

# OHIO FARMLAND PRESERVATION ADVISORY BOARD

## MINUTES OF BOARD MEETING

Ohio Department of Agriculture  
Reynoldsburg, Ohio

August 18, 2010

Minutes taken by Amanda Bennett

\*Disclaimer: Many individual opinions have been captured by the recorder but do not necessarily reflect the opinions of the entire Advisory Board.

**Advisory Board members present:** Kristen Jensen, Chair; Dr. Jill Clark, Vice-Chair; Glenn Myers; Jay Rausch; Joe Logan; John Detrick; Thomas Mazur; Lucille L. Hastings; Kurt Updegraff; Brian Williams; and Roger Rhonemus

**ODA staff members present:** Jessica Atleson, Ohio Attorney General's Office; Jody Fife; Cindy Shy and Amanda Bennett

**Visitors:** Michele Burns, Tecumseh Land Preservation Association; Scott Hill, Western Reserve Land Conservancy; and Jonathan Ferbrache, Fairfield Soil and Water Conservation District

### Opening Remarks

- Kristen Jensen called the meeting to order at 10:19 a.m., in conference room 308 of ODA's Bromfield Administration Building.
- Introductions were made and Kristen spoke concerning the roles and responsibilities of the board, including the difference between personal and professional opinions.
- MOTION: Kurt Updegraff moved to accept the May 19, 2010 Advisory Board minutes. Brian Williams seconded; motion carried.

### Public Comments

Jonathan Ferbrache asked the Board to consider the unintended consequences of current policies, such as the policy that all contiguous parcels must be a part of an application. He noted the relatively small amount of funds that many young farmers are able to leverage and how this hurts their ability to purchase the large protected tracts. When all contiguous parcels are locked under one easement, it could make it difficult for the landowner to sell. He suggested that county average farm sizes be taken into consideration.

Michelle Burns explained that as a local sponsor she wants the quadrants to be known prior to the application period as opposed to drawing the quadrants based on the number of applications received at the end of the application period. She felt that doing the latter could cause the program to receive many low-quality applications. Kristen clarified that prior to today's meeting, the staff sent an email to 109 partners asking if they would prefer the quadrants be drawn prior to applying or after the close of the application period and based upon the number of applications received. Twenty responses were received and the result was an even split in opinion.

In relation to Scott Hill's comments, Cindy Shy explained a situation in the 2010 funding round that

requires recommendation from the Board. A mistake was made in the preparation of applications for the scoring of Tier II, when it was discovered that some unscored Tier II essays should have been scored. Before that discovery, a full offer of \$80,469 was made to the Cox farm, and that verbal offer was accepted. After the mistake was discovered and the additional Tier II scoring completed, one farm (Waris) scored higher than the Cox farm. To honor the offers as they should have been made in that quadrant, staff made a partial offer to Waris of \$103,520, which was accepted. With Cox included, the quadrant total would distribute \$1,642,969 (an average of \$80,469).

In recent weeks, ODA learned that the Jagers farm, located in the same quadrant, wishes to withdraw from the program. Jagers had received a verbal offer of \$61,175. Provided that a written withdraw is received, that would mean that as next in line, Waris would have received a full offer of \$109,425. If a full offer is now made to Waris and the Cox offer is granted, the quadrant will now total \$1,587,699, an average of \$25,199 for the NE quadrant.

Also to note is that the SE quadrant had \$8,043 that was not utilized in the offering process. When this amount is deducted from the current average of \$25,199, the state-wide 2010 funding round average is \$17,156.

Scott Hill believes that Clean Ohio AEPP is a great program and that word of mouth has been the best selling point among farmers in their area. Western Reserve Land Conservancy is now attracting much larger farms than what they have dealt with in the past and they feel this is a good sign for farmland preservation efforts. He reiterated that Mrs. Cox had received the full verbal offer, but understands that the offer may be rescinded. He supports honoring the original offer to Mrs. Cox. He feels the local discussion could be negative if ODA does not honor the verbal offer.

Scott also shared that he hopes the AEPP program can increase its funding. He says they have many donations as well, and that they send out newsletters to couple the word of mouth that is allowing ag easements to increase in their area.

The Board discussed the mistake made in the 2010 funding round and comments were made that the program should do right by the Cox farm and honor the offer. It was explained by staff that the \$17,156 would come from matching funds received from FRPP. Counsel was asked if there were any policy hindrances to granting the offer to the Cox farm, and it was determined that there was not.

MOTION: Lucille Hastings moved to meet the obligation of the Cox verbal offer and to make a full offer to Waris, based upon ODA's ability to meet this additional financial obligation from FRPP matching funds; John Detrick seconded; motion carried.

### **News and Office Updates**

- Donation Program – Three closings should take place within the next two weeks for the Bernhardt and Shultz Farms (Richland County). Total acreage is 310.33 acres. There are also two potential donations – 1) McKirgin in Morrow County (about 500 acres), awaiting renewal of the tax incentive; and 2) Kaufman in Logan County (about 300 acres), awaiting estate changes. Interest is down for the Donation program at the moment because the tax incentive has not been renewed. Scott Hill shared that he has heard that it will be passed, retroactive to January 1, but that could mean a lot of work for local sponsors and ODA in a short period of time (trying to close by the end of the year). Kristen shared that it would not be logistically feasible for the office to process donations if the incentive is not renewed until the last two months of the year. She added that it would take four months minimum to complete. A policy

from the Board might help, but it is understood that there will always be requests for quicker closings for a variety of reasons. The Board commented that timelines for processing should be clearly communicated to legislators and landowners alike, and Kristen says that staff will look at our current documents to make sure the timeline is clearly communicated.

- 2009 AEPP – The office is working to close on the 37 farms. It was hoped that Voge (Preble County) would be the first farm closed, but there have been issues with getting the appraisal approved through NRCS, as well as with subordinations of his cell tower lease and leasehold mortgage. Seventeen of the 37 farms are going to receive federal matching funds. Of the 17, seven are using 2008 FRPP funds, and will use the 2008 approved template deed. The 2009 federal deed template is currently being reviewed by NRCS.
- Century Farm – Cindy shared that there are 824 farms registered from 85 counties. Only Athens, Noble, and Pike counties go unrepresented. The program goal is to have representation from all 88 counties by the end of the year. Thus far, the office has reached out to Farm Bureaus, Extension Offices, County Recorders, SWCDs, and historical groups. The Board made suggestions such as grain elevators in those counties, implement dealers, local historical societies, and putting notices in the CCAO and OTA publications. It was asked if farms are being taken off the registry if they are sold or no longer qualify, because that could be just as telling. If the program is notified, they are removed. A ceremony is in the works to recognize Bicentennial farms, of which there are more than 30 on the registry.
- AEPP Survey – Results have been officially released. Per the Executive Summary, the response rate was 78.2%, with 91.7% of respondents satisfied with the program. AEPP participants tend to have larger operations than the state average. Jill Clark mentioned that during her last presentation on the survey, a question was asked as to how many respondents actually manage their own farms, and now we know that to be 85%. The plan is to do another survey every five years as well as follow-up to the report's other recommendations. A press release was issued, and staff is working with the legislative liaison to get the results to members of ag-related committees. Jill Clark suggested a cover letter for legislators highlighting that satisfaction with the program was high and show how we are addressing suggestions for improvement.
- Second Farmland Preservation Program – The Board was provided with the proposed legislation that will be attached to ODA's budget bill. The second program's purpose is to involve important Ohio farms in farmland preservation that are shut out of the Clean Ohio AEPP. Rules have yet to be developed. A suggestion was made that perhaps a subcommittee of the Board could be performed to make recommendations on the rules for the program, and Kristen added that staff would be seeking stakeholder input on the details of the program, including new partners attracted by the concept of the second program, such as urban areas. The Food Policy Council demonstrated support for the second program.
- Budget – Kristen explained that right now there is discussion that there could be cuts from the General Revenue portion of funding for the Office of Farmland Preservation. The office will need to utilize the 3.5% of principal recommended by the Board at the last meeting during the 2011 funding round.

### **2010 Clean Ohio AEPP**

Two hundred three applications were received from 37 counties, for a total of 29,000 applied acres.

Kristen took incomplete applications to the Director for recommendation action.

- Thirteen applications were disqualified of which eight applications were not enrolled in an Agricultural District, four applications had missing certification signatures, and one had no township resolution.
- The Board had asked for information on Tier II scoring so that they could compare their scores to other Board members. That information was provided prior to the meeting.
- The formula to decide which applications would be scored for Tier II was as follows: If the county had up to three applications, all were scored. If there were more than three, up to six were scored, but if the 7<sup>th</sup> and later applications were within one point of the score of farm #6, these were also included. In total, 145 applications were scored for Tier II. This was the same number of applications that were scored for Tier II in 2009.
- With Cox included and Jagers excluded, there will be a total of 37 farms selected for 2010 funding. That amounts to nearly 6,200 acres of preserved farmland. Coshocton County had its first farm selected in the history of the program.
- All farms with the exception of Cox have returned the Notices of Selection. Waris will receive an updated Notice after Director Boggs has approved the changes to the northeast quadrant.
- Except for Cox, title searches have been ordered on all selected farms. This year, ODA asked local sponsors to forward the title search bid information to local title agencies. As a result, this year there are six title agencies awarded bids that OD A has not worked with within the last four years. There will be a conference call August 19, 2010 with all title agencies providing services for the 2010 farms. If the firm received 1-3 farms, those title searches are due on Sept. 16. Additional time is provided to firms receiving four or more farms.
- A pilot program is beginning with the 2010 funding round in which at least three local sponsors will be taking the lead on clearing exceptions from the title with the landowner. In the past, staff was strained by coordinating the effort of clearing the title between landowner, local sponsor, attorneys, etc. Staff will be lending support to local sponsors that have agreed to participate in the pilot.
- A conference call for the local sponsors of the 2010 selected farms to go over the closing process will take place on Aug. 25.
- Eleven of the selected farms were identified with the FRPP program manager to receive matching funds. A packet was sent around the room showing the extra paperwork that must be completed by these landowners. ODA was given a very quick timeline and in turn, the landowners have one week to complete the additional paperwork. There is ~\$1.3 million in FRPP funds available for these farms. Farms were selected by looking at the application to see which farms had no active oil and gas leases, a key requirement of the FRPP. Many Ohio farms that come into the AEPP program have active oil and gas leases, and no company with an active lease has agreed to subordinate. Farms were then ranked and selected by greatest purchase price in order to allocate all the FRPP funding. Kristen clarified that FRPP provides matching funds to help extend Clean Ohio dollars.

### **Kaizen Overview**

Amanda gave an overview of the Kaizen process in which staff and stakeholders took part in June 21-25. If implemented entirely, the new process is estimated to reduce the amount of time spent on processing farms from two years to approximately one year. Board members that attended throughout the week commended the office for going through the process in an effort to become more efficient and were happy to be able to provide input. Kristen again thanked Board members that took time to visit during the week.

## **OAC Revisions**

Kristen reviewed the proposed changes to the Ohio Administrative Code, and noted that the changes were submitted to the 90-day review process. Proposed changes include:

- Reducing the number of attachments required at time of application.
- Adding wind turbines as an exception to the requirement that all applicant property be under CAUV. (901-2-02, Eligibility). This brought about discussion from the Board on wind turbines, and whether or not this concerned residential (consumer) turbines or commercial ones. Some members expressed that it should include commercial ones, since this will be an increasing trend in Ohio and will be a major economic boost for the state. It was shared that other states have commercial turbines and those farms are still active in agricultural production. Kristen added that ODA policy still requires that landowners follow all state and federal regulations, including those by PUCO (which would regulate commercial wind turbines). Right now, the Federal deed says that only turbines for residential use will be permitted, but it is possible that this requirement will change.
- The ranking of farms to be scored for Tier II will be changed to “Applications approved by the Director will then be submitted for tier two evaluation” (901-2-05, Farmland ranking system)
- Clarification was added to section 901-2-06 to explain that all interests that limit the title must be cleared or subordinated, unless exempted by the director

## **Fast Track Incentive**

One suggestion from the Kaizen team was that the Board consider incentivizing applications that come with proof of a title search having been completed or even producing proof of a clear title. The landowner could voluntarily have the title search completed prior to application. If it was clear, staff would know right away that the farm would be eligible for FRPP funding. It would take less time to complete the process, because having the title search done earlier would make staff and local sponsors aware of what exceptions needed to be cleared or subordinated. The Kaizen team suggested that an incentive (either from points or additional funding) be available to the landowner for having this done prior to applying.

Discussion: Providing points might give the perception that the program prioritizes clear titles and that would be wrong. Perhaps the fact that the process would go faster would be incentive enough? Perhaps providing more money to the landowner would then be a good incentive because going federal actually means more money will be spent by the landowner because they are required to get an appraisal. Providing points for producing clear title seems to incentivize those with money available to have title search done upfront. It was thought to be unlikely that many can produce a true clear title, due to presence of issues such as mortgages and active oil and gas leases.

For those that do have clear titles, they have to do more paperwork for FRPP and also obtain an appraisal. A comment was made that some landowners selected for a federal deed may refuse to do additional paperwork and obtain an appraisal in order to become a state deed. A suggestion was made that ODA pay for the appraisal, since state deeds are not required to undergo that expense. Would allowing the landowners to get their own title search with the promise of a fast track save staff time? Staff responded no, since title work is ordered early in the process anyway. If the program allowed landowners to order their own at that time, it would just involve an additional step of the landowner having to make sure that ODA gets a copy because it will have to be reviewed by counsel. Another suggestion was made that ODA pay for the title searches of those that have it done early but then aren't selected, but this was determined to be too expensive. If a landowner has the title search done early but doesn't get in to the program, could they use it next year? Jessica said that no, an update would have to

be completed prior to the next application period. Jessica added that even if only a few farms voluntarily did their title searches early, it would still save time in the review process. It was asked if it could be added as a part of the essay on Business/Estate planning... “Do you have a clear title?” Jessica mentioned that the landowner would still need to provide proof, however.

Following discussion, Kristen summarized that the Board did not want to provide points or money to landowners for doing their title search prior to applying. Some board members felt that there should be an incentive because it would be more efficient, while others felt it would change the program too greatly, and that the only incentive should be that you could get your money faster. Board members urged that a timeline would be needed if a landowner is offered the opportunity to get the title search done early. Would reimbursing landowners in the FRPP process for their appraisal go against FRPP rules? Staff did not believe that it would.

### **Scoring Discussion**

The idea from Kaizen asked the Board to evaluate an option to divide and score applications in a different way than it is done now (last year, all 12 members scored 145 applications that were selected for Tier II scoring). Various scoring options were discussed, including four teams of three members scoring one quadrant each; option to divide by essay question; each member score all applications; and six members scoring two quads each.

**MOTION:** Jill Clark moved that for 2011 funding round, the Board divide scoring into two groups of six members each scoring two quadrants. Kurt Updegraff seconded; motion carried with Lucille Hastings abstaining. Board member John Detrick left the meeting prior to this vote taking place.

### **2011 Application Changes**

Prior to the meeting, staff supplied the Board with a document comprised of internal comments and comments from local sponsors regarding policy questions that could impact the 2011 application. Since changes have to be submitted to the IT department by Sept. 1, it was decided by the Board that policy questions not addressed today would be addressed at the next meeting.

#### **3C – Must all contiguous parcels be submitted with application?**

Some members felt that a landowner should then take that into consideration prior to applying for the program and that changing this requirement would substantially change the purpose of the program. Others felt that the program should be flexible and consider changing the contiguous parcel policy. The Board felt that the issue should be looked at further at another time. (To be discussed for 2012 application).

**12C –** After discussion, the Board decided to make no changes to this question.

**12D –** After discussion, the Board decided to make no changes to this question.

**13 A&B –** After discussion, the Board decided to make no changes to these questions.

**13C –** The staff recommended changing the word “Intersection” to “Interchange” to be consistent with the OAC. The Board agreed with the recommendation and the question will change to read “Interchange.”

**13E –** Comments from local sponsors were that a distinction should be made between farm homes and nonfarm homes, and that applications should not be penalized for having farming homes nearby.

Historical data showed that in the past the application did make a distinction. Board members agreed to change the wording of the question to read “How many nonfarm homes exist within a one-half mile perimeter of the farm boundary?”

**14** – Board members felt an incentive for being in a PCA or PAA is already built-in to the application in Tier II (comprehensive, zoning plans)

**14D** – Higher local match – The Board decided this issue should be looked at later (To be discussed for 2012 application).

It was suggested by the Board that staff continue to bring these policy questions forward in a similar format, but to include recommendations. Even though recommendations may not be followed, it is helpful for the Board. If no recommendation can be given, the Board asks that staff explain why no recommendation was given.

**14F** – Recent Land Use Conversion – After discussion, the Board decided to switch the question back to read “resulting in non-agricultural use.”

**14G** – County receiving funding in previous funding rounds – After discussion the Board decided to make no changes to this question.

**15A** – Comprehensive Land Use Plan – Staff recommend that the question be re-worded to include revised comprehensive land use plans.

The Board reiterated that some policies would need to be revisited, which wouldn’t impact the 2011 application but could possibly impact the 2012 application.

### **Guidelines & Policies - 2011**

- 40 acre minimum – The Board recommends keeping the 40 acre minimum but would like to revisit the issue before the 2012 funding round.
- Large Farm Exception – After discussion, the Board made a recommendation to consider the large farm exception eligibility as 400 acres or two times the average county farm size.
- Title and Appraisal Costs – In light of earlier discussions regarding FRPP farms having to pay for their own appraisals, the Board moved to take on that cost.

**MOTION:** Jill Clark moved to make a recommendation to pay for the 2011 funding round FRPP appraisals on a 1-year trial basis. Seconded by Tom Mazur; motion carried.

- Multi-County Farm – Clarification was asked about how many resolutions are needed for an application. Kristen explained that currently, every application needs a resolution from their local sponsor’s organization. If the Local Sponsor is a political subdivision – township, county, or SWCD – this is all you needed for the 2010 application. If you are a charitable organization, you must also have a resolution for every township and county in which the property lies. If you are applying a multi-county farm, you must have a resolution from every jurisdiction in which the farm sits (townships and counties). After discussion, the Board recommended that the policy be that a local sponsor can choose which county the farm will apply under; however, if the local sponsor is a charitable organization, it must obtain resolutions from all counties and townships in which the farm sits. For a local sponsor that is a political subdivision, they must obtain their

own organization's resolution and resolutions from all townships and counties in any other county(ies) in which the farm sits.

- Funding Caps – After discussion, the Board did not recommend any changes to the funding caps for the 2011 funding round.
- Regional Balance –After discussion, the Board decided to keep the same 2010 quadrants for the 2011 funding round.

**Next Board Meeting** is scheduled for November 3, 2010, 10am-3pm.

**Annual Summit** is November 18, 2010.

MOTION: Motion for adjournment by Jill Clark. Seconded by Jay Rausch; motion carried.