Approved 12-10-21

# MONTGOMERY SOIL CONSERVATION DISTRICT BOARD OF SUPERVISORS MEETING November 12, 2021

Due to continuing COVID-19 meeting restrictions, the regular monthly meeting of the Board of Supervisors, Montgomery Soil Conservation District (MSCD) was held remotely on the GoToMeeting virtual platform.

# People Present:

Robert Butts, Chair
Robert Butts, Vice Chair
Tim McGrath, Treasurer
Linda Lewis, Supervisor
Doug Tregoning, Supervisor
Joe Lehman, Associate Supervisor
Chris Miller, Associate Supervisor
Jeremy Criss, Director OAG
Mike Scheffel, OAG
Charlotte Brewster, District Conservationist (NRCS)
John Zawitoski, District Manager (MSCD)
Karen Walker, Office Service Coordinator (MSCD)

Chairman, Robert Butz called the meeting to order at 8:59 am and began with agency reports.

#### **Agency Reports:**

**EXTENSION**: John presented the report provided by Kelly Nichols, County Extension Agent. Kelly reported on the Pesticide and Nutrient Management Meetings for Montgomery County. All pesticide and nutrient management meetings will be held in the upper part of the barn at the Ag History Farm Park.

Pesticide Private Applicator Exam: November, 15, 2021, 6:00-8:00pm; Pesticide Private Applicator

Recertification Meeting: December 9, 2021, 6:00-8:00pm; Nutrient Voucher Training: December 14, 2021, 6:00-8:00pm. Kelly also reported that the **2022 Agronomy Update** will be held on Wednesday, February 23, 2022, at the Urbana Fire Hall.

Kelly's report identified some alternative options for obtaining continuing education credits. These included: an online self-paced module for both pesticide private applicator and nutrient management credits and provided a link to the module on the U of MD website (pesticide applicators website). Users should select the 2020 Pesticide Renewals, and then follow the instructions under Option 2. Kelly indicated that a workbook is available for pesticide private applicator credits. To obtain a workbook, please give Kelly at call at 301-590-2807.

Kelly's report also highlighted farm stress resources available through the University of Maryland Extension and the Maryland Department of Agriculture through a new Farm Stress Assistance Program, which will provide physical and mental health resources to rural communities. A link to the website was provided for more information (Farm Stress Management website). Kelly's report concluded with information concerning upcoming events. There are numerous virtual and in-person events on topics including livestock, energy, ag law, row crops, fruit, and vegetables, visit our new Ag and Food Systems Meetings and Events page at <a href="https://www.go.umd.edu/ag-events">www.go.umd.edu/ag-events</a>.

**Zoning Text Amendment (ZTA) 21-08:** Jeremy explained that Zoning Text Amendment (ZTA) 21-08, Landscape Contractor Use Standards (Ndou) was introduced on October 19, 2021, and that a public hearing is scheduled for 11/30/21 at 1:30 pm. Jeremy explained that neither the OAG nor the PHED committee were aware of this ZTA until it was introduced by Council President Tom Hucker. OAG is not opposing the ZTA. ZTA 21-08 will allow landscape contractor as a limited use in certain zones if certain conditions are met, such as a minimum lot area of 2 acres. The minimum 2-acre requirement will create a greater opportunity for small landscape contracting businesses (mow and blow). The goal is to give landscaping companies the opportunity to grow, deliver and install horticulture products. Jeremy provided the following link to the information for the ZTA.

https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2021/20211019/20211019 2A.pdf

Introduction of Septic Tank Bill 40-21: Jeremy provided an update on Council Bill 40-21 Individual Water Supply and Sewage Disposal Systems - Amendments (McCartney-Green) that was introduced on November 2, 2021, with a public hearing that is scheduled on 11/30/21 at 1:30 pm. Jeremy explained that all the changes that were made to the Bill as recommended by the Ag Agencies with Director of DEP, Adam Ortiz were taken out from the Bill that was introduced on November 2<sup>nd</sup>. Once Adam Ortiz announced he would be leaving the County for a new position with EPA, all the penalties and violations are still in the Bill. The OAG believes all Ag groups missed the wording related to easements and penalties on lines 136-141 and lines 146/154. The Bill includes language that would require all new septic systems approved by DPS to have an easement that is recorded in the land records, and it will give DPS and DEP the authority to check and evaluate the system. Previously DPS was the only agency involved in reviewing and approving septic systems. Jeremy mentioned that the Bill still requires periodically pumping out the septic tank (every 5 years) and there is still a provision for reimbursement for the property owner. The bill is much heavier on penalties and regulatory requirements and Jeremy asked for the District to participate in and provide a testimony for the November 30th public hearing. Chairman Butz expressed his concerns that this Bill represented a substantial increase in government oversight for rural landowners and concurred that he would like to present both written and oral testimony. John will coordinate with Robert and OAG on this testimony. Jeremy provided the following link to the information for Council Bill 40-21.

https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2021/20211102/20211102\_9.pdf

Bill 5-21 Ag Land Preservation Easement Funds-Solar companies Jeremy then provided an update on Council Bill 5-21 that was discussed in GO & PHED Committees on October 28, 2021. He explained that the Bill does not address the County's Racial Equity and Social Justice Impact Statement requirements. The OAG recommended that \$5.0 million be added to the Ag Land Preservation CIP FY23-24 to purchase easements on both large farms and smaller farms (less than 50 acres) that will provide access to land for BIPOC farmers both men and women. Jeremy provided the following link to the information for Council Bill 5-21. <a href="https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2021/20211028/20211028\_GOPHED1.pdf">https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2021/20211028/20211028\_GOPHED1.pdf</a>

**ZTA 21-07 Density and Height Allocations-MPDUs:** Jeremy then discussed ZTA 21-07 and directed supervisors to review a letter the OAG sent to Council President Tom Hucker on October 8, 2021. Jeremy explained that MPDUs do not normally require the use of TDR's and BLTs. However, this bill creates a new opportunity to develop affordable housing in the CR Zone. If the building owner in the CR zone enters into agreement not to increase the rent for 30 years, this will create incentives for affordable housing at the expense of the CR zones used for both TDRs and BLTs. The CR Zone is a receiving zone for both TDRs and BLTs. Ultimately, the ZTA could result in the limited use of both TDRs and BLTs.

**Broad Run Creek Farm II LLC:** Jeremy provided an update on the proposed acquisition by County Parks of the Broad Run Creek Farm II LLC. The CE is proposing to approve this acquisition although the OAG and the APAB are not completely clear on the terms of the transaction including how the TDRs will be treated given

these TDRs would be retained with the property once the easement is terminated. The OAG would like these TDRs to be extinguished and at this point there is still no clarity on the matter. Jeremy explained that there are 6 remaining TDRs, and who will own these TDRs is yet to be determined. Caroline Taylor (Montgomery Countryside Alliance) shared concerns with Dale Tibbitts about the County terminating the Ag Easement and creating a passive park.

<u>Gravel Portion of River Road:</u> Jeremy then provided an update on the MCDOT culvert projects being undertaken on the Gravel Portion of River Road and reviewed with the Board correspondence sent by the OAG to MCDOT staff. Jeremy explained that the project has become a real muddy mess and noted the roadbed itself has been compromised. Jeremy mentioned that there were 20 truckloads of CR6 stone brought in to restore the area where 8 culvert pipes were removed and replaced on a 4-mile section of Elmer School and Whites Ferry Road. Jeremy is trying to keep farmers apprised of the matter so they can get crops off the field. Jeremy thanked Linda for her efforts on the matter.

Expanded Farm to Food Bank Program: Jeremy then reported on progress for Expanded Farm to Food Bank Program. Jeremy shared email correspondence from Manna Food Center about the program details and explained the deadline for applications is November 30, 2021. There will be an Information Exchange and Listening Session on November 18, 2021, at 3:00 pm. Jeremy mentioned 30 farmers contributed to this year's program in producing food for Manna and his hope is 40 farmers apply during this application period for next year's growing season.

Council Bill 16-21: Jeremy provided an update on Council Bill 16-21-Environmental Sustainability- Building Energy Use Benchmarking and Performance Standards that was discussed before the T&E Committee on October 28, 2021. The DEP recommends the bill should apply to equestrian facilities in the County with buildings 25,000 square feet in size or larger to assess the energy being used for lighting, heating, and air conditioning, etc. The DEP presentation included a summary of other jurisdictions around the country including Washington State that exempts all agricultural buildings. Jeremy hopes that Montgomery County will mirror Washington State and have existing and new agriculture buildings exempted. Jeremy provided the following link to the information for Council Bill 16-21.

https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2021/20211028/20211028 TE1.pdf

**Electric Lawn Care**: Jeremy explained that we are still waiting for legislation from DEP that proposes the prohibition on the use and sale of gasoline leaf blowers. A broader Electric Lawn Care bill may also be proposed.

<u>Upcoming Meetings and Events:</u> Montgomery Soil Conservation District: November 12, 2021, Agricultural Advisory Committee: November 16, 2021, F2FB Information Exchange and Listening Session: November 18, 2021; Ribbon Cutting for 61 Vineyard: November 19, 2021; F2FB Capacity Building Grants deadline: November 30, 2021, Public Hearings on ZTA 21-08 and Bill 40-21: November 30, 2021; Montgomery County Farm Bureau Board of Directors: December 7, 2021.

#### **SECRETARY/ TREASURER'S REPORT**

**Approval of the Board Minutes**: Supervisor Linda Lewis inquired if the date indicated on the minutes was incorrect. The date for the regular Board minutes was correct; however, the date indicated on the Executive Session Minutes was not and would be corrected during the next Executive Session. Both Karen and the chairman thanked Linda for catching the error and with no additions or corrections to the minutes, a motion was made by Linda Lewis and then second by Robert Butts and passed approving the October 8<sup>th</sup> Board Minutes.

**Monthly Financial Statement:** Karen explained the check book and bank statement have been reconciled and noted that the audit was completed and submitted to MDA on time. One expense noted was for a \$100

membership for the Maryland Horse Council (MHC). Travis participates regularly with the MHC and that the District has provided annual membership in the past and that our current membership had expired and was up for renewal. Karen and John recommend support for this membership renewal. Karen then presented a request from MASCD concerning a sponsorship donation to support the MPT-Farm & Harvest programing. She mentioned that we generally support this effort and that last year MSCD provided a \$625 donation. John mentioned that during the MASCD Board of Directors Meeting, that there was discussion about District's providing funding traditionally earmarked for this program, to help offset MASCD operating expenses being funding through grants. The chairman concurred with John as he recalled the same discussion at MASCD and thought this matter should be placed on hold until MASCD provides a clear resolution. John noted he would reach out to MASCD for clarification and that if needed, this matter will be addressed in the December Board Meeting.

The last item Karen presented was a need for additional storage space as current storage areas in the building are considered in violation of the building lease by MNCPPC. We have been notified by Parks to address areas that we are utilizing for storage that are in violation of the lease agreement. Options on site are severely limited and an outside sea container would be susceptible too leaks and may harbor pests such as rodents. Not an ideal place to store equipment and archived files. Karen has investigated storage rentals and there is a place that is 2.3 miles from the office that costs \$160 per month. Karen said the space is close and will allow us to follow Park and Planning space restrictions. While the District Supervisors understand the options are limited, they have suggested that the Building Users group set up a meeting with MNCPPC to see what can be worked out. In the meantime, the Supervisors wanted to provide support to John to locate offsite storage until the long-term building space issues can be worked out.

The chairman asked to consider one motion to address everything that was presented. A motion was made by Tim McGrath and seconded by Doug Tregoning and passed approving to file the October Financial report, pay the District membership for the Maryland Horse Council, defer addressing MASCD/MPT Farm & Harvest donation for the December Board Meeting and allow John the discretion to handle the space issue.

# **District Activities Report and Program Updates**

Charlotte Brewster, District Conservationist presented the monthly activities report and noted that there is only one Request for Assistance (RFA). The RFA is for Stuart Davies, and it is a horse operation. The operation is a small property off Beallsville Road with 16 acres with about 10 acres in pasture. Stuart is seeking assistance in grazing management, crop management, nutrient management, and a conservation plan. The property is in the Ag Reserve and it is a horse operation and would more than likely be assigned to Travis. John indicated that the request is in line with the District's mission and noted that we would assign Travis to work with him and to address his technical assistance needs.

Charlotte then reviewed with the Board the District Activities Report for October. She explained that while there were no plans up for approval this month, she noted that there were 9 plans in progress as outlined in the report and a great deal of construction activities that were going on. Charlotte reviewed some of the technical design projects in progress. For the past few months, we are having engineering meetings that are separate from our staff meetings. These engineering meetings have proven to be very beneficial in keeping us on track with all ongoing projects and requests received. Some of the technical design projects include Waters Orchard (c/o Ben Butler) Ag Accessory Building, and trough designs for Mr. Kohlhoss, Andrew Keller and Amarnath Acres. Currently under construction are 2 troughs for Eleanor Leak and the Ag Chem building for Laytonsville Landscaping, a farm Access Road for Black Ankle and a pond clean out for Ridgefield Community. The 2 waterways for Willard have been completed and there was a site visit for Tim Hussman to provide a feasibility for a spring fed livestock water.

Charlotte then announced some staffing changes impacting our office. Chris Zawitoski who works for RC&D under a contract with NRCS has been offered and accepted an MDA Technician position with Frederick SCD. All are happy for Chris and are hopeful that there may be an opportunity for him to return to MSCD. Charlotte noted that Chris has been a great asset and this opportunity will provide him the exposure and experience to continue to grow. With Chris moving on, the technical design workload will be tremendous for Udeni and Paul. Charlotte has spoken with Adam Lyon about a short-term solution to engage Mike Lock, an MDA regional technician, to help fill our technical staffing needs. Charlotte has also touched based with Warren Johnson, NRCS Area Engineer about the new engineers that are scheduled to come on board and whether they too might be able to assist. Charlotte also mentioned that Sam Tyler, who provides assistance and oversight on large scale intensive technical designs like the Ag Chem for Laytonsville will be retiring at the end of the month. John mentioned that MDA is making two employment offers for Conservation Planners and John is advocating to Adam that the Conservation Planner position that was held by Kathleen Herr be reclassified and reassigned as a technician position. Charlotte shared that she is checking with her organization to see if R&CD will fund another technician position.

Lastly, Charlotte shared that NRCS will be offering a lot of trainings for seasoned and new employees in the upcoming winter months. In addition, she announced there is funding for Agriculture Management Assistants (AMA) program for High Tunnels and Irrigation. She noted there will be a Local Workgroup for AMA's and the meeting is scheduled for January 7, 2022 for program sign up.

### **District Managers Report - NEW BUSINESS REPORT**

Proposed FY23 Budget Engineering Position: John reported the district is working with the Office of Agriculture to include as part of their FY23 Budget a proposed engineering position. It is proposed that the position be funded in part by the WQPC fund through DEP as well as a portion of funding provided by MDA to help support the Ag WIP. On November 2, the District met with officials from the County OMB, DEP and OAG to discuss the need for this position.

It was revealed to our County funding partners, that the decision by NRCS to no longer provide technical oversight for small pond approvals was going to negatively impact the County and eliminate the District's legal ability to provide small pond approval services to the County beginning on January 1, 2022. These small pond approvals include many of the DEP stormwater management retrofits that are required to meet the 378 small pond standards. We discussed how the WQPC fund could help the district maintain these services if the County would fund the position. We have proposed seeking cost share assistance from MDA through the CB Trust to help fund this position as this position could help support expediting design approvals and increasing efficiency in support of the Ag WIP. We are not sure if the County Executive or Council will support this position, but it was made clear that the District provides this as a service to the County and that the work the District performs in these areas does not go towards local district WIP goals. It was also noted that the district has no urban planners or technicians, so this workload would create a negative impact.

It was discussed that maybe the City of Rockville and Gaithersburg would support providing funds to the County for this position as they too would benefit from the District having this engineer. John indicated that this was not something he discussed with these jurisdictions but perhaps it was something worth exploring. There was also a suggestion that if the WQPC fund was not supported that DPS's enterprise fund should be looked into as an alternative source of funding. Right now, the position is in OAG's budget for FY23.

Jeremy suggested and the Board concurred that a letter should be sent from the District to DEP, copying the County Executive and other key officials thanking them for the meeting and summarizing why the position is critical if the District is to continue providing small pond approvals as a service to the County. John will draft a letter to send to DEP and the other County Officials.

# Annual WQPC Report - January 2022

John reported that he is in the process of developing his annual WQPF fund report. This report is what we use to invoice DEP for our annual WQPC funding the supports our local cover crop program and conservation cost share assistance. His goal is to have a draft report ready by the next Board meeting and be ready to remit to DEP by January 2022.

# **MDA** and Staffing Update

John reported that MDA is in the process of extending offers for over 58 positions across the State. We have two planners that will be receiving offers. If accepted, I believe they will begin their tenure on or about December 1<sup>st</sup>. John believes the best approach would be to assign each planner to J and Travis to help get them acclimated, trained and to primarily focus their efforts on plan updates. John's report also highlighted that the District will be losing Chris Zawitoski to Frederick SCD as he has been hired by MDA to fill a new Soil Conservation Associate II position. Chris currently is employed by RC&D through an annual contract. While we will miss his contributions, MDA's position provides him stability that is important to his career development. We want to wish Chris much luck and success with this new opportunity.

Since we are now losing an important technical staff position, John reported that he has had dialog with MDA to see if we can convert Kathleen's vacant planner position to a Conservation Associate. We have a vital need for this position and believe now that we are losing Chris, the timing is right to pursue hiring a new tech verses getting an additional planner.

# MD Nutrient Management Update

John reported that the MDA Nutrient Management Program will be holding their **Nutrient Management Update training on Wednesday, December 8th, 2021**. Like last year, this training will be held virtually. This is a great opportunity for certified consultants to receive 6 continuing education credits. A link to the training page in incorporated into the minutes where more information about registering for the training will be posted: <a href="https://mda.maryland.gov/resource\_conservation/Pages/nutrient\_management\_training\_program.aspx">https://mda.maryland.gov/resource\_conservation/Pages/nutrient\_management\_training\_program.aspx</a>

For MDA personnel, or anyone interested that has yet to become a certified consultant, the program will be holding a certification exam in February of 2022.

### **Practice Keeper Planning Tool Demo**

John reported that a date has been reserved on the calendar to see a demonstration of the Practice Keeper Conservation Planning software in PG SCD. This is an alternative conservation planning software package that would be ideal for doing plan updates. MDA has indicated that this software package is sufficient to use for plan updates and to keep plans from falling out of Conservation Desktop. Howard, Anne Arundel and Montgomery Districts are participating in this demonstration. If we find this to be a useful tool, we will partner with MDA in the purchasing of the software. This planning platform appears to be an easier planning tool and would be an excellent way to get our new planners up to speed quickly in writing plan updates. John indicates that he will report back to the Board at the December meeting but if practice keeper will work, we should move on this sooner than later. As far as Conservation Desktop is concerned, the plan would be that as time permits, planners will enter the plan update materials into Conservation Desktop. Practice Keeper will provide a bridge between Conservation Tracker and Conservation Desktop and better help us meet our WIP plan update goals.

### **MASCD** Winter and Summer Meeting Dates

John reported on the Maryland Association of Soil Conservation District's Annual Meeting Schedule 2022 and asked supervisors to please hold these dates:

February 9 and 10<sup>th</sup> has been reserved for the Winter Meeting. Currently an in person meeting in Annapolis. Feb 9<sup>th</sup> will be the meeting day, and 10<sup>th</sup> will be for legislative visits and luncheon reception.

The 2022, Summer annual meeting with be a combined MASCD and NACD meeting. The dates are **August 28**<sup>th</sup> **through 31**<sup>st</sup>. The summer meeting will be much later this year because the hotel could not accommodate a large meeting earlier in the summer. The meeting will be at the Hyatt in Cambridge.

### Other notable MASCD Business:

- MDA: Fill new Pin positions re-recruitment Making offers 53 positions
- Additional vaccinees focus on next recruitment
- MACS 100% cost share assistance ran into a per project cost cap issue. Proposal to raise the MACS project cap limit from 50K to 75K

# **Envirothon Update:**

- June 21 23 State Envirothon Saint Mary's College
- National Envirothon will be July 24 -30 scheduled to be held at Miami of Ohio University
- 5<sup>th</sup> Issue is Waste to Resources
- At the end of this year, Craig is stepping down as the Envirothon Coordinator.

# **Sexual Harassment Prevention Training**

As indicated during the October 26<sup>th</sup> MASCD Board of Directors meeting, All Board Supervisors will be required to take sexual harassment training. The Maryland Department of Agriculture and the Montgomery SCD has made training arrangements for February 16, 2022, at the Agricultural Historical Farm Park 18410 Muncaster Road, Derwood, MD for this training. It is our understanding we are to accommodate about 30 Supervisors. The Training is to go from 1:30 am to 3:30 pm.

# District Managers Report – OLD BUSINESS REPORT Update Cover Crop –Planting Deadline Extended

John reported on some updates to this year's Cover Crop Program. Due to wet conditions across many parts of the state the November 5 planting deadline has been extended by one week. Farmers now have until **November 12** to plant qualifying cover crops of wheat, spelt, rye, and triticale in their fields.

They must use one of the following planting methods: no till, conventional, or broadcast with light, minimum, or vertical tillage. With the extension, farmers must certify their cover crop with their local soil conservation district within one week of planting and no later than **November 19**.

These acres will qualify for the \$45/ac base rate with no incentive for cereal/cereal mixes. However, they will still be eligible for the delayed termination incentive next spring. We have contacted all cover crop applicants to inform them of the deadline extension.

#### Audit Completed and Submitted to MDA

John reported that the District has remitted to MDA our annual audit ahead of the October 25<sup>th</sup> Deadline. There were no reportable issues identified and is a credit to Karen's attention to detail. We are good for another year.

# **Draft MOA – Comments Submitted**

John reported that subject to the Board's approval from the October meeting, that he has forwarded comments concerning the draft MOA with NRCS. NRCS has accepted our comments and have indicated they will share them with their National Office's legal team. If they approve the MOA, they will be asking the District to execute the MOA. At such a time the District executes the MOA, NRCS will then ask the District to execute Unfunded Cooperative Agreement. As you know, we have received no new draft of the UCA since we

submitted our comments to NRCS in the Winter of 2018. This will need to be addressed before we contemplate signing the UCA.

# **Small Pond Update:**

John reported that since the last Board meeting, he has met individually with the County Department of Permitting Services, City of Gaithersburg and City of Rockville to fully brief them on the Small Pond Issue as it relates to the District and NRCS pulling out of small pond reviews on January 1, 2022. These meetings were in preparation for a meeting with MDE, the District and the local governments to discuss both the short-term and long-term process for small pond approvals.

This meeting was held on November 5<sup>th</sup> and there was a lot of good discussion. While MDE maintains that even after January 1, 2022, the District could maintain the status quo on issuing approvals, it was highlighted that the District would expose themselves to potential liability by approving small ponds in the absence of having an engineer on staff to certify 378 sufficiency. There was also discussion by the local jurisdictions on MDE's offer to delegate responsibility to the County and municipalities, removing the District from the process entirely. However, each jurisdiction expressed no real interest in going a delegated authority route as they have limited staff and not a sufficient amount of technical knowledge to wholly take these responsibilities on.

It was discussed how the District is working with the County to see if the County would fund an engineering position however there are no guarantees the position will be funded. What is for certain, on January 1<sup>st</sup>, the District would not have an engineer on staff and therefore a need to develop an alternative approval process until such a time the district would have an engineer on staff to do the reviews. As of right now, the District will not be able to execute the MOU proposed by MDE and that the County, City of Gaithersburg and City of Rockville will need to coordinate small pond approval projects through MDE.

Chairman Correspondence: Robert Butz, the chairman noted that he has no correspondence to share.

## **ADJOURNMENT AND NEXT MEETING**

The meeting officially adjourned at 10:30 and the next scheduled Board of Supervisors Meeting is December 10, 2021.

Respectfully submitted,

Karen Walker, Administrative Assistant

MEETINGS ATTENDED	<b>PERCENTAGE</b>
Butz	92%
Butts	100%
McGrath	100%
Linda Lewis	100%
Doug Tregoning	100%
*Linthicum	70%
*Joe Lehman	90%
*Chris Miller	90%

<sup>\*</sup>Associate Member