

**OHIO FARMLAND PRESERVATION ADVISORY BOARD  
MINUTES OF BOARD MEETING**

**Ohio Department of Agriculture  
Reynoldsburg, Ohio**

**June 15, 2011**

**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:** Mike Bailey, Chair; Jill Clark, Vice-Chair (arrived at 1:13 p.m.); John Detrick; Lucille L. Hastings; Joe Logan; Thomas Mazur; Glenn Myers; and Brian Williams

**ODA staff members present:** Rocky Black, Deputy Director; William Hopper, Chief Legal Counsel; Jessica Atleson, Assistant Attorney General; Jody Fife; and Amanda Bennett

**Visitors:** Howard Wise; Jonathan Ferbrache, Fairfield Soil and Water Conservation District; Michele Burns and Krista Magaw, Tecumseh Land Preservation Association (aka Tecumseh Land Trust); Steve Goodwin, Appalachia Ohio Alliance; Scott Hill, Western Reserve Land Conservancy; Larry Frimerman, Three Valley Conservation Trust; Rob Krain, Black Swamp Conservancy; Judy Kocab, Ashland County; Rod Kuntz, landowner.

**Opening Remarks**

- Mike Bailey called the meeting to order at 1:09 p.m., in conference room 308 of ODA's Bromfield Administration Building.
- ODA Deputy Director Rocky Black introduced new Office of Farmland Preservation Executive Director Mike Bailey on behalf of Director Zehringer. Rocky explained that the Director likes Howard's proposal for a local AEPP, and he wants to hear from this Advisory Board.

**Previous Advisory Board Meeting Minutes – May 4, 2011**

Brian Williams asked for clarification in the minutes of the name of Tecumseh Land Trust, represented as Tecumseh Land Preservation Association. It was clarified that Tecumseh Land Preservation Association is their legal name.

**MOTION:** Lucille Hastings moved to approve the May 4, 2011 Advisory Board meeting minutes as presented. Brian Williams seconded; Vote 7-0; motion carried.

Visitor Scott Hill of Western Reserve Land Conservancy was asked to make comments because he had to leave. Scott passed around a map from the Conservancy showing how

AEPP has allowed the Conservancy to begin preserving thousands of acres in Northeast Ohio, and he expressed his organization's support for a local AEPP.

**Proposed Local Clean Ohio Agricultural Easement Purchase Program (AEPP)**

Mike Bailey then asked Howard Wise, former Assistant Director of the Ohio Department of Agriculture and former Executive Director of the Office of Farmland Preservation, to provide the Board with a presentation on his proposal to decentralize the AEPP. The document "*Proposed Local Clean Ohio Agricultural Easement Purchase Program (AEPP)*" was provided to the Board in advance of the meeting.

During discussion of the Bonus AEPP section of the proposal, which would allow the Director the discretion to award unused funds from local entities to other entities or to the next funding round, John Detrick shared that this may become a problem if a county has already hit its \$500,000 cap.

Mike explained the post-certification section of the proposal, which would include one or more intensive training sessions for local entities to learn more about the local AEPP process and their role in administering the program. Board members suggested that ODA not only target these trainings to local entities that would be categorized as "start ups," but also utilize the experience of Board members and experienced local entities to help ease the transition of new local entities implementing a local AEPP process.

Jill Clark asked how recertification would go if an entity is certified in a previous funding round, and Howard and Mike explained that recertification would be a much simpler process from year to year for entities already certified. It was mentioned that it could be modeled after the National Resources Conservation Service (NRCS) Farm and Ranch Lands Protection Program (FRPP), which requires cooperating entities to recertify every three years.

Thomas Mazur brought up a concern with the overlapping jurisdictions of land conservancies and local governments. If three entities in the same county all qualify for \$500,000 the first year, how will ODA decide who gets what?

Brian Williams mentioned that he prefers a dollar amount cap for the three categories of local entities in the proposal (start-up, intermediate experience, and strong experience), but not a cap on the number of farms a given entity can receive in a funding round. Howard explained that by limiting the number of farms that the local entity can fund based on experience and capacity, the intention is to prevent local entities from spreading themselves too thin by having too many farms in a funding year.

When discussing the flexibility in applications and ranking systems for local entities, the Board discussed potential changes to the Ohio Revised Code (ORC) and Ohio Administrative Code (OAC). The Ohio Revised Code 901.22 details that preference be given to such factors as prime soils and proximity to development pressure (i.e. imminent but not in the direct path of urban development). Howard and Mike explained that by not changing the ORC, those rules can still be preserved while at the same time allowing

local entities to tailor the weight and range of those points to meet their community's specific needs, because the OAC allows for ranges of points within given evaluation categories.

Board members wondered if the program would be decentralized to a point at which the local AEPP would become a block grant type of program, and comments were made that while there is no problem with demand as the program is right now, decentralizing the AEPP may create even more communities coming forward in the hopes of receiving funding.

Joe Logan mentioned that caps in the program may want to be reconsidered under a local AEPP. If the county cap remains at \$500,000, a start-up entity may never get to advance to an intermediate or experienced entity because they would always cap out.

When discussing the flexibility for local entities of drafting the Deed of Agricultural Easement, Jill Clark asked if ODA will remain a co holder of the easement. It was mentioned that NRCS used to be a co holder on FRPP easements, but no longer does. Instead, NRCS retains a "contingent right of enforcement" interest on their deeds of easement, and they do sign their deeds of easement. However, they are no longer "grantees". Mike mentioned that, under either case, ODA would still require review of the Deed of Agricultural Easement prior to the Director signing.

### **Public Comments**

Prior to the meeting, the Board was provided with letters from the Wayne County Commissioners and the Wayne County Agriculture Success Team expressing concerns with a local AEPP program. A third letter, a response to the Wayne County Commissioners from Director Zehringer, was provided to the Board prior to the meeting.

At the meeting, the Board was also provided with letters of support for a local AEPP program. Letters were received from Black Swamp Conservancy, Western Reserve Land Conservancy, Tecumseh Land Trust, Clark County Farmland Preservation Workgroup, and the Fairfield Soil and Water Conservation District Board of Supervisors.

Public Comments made at the meeting were as follows: Krista Magaw of Tecumseh Land Trust spoke in support of the proposal for a local AEPP. She said that this program as proposed may actually limit Tecumseh to no more than \$500,000 per year due to start-up entities and the total limited Clean Ohio funding, but that lesser amount of AEPP funding under a local program would actually enable her organization to be able to leverage greater amounts of funding from other sources (such as through FRPP). She also believes that the land trust community provides an outstanding support framework that will allow them, as a community, to help start-ups under a local program. This will allow for more regional cooperation.

Jonathan Ferbrache, of Fairfield Soil and Water Conservation District, reiterated the point of regional cooperation. While his own organization may not be able to receive more than

\$500,000 individually, he has reached out to neighboring counties to help build their capacity to preserve farmland and access AEPP dollars.

Steve Goodwin of Appalachia Ohio Alliance said that regional cooperation and partnering will be key for his organization in the administration of a local program. His organization covers a wide area in Southeast Ohio, but due to limited resources and staff, will rely on partners to help make a local program a success. His key concern will be in how his organization will be able to pay for the implementation and administration of a local program.

Larry Frimerman of Three Valley Conservation Trust also spoke in support of a local AEPP. He said that if it were not for AEPP, his organization would not be such a strong force in Southwest Ohio. His organization has gained a lot of experience over time in working with other funding sources like FRPP, and believes that a local AEPP would be akin to that program's evolution over time. He notes that there will be kinks to work out (such as the Points Based Appraisal system and how that will have to be changed if local entities are able to change their point ranges), but believes that the local land trust community stands ready to help move this proposal forward. He also mentioned to the board that the Coalition of Ohio Land Trusts is having their statewide meeting tomorrow (June 16) at Dawes Arboretum.

Rob Krain of Black Swamp Conservancy said that he was in support of the local AEPP proposal. He believes that decisions about farm ranking and deed language are best made at the local level. He notes that this proposal is a huge step forward for the AEPP.

Judy Kocab of Ashland County felt that there was no way her county could participate in a local AEPP given lack of resources and staff. She had concern that the program would result in dominance by the major land trusts throughout the state. She noted that there are advantages to the proposed program, but that she sees no way to continue without going in with a larger organization and letting them control everything.

John Detrick mentioned that under this proposed program, there could be upwards of 30 new counties coming in as start-ups. Brian Williams expressed his appreciation for Howard's presentation as well as comments from local entities. Many of his outstanding questions about a local AEPP were answered through this process. He is encouraged that local entities see a local program as a means to leverage more funding from other sources, and feels that smaller entities will see the new block grant style as a means to get more buy-in at the local level.

Lucille Hastings spoke to the Wayne County letters opposing a local AEPP, because she represents farmers in that area of the state. She mentioned that the area has always had a lot of interest in preservation, and wants to keep this in mind moving forward, especially when they are saying they will not be able to participate in a locally-driven program. She wants the Board to remember that one of the goals of AEPP was to get as many people as possible involved in farmland preservation.

Howard Wise reiterated two key items in his proposal: 1) that the current program has a one size fits all system and a locally-run program will allow the communities to develop a program that fits their needs, and 2) the cost of administering at the local level. He believes some concerns are addressed through start ups partnering with more experienced organizations to build capacity, as well as the training that will be developed and administered by ODA to further explain the local AEPP process and the roles of local entities in administering a local AEPP. Finally, although it will have to be fleshed out in more detail, his proposal provides the opportunity for local entities to develop a stewardship/administration fee that could come out of the easement purchase that would be prorated for each landowner (not just come off the top of the total amount allocated to the local entity).

Mike then discussed next steps. He would like to reconvene the Advisory Board in August, to provide the Board with updates on implementation of the proposal. He would also like to establish work groups comprised of Board members and local partners to flesh out the details of certain parts of the proposal. At this time, he would like to see a work group for AEPP process at the local level and a work group for ranking systems. He will contact the Board and local partners after the meeting to garner volunteers for the work groups, and the Board would be provided an update at the August meeting.

Howard stressed that time is of the essence. Howard recommended that the proposal move forward and be implemented for the 2012 funding round. Lucille stressed that ODA needs to communicate these changes to local entities as soon as possible, so that they can prepare themselves in time for the next funding round. Board members showed appreciation for moving forward quickly but cautioned that the details of this proposal will be most important to its success and that special attention must be paid to aiding start ups in building capacity at the local level. Glenn Myers warned against the possibility of political influence in a locally-run AEPP, and hopes that the Board will consider making decisions based on the need to spend the people's money fairly and effectively.

Mike read the ORC pertaining to the role of the Advisory Board (901.23) and stated that decisions relating to the AEPP ultimately rest with the Director of ODA. Since the Board's primary responsibility is to advise the director regarding the design and implementation of an AEPP, the Director wanted to bring this proposal to the Board at this time.

Jill Clark mentioned that there will still be policy issues the Board can help address and advise on, such as suggesting that to ease the potential of political problems at the local level, entities could choose to simply adopt the 2011 Clean Ohio AEPP funding round application as their application without changes.

Krista Magaw asked that the Board not let go of the opportunity to allow a "carve-out" for start ups, allowing more entities to have a chance to get funding. She said that the more experienced entities can show start ups how leveraging other funds can allow all to pull in more funding for preservation. Rob Krain reiterated the point, saying that a local AEPP will allow his organization to start preservation efforts in counties that have not

always scored well under the current AEPP structure, and that they can garner FRPP monies to further their efforts throughout the region. Jonathan Ferbrache also commented that his organization may be able to partner with start ups.

MOTION: Thomas Mazur moved to endorse the concept of Howard Wise's proposal for a local AEPP. John Detrick seconded; Discussion: Jill Clark suggested a third work group to report back in August – Capacity Building – asking local entities what resources and assistance will they need to participate in a local AEPP. Joe Logan asked if more information could be fleshed out about the criterion for determining the level of capacity of a local entity (start up, intermediate, experienced). He also would like to see more information about how allocation would work, and requested for the future a spreadsheet showing more information about who has applied in the past, who has been successful, etc. Vote 6-1; motion carried.

### **2011 AEPP Funding Round Update**

Amanda Bennett provided a brief update on the 2011 funding round. To date there have been 39 verbally accepted offers, but offers are not yet complete. There are still a few pending. New counties that have the potential to have AEPP easements purchased in them include Richland, Perry, and Muskingum. The office hopes to have verbal offers completed in the coming days.

### **Subdivision Request**

The Board took up the issue of a request for agricultural subdivision that was first introduced at the last meeting. Mr. Rod Kuntz, the landowner, made himself available for questions about his request. ODA was approached by Mr. Kuntz with a request to split 25 acres from their existing 114.99 easement. The easement was placed in 2006. Rob Krain presented new maps for the Board to review regarding the easement. He explained that this property is a part of a block of 3,000 acres of protected farmland. He also mentioned that a nearby neighbor had previously received permission to subdivide.

Mike asked what other options the landowner had considered before making this request, such as putting shares of the property into an LLC. Mr. Kuntz explained that most of their land is in an LLC. Without subdividing, he can't put these 25 acres into the LLC. He would have prior to the easement being placed, but AEPP requires the homestead to be on the easement, and there is a homestead on the easement. Rob Krain explained that the home is not Mr. Kuntz's, but that of his sister. Both Rob and Mr. Kuntz stress that his Deed of Agricultural Easement allows them the right to ask for the subdivision, and that the Deed stipulates that such a split would keep both parts in viable agriculture. Mr. Kuntz does not want to split for another house, he simply wants to continue to farm the 25 acres and put it into the LLC.

Jill Clark explained that the Deed does afford the right for the landowner to come to ODA requesting a split, but even now that this language isn't in more recent deeds, it doesn't afford any extra consideration just because it is in his deed. Landowners can always come to ODA to request anything regarding their Deed.

Brian Williams mentioned that he checked other states' programs to see how they handle requests for subdivision. Some states are harder-lined than Ohio, and some leave the door wide open for subdivisions. One state even suggested that if dominant agriculture changes in a particular area, subdivision may be necessary to keep agriculture viable in that area.

Jill Clark mentioned that the easement only closed a few years ago (2006). She cautioned the Board that voting either way on this could be setting precedent for other cases.

William Hopper, ODA Chief Legal Counsel, reads from the statute establishing the Advisory Board and mentioned that it would have to be determined if requests of subdivision should even come before the Board.

Brian Williams mentioned that the Board doesn't even have a policy on saying yes or no to subdivision requests. He also cautioned against voting one way or another without a policy in place. Lucille Hastings cited that there will always be a convincing argument to grant a subdivision, and reminded the Board that this subdivision request was a tied vote at the last meeting because of the concern of setting a precedent.

Mr. Kuntz explained his situation in more detail, adding that he believed the Deed of Agricultural Easement simply restricted them from selling the land for development. He doesn't believe there should be an issue if they are only manipulating the easement for agricultural purposes. It's only a transfer of ownership, in the same family in fact.

MOTION: John Detrick moved to support Mr. Kuntz's request for subdivision. Thomas Mazur seconded; Discussion: Jill Clark said she would vote against this motion but will then make a motion for the Board to develop criteria for determining viability and making recommendations on these requests. Joe Logan asserted that the Board continues to try and make the AEPP a farmer-friendly program, but he doesn't see how this request increases or enhances viability. Vote: 1 yay, 6 nays; motion fails.

Mike asked the Board to set the next meeting date. The next Advisory Board meeting will be Tuesday, August 23 at 1:00 p.m.

Krista Magaw asked that members of the Board consider speaking with their legislators about the issuance of the Clean Ohio bonds, which have not been approved as of yet. It may happen in the fall, but it is not a sure thing.

MOTION: John Detrick moved to adjourn the meeting at 3:58 p.m. Jill Clark seconded; Vote 7-0; motion carried.