

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

**Ohio Department of Agriculture  
Reynoldsburg, Ohio  
November 13, 2014**

**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:** John Schlichter, Chair; Brian Williams, Vice-Chair (arrived at 10:22 a.m.); Alan Anderson; Lucille Hastings; Dean LaRue; Joe Logan; Timothy Lynch; Thom Mazur; Jay Rausch; John Watkins; Bill Westbrook.

**ODA Staff Members present:** Howard Wise, Assistant Director, Ohio Department of Agriculture; Denise Franz King, Executive Director, Office of Farmland Preservation (OFP); Julie Phillips, Assistant Chief Legal Counsel; Amanda Bennett, OFP; Jody Bowen, OFP.

**Visitors:** Larry Frimerman

**Opening Remarks**

The Meeting was called to order at 10:07 a.m. by John Schlichter, Chair and Deputy Director of the Ohio Department of Agriculture (ODA). John introduced the Board's newest member: Alan Anderson, a Greene County Commissioner, representing County Commissioners' interests.

**Travel Expense Reports**

Jody Bowen reminded Advisory Board members about Travel Expense Reports and asked each Board member to complete a contact sheet so that an updated Board roster could be provided to everyone. Jody also shared with the Board a new GIS state map showing our agricultural easements.

**Approval of June 5, 2014 Advisory Board Minutes**

MOTION: Timothy Lynch moved to approve the June 5, 2014 Advisory Board meeting minutes as presented. John Watkins seconded; Vote 9-0 (Brian Williams not yet in attendance); motion carried.

**Programs Update**

Amanda Bennett provided an update on the OFP's pending easements:

#### AEPP 2011

- All agricultural easements from this funding round have now been closed, the final one in Wayne County.

#### LAEPP 2013

- Three agricultural easements have been closed and recorded (Greene, Madison, and Fairfield counties). Two additional farms are nearing completion in Mercer and Greene-Clark (multi-county easement). That leaves approximately 22 additional, pending agricultural easements.

#### LAEPP 2014

- At present, there are approximately 34 pending agricultural easements. We expect additional easements after the next Agricultural Conservation Easement Program – Agricultural Land Easement (ACEP-ALE) funding round is determined. As some easements apply for and receive matching dollars, some Local Sponsors will be able to move further down their application lists, resulting in additional agricultural easements. Currently, all ACEP-ALE projects for the federal FY2014 are ODA-matched projects (12 from LAEPP 2014 and 1 from LAEPP 2013).

#### Agricultural Easement Donation Partnership Program

- Still working on the four agricultural easements in Hancock and Wood Counties with West Central Ohio Land Conservancy (WCOLC) as sponsor.

#### Agricultural Easement Donation Program

- Two (2) pending agricultural easements – Delaware and Miami counties.

Amanda also recently attended the American Farmland Trust's annual conference in Lexington, Kentucky. Amanda said she learned a lot about other state's farmland preservation programs and took every opportunity to highlight Ohio's program and Advisory Board.

#### **Local Agricultural Easement Purchase Program (LAEPP) 2015 Local Sponsor Application for Certification Results**

Denise Franz King drew the Board's attention to the Local Sponsor Application for Certification, recommended by the Board at its June meeting. She noted that the OFP looks to do a three-year review of the LAEPP Local Sponsor Certification process, to be shared at the next Board meeting. Denise looks forward to the Board's thought on what could be tweaked, what should be left alone, etc.

Denise then shared a map with the Board showing how many counties would have a Local Sponsor accepting applications from their area – a total of 51 counties would be represented. Alan Anderson sought clarification that the Local Sponsor Certification Application was for entities such as Tecumseh Land Trust in his area, and Denise confirmed his assumption.

Denise said that funding for LAEPP 2015 is just over \$7 million, because in addition to the \$6.25million appropriated (less OFP operating costs), there were funds unable to be used by Local Sponsors in 2013 and 2014. The total is \$7,084,991. Denise then directed the Board to the chart showing recommended funding allocations for each Local Sponsor under LAEPP 2015. OFP is recommending all Local Sponsor applicants – 22 (largest number of Local Sponsor applicants to date) receive funding allocations. The increase in Local Sponsors resulted from outreach to Soil and Water Conservation Districts (SWCDs) and less federal matching dollars being available. Denise explained that the same funding formula was used.

### **Board Discussion and Recommendation Regarding Applicants for Certification and Funding Allocations for LAEPP 2015**

Thom Mazur speculated that fracking may have something to do with lack of participation in the Appalachian areas of the state. Oil and gas activities have caused land values to go up, and with the possibility of drilling income, a landowner may choose not to sell an agricultural easement on their property. In some parts of the state, housing, rental, local government revenues are all up due to the fracking boom. This may cause some landowners to hesitate placing their properties under easement.

Alan asked if Local Sponsors receive a stipend or operating funds from their allocation. Denise answered that no, the program is locally directed but that some entities receive stewardship fees from their landowners to cover ongoing operating, legal insurance, and monitoring expenses. Lucille Hastings added that one reason the Board recommended localizing the purchase program was to reduce cost to the OFP, which in turn would result in additional monies for agricultural easements. While she would like to see more counties participating throughout the state, Lucille said she recognized the OFP is doing what it can to keep the program statewide. Denise said that the OFP receives calls from both landowners and potential Local Sponsors looking to see how to increase local participation. She often recommends they speak to participating counties, SWCDs, etc. to see what is involved and consider applying in a future funding round. Given current staffing and funding amounts, finding a balance is of importance given that the more Local Sponsors there are – the less funding there is to go around. There must be enough funding available for a Local Sponsor to be able to actually purchase an agricultural easement.

**MOTION:** Lucille Hastings moved to recommend to the Director approval of the Applications for Local Sponsor Certification and funding amounts for the 22 local sponsors (shown in Exhibit A). Brian Williams seconded; Vote 10-0; motion carried.

### **Board Discussion on Policy**

Denise explained to the Board that due to increased oil and gas activity related to the Marcellus and Utica Shale formations, there has been a burst in the number of pipelines (and pipeline easements) coming into and across Ohio. The OFP sent a letter to all landowners with existing and pending easements to be proactive in educating landowners in our programs to contact the

OFP before signing a pipeline easement. Landowners are encouraged to gather key information and seek legal advice before signing an easement with a pipeline company. Most important to the program is maintaining the quality of the agricultural production. Tim Lynch shared that while his productivity has not been diminished as a result of an existing pipeline on his property (it follows a rail bed), he too has seen an increase in pipeline activity in Seneca County. Some companies are using existing easements to construct new pipelines, and current landowners may not even be aware of the existing pipeline easements on their property. He thought the letter was a great idea for all landowners – not just those in the preservation programs. Thom shared an instance in his area of a landowner quarreling with a pipeline company regarding the definition of agricultural structure (he runs an aquaculture operation). He warned also that some easements are larger than others (up to 100 feet). Jay Rausch asked how deep the easements tend to go, and shared two instances he knew of landowners literally running into pipelines that weren't buried far down enough for agricultural-related practices, like tiling.

Denise also referenced the Ohio Department of Natural Resources' pipeline standards, a 20+ page document that shows clear guidelines about pipeline depth and installation practices (segregating top soil, etc.). If the OFP can provide good information to the pipeline companies – like the new easement map – it may result in companies going around instead of through the state's agricultural easements. Denise said the OFP has been contacted by ET Rover regarding their pipeline project, and that the office continues to do outreach to other companies. A question was asked as to how many letters were sent; Denise responded that the letter went to the 318 existing agricultural easement-holders, as well as to all pending easement landowners.

Lucille mentioned that a copy of the letter should be shared with Dale Arnold at the Ohio Farm Bureau, who speaks to landowners about pipeline easements. Denise said the OFP has worked with Dale on these issues. John S. commended Denise for her ongoing work with respect to this topic.

### **Local Agricultural Easement Purchase Program (LAEPP) 2015 Landowner Application Proposed Changes**

Denise referred the Board to a revised version of the landowner application for LAEPP 2015. The number one change throughout the application is the addition of items landowners acknowledge with their signature on Step 20 but which continue to be a problem throughout the agricultural easement process – like the fact that an agricultural easement lies on top of all parcels under the application, which means that the property cannot be subdivided in the future. Many landowners think of housing subdivisions, and not subdividing of an agricultural easement. Bill Westbrook said that to him as a development, subdivision means “plat.” Denise said that lends itself to the confusion – that there are multiple definitions of the term. As a result, the office recommends an addition in Step 3 (Eligibility) wherein a landowner acknowledges that they understand the agricultural easement will lay over all submitted parcels, and that all must be sold or conveyed as one unit in the future (including homesteads).

Alan asked for more clarification on this policy. Denise explained that since its beginning, the purpose of the program was to preserve whole farms, and large blocks of farmland. Lucille said she understood why landowners would feel trapped – when they own three parcels, they think those three parcels are just that – three separate parcels. Jay asked about the homestead policy, and Denise said that is another policy reiterated throughout the application and Policies and Guidelines document to be discussed later. Denise said there is still an emphasis to Local Sponsors that they advise landowners to do estate planning before applying to the LAEPP. The Board discussed the point structure for the penalty of subdividing prior to application – there are fewer points available to a landowner who has subdivided property for non-agricultural purposes in the past three years. Jody added that the point “loss” is less significant for a landowner under LAEPP, as they are only competing against other applicants to that Local Sponsor, as opposed to a quadrant of the state. Bill suggested looking at a graduated point structure for lot splits based on the number of lots created by their subdivision. Brian Williams mentioned that the Board has debated the topic of splits throughout the history of the Board, including allowing subdividing for agricultural purposes. Lucille said there is no problem in attracting applicants with the policies as they are now. The program is oversubscribed as it is (more landowners interested than there are funds to purchase those easements).

Julie Phillips, Assistant Chief Legal Counsel, explained that she worked with the OFP to reiterate the department’s no subdividing policy in all areas of the process – in application, the Purchase Agreement, and the Deed of Agricultural Easement. Denise added that the program is voluntary, and competitive. It may be harder for a landowner to sell a larger farm than one that can be sold by parcel. Lucille asked if someone could research that, as she didn’t know that this would be true. Howard Wise said that when promoting the program in the beginning, it was important to the Legislature to preserve the best farms and make them economically viable in the future. When one person said she wanted to be able to leave each of her three children the opportunity to have a piece of the farm, Howard said, “but what if each of those three children have three children and want each of them to have their own piece?” Howard went on to say that the Deed of Agricultural Easement language is the best defense to keep farms whole. Landowners will violate the terms anyway – which he said brought up another issue. He wants the county Recorders’ offices to flag the state’s easements so that landowners are not granted the ability to split the farm in the future. There should be an easy technological way to do this. Bill said that while there may be a way to do this, it is not the county that enforces the terms of the Deed. They have no duty to notify when someone goes against deed restrictions. That is the holder’s responsibility. John S. said it would probably take an action on the part of the Legislature to force the county to notify ODA of a proposed split. Bill suggested that ODA consider requiring landowners to combine multiple parcels into one or work with planning authorities in counties to identify parcels under agricultural easement. Denise said that the OFP will research this with Legal, and added that monitoring agents currently are tasked with checking the county records each year to see if any potential splits have occurred.

Alan said that as a taxpayer, he is surprised that ODA is concerned about keeping farms in blocks – if it is subdivided but being farmed, what is the harm? It is still farmland protection if not the “farm” itself. Jody said that while ODA may not be appropriate for landowners seeking future splits, they may be able to work directly with a Local Sponsor on a non-ODA easement that would meet their needs for subdividing. Bill said he could see the purpose of the large block philosophy – if someone takes 100 acres and creates ten 10-acre parcels, it diminishes the viability of it being farmed. Brian stated that the Board should continue to discuss changes in the farm economy – when the program started, it was focused on grain farms facing intermediate development pressure. There are now productive, viable operations with smaller acreage in urban areas. The Board should accommodate and consider these changes in agriculture.

Before leaving, Howard thanked the Board for its service. He thanked all local partners, farmers, and local officials for how engaged they are with the farmland preservation program. He thanked the staff of the OFP and John for his leadership of the Board. He commended Director Daniels for being a strong supporter and going to bat for the program.

Denise ended the Board’s discussion regarding the landowner application changes by introducing the new site visit form. The main reason for the form is to encourage Local Sponsors to visit with the landowners prior to application and to discuss the very issues being discussed by the Board (like subdividing) with the landowners.

MOTION: Joe Logan moved to recommend to the Director approval of the proposed edits to the LAEPP 2015 Landowner Application. Lucille Hastings seconded; Vote 10-0; motion carried.

### **Local Agricultural Easement Purchase Program (LAEPP) 2015 Policies and Guidelines**

Denise shared the proposed LAEPP 2015 Policies and Guidelines with the Board. The OFP is asking Local Sponsors to provide this document to their landowners when doing their site visits, because of the policies it explains, including the Large Farm Exception Policy. The OFP recommends continuing to offer a pre-application split (a landowner would be permitted to apply only part of their contiguous acreage or to split that acreage amongst two applications). The change to the policy would be to eliminate the post-easement split. There are approximately five easements that were granted the post-easement split, and all will be honored. Over the summer, the OFP began implementing the first request by a landowner with a post-application split. It has been very challenging. The landowner has been great to work with, which helps. One complicating factor is that it is an easement that included federal matching dollars, so the Natural Resources Conservation Service (NRCS) must also be a part of the process. One of the challenging things has been to allocate restrictions among what will be multiple landowners under one single agricultural easement. Questions the OFP has faced include how to allocate 2% impervious surface, and if one landowner violates the easement, is ODA required to enforce against both landowners? It is preferable to decide such issues prior to application, said Denise. Julie added that she advised the OFP to consider the pre-easement split option because it is easier

for families wanting to leave ground for their children if these parcels come in under separate easements from the beginning. It also makes it easier to monitor those easements in the future. Denise said that eliminating the post-easement split Large Farm Exception is as much for the landowner's protection as anything else.

MOTION: Bill Westbrook moved to recommend to the Director approval of the proposed edits to the LAEPP 2015 Policies and Guidelines. Tim Lynch seconded; Discussion: Alan said that ag business will only get more complicated. The more restrictions placed on eligibility, the more difficult it could be for landowners to get into the program. Bill stated it would be better to be clear now – if landowners don't agree with the policies, they won't be eligible. These issues should be revisited in the future if there is a problem with the policies as they currently are. John S. said that subdividing has caused a lot of time and heartburn. ODA does not want to turn anyone down; the OFP does what it can to accommodate the landowners in the program. It is best if the rules and policies are made clear ahead of time. Brian said he was comfortable voting for the Policies and Guidelines today, but believes the Board should continue the discussion as it is not known what the future holds. He said he is in favor of flexibility, especially providing that to those at the local level. Bill said that flexibility can also lead to problems for ODA as they are the enforcement agency regardless of local flexibility. A landowner may talk to another landowner that had a completely different experience from one local entity to another. If being uniform now results in fewer applications, then the Board should revisit it. Lucille said the rules should be stuck to for now. The Board can only use their best judgment, and will continue to adapt as things change. John S. continued the vote. Vote 10-0; motion carried.

### **Trends Impacting Ohio's Farmland Preservation Program**

Denise and John asked Board members to share their perspectives. Bill said that he has been interested in changing demographics with regard to housing. The shift seems to be to more density of housing per acre. This change may allow farmland preservation to move closer to development than in the past. Large lot single family development will have little demand in the near future as the demand shifts to high density condos and apartment buildings for millennials and empty nesters. John S. said that is a good point, and that an eye should be kept on the proximity emphasis of the application as a result.

Lucille noted that there is a very informative series running in National Geographic magazine relating to farm and food topics across the country and the world. Thom echoed – said that there was a wonderful piece on food transportation recently as well.

Thom said he is very interested in opportunities to tie farmland preservation dollars with open space dollars and asked why more projects aren't done in conjunction (like bike trails beside preserved farmland). Denise said that there are some Local Sponsors who find ways to use both open space and farmland preservation dollars to further their efforts. Brian said that there is a lot of controversy surrounding the tying of the two programs. There has been no progress in

promoting it and in some cases efforts to discourage it. Denise said she would consider sitting down with Thom and her counterpart with the open space program, Mike Miller at OWPC to explore opportunities.

Denise asked the Board to review the program timeline for LAEPP 2015 and to consider that two Board meeting dates may be needed depending on the timing of NRCS's next funding round. Two dates were tentatively selected – Wednesday, May 6 and Wednesday, June 3. John S. added that the OFP will try to take the meeting off-site again. If the Board has any ideas on future locations for meetings, please share.

Julie said that all Boards and Commissions are being reminded of the Chapter of the Ohio Revised Code that requires 3/5 attendance to hold their seats.

### **Adjournment**

MOTION: Lucille Hastings moved to adjourn the Board meeting at 12:08 p.m. John Watkins seconded; Vote 10-0; motion carried.