii) within a Rural Legacy Area

(d) The receiving parcel shall not be subdivided into more than fifteen (15) lots plus a remainder. All lots shall meet the Agricultural Clustering provisions of § 1-19-7.300 (C).

(e) The receiving parcel must be used for agricultural activities at the time of the transfer, as defined in §9-206(m)(1) of the Environment Article of the Maryland Code.

(f) The receiving parcel shall not be completely encumbered by a permanent restrictive easement or owned by a government entity at the time of the proposed transfer. If a portion of a receiving parcel is encumbered with an easement that limits subdivision potential at the time of the proposed transfer, the encumbered area and subdivision restrictions shall be subtracted from the parcel to determine the potential receiving density.

(4) **Bulk Requirements.**

(a) A permanent restrictive easement in a form provided by the County must be placed upon all sending parcels prior to the subdivision recordation.

(b) Any lots created using the subdivision potential retained on the sending parcel, if any, shall meet the Agricultural Cluster provisions of §1-19-7.300 (C). Any remaining ASP lots shall be specified within the restrictive easement discussed in subsection (4)(a) above.

(c) A property owner wishing to transfer or receive ASP lots shall submit an application seeking approval on a form provided by the County. Application for a certificate of transfer for a sending parcel shall contain such information as may be necessary to determine the number of subdivision potential ASP lots involved in a proposed transfer. The review of all applications shall be administered by the Community Development Division.

(d) The transfer of ASP lots shall be a private transaction between property owners, subject to approval of the sending and receiving parcels by the County in accordance with the procedures set forth herein.

(e) On a property that consists of multiple original tracts or parcels as defined in §1.19.7.300(B), transfer of ASP lots shall not be permitted if the maximum density of fifteen (15) lots can be achieved by utilizing the Agricultural Clustering provisions under §1.19.7.300(C). Where the Agricultural Clustering provisions under § 1.19.7.300(C) yield fewer than 15 lots, ASP lot transfers may be utilized to achieve the maximum density of fifteen (15) lots. In no case shall multiple tracts or parcels within a property or farm be permitted to create multiple fifteen (15) lot subdivisions.

(f) Subdivisions utilizing ASP lots shall follow all provisions within Chapter 1-16, Subdivision Regulations of the Frederick County Code.

(g) A minimum building restriction line (BRL) of 500 feet shall apply to all lots that are created as a result of ASP lots created on parcels adjacent to the Scenic Monocacy River.

(h) ASP lots may not be transferred from the owner of property used for agricultural activities in a Tier III area to the owner of property used for agricultural activities in a Tier IV area.

EXHIBIT #4- Comparison of Criteria  
Agricultural Subdivision Transfer Option

September 30, 2014

Option #1	Option #2 (Staff draft)
<b>Sending Parcel Criteria:</b>	
1 Must be located in Tier IV (D.2(b))	Must be located in the Agricultural Zoning District and be used for Agricultural Activities at the time of transfer(D.2(c))
2 Minimum size of 50 acres (D.2(c))	Minimum size of 50 acres (D.2(b))
3 Adjacent parcels can be combined for application (D.2(d))	Adjacent parcels can be combined for application only if in common ownership (D.2(b))
4 none	Must meet minimum soil quality criteria mirroring Ag Preservation Programs (D.2(e))
5 none	Must NOT transfer more than 7 rights (D.2(f))
6 none	Must NOT already be in Ag Preservation easement (D.2(d))
7 Must have more than one subdivision potential (D.2(a))	Must have subdivision potential (for example, not 100% steep slope, FEMA floodplain, or have history of failed perc tests) (D.2(g))
8 none	Rights retained on the sending parcel must be developed following Agricultural Cluster language (D.4.b))
9 Permanent easement required on sending parcel at time of transfer(D(8)	Permanent easement required on sending parcel at time of transfer (D.4(a))
<b>Receiving Parcel Criteria:</b>	
10 Located in Tier IV (D.3)	Must be located in the Agricultural Zoning District (D.3) and used for Ag Activities at the time of transfer (D.3(e))
11 Must NOT be located in Rural Legacy Area or Priority Pres. Area (D.3)	Must NOT be located in Rural Legacy Area or Priority Pres. Area (D.3(c))
12 none	Must have subdivision rights remaining (D.3(a))
13 If a portion is encumbered by an easement, this area is subtracted in order to determine sub rights (D.3)	If a portion is encumbered by an easement, this area is subtracted in order to determine subdivision potential (D.3(f))
14 none	Must not be encumbered by an Ag Preservation easement (D/3(f))
15 No maximum acreage for receiving parcels	Must be a maximum of 50 acres (D.3(b))
16 Density is 1 lot per 2 acres (D.6(b))	Density is a maximum of 15 lots (D.3(d))
17 none	Agricultural clustering is required (D.3(d))
<b>Bulk Criteria:</b>	
18 Private transaction (D.9)	Private transaction (D.4(d))
19 staff review of application (D.7)	Staff review of application (D.4(c))
20 none	No transfer allowed if 15 lots can be achieved without having to transfer lots (D.4(e))
21 none	500 foot Monocacy River Building Restriction Line (BRL) (D.4(g))
22 Allowable uses are uses permitted by right in the Agricultural zoning district (D.4 &D.5)	Easement on sending parcel would restrict properties further than the Ag Zoning District language (ie, no churches, schools) (D.4(a))