

Department of Agricultural Resources

AGRICULTURAL LANDS PRESERVATION COMMITTEE MINUTES OF MEETING

February 28, 2019

Massachusetts Technology Collaborative (MTC)

Weiss Conference Center

Room 102, 75 North Drive

Westborough, MA

MEMBERS PRESENT:

- John Lebeaux
Department of Agricultural Resources
- Warren Shaw, Jr.
Public Member
- Rick Harper
UMass, Center for Agriculture, Amherst
- Laura Abrams
Board of Agriculture
- 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
- Dan Wright
Natural Resources Conservation Service, Non-Voting Member
- Susan Flaccus,
Farmer
- Kathy Orlando,
Sheffield Land Trust - Land trust representative

MEMBERS ABSENT:

- Fred Dabney
Public Member

ALSO PRESENT:

Gerard Kennedy, 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

PUBLIC ATTENDEES:

Nathan L'Etoile – American Farmland Trust
Doug Gillespie, MA farm bureau
Larry Flaccus, Farmer (Orchard)
Peter Wilson, private attorney

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 himself and asked ALPC members and other attendees to introduce themselves.

I. UPDATE

Commissioner Lebeaux updated the status of the ALPC and new appointees. One farmer position and farm advocacy representative were still not appointed but background checks have been submitted by individuals and are currently under review. There have been personnel changes at the Department: Chief Fiscal Officer Michael Rock retired after 35 years of service to the state, ten of which were as MDAR's CFO. Currently Alicia Bouchard is serving as acting CFO while MDAR is working with HR to fill the position. Interviews will be conducted during the month of March. The Commissioner said he was sad to inform the board that Atty Michele Bodian will be moving on to the private sector.

The Commissioner reported on the National Association of State Departments of Agriculture (NASDA) Winter Policy Conference in Washington D.C. There was a great deal of interest in the subject of Hemp and particularly CBD. In addition to USDA, FDA has a role relative to ingestion of products and may do some type of stakeholder engagement. There is some concern that USDA and other federal entities may have different interpretations than state programs, especially if the state programs are rolled out and the federal determinations come a year later.

The Commissioner reviewed the APR report summary: Two Projects have closed in FY 19. Ron Hall provided an update.

The Commissioner informed ALPC that the meeting was being recorded and asked if anyone else was. There was no other recording.

II. APPROVAL OF MINUTES

a. December 14, 2018

It was moved, seconded with no further discussion.

VOTED: To approve of the minutes of December 14, 2018. The vote was unanimous.

III. DISCUSSION: APR Renewable Energy Policy

Gerard Kennedy provided an update. MDAR is working on updating the policy and the first draft was very dense and non-public user friendly so the Department would like to have more time to revisit the draft to improve it before bringing it forward for approval. The request would not impact any grant programs.

There was a question whether it would be ready for the APR Program policy and regulation hearings in 2019. Gerard said the Department is required to host hearings in 2020 so there will be opportunity for comment then. There was discussion on timing of producing the policy.

There was a motion for the Department to bring back the proposed APR energy policy no later than August 1st. It was seconded. No further discussion. The vote was unanimous.

IV. VOTE OF INTEREST: Kestrel Land Trust (Szala), Hadley

Ron Hall presented information on this recommendation to the Committee including maps and a description of the location, proposed APR boundary, acreage, soils, nearby APR lands, current farm operations, and potential funding support from outside partners such as the Town and local land trust. Mr. Hall recommended to nominate this project for appraisal.

There was a motion as requested, a second, no further discussion, the vote passed unanimously.

V. VOTE OF INTEREST: Gunn, Sunderland (Update)

Michele Padula presented information on this recommendation to the Committee including maps and a description of the location, proposed APR boundary, acreage, soils, nearby APR lands, current farm operations. The project previously received a vote of interest and since that time the federal funding rules changed, now requiring parcels to be contiguous with each other. Because the Gunn parcels are not contiguous, each parcel must now be considered a separate application and the appraisal must be updated to reflect values for each parcel. Ms. Padula recommended a revised vote of interest to allow Parcel 1 and Parcel 2 (as presented) to be considered as separate applications.

There was a motion as requested, a second, no further discussion, the vote passed unanimously.

VI. FINAL VOTE: Battachi, Sheffield (Gift)

Kathy Orlando recused herself due to her organization's involvement in the project. Barbara Hopson presented information on this recommendation to the Committee including maps and a description of the location, proposed APR boundary, acreage, soils, nearby APR lands, current farm operations, and funding support from outside partners such as the local land trust. Ms. Hopson recommended accepting this gift APR subject to the following conditions:

- 1) All parcels to be excluded (if any) must conform to the layout as appraised, must be surveyed out and must be approved as required by the municipal zoning body.
- 2) Sheffield Land Trust will complete a recordable survey of the gift APR property, the cost of which will be paid by Sheffield Land Trust and/or the landowner, in formats suitable for the purposes of the Department prior to closing
- 3) The Department and Sheffield Land Trust will identify the Area of Special Concern and develop management guidelines in consultation with MA Department of Fish and Game and the The Nature Conservancy.
- 4) The owner(s) must execute the current approved an un-amended APR contract in effect at the time of closing with the Department.

There was a motion as requested, a second. Bob O'Conner asked how the timing of the application and votes occurred/work. Ron Hall explained the Gunn and Batacchi projects were previously voted on but are being updated due to changes in the federal program rules and project scope.

The vote passed unanimously.

VII. APR REGULATIONS

The Commissioner described the request was to present and vote on the draft changes. This will not be the final ALPC vote on the matter. This vote will approve a set of regulations to present to the public for their input. Once public hearings and the public comment period is over the Department will review the comments and make any appropriate changes to the regulations. The regulations will then be presented back to the ALPC for their final approval.

Gerard Kennedy began stepping through the redline changes beginning with the definitions of terms. There was comment from Nathan L'Etoile suggesting a change to make the raising of plants equitable to the raising of animals and potentially not using the 61A definition. Nathan stated that when dealing with animals, the 61A definition for "Land in agricultural use" refers to "for the purpose of selling such animals or product derived from such animals in the regular course of business". As an example if you are raising cows, the milk is a product from those cows and so is cheese derived from the milk. Conversely, under the definition for "Land in horticultural use" there is no reference to "products derived therefrom". As an example a bakery on a farm where wheat is grown is not considered to be agriculture under 61A. He suggested that the APR Program is not bound by the law to continue to use 61A as the ongoing definition and could address this change in the regulation. Michele Bodian stated that the APRs themselves, since 1990, include this definition referencing 61A in the document itself. As a result changing the definition in regulation would impact on the APRs since 1990. The older APRs do not have this reference to 61A. The reason the definition was incorporated into the APR document is due to the fact that, by statute, when ALPC votes to acquire a new APR, the land has to meet the definitions under 61A. So it makes sense to continue to use that definition once you are in the program. If the definition is subsequently changed in the regulation, the definition in the regulation might not be the place to do this. Kathy Orlando voiced concern that if the ALPC starts to modify the definition in regulation that it could open the door to allow the boarding of horses to be included. Kathy stated that it has been very important to the viability of the APR program and its utility to farmers that horse stabling is not part of the definition. Michelle Bodian stated that to understand the impact on the before and after value as a consequence of such a regulatory change that the program would need to coordinate with appraisers. Susan Flaccus commented that there is rarely a product that is 100% derived from a plant or a fruit. Usually there are added ingredients. So the question would be how much needs to come from the farm and how is that determined. There was further discussion on why the definition of 61A has historically been used. Commissioner Lebeaux commented that the Department is not ready to address this matter and needs to review this issue further. He reiterated this view at the end of the meeting.

Gerard presented the proposed changes through a Powerpoint presentation and proceeded through each change giving ALPC members a chance to review and comment.

- Farmer/New Entry Farmer
- Farm Business Plan: Two definitions were presented, one with strikeouts of the following words and phrases following a stakeholder meeting – "and qualifications"; "personnel qualifications and responsibilities"; "and marketing strategies"; "employment considerations"; "and details on business partners if applicable. Such plan should at a minimum include: an estimate of start-up costs, income statement with budget estimates and expense projections". There was discussion on the value of striking or retaining components of the farm plan definition such as estimate of start-up costs, budget estimates, and number of employees. Kathy Orlando asked about situations where an existing farm is adding acreage to their farm. Are those farms obligated to provide this information about their entire farm or just the land being acquired? Nathan suggested a clarification and

recommended changing the language to "APR parcel to be acquired". Warren Shaw recommended making that modification. Laura Abrams asked for a change in the format for referring to 61A to ensure consistency across the document. Bob O' Connor expressed that it would be helpful to have financial information for review. The consensus was to extract the financial information and include in the section for farmers with less than two years' experience under the term "Financial Plan" and in Section 22:10 5(a)2.

- Minor (violations): There was discussion to clarify "involving legal action" by "those that have a right to enforce".

There was discussion to move forward with the definitions as presented and the public comment period would allow opportunity to think about the comments provided today and any incoming public comments and respond accordingly.

New Sections:

- Conferences: Gerard explained this is a new requirement. The first being with the landowner after final vote of ALPC. Staff has been doing this but it has not been a requirement. The second being during a proposed sale - the staff would need to meet with the seller and buyer.
- Automatic waiver: It was explained this draft section is essentially verbatim from the new regulations.
- Discretionary Waiver of Right to Purchase: There was comment that perhaps it should be considered to allow other forms of waivers (if found in the best interest of agriculture/MA) in case a particular situation/waiver request does not meet the automatic or discretionary waiver criteria. Michelle Bodian requested clarification from the board that the definition of section (b) met the intent of the ALPC. There was comment to add "experience" somewhere on the list. There was a question regarding whether the financial statement and P&S becomes public record. Yes they do unless it meets one of the exceptions in the public record law. There was comment that this could be concerning if it included the whole business plan.
- Right to Withdraw: There was discussion to clarify that the Seller can withdraw at any time. The language is direct from statute so the only thing that can be done is to try to get clarification. Nathan questioned the process for exercising by saying that it appears that the way the Department notifies a seller that it is not going to waive is by notifying the seller that the Department is going to exercise. It seems that the landowner cannot withdraw their option to sell after receiving the notice that the Department has opted to purchase the land. Michelle Bodian referred to the Adjudicatory Hearing Section 22:13 2(a)(1) which states that when the Department notifies the landowner of the decision to purchase, it needs to include the right to appeal. In Section 22:10 (6) Exercise of Right to Purchase, the notice of election to purchase process is described. Michelle stated that this does not end the right of the landowner to withdraw even though the Department has elected to purchase the property. Michelle stated that the landowner can withdraw at any point before the Department decides to exercise its right and before the Department decides to assign its right. There are two opportunities then to withdraw. Michelle stated that the language is directly taken from statute. The board felt that the landowner should know that there is an option to withdraw before assignment. Michelle suggested adding to (6), Exercise of Right to Purchase, the following language: "including when the land will be assigned"

- Appeal process for waivers: Michelle Bodian reminded the board that due to the newly constituted ALPC a new hearing officer would need to be appointed when an appeal comes forward. There was discussion on what constitutes a "reasonable" time. Historically the ALPC voted on setting a timeframe for themselves of 45 days. At a future meeting, when the board is fully constituted there would need to be a discussion on the appeal process.
- Review of the APR Program: Gerard noted this is the requirement to review the program every 3 years with the ALPC and Board of Agriculture.

Gerard outlined the next steps:

- Board of Agriculture Meeting: March 5, 2019
- Public Comment Period/Hearings; Spring
- Regulation Promulgation; August 1, 2019
- Outreach; Summer/Fall 2019
- Review/Hearings; 2020

It was confirmed the Board of Agriculture comments on, but does not vote on the proposed changes. The ALPC votes on the changes.

The Commissioner requested a vote to approve the proposed changes to allow the Department to move forward and release the regulations for public comment. There was a motion and second, no further discussion. The vote passed unanimously.

There was no other business

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

VOTED: To adjourn the ALPC meeting at 2:49 PM.

Vote was unanimous.

Respectfully submitted,



David Vale,
Agricultural Lands Acquisition Specialist