

Department of Agricultural Resources
AGRICULTURAL LANDS PRESERVATION COMMITTEE

MINUTES OF MEETING

June 13, 2019
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
- Joe Shoenfeld
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 Kathleen Theoharides
Executive Office of Energy & Environmental Affairs
- Dan Wright
Natural Resources Conservation Service, Non-Voting Member
- Susan Flaccus,
Farmer
- Fred Dabney
Farmer
- Karen Scwalbe,
Southeastern Massachusetts Agricultural Partnership, Inc – Farm Advocacy Organization
Representative
- Kathy Orlando,
Sheffield Land Trust - Land trust representative

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
Caroline Raisler, Department of Agricultural Resources
Christine Smith, Department of Agricultural Resources
Margaret Callanan, Department of Agricultural Resources

PUBLIC ATTENDEES:

Nathan L'Etoile – American Farmland Trust

Nicole Viars- NRCS

Larry Flaccus, Farmer (Orchard)

Michelle Harvey- Lakeview Nurseries and Board of Agriculture

Laura Sapienza-Grabski- MAAC

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 10:10 AM. Commissioner Lebeaux introduced himself and asked ALPC members and other attendees to introduce themselves.

I. UPDATE

Commissioner Lebeaux provided an update on key Department matters:

Northeast Association of State Departments of Agriculture (NEASDA): MDAR hosted the annual meeting of NEASDA on Cape Cod. The gathering highlighted the cranberry and aquaculture sectors. Both the Lieut. Gov. and the new EEA Secretary, Kathleen Theoharides, participated. The Secretary of Agriculture in Rhode Island developed a proposal for the national meeting of NASDA to recommend that sod farms and nurseries should be allowed to participate in NRCS land protection programs.

Commissioner Lebeaux mentioned that a new CFO for MDAR is starting on June 24th. Jen Boudrie has started as an outreach coordinator. Caroline Raisler has joined the agency as a stewardship planner. Christine Smith was introduced as a new attorney.

The agency posted a policy on retail sales of hemp. Over 100 licenses were granted this year for cultivation - a large increase from 14 a year ago.

The Commissioner reviewed the APR report summary:

- FY19 two projects closed protecting 95 acres with APR value of \$1.29m.
- 19 pending votes of interest. 15 pending final voted projects.

Christine Clark, NRCS state conservationist retired end of May. He welcomed acting conservationist Nicole Viars stated that she has been with the agency for 27 years and is coming from West Virginia and will serve through October approximately until position filled.

Federal review of new applications are ongoing - we expect to have a new cooperative agreement in place by September and look forward to further updates when we have more to report.

II. APPROVAL OF MINUTES OF FEB 28, 2019

It was moved by Warren Shaw, seconded with no further discussion and

VOTED: To approve of the minutes of February 28, 2019

Susan Flaccus highlighted a typo on 2nd line in right to withdraw on page 5. Spelling of "statute" should be corrected.

The vote was unanimous.

III. DISCUSSION: Approval of APR regulations

Gerard Kennedy provided a summary for the new ALPC members. Response to legislation passed last year, the Department is proposing changes to the regulations to address the transfer of APRs. Key elements include new or modified definitions related to Farm, Farmer, Farm Business Plan, Minor, New Entry Farmer, the OPAV, Potential Assignor, Potential Purchaser, ROFR, Statement of Interest and Waiver. Included provision for a pre-acquisition meeting before the APR is finalized and a pre-sale conference before the sale (as required by the legislation). The pre-sale conference requires a meeting with the seller and the buyer at the APR parcel to be sold to review the process. There is now an automatic waiver process. There is also a discretionary waiver process. A key element in the proposed regulations is the right of the seller to withdraw at any time and also a right to appeal a decision to the ALPC.

Regulations apply to APR landowners. The Department currently hold 935 properties, 640 of which have OPAVs, approximately 97 have ROFRs and the rest have no ROFR or OPAV. The regulations were developed with input from ALPC and the Board of Agriculture, four public meetings including a joint meeting with ALPC and the Board of Agriculture. Input was also provided through a stakeholder meeting and two public hearings. The Department is required to promulgate the regulations by August 1st of this year.

At the last ALPC meeting the committee reviewed the proposed changes, recommended changes which have been incorporated and voted to approve the regulations for the purpose of moving forward with public comment process. ALPC must also approve the final regulations which have been slightly modified based on the public comment process.

Gerard asked for any questions from the ALPC. Warren Shaw asked about the changes to the regulations since the previous vote. Gerard stated that there was discussion around the Farm Business Plan and a comment about whether the business plan needs to apply to the entire farm business or just to the APR parcel being acquired. In the modified regulations, the reference is to the APR Parcel. Specific to Warren Shaw's comments changes were made to reflect a business owners experience when acquiring an APR as a beginning farmer. Also, to address concerns about the use of "Minor" and who has the right to enforce on the APR the 2nd line now includes "by those with the legal right to enforce" which includes the Department and the NRCS where they have those rights.

Comments included 1 individual and 6 groups. Changes proposed following the hearings include: Definition sections - new entry farmer should not be tied to a specific organization so the proposal is to change to "beginning farmer".

A group of land trusts commented on notification following a decision to exercise - this is included as well. Notice of election to purchase no more than three business days after the decision is made.

Third change is #7 in statement of interest. Department only assigns its right to certain parties in some instances (handful of APR's limit to non-prof? And maybe governmental entity). So changes were made to reflect these.

Fourth change is #8 to that section. Over inclusion of criteria - previously A-B but not applicable and should actually be A-C. So that change has been made.

Other comments were made, many not directly related to changes in regulations but more broad. They were helpful because there will be review in 2020 with regional hearings.

Kathy Orlando - noticed there is still a "new entry farmer" reference under 5.a.v and questioned if this was an oversight? ? Supposed to be beginning farmer? Gerard acknowledged this as an oversight. Commissioner also highlighted the same error in 5.b.3.

Kathy - leasing 5.a.3 - seems very specific for the purposes of leasing land. There are a lot of things related to agriculture that aren't leasing land and this is a very specific issue. Was wondering where that came from. Gerard stated that it came from the first meeting via Chris Coffin. She asked if an entity that is incorporated for enhancing or promoting agriculture would be included. Gerard stated that the intention was that the organization is intended for leasing land to beginning farmers, not an organization for educational or promotional purposes.

Kathy suggested that it is very narrow for an entity to be organized just for that purpose. Since the idea is to be supportive of agricultural business, is it within the intent to have something not so narrow. As narrowly written criteria can be confusing. Would an entity have to re-write its mission?

Margaret stated that we don't think it should read it to be "just" but rather to include. Kathy suggested that it should be changed to include "for agricultural purposes" - doesn't come across that way. Suggestion of adding "including" to make it clear. Nathan Etoile stated that there are various organizations 501c3's some land trusts, some other entities. The goal was to include organizations that exist for the sole purpose of leasing farmland.

Commissioner disclosed recording meeting and asked if anyone else was recording. Laura Sapienza Grabski stated that she is recording and further asked if ALPC has copy of all the comments submitted and if a copy of the document available today? She asked if there was a copy of the APR regulations available and was provided with one.

Commissioner stated that we are under a legislative deadline to promulgate the regulations by August 1st and mindful of upcoming process for broader regulatory review. Gerard stated that comments have not been distributed and that the department is working through developing responses to the comments.

Nathan asked about the definition of "Assignee". He asked for more information on how that definition is intended to be applied. He stated that an organization must show through its organization documents that it was formed for the purpose of operating a farm. "A few of us" asked a few landowners about this and learned that their incorporation documents tend to be formed "for all legal purposes" which seems a standard approach from many attorneys. How would that be applied? Would they qualify as a potential assignee? Land Trust and Farm Bureau submitted comments that they felt it was excessive to require change of incorporation of documents. Gerard stated that the Department had typically asked

for the incorporation documents to be changed if the incorporation documents do not reflect the fact that the entity included in its purpose" owning and operating a farm". Warren Shaw asked why we approach that way? Gerard stated that we want to make sure the entity is for agricultural purposes.

Kathy stated that this sounds like it could be practical problem. Nathan said that it is a diverse community where many of those corporations could be doing other things like landscaping, ice cream etc. in addition to farming. Curiously this is not a requirement in the automatic waiver process, but when move to assignment process it comes into play. This seems to be a discrepancy.

Trustees as example - not in incorporation documents, but they own and operate farms so they can get automatic waiver but not assignment. Gerard asked - are you saying we should waive and assign to any corporation that doesn't say anything about farming in the articles of incorporation? Nathan - yes.

ALPC question - is there intent to differentiate between waiver and assignee? Gerard stated that the automatic waiver language is taken from the statute. ALPC - is there any reason not to include in assignee language? Discussion.

Kathy states that it seems the intent is to make sure the entity is actually farming. ? Gerard agreed. Discussion.

Further discussion on the matter led to a recommendation to add "meets the definition of Farmer" to the last sentence and second to last sentence of "Potential Assignee".

Moved by Warren Shaw. Second by Kathy

Commissioner questioned if the definition of "Farmer" now needs to be modified. A suggestion was made to include tax return schedule F, current or previous year's approved M.G.L. Application.

Motion by Chair to that effect, seconded by Kathy, no further discussion, all in favor, unanimously passed.

Kathy pointed out some typos - adjudicatory hearings - a comma22.13 under 2.a.1 a comma missing after "who may be the aggrieved owner" and the very last sentence a missing "th" "forth" not "for" in the APR (2.c.2)

Motion by Kathy, second, no discussion all in favor, unanimously approved.

Move to approve with modifications made, second, no further discussion, all in favor, unanimously approved.

IV. Approval of APR application

David Viale distributed a copy of the proposed application. David explained the application had been previously approved by the ALPC and that the staff had recommendations for some improvements based on what they were seeing when reviewing applications and feedback provided by landowners. The changes help to clarify parts of the application where landowners have had questions and also obtains additional information used in evaluating and ranking projects. David reviewed the suggested changes which are:

- Clarify the date of application period
- Enable applicants to submit by email as an additional option
- Add reminders to applicants to include the required attachments
- Require documentation be provided of signatory authority
- Include a question on whether the community is a right to farm community as it aids in the ranking of the application
- Requests survey info if available
- Asks if any portion of the proposed land is already enrolled in a similar program such as Farm Viability
- Requests copy of existing leases and info on known option to purchase, right of first refusals, rights of ways or purchase and sales agreements affecting the land being proposed for APR
- Asks short term and long term plan for the property
- Adds additional land use categories for Hay, Forage and "Other"
- Asks intended and current use of structures
- Asks about known tax liens, mortgages
- Obtains the required consent to a site visit
- Adds a date to the signature line

There was a motion, a second, no further discussion, the vote passed unanimously to adopt the changes.

V. Ranking sheet

Ron Hall presented on how thresholds were clarified to meet state or federal program thresholds. Two changes made to thresholds - removed whether met fed and state impervious surface requirements - it is a % that is determined later in the process so we've removed as a threshold at this early stage. Added in a segment under the federal side that identifies the property is a single contiguous parcel - important to identify at this point in the process due to federal requirement.

Kathy - contiguous land parcel - the land on the ground/tax parcels as long as they are next to each other. Ron = yes.

Parcel attributes - the only change is to now provide an area at the top that allows us to insert the open acreage % use.

Location - language of how the question was worded has been changed. It now reads "active commercial APR land within 2.5 mile radius - previous "open APR land" within 2.5 mile radius. Intent is to identify active commercial use.

Question ALPC member – appears to only consider APR land. Is other conservation land considered? No. ALPC member question - what is rationale for having other APR land in the area? Does this lean away from areas where there are not other APRs? Nathan - if goal is to conserve ag land then including any A-97 land dedicated to agriculture would be wise. Ron - federal program also looking at protected farm land. Discussion of APR requirement for active ag vs. CR's that may allow ag, but not require it. Warren - staff should take a look at.

Ownership and succession - no changes

Single family building permits - only change is to have an area to enter the # of permits over 5 year period

Land use – clarifying the points assigned is one of the shown categories not multiple.

Size – changed from “acres of productive farm land” to “acres of land in open ag use” to be consistent with the terms used in ranking intensity/productivity which uses “open land intensively farmed”- Part of this consideration goes to the federal program too.

Bob O’Conner asked whether we want to consider adding more points for a succession plan? Ron Hall responded that quite often not all applicants have professional written plan. Michele Padula also noted that she has not yet seen one in an application yet. Bob added that EEA gives more points to something they want to see in applications. Nathan noted this was a good point. Kathy Orlando - not necessarily putting more weight on plan but don’t have anything written out. Bob suggested that 10 points may not be critical, but 25 points may send more of a message. ALPC - hopefully can include sod and nursery if NRCS makes allowable.

Additional info at bottom of page - Staff comments and points were increased comments regarding-intensity, infrastructure added value, other APR’s being adding to, and assessing projects on a stewardship level were provided as examples.

Dan - duplicative to have 75% prime soils when already % of prime and state is awarded points above. Why not just weight more heavily above? Ron and Michele Padula - difference is to set aside size but it is 100% prime. Prime vs state - state could be as equally productive.

Question – reason for looking at building permits – Michele Padula responded that the intent is to try to determine threat. She said that it is not an easy question to answer, and MDAR staff looked various ways to get at it and came up with how many houses being built on year on average to assess development pressure. There was a question whether this was Town specific and not by radius? Correct. There was discussion of viability in blocks vs isolated parcels and that the score sheet trying to find balance of all factors. It was noted that the score sheet is reviewed annually with ALPC to continue adjusting as we see what is working, what is not.

Ownership succession – There was a question whether there are multiple areas where applicants can get points? Staff responded that is correct.

Bob - did we think about doing building permits per square mile vs single town boundary? To account for town size? Barbara Hopson replied we didn’t look at that way but did take into account population. Discussion of relative building permits intensity. Bob - per square mile of town is getting them to the same playing field. Divide town permits by square miles or population to put them all on the same scoring. Bob - they have been doing scoring for decades and change every year so he understands.

Chair comment - 30th vs 28th as the application deadline? Discussed, it is internal and figured FY just easier to go by.

Commissioner - will think about the points made - doesn't think we want to do on the fly but we'll think about. At the moment requested ALPC to consider as presented.

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

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

VOTED: To adjourn the ALPC meeting at 12:02 PM.

Vote was unanimous.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "D. Viale", with a large, stylized flourish at the beginning.

David Viale,
Agricultural Lands Acquisition Specialist