

## **OHIO FARMLAND PRESERVATION ADVISORY BOARD**

### **MINUTES OF BOARD MEETING**

**Ohio Department of Agriculture  
Reynoldsburg, Ohio**

**December 19, 2006**

(corrected 06/28/2007)

*Howard F. Wise, Chairman of the Board, called the meeting to order at 10:09 a.m. in Seminar Room A of the ODA Bromfield Administration Building.*

**Advisory Board members present:** John Detrick, Glenn M. Myers, Lynne J. Erickson, Roger Wolfe, Brian Williams, Roger Rhonemus, Ed Meyers, Jill Clark and Jay Rausch.

**Advisory Board members absent:** Brock Wanless, Lucille Hastings and Harold Wehl.

**ODA Staff members present:** Howard F. Wise, Michael Bailey, Kelly Carneal, Jody Fife, Amy Miller, and Lori Payne, Associate Assistant Attorney General.

**Minutes:** The minutes of the August 23, 2006 meeting were approved. Lynne Erickson made the motion with Roger Wolfe seconding to approve the minutes as read. A unanimous vote of approval was cast of 9 to 0.

#### ***Opening Remarks:***

Chairman Wise stated the purpose of this meeting was to develop clear guidelines that are fair and known to all. He gave a historical overview of the AEPP and that the policies and guidelines were separated from the application. Gradually, the policies were incorporated into the application to explain the program to the landowner and local sponsor.

*Howard F. Wise Retirement:* Howard F. Wise stated this was his last meeting as Chairman and will be retiring from the State of Ohio on December 29, 2006 after 29 years and 7 months of service.

Jody Fife made an announcement asking board members to submit their mileage for reimbursement via electronic fund transfer. Members were asked to submit their paperwork or complete before the end of the meeting.

#### **News and Updates:**

*New Board Members* - Howard F. Wise introduced and welcomed two new board members, Jill Clark, appointed as Vice Chair of the Advisory Board, representing the Ohio State University, and Jay Rausch, representing Soil and Water Conservation interests. He shared a biography of their backgrounds and experiences.

*Clean Ohio Reauthorization:* Brian Williams overviewed the reauthorization of Clean Ohio bonds. He stated that 70% of the \$400 million has been repaid. As a result, the Ohio Senate is hearing a bill today to approve the reauthorization. There will be no major changes in the allocation for each program although AEPP is the most oversubscribed program. An environmental coalition named "Mainstream Green" has been established to promote the reauthorization.

*Seventh Annual Ohio Farmland Preservation Summit:* Kelly Carneal distributed packets from the Summit to members who did not attend the event. She described the event and the informational pieces within the packet. She noted the "New Conservation Tax Incentives-Some Things We Know and Some Things We

Don't Know," by Steven J. Small, Esq., as a concise explanation of tax benefits for landowners interested in pursuing an agricultural easement on their land.

Howard F. Wise said the "Ohio Department of Agriculture Office of Farmland Preservation Report: 1999-2006" was sent to the Governor, President of the Senate, Speaker of the House, Chairman of the Senate Agriculture Committee and Chairman of the House Agriculture and Natural Resources Committee. Jill Clark added the information is available at <http://cffpi.osu.edu>. Michael Bailey said the document would be added to ODA's website.

*Farm and Ranch Land Protection Program Concerns:* Michael Bailey discussed the Ohio Department of Agriculture's increasing concerns over the Farm and Ranchland Protection Program. Currently, there is a signed Cooperative Agreement between USDA and ODA regarding this program. He distributed "Appendix D: Land Acquisition Screening Process Worksheet" detailing the screening process for land acquisition in regards to records search and conducting an environmental assessment of the land and buildings. Howard F. Wise reminded the members that ODA is purchasing an intangible real estate right, not acquiring land as stated in the document.

Michael Bailey said that the process is becoming more cumbersome for ODA to work with NRCS as the agency is reviewing every document and procedure. There are some issues within the Cooperative Agreement that are in direct conflict with the AEPP Deed of Agricultural Easement. Michael Bailey stated federal policy is to preserve the soils while ODA's policy is for the preservation of agricultural use. These diverging policies are coming to a point of conflict which may result in ODA backing away from the federal funding.

Howard F. Wise reminded the members that a letter was signed by ten (10) state Agricultural Directors stating necessary changes to the program regarding the conflicting issues of the federal regulations and statewide program policies. The demand for funding is heavy, so if ODA were not to use the money, it would go to some other program.

Kelly Carneal acknowledged nine (9) of the 2006 Agricultural Easement Purchase Program recipients are receiving federal funding through this program. The other award winners receiving state funding will close significantly sooner than the rest. Michael Bailey asked the members for recommendations to discuss with the new Director of Agriculture.

There was a lengthy discussion regarding this issue from the members. Lynne Erickson questioned who would complete the Worksheet. Howard F. Wise said a professional environmental scientist would complete the form. Lynne felt the farmers should not incur the cost of this technical service. Ed Meyers said the Western Reserve Land Conservancy has a six page document for the environmental site assessment. Roger Wolfe questioned the provision regarding lead paint in agricultural buildings and the implications to the landowner. Howard F. Wise stressed that this material was for informational purposes, and no Advisory Board policies need to be implemented yet.

*Transition Update:* Howard F. Wise is the Transition Coordinator for the Ohio Department of Agriculture. He had prepared the Transition Manual required by the Ohio Legislature. He stated Dr. Bobby Moser of The Ohio State University is in charge of the transition of ODA. He informed the members that the Transition Manual has been written for the next Administration, including six pages dedicated towards the Office of Farmland Preservation.

Brian Williams informed the members that Dr. Moser has held meetings with stakeholders regarding the Ohio Department of Agriculture. These stakeholders represent a wide range of interests in the agricultural industry. Jill Clark added a survey has been sent to these stakeholders regarding the future direction of the state agency. She attended the stakeholders meeting and the predominant issue was the conflict between rural and urban land uses as well as the growth and change in the agricultural industry. Farmland preservation was discussed by the majority of representatives.

Howard F. Wise reviewed the accomplishments of the Ohio Department of Agriculture under the direction of Director Dailey. Through his 16-year tenure, which is the 2<sup>nd</sup> longest consecutive in Ohio state agency history, \$50 million in capital improvements have occurred as well as the \$10.5 million secured in the construction of a new Plant Pathology Building. He stressed the Office of Farmland Preservation is a well-oiled machine and has done a commendable job.

Brian Williams informed the membership that a paper was drafted regarding the Office of Farmland Preservation staff and responsibilities, which was sent to Dr. Moser. He highly praised Michael Bailey and Kelly Carneal's presentation at the National AFT conference regarding the online AEPP application. He felt they were well received and clearly explained the information to the attendees.

Michael Bailey distributed an interview with candidate Ted Strickland from the July issue of "Ohio's Country Journal." The article highlighted his position on various agricultural issues including the Clean Ohio Agricultural Easement Purchase Program. Mr. Strickland was very supportive of the continuation of the program as well as land use policies.

*Center for Farmland Policy Innovation:* Jill Clark distributed materials on the mission and informational programs offered in the future. She recognized the Center's board members in attendance at the meeting including Lynne Erickson and Howard F. Wise. She summarized the three Partnership Program funding recipients as well as the pilot programs. The three include: Ag Business/Local Funding from Clark County; Transfer of Development Rights Program from the village of Hiram in Portage County and Agricultural Policy Audit from Wayne, Holmes and Ashland counties determining whether local policies help or hinder agriculture. She also highlighted future roundtables including Agri-Business Retention and Zoning in Support of Agriculture that will be held at various locations across the state.

*Director Dailey's Remarks:* Director Dailey addressed the board members by commending their service and dedication towards farmland preservation. He presented proclamations to Lynne Erickson and Ed Meyers for their service to the Farmland Preservation Advisory Board with the Ohio Farmland Preservation Ambassador Award. After receiving the awards, the group took photos to commemorate the achievements of the recipients with the Director and a group photo was taken.

*Ohio Century Farm:* Howard F. Wise distributed the new application for landowners interested in designating their farm as an Ohio Century Farm. He said the program has become more stringent due to falsification of information by landowners. He said that neighbors and local individuals have called ODA to report fraudulent applications. A title search has been added to the application to insure legitimacy of the applicant's information. Director Dailey requests that each member market this program to their local community. Michael Bailey added AEPP applicants receive additional points by securing the designation on their farm.

*Role of Advisory Board:* Michael Bailey stated that he would recommend that the role of the Advisory Board expand and recommended quarterly meetings. The Board's input and guidance on issues will amplify in the future as the Department increases in the number of agricultural easements.

Kelly Carneal added that the need to meet quarterly comes from the necessity to address various landowner and easement issues that arise from the deed of agricultural easement. She gave an example that the staff could ask the landowner and local sponsor to present a proposal to the Advisory Board to review. Upon the recommendation of the Advisory Board, the Director could then approve or deny the proposal.

*Recreational Improvements:* Michael Bailey asked the members to review the Deed of Agricultural Easement, Section 5.10, "New Recreational Improvements." He reviewed the easement language that gives a landowner the opportunity to construct new or reasonably enlarge a recreation improvement within the Homestead area. Any new recreational improvement outside the Homestead area must receive advanced written permission from the Ohio Department of Agriculture as the Grantee.

He gave a recent example of an AEPP recipient in Clark County requesting to construct a recreational lodge in the woods. He distributed an informational flier regarding the prefabricated house with the structural dimensions. The landowner stated the square footage of the first floor to be 900'.

Howard F. Wise added the Clark County Auditor was contacted to determine if the hunting lodge would be CAUV eligible. The Auditor reviewed the proposal and indeed the structure would be CAUV eligible.

Michael Bailey described the process used by ODA to review this proposal. Staff first conducted a site visit of the property to determine the size and location of the structure. The landowner took down trees for the area, determined the location and size of the water well and the location of the utilities. After ODA staff consulted with the landowner, the landowner decided not to construct the dwelling. One possibility offered by ODA was for the landowner to amend the deed and designate this as their one reserved house lot.

Kelly Carneal stressed the need for definitions regarding recreational improvements and houses. Howard F. Wise emphasized AEPP policies are upfront which is the way to handle landowner issues as they arise within the program. When policy language is vague, the floodgates open with requests that are non-conducive to agriculture.

Glenn Myers asked if the subdivision was acceptable with the zoning regulations. Michael Bailey said it was acceptable with the zoning regulations. Lynne Erickson informed the committee of the new Sewer/Septic rules that allow more than one house on each lot.

Jill Clark suggested that, if the uses can be monitored, then it could be acceptable. The local sponsor must be able to monitor the use yearly upon inspection. Therefore, if the use can't be accurately verified through a once-a-year monitoring visit, then it should not be acceptable.

Brian Williams supports quarterly meetings but cautions the membership regarding micro-managing the program. He felt general criteria can be managed administratively by the Office of Farmland Preservation. The Board should be informed in the decision making process. Lynne Erickson felt policy implications that affect the program should be brought to the Board.

Ed Meyers discussed the procedures used by Western Reserve Land Conservancy. The written policy methodology is used to consider various proposals. When a proposal is submitted by an easement donor, an amendment can be requested of the deed of easement. Glenn Myers added that written policies won't cover every conflicting issue in the future. Lori Payne stated the ultimate decision regarding these issues ultimately rests with the Director of Agriculture.

*Subsurface Oil and Natural Gas Exploration:* Michael Bailey asked the members to review the Deed of Agricultural Easement, Section 4.4, "Mining." This section details that there shall be no surface mining, however the landowner may undertake the exploration, development and extraction of oil and gas. By signing the Cooperative Agreement, the FRPP program prohibits the above referenced activities which are in direct conflict with AEPP. The Ohio Department of Agriculture believes this is a non-negotiable issue. Roger Rhonemous asked about the provision regarding active wells. Michael Bailey stated that he believed that the FRPP Cooperative Agreement requires the removal or extinguishment of active or inactive oil and gas wells. Howard F. Wise stated that Tom Stewart, Executive Director, Ohio Oil and Gas Association had initially presented oil and gas leases being addressed in 3 ways, either by a) the landowner would buy the lease out, b) a geologist confirms that the well is completely depleted, or c) a location is tested and no oil or gas is found.

There was a great deal of discussion regarding this issue by the membership. Lynne Erickson stated there is very little pollution of the soils on agricultural operations containing oil and gas wells. Data from ODNR's Division of Mineral Resources Management does not substantiate high levels of pollution statewide.

Ed Meyers informed the members that House Bill 278 protects water sources and buffer areas. As a result, Western Reserve Land Conservancy has written a 4-page document directing landowners to minimize the impacts of these activities which contains language for oil and gas exploration. This economic activity provides farmers additional revenue for the farm.

Michael Bailey asked the members to make a recommendation regarding this issue. After more discussion the membership passed the following motion: Lynne Erickson made a motion seconded by Roger Rhonemous, that the language permitting subsurface oil and gas extraction remain, and that the mechanism for ODA to negotiate more restrictive mining language remains. Motion carried unanimously 9-0.

*Agricultural Subdivision Policy for AEPP:* Michael Bailey discussed a request for additional homes on an AEPP property. A Clark county landowner asked for two (2) houses on the farm which does not meet the Farmstead Policy regarding Housing. Michael Bailey reminded the landowner that upon signing the AEPP Application, there is a clause regarding the number of homes allowed in this program. He added that, since 2002, there have been two (2) farms that have requested an exemption since the inception of the program. This policy will be challenged in the future as ownership transfers.

*AEPP Policy (Liens and Mortgages):* Michael Bailey reviewed the AEPP policy regarding liens and mortgages. Selected farms undergo a title search and must subordinate all third-party interests. Recently, the Office of Farmland Preservation has encountered a judgment against a trustee of a trust owning a farm who has not paid taxes to the Ohio Department of Taxation, and another judgment against a second landowner by the Ohio Department of Jobs and Family Services, because they were a corporation that failed to pay unemployment taxes. Howard F. Wise stated the Ohio Department of Agriculture does not want the publicity of publicly funding an applicant who owes taxes to other public entities. He has concerns regarding putting or imposing the burden on the Ohio Department of Agriculture to garnish money to third party interests. Landowners should agree to pay off the money he or she owes to the entities before accepting AEPP funds.

Howard F. Wise stated there is a loophole with the rules regarding mortgages and liens because there is no language regarding personal financial issues. Michael Bailey acknowledged this issue and proposed a policy to pay the debt within 60 days or it will be deducted by the title company. Howard F. Wise felt another option was to put the funds in escrow until it is resolved. Glenn Myers added that Ohio Lottery winners must have no outstanding financial issues or their winnings are directly paid to the entities before he or she receives any award.

Michael Bailey recommended the board members to make a policy regarding this issue. Ed Meyers made a motion seconded by Glenn Myers to, in the AEPP application, expand the judgment and lien question by asking the applicant whether there is a court judgment by the State of Ohio, or any agency thereof, against any party with an ownership interest in the AEPP application property. Furthermore, if a title search substantiates that such a judgment by the State of Ohio, or any agency thereof, exists, then it must be either a) removed prior to closing, or b) fully paid off at closing. Motion carried unanimously 9-0.

*Donation Criteria:* Kelly Carneal discussed the Ohio Agricultural Easement Donation Program. She said there has been increased interest due to landowners in search of protection from local municipalities seeking annexation. She described landowners in Hardin County with substantial holdings that faced opposition from the county commissioners, township trustees and the city of Kenton. Based upon these findings, Director Dailey opposed the proposal due to the lack of local support. Kelly Carneal asked the group if criteria should be established for the program, particularly distance from municipalities. She added the zoning criteria for the city of Kenton was established in 1974. Jill Clark felt the Ohio Department of Agriculture should not accept every donation but develop strategic guidelines focusing on monitoring easements in perpetuity. Kelly Carneal summarized the landowners in Hardin County decided to donate their agricultural easements with Black Swamp Conservancy.

*Partnering with land trusts that utilize FRPP:* Michael Bailey distributed a spreadsheet regarding the two projects the Ohio Department of Agriculture is partnering with local land trusts. These unique cases allow

the Department to leverage funds to protect larger properties and use the prescribed AEPP forms required by law.

*Utility Easements Across Protected Property:* Michael Bailey reviewed the Deed of Agricultural Easement section 5.11: Utility Services and Septic Systems. He stated the general policy of the Ohio Department of Agriculture is to allow utilities for the benefit of the farmer but not for the extension to others for nonagricultural development. Ed Meyers said the perception is that easements block the extension of utilities for others. Howard F. Wise explained that Director Dailey will always side with the farmer.

*AEPP Block Grants/Sub Committee:* Michael Bailey discussed the future of the program and the desire to have a decentralized funding program that allows local stakeholders to select the farms. Howard F. Wise agreed with this program as the Office of Farmland Preservation will implode because it is not self-sustaining due to lack of staff and resources. He illustrated other neighboring states that have converted from statewide programs to county or land trust programs. Kelly Carneal added a uniformed ranking system, and criteria will need to be established across the state by local entities. Howard F. Wise stated the Ohio Revised Code would need to change to allow this mechanism.

*Other Comments:* Howard F. Wise made closing remarks regarding his tenure at the Ohio Department of Agriculture. He encouraged members to strengthen relationships with legislators to champion the farmland preservation movement. He enjoyed working on farmland preservation more than anything else and will continue to play a role in the movement. He commended Roger Wolfe in receiving his prestigious award from the Ohio Farm Bureau and asked for a copy of his speech.

Howard F. Wise adjourned the meeting at 2:02 p.m.