

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

**Ohio Department of Agriculture**

**Reynoldsburg, Ohio  
September 13, 2012**

**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:** Howard Wise, Chair; Brian Williams, Vice-Chair; John Detrick (arrived at 10:25am); Lucille Hastings; Dean LaRue; Timothy Lynch; Thomas Mazur; Jay Rausch; Roger Rhonemus; Brian Schlatter; Kurt Updegraff.

**ODA Staff Members present:** Denise Franz King, Executive Director, Office of Farmland Preservation (OFP); Amanda Bennett; Jody Bowen; Howard Henry, ODA Legal Counsel.

**Visitors:** Matt Harbage, USDA Natural Resources Conservation Service; Larry Frimerman, Three Valley Conservation Trust

**Opening Remarks**

Meeting was called to order at 10:12am by Howard Wise, Chair and Assistant Director of the Ohio Department of Agriculture (ODA). Howard W. introduced himself to the group, sharing that he had previously served as Assistant Director, and more recently returned to ODA in November 2011 at the request of then ODA Director James J. Zehringer. Howard W. explained that Director David Daniels sends his apologies, as he wanted to be here for opening remarks but had a conflict with a national meeting. Eventually, Howard said, we would like to have all 12 members of the Advisory Board together in a photo with Director Daniels.

Denise Franz King introduced herself to the Advisory Board as the new Executive Director for the Office of Farmland Preservation. She has a long history with farmland preservation, as she was on the Governor's task force in 1996 and had significant involvement with Clean Ohio. She is currently a Township Trustee, and her previous experience includes time with The Nature Conservancy, the Ohio Department of Natural Resources, and the Ohio Department of Commerce. Introductions continued on to ODA staff present, visitors, and each member of the Advisory Board.

During introductions, Howard W. explained that Brian Williams has been named Vice Chair of the Ohio Farmland Preservation Advisory Board by Director Daniels.

This is the first meeting for Board member Timothy Lynch, representing the Townships of Ohio. He is a Trustee in Liberty Township, Seneca County, and has been a Township Trustee for 37 years.

MOTION: Thomas Mazur moved to approve the October 26, 2011 Advisory Board meeting minutes as presented. Kurt Updegraff seconded; Vote 10-0; motion carried.

### **Update on Current Programs and Projects**

Denise presented the Office of Farmland Preservation's (OFP) Annual Report. A focus was placed on stories of how our agricultural easement purchase funds are used by landowners to expand their operations and further economic development. Brian W. asked how the OFP is tracking the reinvestment of purchase funds, and Denise explained that the OFP has sent a mass email to our local partners asking them to share photos and stories with us throughout the year. Denise added that the report has been provided to every member of the Ohio General Assembly, and drew everyone's attention to the figures in the Director's letter within the Report. Brian W. thanked Denise for placing a focus on the reinvestment aspect of farmland preservation, as it helps with explaining the value of the program to people throughout Ohio.

Amanda Bennett provided an update on the OFP's programs, including:

- 2009 funding round is now officially closed with a total of 33 easements closed
- 33 easements have been closed under the 2010 funding round, with three still pending; combined with closings under the 2009 funding round, the OFP had a record-breaking year for closed easements
- All 41 easements under the 2011 funding round are still pending; local sponsors applied using ODA's purchase funds as a match for the Federal Farm and Ranch Lands Protection Program (FRPP), bringing in approximately \$2 million that can be utilized by local sponsors to further their local capacity and to preserve additional farmland
- ODA has applied four more properties to FRPP, expecting to receive approximately \$206,725 in matching funds
- There are four pending Donations, and three Agricultural Security Areas are being reviewed by the OFP in Montgomery, Mercer, and Clark-Greene-Madison counties.

Kurt asked for a refresher on how FRPP works. Matt and Amanda explained that through this program, FRPP cost-shares on projects for up to 75% of the purchase price. Traditionally, ODA applied for reimbursement on Clean Ohio projects, but under the 2011 funding round ODA invited local sponsors to apply for the matching dollars using ODA's purchase price as the match required for Matt's program.

Amanda then showed the Board a revised section of the Deed of Agricultural Easement dealing with utilities. The section was expanded due to an increase in easement issues surrounding whether or not utility companies could run pipelines across protected property. The landowner is now required to let ODA know when they are approached by the utility. Howard W. said that since the pipeline, for example, may not be able to be stopped, ODA can at least make a case for minimum impact to the protected property, advocate for the landowner's fair compensation, etc. In other cases, ODA may be able to work with the utility to redirect the line, for example, so that it has minimum impact as it pertains to the protected property. Every situation will be unique, but this new language will help ODA learn about these easements before they happen. Tim Lynch shared a situation in his township where a preserved property landowner had a question about whether or not he could connect to a natural gas line, and how that led him to approach the utility to ask them to check and see if affected properties are protected. Howard W. explained that the issue sounded like a landowner's personal use, which is allowable in our Deeds of Agricultural Easement, but reiterated that this new language will hopefully help ODA to learn about these situations sooner rather than later.

Although on the Agenda, ODA's Chief Legal Counsel, Michael Rodgers, was unable to attend the meeting. Howard Henry, ODA Legal Counsel was introduced by Denise. Denise explained that the OFP has seen an increase in easement issues and is actively working on a few different easement violations, usually having something to do with subdivision or an improper transfer in ownership of only one part or parts of the protected property. In one case the landowners conducted the transfer without ODA's knowledge, and in another the landowner made the OFP aware of the situation. Howard H. added that the new utility language in the Deeds of Agricultural Easement is for this purpose exactly – to make ODA aware of problems before they occur. Denise thanked Howard H. for ODA Legal's assistance to the OFP.

Denise then introduced the OFP's newest program – the Agricultural Easement Donation Partnership Program – to the Advisory Board. The OFP has already received inquiries from landowners and potential local sponsors for the program, which offers local sponsors a reimbursement of \$3,000 for a completed Donation Easement, with an extra incentive for farms over 200 acres. The OFP has set aside \$50,000 for this new program.

### **ODA Omnibus Legislation**

Denise described sections of the new ODA Omnibus Bill that pertain to the OFP. The Bill is working its way through the Legislature.

### **Current Agricultural Use Valuation (CAUV) Revisions**

Howard W. shared with the Board an article from the Buckeye Farm News about the recent debate regarding certain federal conservation programs, such as the Wetlands Reserve Program (WRP), qualifying for CAUV. ODA is seeking a meeting with CAUV and the Farm Bureau to better understand if ODA's easements are affected. Under current Ohio law, up to 25 percent of

a parcel can be used for conservation practices without jeopardizing the CAUV status of a farm. The current debate is whether land enrolled in a federal conservation program such as WRP, which places a permanent easement on the land that does not allow for other farming activities to occur, and which comprises more than 25 percent of the parcel, still qualifies for CAUV.

Matt Harbage added that his office has received calls from many angry Wetland Reserve Program landowners that have received tax recoupment bills due to these recent revisions. He said the actual change in assessment doesn't appear to affect the landowner's annual tax bill all that much, but that the recoupment fee can be quite large. He went on to say that FRPP does not have a requirement that protected property stay in CAUV, but he knows that our easements do have that requirement. Brian W. noted that many land trusts may be impacted by these revisions as well, since many of their projects are permanent conservation easements. Howard W. will discuss the issue with interest groups and the Ohio Department of Taxation to determine how best to retain farms with wetlands in CAUV as required by the AEPP program.

### **Update on the proposed Local Agricultural Easement Purchase Program (LAEPP)**

Howard W. began the discussion on LAEPP by reminding everyone that the Board recommended to the Director that the OFP implement a decentralized, local AEPP. Denise then presented a PowerPoint to the Board explaining the LAEPP process.

Roger Rhonemus asked how soils fit into the ranking system for LAEPP. Howard W. explained that local programs will set their own priorities in their rankings system, but that there are still guidelines outlined by Ohio Revised Code and Ohio Administrative Code that include, for example, soils. The local sponsors, however, can weigh various priorities differently than the centralized AEPP did.

Matt asked where in the LAEPP process a local entity applies for FRPP funds. Howard W. said that the OFP will be in close communication with him as more details are worked out.

When presenting on Local Sponsor Criteria for Certification, Denise explained that this is where the Advisory Board's new role in the LAEPP would come into play. The staff of the OFP will gather the local sponsors' applications for certification and rank them using these criteria. Then the OFP would make recommendations to the Advisory Board at a meeting. The Board would then make a recommendation to the Director of ODA as to which local sponsors are certified and what amount of funding they should receive.

When discussing funding, Denise stated that the goal is to have about 20 certified local sponsors a year spread across the state, rather than a few local sponsors receiving all of the funding. Howard W. reminded the Board that although the upcoming funding round is shown as \$3 million, the amount is actually only \$2.7 million given the amount that must be utilized for administration of the OFP. The OFP used to be able to operate on interest from the bonds, but now there is no interest to utilize.

Howard W. explained to the Board that the first year of the LAEPP is indeed a pilot program. The OFP expects there to be bugs, and that admittedly it will be difficult to determine an entity's degree of experience. The thinking is that start-ups will have mentors to teach them the process, so dedicating a certain amount of the funding for these start ups is important. He hopes that everyone will see the LAEPP less in terms of the amount of funding available and more in terms of going through the motions to make this work while showing continued demand for farmland preservation.

Lucille Hastings asked about start ups and if they will have as much opportunity as experienced local sponsors to receive funds. Denise explained that the LAEPP process will reserve \$400,000 to fund two start ups in the first year. Lucille asked if local sponsors can be certified in more than one county, and it was explained that yes, an idea is even being thought through to tier funding in a way that categorizes entities as serving 1 county, 2 counties, or "3 or more" counties and considering that when disbursing funds. Lucille would not like to see a situation in which smaller local sponsors are at a loss and only the large entities receive funding. Howard W. shared that a case could also be made that the larger local sponsors may have more capacity and have been in farmland preservation much longer than someone just starting out.

Thom Mazur asked the potential for multiple entities to be certified in the same county. Howard W. explained that there will be an emphasis on collaboration between local sponsors in LAEPP so that there is not much overlap and competition between local sponsors. Brian W. suggested that ODA make this case during the "road show" that will take place throughout the state prior to the start of the program. He also suggested that something be added to the application that indicates a local sponsor's ability to, in a manner of speaking, "play nice with others."

Howard W. shared that the ideal situation would be a local government (township, county) that supports a local land trust to administer local farmland preservation efforts.

He went on to say that when Denise comes up with a matrix and presents that to the Board for a recommendation, Brian Williams, as Vice Chair, will lead that discussion.

Lucille asked how long certification would be good for, and Howard and Denise explained that it would be good only for one funding round, but that thought is being given to a shortened form for future years. The idea is to have as much as possible be done electronically, even so far as to have the ranking criteria online. This would allow local sponsors to just go online, adapt it to their liking, and go from there.

A break was taken at 11:53pm for lunch, with the meeting resuming at 12:18pm.

The Advisory Board began by reviewing the Draft OAC revisions as presented by Denise. Lucille asked how the workload will change in the OFP. Denise said she hopes to see ODA's tasks decrease so that the OFP can focus on monitoring and enforcement of our existing easements. Lucille asked if additional employees will be considered, and Denise said not at this

time. Brian W. asked what OFP has heard from locals about their increased workload under the LAEPP, and went on to say that he has heard they are largely OK with it, because of the increased flexibility they are gaining. Amanda added that the OFP will see a time savings in things like ordering title work, working through title exceptions, etc.

Denise began discussion on proposed OAC section 901-2-07, the area that involves the most additions that speak to the LAEPP. The OFP has attempted to leave most of the OAC the same, as to keep the rules flexible enough to retain authority for the centralized, traditional AEPP process. Jay asked about regional balance, and Brian W. added that last year the Board approved the CCAO map to be used in the next funding round. Attention is drawn to the current OAC language on regional balance, which reads:

“Regional Balance” is based upon, but not limited to: (1) the number of applications received from a region in proportion to the total number of applications submitted; and (2) the total amount of funds a region has previously received in proportion to the total amount of funds distributed.

The Board discussed adapting this definition to include “applications for certification,” since the current reading of #1 in that definition refers to applications from landowners under the centralized AEPP.

Howard W. said that the Director likes the idea of maintaining regional balance with regard to LAEPP, and that perhaps the Board should consider recommending that a minimum amount of funding be set for each quadrant provided there is an entity certified in that area.

Discussion revolved around whether or not a motion should include a set amount of money for each certified local sponsor this first LAEPP funding year. Denise is concerned that putting a dollar amount down may paint the OFP in a corner in that we do not know how many applications for certification we will receive in this first year. Howard W. felt that \$400,000 per region ensures there is a chance for funding, incentivizing local sponsors applying for certification. Brian W. liked the idea of including in the motion that if approved, the \$400,000 would be for the first year only, since it is a pilot program. Howard W. reiterated that the OFP will indeed come back to the Board after the first funding round of LAEPP, to discuss bugs in the process, how applications went, etc. Lucille asked what the criteria for success of LAEPP will be, and Denise explained that if local capacity is improved, it may result in local buy-in to support funding at the local level (such as local bonds for farmland preservation).

**MOTION:** Thomas Mazur moved to recommend to the Director of ODA that at least \$400,000 be awarded to each of the four designated regions provided there is a certified entity in each region during the pilot LAEPP. Brian Williams seconded; Vote 10-0; motion carried.

Kurt pointed out awkward wording of proposed OAC 901-2-05(D) (2) which currently reads:

The farmland preservation advisory board shall base their tier two recommendations shall be based on the applicants’ response to questions which may address but not be limited to, the following categories: farm

succession plan, showcase farm, farm estate plan and provisions to promote local farmland in the community or other criteria deemed necessary by the director. Applicants shall address such categories through a narrative on space provided on the application form.

Howard H. noted the awkward structure of “shall base their tier two recommendations shall be based...” and will correct in the next revision.

Kurt also questioned proposed OAC 901-2-07(B) (3), which currently reads:

On approval of the application, the certified local sponsor shall sign a cooperative agreement with the department.

Kurt asked for clarification on which application is being referred to in this sentence and Howard H. explained that it is the application for certification completed by the local sponsor, not the landowner’s application to the local sponsor. Howard H. made a note to make sure this is clarified throughout the proposed rules to ensure everyone knows which application is being referred to. Brian W. suggested using “application for certification” every instance in which that is the application being referred to, in order to make things clearer.

Thom spoke to the Board about the inconsistencies between the Omnibus Bill, as well as in sections of the ORC and OAC that speak about AEPP applications with regard to words such as intersection, interchange, road, and freeways. The various terms mean different things, and have been a common theme brought up by local sponsors after applications past, which utilized these terms in order to determine development pressure. Howard W. pointed out the importance of making sure the OAC matches the ORC, and the OFP will reach out to Thom for assistance in correcting this issue in the proposed OAC.

MOTION: Brian Williams moved to recommend to the Director of ODA that ODA move forward with implementation of a one year pilot Local AEPP using the Draft Rules and the local sponsor certification criteria – with changes as noted during today’s meeting – as presented to the Advisory Board, adding something to the local sponsor certification criteria that addresses the potential conflict of having multiple certified local sponsors in the same area. Lucille Hastings seconded; Vote 10-0; motion carried.

Brian W. asked that ODA remember to coordinate with Matt at FRPP when implementing the LAEPP.

### **Other Business**

Denise mentioned that the Ohio State University has named Bruce McPheron Vice President for Agricultural Administration and Dean of the College of Food, Agricultural, and Environmental Sciences (position formerly held by Dr. Bobby Moser). Dr. McPheron currently serves as a member of the Pennsylvania Farmland Preservation Advisory Board.

Thom asked if this Advisory Board currently has a representative from OSU, and Denise said that Peggy Kirk Hall, an attorney on the staff at OSU, has been named to the Board but could not be here today due to a conflict.

Denise shared with the Board that the 2013 Ohio Farmland Preservation Summit has been scheduled for Thursday, January 17, 2013 at the 4-H Center at the Ohio State University in Columbus, Ohio.

Brian W. shared with the Board that many groups helped with lobbying for Clean Ohio funding to be appropriated to the OFP, including The Nature Conservancy and the Ohio Environmental Council. There was a lot of behind the scenes work to get that funding appropriated, and now the group meets regularly to see that funding continues.

### **Public Comments**

Larry Frimerman added that he believes AEPP is one of the most underrated and underfunded programs that the State of Ohio has had in a long time.

Howard W. adjourned the meeting at 1:23pm.