

MINUTES: AGRICULTURAL LANDS PRESERVATION COMMITTEE MEETING

Monday, March 30, 2020
10:00 AM to 12:30 PM

MEMBERS PRESENT:

John Lebeaux, Department of Agricultural Resources
Clem Clay, UMass, Center for Agriculture, Food and Environment
Phillip DeMartino, Designee for Chrystal Kornegay, Department of Housing & Community Development
Robert O'Connor, Designee of Kathleen Theoharides, Executive Office of Energy & Environmental Affairs
Rita Thibodeau, Natural Resources Conservation Service, Non-Voting Member
Laura Abrams, Board of Agriculture
Warren Shaw, Jr., Public Member
Fred Dabney, Public Member
Susan Flaccus, Public Member
Kathy Orlando, Sheffield Land Trust
Karen Schwalbe, Southeastern Massachusetts Agricultural Partnership, Inc

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
Delia Delongchamp, Department of Agricultural Resources
Caroline Raisler, Department of Agricultural Resources
Taylor Arsenault, Department of Agricultural Resources
Christine Smith, Department of Agricultural Resources
Ashley Randle, Department of Agricultural Resources
Emily Boss, Franklin Land Trust
Michael Lewis, Green River Farm
Denise Barstow, Kestrel Land Trust

Chairperson of the Agricultural Lands Preservation Committee ("ALPC"), John Lebeaux and Commissioner (the "Commissioner") of the Massachusetts Department of Agricultural Resources (the "Department"), called the meeting to order. He noted that the meeting was being recorded and that it was being stored by Zoom in the cloud and that it was being held remotely pursuant to the Governor's Emergency Order dated March 10, 2020

I. Department updates

Commissioner Lebeaux presented an overview of how the Department was responding to remote working in the face of the COVID-19 pandemic.

He mentioned that some staff were continuing to work in the field but that most staff were teleworking. The Department is trying to get a grasp of what is considered to be essential work and what is considered to be non-essential work in order to assist with its planning moving forward. He stated that they have continued to maintain the usual delivery of services including closing on an APR over the past couple of weeks.

The scheduled move for mid- May to the new office in Southborough is questionable at best at this point.

The Department is also trying to work out the logistics of working in the field particularly given challenges such as the absence of restroom facilities.

There is also intensive communication taking place on a daily basis with the Secretary Theoharides' office and with the division managers. A further challenge is the US mail and how to handle the volume of mail that gets received in the Department and that needs to be sent out.

For Fiscal Year 2020 to date, the Department has closed on three projects protecting just shy of 220 acres with an APR value of \$1.23 million, a cost to the Commonwealth of \$758,000 with a local contribution of a little more than \$450,000 and an overall bargain sale of \$20,000.

As far as Final Vote projects, there are 24 of them encompassing around 1100 acres with an approximate APR value of \$10.3 million with the cost to the Commonwealth that is estimated to be \$8.4 million with a \$1.9 million local contribution and or bargain sale. There presently are 14 pending votes of interest. And then there are seven projects that are unresolved as far as their votes of interest.

In spite of the COVID-19 response the Department did manage a recent APR closing. In partnership with the Kestrel land trust, Town of Hadley and the Food Bank of Western Massachusetts the APR program closed on a 142-acre parcel in Hadley. The closing was the culmination of a multi-year effort to permanently protect land from sprawling development.

II. Approval of Minutes from November 7, 2020.

In the absence of any questions, the Commissioner moved onto the next item on the agenda which was to approve the minutes of November 7, 2020. Fred Dabney commented that there was no vote referenced on the Bartini APR while all other votes were shown. The commissioner asked staff to correct the section in the minutes.

The Commissioner asked for a motion to approve the minutes as corrected:

Motion: Fred Dabney

Second: Susan Flaccus

Vote was unanimous.

III. Final Re-Vote: Gunn 1 (Montague Road) - Sunderland – Franklin County

Michele Padula presented on need to revisit the Gunn APR vote due to an error. Michelle stated that there were two final votes for two separate Gunn projects at the last meeting. An error was made on the Gunn One project. The APR value was \$170,000. Michelle final voted \$148,000 from the Commonwealth and \$22,000 from the town. It should have been \$148,400 from the Commonwealth and \$21,600 from the town. The recommendation is to final vote the new figures with the standard conditions.

Motion: Warren Shaw

Second: many members

Vote was unanimous.

IV. APR Program Listening Sessions Review Schedule and Outreach

The Commissioner mentioned that the Department conducted five listening sessions over the course of January, 2020. Many ALPC members attended one or more sessions. The Commissioner stated that he was very pleased with what he heard. Overall, he thinks folks are in a better place relative to the APR Program.

Commissioner Lebeaux asked Gerard Kennedy if he or any of the staff had any comments that they would like to make about the listening sessions. Gerald mentioned that overall there were 90 specific comments with 33 comments being submitted online. All of the online comments were presented verbatim and were sent to the ALPC members. There was good participation at the five listening sessions at which there were 36 specific commentators. Many of the commentators had multiple comments.

Gerard said that the comments that were submitted online were sent to the ALPC members as drafted by the commentators. The comments that were received at the listening sessions were reported out as close as possible to verbatim. If they are recorded in quotation marks then the program feels that they have been captured as closely as possible to the actual spoken words at the meeting.

The Commissioner opened the session up for questions and comments.

Fred Dabney commented that there were some issues that were raised at the listening sessions that appeared to require some direct action. He asked what if anything had been done to address some of these issues.

The Commissioner stated that he did not think that many of them have been acted upon since the sessions in January. Fred clarified his questions by asking what are the next steps to address the comments that were raised at the listening sessions.

Gerard stated that according to the legislation that was passed last year the Department has to review the program every three years in consultation with the ALPC and the Board of Agriculture. And to jump start that process the Department mailed out to the APR landowners all of its existing guidelines, policies, procedures and regulations. This provided stakeholders at the listening sessions with material to review in order for them to provide their input as to what changes should be made to the program. So, the process is just at the beginning stages. The program is presenting the comments back to ALPC and then will present them to the Board of Agriculture. They will also be available on the Department's website at www.mass.gov/apr.

The program is really seeking from ALPC guidance on where the program needs to focus its efforts on to improve the overall effectiveness of the program. Gerard said that the comments are loosely tagged with their primary areas of concern. For example, solar comments are tagged as "solar" and those comments are grouped together as much as possible. If it's a comment on ag-tourism then those comments are grouped together under the ag-tourism tag. So, the program is looking to ALPC to review those comments and then provide the program with some direction for improving the program.

Fred Dabney asked if the Department would prefer ALPC members to submit written comments to the Department on those comments that were received at listening sessions and on line through the web portal. Commissioner Lebeaux stated that the Department is happy to receive written comments from ALPC but that he would be happy to engage directly with the ALPC members now on their thoughts. Fred stated that it would probably be more effective to send the comments via email to the Department.

Christine Smith, attorney with the Department reminded the members that any written comments should be submitted directly to the Departments and not to other members of the ALPC. Otherwise there would be a violation of the Open Meetings Law. The commissioner then suggested that Fred should send comments directly to the APR Program to Gerard or to Ron Hall.

Gerard suggested to the Commissioner that it would be helpful to ask the ALPC members individually for their thoughts on the listening sessions, how they were conducted, how effective they were and if they have any recommendations for improvements and for their thoughts on areas the program should focus on.

Susan Flaccus stated that a comment that resonated was that the priority was whether the program wants to support farmers or farmland. Some APR landowners dilute what the original intent was of the APR. And it's important to figure out how to support farmers without sacrificing the original intent of the APR.

The commissioner responded by saying that this goes to the original legislative intent of the program. It's pretty clear that this is a land protection program. And this gets to some of the inherent conflicts or friction points that the program has with farmers. It's not a viability program. First and foremost, it's a land protection program.

Warren Shaw tried to speak next but his comments were not audible.

Clem Clay started that he would prefer to submit comments in writing.

Bob O Connor attended the Pittsfield meeting and thought it was a positive meeting. Certainly, by comparison to the comments from two years previously. He mentioned that the EEA Resilient Lands Initiative hired the UMASS Donahue Institute to conduct focus groups on agriculture. He would be happy to provide written summaries for the group.

Laura Abrams stated that since this whole process has begun the Department has a lot more positive feedback at this point.

Karen Schwalbe said that there were good turn outs and that the mood was a lot more positive than when listening session had been held previously in the south east. She agreed with what Susan had to say about saving the farmer and the farmland. She said there were a couple of areas that she would like to follow up with on the program in particular the comments Rob from Westport Land Trust made. Commissioner Lebeaux thanked Karen for her comments and said that we could only hear part of her comments because of poor audio quality.

Phil DiMartino said that he was unable to attend any of the sessions and so was not offering any comments.

The Commissioner circle back to members who were not able to provide their comments the first time around.

Warren Shaw called in. He said he attended the Essex listening session and that it was well attended by the Department staff and by the agricultural community. He said there were a number of important points brought up throughout these listening sessions. Ancillary uses such as weddings or solar or Agri-tourism activities appeared to be major issues. He thinks this needs to be defined a little bit more. There also seems to be some uncertainty about what landowners can and cannot do.

The other interesting issue that was brought up by Dave Dumaresq regarding his overall concerns about how he could recover the value of his business investments moving forward if he were transitioning. The program needs to further clarify its position on business value and how it's to be treated because there seems to be uncertainty there about that.

The Commissioner tried to reach Kathy Orlando but was having some technical issues.

Kathy Orlando said that she also heard a lot of more positive comments. It's important for people to realize that this is a work in progress. Having resolved the issue with the resale and the waivers was a huge benefit that helped others to realize that when there is a problem it doesn't mean that the program is bad but that you need to say something and work collaboratively to resolve the issue. Another issue that came out of the session she attended was how important it is to be able to support both farmland protection and the farm. Without the

farmland, there are no farms and without the farm the farmland doesn't get good use. This has been a lot of progress in identifying ways where there doesn't have to be conflict there.

She heard a tremendous amount of support for additional funding for the program because some of the issues that come up related to not being eligible for things due to ranking or NRCS requirements and were not an issue where there was more funding for the program. And if we could get additional funding we could have more viable farms qualify for protection. Being able to get more funding to the program would help address some of the comments that she heard.

Commissioner Lebeaux thanked Kathy for her comments and stated how we always have to remember the basic tenets of the program. The Department has made great strides over the years such as with the special permit legislation which was introduced to allow APR farmers to conduct non-agricultural activities on their land.

Kathy stated that it might be useful to include this on the agenda for the next meeting. Gerard asked Kathy to clarify as to which agenda item. She stated that it should be continued follow up on the listening sessions.

The commissioner asked non-voting member Rita Thibodeau if she had any comments. Gerard indicated that Rita had sent a note that she could not continue to participate. The reason was not clear.

Member of the Board of Agriculture Michael Smolak commented that protecting the farmer and protecting the farm go hand-in-hand. He also commented that the Department's approach to business value is the elephant in the room for many of them particularly in his case because he's planning to transition his farm which has a significant business component.

The audio quality then became quite weak as Mr. Smolak continued with comments related to non-profits. Much of this was indecipherable. The commissioner apologized for the poor quality. He stated that he would put his comments in writing.

The commissioner asked Delia Delongchamp to comment as she had raised her hand. But her comments were indecipherable due to poor audio quality.

The Commissioner asked Gerard to speak to the work that Jen Boudrie had conducted for the Department. Gerard mentioned that the APR Manual was now available on the website. The commissioner is very proud of the document and thinks it answers a lot of the questions from the public. It can be accessed at www.mass.gov/apr

V. APR Program Special Permit Survey

The Commissioner asked Gerard to introduce the topic of the survey for Special Permits. Gerard stated that farms have diversified their operations over the last few years to increase their income into areas that are related to Agri-tourism. He commented that Phil Stevens at the Amherst Listening session asked about a host of non-agricultural uses on his land and if they would be allowed. As staff grapple with these issues, there is a special permit process. However, the process can be resource intensive for the Department and not entirely straightforward. To start to understand the range of activities taking place on agricultural lands in the state, staff have developed a survey and he asked if staff could speak to the issue.

Caroline Raisler of the APR Stewardship program offered that from a staff perspective they are trying to get data about what people are doing and what they are thinking of doing.

Unfortunately, the Commissioner stated that her audio quality was poor. He asked Delia Delongchamp if she would like to provide comments but unfortunately the audio was too poor.

Clem Clay asked about similar activities in other states and mentioned an upcoming conference in Burlington, VT.

The Commissioner asked Ron Hall if he would like to provide any comments. But the audio was too poor to hear him clearly.

Delia commented via the chat function that the staff are aware of the need to consider and address changes to the Special Permit policy following input from the agricultural community at the listening sessions. The survey is a way to gather data towards this end.

Ron Hall tried to offer up comments following a request by the Commissioner but the audio was too poor.

The Commissioner asked what the role of the ALPC was relative to the survey. Gerard stated that the staff were looking to get input from the ALPC on the questions on the survey. Ultimately ALPC would need to approve any change in the policy.

The Commissioner brought the meeting to close. He asked for a motion to adjourn the meeting.

Motion: Fred Dabney

Second: Laura

Vote was unanimous.

Recording of meeting is available upon request.

Submitted by Gerard Kennedy

Gerard Kennedy

Approved by ALPC on July 20, 2020