

Department of Agricultural Resources

AGRICULTURAL LANDS PRESERVATION COMMITTEE

MINUTES OF MEETING

December 14, 2018

Division of Fishery and Wildlife

Field Headquarters

1 Rabbit Hill Road, off North Drive

Westborough, MA

MEMBERS PRESENT:

- John Lebeaux
Department of Agricultural Resources
- Warren Shaw, Jr.
Public Member
- Stephen Verrill
Public Member
- Patricia Vittum
Associate Director of Center for Agriculture, UMass, Amherst
- Laura Abrams
Board of Agriculture
- Fred Dabney
Public Member
- Phillip DeMartino, Designee for Chrystal Kornegay
Department of Housing & Community Development
- Robert O'Connor, Designee of Matthew A. Beaton
Executive Office of Energy & Environmental Affairs

MEMBERS ABSENT:

- Dan Wright, Designee for Christine Clark
Natural Resources Conservation Service, Non-Voting Member
- George Beebe
Public Member

ALSO PRESENT:

Gerard Kennedy, Department of Agricultural Resources
Margaret Callanan, Department of Agricultural Resources
Barbara Hopson, Department of Agricultural Resources
Ron Hall, Department of Agricultural Resources
Michele Padula, Department of Agricultural Resources
David Viale, Department of Agricultural Resources
Michelle Bodian, Department of Agricultural Resources
Alisha Bouchard, Department of Agricultural Resources

PUBLIC ATTENDEES:

Nathan L'Etoile – American Farmland Trust

Kathy Orlando – Sheffield Land Trust
Mo Tougus – Tougus Family Farm
Don Leab – Ioka Valley Farm

MEMBERS OF THE BOARD OF AGRICULTURE

Judy Leab
Crystal Card
Laura Sapienza-Grabski
Donald Chase
Skip Vadnais
Michael Smolak
Lucinda Williams
Lydia Lydia Sisson

Chairperson of the Agricultural Lands Preservation Committee ("ALPC"), John Lebeaux and Commissioner of the Massachusetts Department of Agricultural Resources (the "Department"), called the meeting to order at 10:06 AM. Commissioner Lebeaux introduced David Viale as new APR Staff member and asked ALPC members and other attendees to introduce themselves.

I. UPDATE

Commissioner Lebeaux announced no updates due to reason for meeting.

II. APPROVAL OF MINUTES

a. November 2, 2018

It was moved, seconded with no further discussion and

VOTED: To approve of the minutes. The vote was unanimous.

Commissioner requested members to introduce themselves - the board and committee members did so.

III. APR Renewable Energy Policy

Gerard Kennedy summarized that ALPC had reviewed the policy a couple meetings ago and Ag Board reviewed in November and the previous discussion they had. The policy currently only looks at electrical use. Including other energy uses was initially looked at but it is a complicated matter and the Department hasn't gotten to the point where they are ready to make recommendations for a proposal to account for non-electric uses.

There was discussion confirming that roof top solar is not covered by the policy. Warren Shaw commented that as drafted, the policy may not be flexible and asked whether there was a way to allow for an applicant to appeal it or provide language in the policy for someone to make another decision. Gerard explained that the intent of the policy was to move away from discretionary decision making.

Steve Verrill commented that he didn't think there should be a limit if the land was non-tillable land. Warren Shaw agreed. Bob O'Connor pointed out that a lot of the non-tillable land is forested and

might have issue with cutting and asked how the APR treated forest land. There was discussion about the purpose of the APR to preserve the land and what is considered an agricultural purpose and use.

Nathan L'Etoile said he felt it is important to include language to clarify the policy is strictly to electricity - specifically #6. He gave credit to the Department for figuring out a way to allow solar on barn roofs. He felt there needs to be a way to make solar an agricultural structure to meet the law.

Skip Vadnais had concerns about decommissioning and asked what guarantees there are that there is funding available for decommissioning. Gerard Kennedy clarified the intent of the decommissioning and that there is not a bond in place/no guarantee that funding would be available for it. Commissioner stated the potential remedy would be through the judicial system.

Nathan L'Etoile pointed out the definition of ownership. He feels farms are often under various ownership structures and it could be problematic if there was a requirement that everything needs to be under one/the same ownership.

The Commissioner stated there are decommissioning requirements for digesters but there is bond for that. He feels there is plan in place, the Department feels it is enforceable. Michelle Bodian offered that land in violation would not be eligible for MDAR grants and pending the OPAV policy they may not be able to purchase additional APR land.

Judy Leab agreed that land that can't be used for agricultural land for tillage/crops should be considered for ground mounted and didn't want to what she felt is a burden to landowners for legal assistance to decommission.

Laura Sapienza-Grabski thinks there should be some flexibility on the 50% rule as it could allow them to generate income that could be reinvested into the farm.

Commissioner suggested a vote today would make things better and more flexible for farmers and that the Department will continue to work on the issue. Warren Shaw reminded everyone that the proposed policy is currently the non-written policy of the Department and would support it but feels adding flexibility for appeals at some point would be good. Michelle Bodian clarified the policy is not appealable, but the denial of the approval is appealable through ALPC.

Nathan L'Etoile reiterated his concerns he stated earlier.

Kathy Orlando suggested making a distinction between who might supply a performance bond for decommissioning, such as making a requirement that the solar company provide it and putting a requirement that someone puts it up so that it gets into the landowners contract.

There was discussion that many communities require a performance bond via the planning board condition of approval.

Warren Shaw made a motion to approve the policy as it stands and ask staff to come back within 3 months/90 days to address the suggestions mentioned today. Bob O'Conner seconded the motion. Discussion - Fred Dabney would prefer not to approve something that isn't satisfactory to what the ALPC wants. There was a question whether there was an issue before the Department. Gerard said there are requests routinely and that currently the Department doesn't have a policy they can provide in writing to the farmer. Steve Verrill asked if there was no vote the policy would be in effect. Gerard said there would be no written policy and reminded the ALPC that the policy did go through public comment

already. The Commissioner pointed out that some of the public comment was that there could be misunderstanding of the policy without having it in writing.

Laura Sapienza-Grabski requested educational opportunities for farmers in the future because she feels there is a lot of confusion around solar. Fred Dabney asked if the new legislation required such education. Gerard said that staff will discuss APR document and approval process with all new APR landowners.

Fred Dabney voted against. The rest of the committee voted in favor. The Vote passed 6 to 1.

IV. APR Legislation

Gerard gave an update that an APR project in Princeton closed yesterday and the total number of APR's are at 921. He summarized what the legislation requires regarding OPAV and ROFR. (slide show), the process, and the timeline with a target date of August 1st, 2019 which is when the regulations need to be promulgated by.

There was discussion of the source of the 20% above FMAV source being from the recently passed legislation. There was discussion on clarifying that all of the 5 conditions of an automatic waiver are required.

There was discussion about the ability for nonprofits to purchase and lease for farming. There was discussion on eliminating the less than two years experience from: the manual waiver #1 (non profit).

There was a question whether there is a specific timeline on when a waiver needs to be acted upon. Gerard responded yes - it depends on how that particular APR was drafted. Currently the draft of the APR utilizes 60 days for a decision.

There was discussion regarding the justification of paying more than 20% above the FMAV and that the legislation specifically states "of the land", and how the Department would handle that to account for valuation of things like structures, improvements, solar, other non-APR properties included in a sale, etc. There was a suggestion to remove "non-restricted" from one of the example justifications for paying above the 20% FMAV.

Nathan L'Etoile felt the intent of the definition of a farmer was clear but suggested thinking about how to nuance the language when the regulations actually get written. Suggestion on specifying experience level of farmer.

There was a question on how this impacts existing restrictions. Gerard responded that it would be based on how the APR was written and this regulation is how the terms of the OPAV/ROFR as described in the APR would be addressed.

There was a suggestion and consensus to change "farmer" to "individual" under New Entry Farmer definition.

There was a question whether the buyer could make a case for themselves in person. Gerard said the legislation requires that before a transfer takes place the Department must talk with the Seller and Buyer

as part of education about the process. Gerard confirmed the seller could withdraw at any point and the decision could be appealed.

“Deemed Minor”

There was discussion about what would be “deemed minor”. Laura Abrams suggested having an opportunity for a farmer to make a case if there was a disagreement between major and minor violation. Nathan L'Etoile suggested that if the resource was not significantly damaged and the issue was resolved then it should be considered minor. There was a question whether the regulation would keep a major violator from ever buying APR even if they resolved the issue, or if it was just based on the current situation (Vs. historic that has been resolved).

There was a question whether not farming the property is considered a major violation. It was confirmed that the Department would have a problem with land having not been farmed.

There was a question whether APR land could be sold with a violation. It can be and the due diligence is up to the Buyer to do.

Nathan L'Etoile suggested making requirements for an automatic waiver strict and a manual waiver should be far less strict. There was a suggestion to allow for time for violations to be resolved.

Farm Business Plan

There was a question if a template was available or could be made. The Commissioner said he thinks the Department could probably do that but first needs to establish the criteria for what needs to be in it.

Nathan L'Etoile thought the guidelines are pretty good but suggested the law does not require defining what a business plan is in the regulations and if that were done it would make it difficult to change. He suggested defining it another way so that there is flexibility for it to continue to evolve and change.

There was a question whether the items were required as part of the business plan. They are - to enable the ALPC and Department to have standards to evaluate the plan.

Bob O'Connor suggested a criteria be that staff feels the plan is viable/feasible. There was discussion about the idea.

Warren Shaw suggested including items a banker would look at if considering financing. There was a question whether the farm viability program still had someone who prepares business plans. There was discussion about the Department demonstrating how a decision would be made and the subjectivity of evaluating and whether that exposes the Department to lawsuit or critique.

Michelle Bodian suggested including the criteria that the proposed used is an agricultural use. There was a question whether the process was public record. It is.

Assignment of OPAV/ROFR

Nathan L'Etoile pointed out that as currently drafted the point system automatically puts farmers above new farmers and the same for those who have never owned or leased land. Bob O'Connor agreed and suggested that maybe the quality of the business plan be a component. Judy Leab commented that she felt there should not be anything that discourages young farmers.

Laura Sapienza-Grabski suggested having an opportunity to speak with any of the applicants in case there was something missing from the form/paperwork.

The Commissioner recognized that the feedback was clear that there shouldn't be a deference to one or another. There was discussion on how to break a tie and make the decision.

There was consensus to put the decision back to the seller to choose.

The Commissioner confirmed that the legislation (handed out) did include the 20% language regarding FMAV.

There was discussion the next meeting and process.

There was a motion and second to adjourn the ALPC meeting.

VOTED: To adjourn the ALPC meeting at 1:04 PM.

Vote was unanimous.

There was a motion and second to adjourn the Ag Board meeting.

VOTED: To adjourn the Ag Board meeting at 1:04 PM.

Vote was unanimous.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "David Viale", with a stylized flourish at the end.

David Viale,
Agricultural Lands Acquisition Specialist