

MEETING OF THE ADVISORY COUNCIL ON AGRICULTURE

Department of Agriculture and Markets Building 10B Airline Drive
Albany, New York
March 19, 2018

Present: N. Rea, F. Beyrodt, Jr., J. Bittner, D. Haight, A. Machamer, L. Sobolewski, K. Wagner, B. Reeves, R. Ball, Commissioner; J. Czub, Deputy; N. Morgan, for Sen. Ritchie; D. Howard, NYFC; M. Latham, D. Cordier, T. Cook, L. Shepard, R. Somers, D. Behm, G. Palmer, M. Kelly, S. Wyner, J. Kehoe, T. Della Rocco, J. Brennan, NYSDAM.

Call to Order: Chair N. Rea called the meeting to order at 10:05 a.m. Mr. Rea asked that introductions are in order since there were several new people in attendance.

Welcome: Commissioner Ball thanked the group for their efforts in assisting the Department in working for New York State agriculture. He stated that their efforts make a difference and that “you are the right people to have in the room.”

Review and Approval of Minutes: The ACA members in attendance decided to postpone action on the prior minutes until they were in hand.

Ag. District Notice of Intent, AML Section 305(4) Municipal Mitigation: Danielle Cordier spoke on this section of Ag. and Markets Law and the recent situation with a municipality that is allowing water supply lateral hookups within an Ag. District. Typically, the Department recommends and accepts lateral restrictions from municipalities to mitigate adverse impacts on the agricultural district, identified in the NOI filing. The Department has reviewed and concurred with municipal adoption of lateral restriction resolutions to mitigate growth inducing aspects associated with water/sewer main extension into rural areas. There was one other case in the 1990’s where a municipality defended its restricted laterals and the Department filed an amicus brief.

R. Somers noted that with local officials changing over time sometimes they are unaware that lateral restrictions are in place. The Department is currently working with Cornell’s GIS staff to develop a tool which locates all the areas in the state with lateral restrictions in place with the location on a GIS layer.

Danielle noted that landowners can remove their property from the Ag. District during an 8-year review and remove the lateral restrictions.

At this point motion was made by J. Bittner, 2nd by K. Wagner to go into Executive Session to have the ACA fully informed on the case.

Executive Session with ACA and NYSDAM staff only.

The Regular ACA meeting resumed.

Legislative/Budget Update: Geoff Palmer brought the group up to date on current budget process. The Executive budget request for NYSDAM is relatively flat with some notable exceptions. Farm to School funding is seeing a significant increase.

The Senate bill is adding \$4 million for local assistance for hops research, beginning farmers, CCE, Harvest NY and FarmNet.

The Assembly added \$25 million for a new Wool Center at the NYS Fair. Local Agricultural Fairs are proposed for \$5 million, adding restrooms and water supply as eligible projects.

There's \$10 million proposed for SWCDs.

The Senate provided an extension to Empire State Development (ESD) on administration of marketing orders.

New Legislation: Consumer protection is advanced in regard to gas station signage.

Ag. Assessment changes were reviewed which will improve and enhance farmer benefits.

Geoff Palmer reviewed amendments to Real Property Tax Law that now allows that litigation on Ag. Assessment can now be brought to a lower court. In the past, it would have to go to the State Supreme Court.

Brian Reeves noted that the 10-year tax exemption on new buildings is expiring this year. Geoff said an extension is in the Senate Bill.

Dept. Guidelines for Review of Local Laws: R. Somers addressed the group with a Power Point presentation. Bob began by saying the Ag. District program is growing with over 9 million acres now enrolled and over 25,500 farms participating. The definition of a "farm operation" was reviewed but noted that NYSDAM does not have a definition for "marketing". The lack of a definition makes it difficult to determine the level of protections afforded to on-farm marketing activities under AML. Bob noted that the NYSDAM Farmland Protection website now contains links to Department opinions and court cases for Sound Ag. Practice decisions.

Under the guidance of the Department of State, Codes Division, the Department is working with them to develop guidance documents on how the Uniform Building and Fire Prevention Code applies to agricultural structures. For example, the definition of "agricultural building" is being examined to determine if adjustments should be made. Following the definition, its application to farm structures will follow. For example, discussion is taking place on public entry into greenhouses on farms. Currently, not an agricultural building as defined in the Uniform Code but classifying the building as a membrane structure may allow some public access.

The Division is receiving numerous requests for Dept. of Ag. and Markets protection for enterprises, mainly startup operations. Last week four new cases were received from around the state. The Dept. must determine if they are a commercial enterprise and

whether they have the potential to raise 51 % of the crops/livestock that are sold in their raw or processed state.

Places of employment and public buildings are not protected under Ag and Markets law.

Local governments have the responsibility of protecting public health and safety through zoning. They must look at all of the allowances, protections, prohibitions under State Law, and determine how activities will be regulated locally to protect public health and safety. For example, when a farm offers itself as a wedding venue, the intent of the wedding must be to sell the farm's product to be protected under the AML. Local governments must decide if not protected under the AML, are they going to allow that type of activity within the zoning district. Also, destination farms or farms in general may offer community kitchens, B & B's, and/or farm stays. These uses may be allowed under local zoning, but they are not protected under the AML.

Discussion ensued with Frank Beyrodt saying that Suffolk County is addressing this topic as they try to deal with more and more retail agriculture. On protected lands (land where the development rights have been purchased), it can be illegal to do many of the processing and value added activities as well as build new structures.

Kimberly Ann Wagner said that a farm is a farm but under certain circumstances, a winery is not. She gave an example of an apple farmer using a sale of an apple crop from a tree rented to wedding guests to gain protection from Ag and Markets for a wedding. She thought that this is questionable.

Amy Machamer indicated that we should go further with the definition of agriculture. Creativity is the way around rising costs and local restrictions on ag. "Earth Based" production may be wording that could be incorporated into the definition of agriculture. Inclusion of new ideas should be embraced for the preservation of rural communities.

Chairman Rea asked if Open Farm Sundays and Maple Weekends are protected?

Bob Somers indicated that they are protected. He indicated that problems exist when farms do not have adequate parking and the public parks on the highway right of way.

It was noted that in Riverhead parking is not allowed on PDR land. David Haight said that this is a condition of the deed restriction.

Amy Machamer said that where her farm is located, the NYSDOT is supportive of occasional parking on the side of the road, but some towns are not.

Commissioner Ball added that the Department is supportive of bonafide farms and will look at individual schemes and devices that attempt to use Ag and Markets law to circumvent rules.

Jim Bittner added that local agencies and Farm Bureau should provide outreach and spread the word on Ag Districts through their websites and note how they hold agriculture together.

David Haight asked how does the Dept. draw the line on farms based event? Bob Somers said that the Dept. works with local entities which can limit hours of operation, number of people, etc. in an effort to protect public health and safety. He further stated that once a barn is used for for weddings it is no longer an agricultural building under the Uniform Code and must be inspected for public access.

Amy Machamer commented that her family's farm is in the 8th generation and 200th year with the same infrastructure. Their challenge is how can we use all our farm assets from the best soils for farming to the wet spots and brushy areas.

David Howard added that NYFC is looking at ag tourism to stay viable.

Michael Latham summarized by saying that the Dept. has strengthened its rules/guidance and determinations from the Department have been challenged. We are trying to strike a balance between the Dept. and the intention of producers. Guidelines have been carried to the outer boundaries of the statute and we may have to amend the statute in the future if protections need to be broadened.

Invasive Species, Spotted Lanternfly: Margaret Kelly of the Division of Plant Industry addressed the group on the newest invasive of note; the Spotted Lanternfly which was recently discovered in PA and VA where a quarantine is in effect. This pest affects orchards, grapes and hops among other crops. It is a sucking insect that deposits sticky honeydew like aphids do. The Dept. is working on its response. This pest serves as a good citizen science project as the insect is very easy to identify. Pesticides are effective in controlling this invasive.

Action on Minutes of September 7, 2016 meeting: Copies of the previous meeting were provided. Jim Bittner asked how the meeting item related to solar array siting had evolved? Mike Latham will cover this later in the meeting. A motion was made by Wagner and seconded by L. Sobolewski to approve the minutes of the previous meeting. The minutes were approved.

Farmland Preservation Program and OPAV/Pre-emptive Purchase Right: David Behm noted that the Farmland Preservation Program seeks to protect farmland from non-farm conversion. OPAV/Pre-emptive Purchase Right came to be in VT and is an option to purchase land at its agricultural value. MA has this as well. VT has had great success with OPAV and it usually involves family transition.

With this program the land is affordable and young farmers have a chance to buy.

We have seen celebrity purchases occurring in New York State with the farmland taken out of production by the wealthy for their personal use.

In VT, OPAV does guarantee that the land will stay in Ag but may not be affordable to the beginning farmer. There need to be a distinction whether the transfer will be affordable or just farmer to farmer.

OPAV/Pre-emptive Purchase Right costs are not eligible expenses under the NYS Farmland Preservation Program but may be used for match.

There is a growing level of interest in OPAV.

Chair Rea noted that AFPB is looking at possible funding streams for OPAV. N. Rea asked if they could submit more applications than the 4 applications allowed in the past.

D. Behm said that there was a limit due to the large amount of work involved with completion of a project. Currently there is a six-application limit.

D. Howard, NYFC, commented that OPAV makes land affordable to all farmers, that's the goal.

D. Haight noted that public perception of PDR is very important. The solutions are not the same everywhere. Citizens could lash back if the PDR lands are acquired by the wealthy landowners for recreation land.

B. Reeves asked if a contract with a farm sale that includes protection would help with ranking?

D. Behm said that from his prospective, yes, it shows efforts are being made in the process.

S. Wyner on Suffolk County case involving development rights. In 2016, Justice Whalen looked at Suffolk County's purchase of development rights under GML 247. Whalen determined that County law violates Public Trust Doctrine. County can't acquire development rights and then give them back. Appellant court took a broader view and overturned Justice Whalen. There may be an appeal. Suffolk County can continue to do what they have been doing since 1974.

D. Behm noted that Suffolk Co. PDR law requires "open lands" be protected. No buildings allowed. Land is preserved but farm viability in question.

Large Commercial/Community Solar Array Siting on Farmland: M. Latham lead the discussion. The Clean Energy Standard is the driving force on solar PV. Also, hydro and off shore wind are being effected. At stake, solar could affect thousands of farmland acres in NYS.

Open and clear, level, well-drained soil where 3 phase electric is nearby are what is sought after. This puts considerable pressure on farmland, especially prime farmland that is used in food production. The Division has been working with NYSERTA and the Public Service Commission on this. Currently guidelines are in place on the website. Rented land is particularly vulnerable as solar companies can offer rental rates above the rates that farm land is rented for agriculture.

Commissioner Ball noted that there is a new Commissioner at NYSERTA and that they have had good conversations thus far. A large percentage, 65%, of farmland is at risk. This represents the percentage of land that is rented by farmers in New York State from

others. The Depts. number one goal is to take the top four tiers of soils off the table for solar.

There are other ways to make solar compatible with other land uses. In Europe panels are sixteen feet in the air to allow for uses under panels. Also, pollinator habitat is another use although this still removes land from farming.

M. Latham said that currently there are several big projects in the works in New York State. The cumulative impact of many solar projects could have a negative effect on agriculture.

B. Reeves suggested that putting solar on prime and important farmland should be made cost prohibitive. Marginal land is fine.

M. Latham said that there could be 8,000 acres under solar in just a couple years from now.

Commissioner Ball said that we are trying to catch up with the movement now.

M. Latham noted that the Dept. has always been supportive of on-farm solar that supplies the farm with up to 110% of its electric needs.

A. Machamer commented that the Dept. needs to be thinking about the next new technology that may come along and what will happen to all this land under solar arrays.

M. Latham noted that the deconstruction is being addressed.

Commissioner Ball reported that there is an Interagency Commission on the Siting of Energy Projects working on issues like solar siting.

Inherent Risk Law: Scott Wyner reported to the group on this statute. The law creates responsibilities for farmers (i.e. instructional signage) and responsibilities of the visitor (behavior). Farmers should educate employees, evaluate risks and address, and educates visitors of the risks.

Update by Commissioner Ball on Dairy Industry and NASDA/National Issues:

The Commissioner updated the group on the dairy industry and farm bill. There has been 4 years of very challenging times for dairy. Coops have been working to improve the USDA's MPP. The Commissioner has been working as a member of the Tri-National Accord, meeting with representatives from Ontario, Cañada and Mexico as well as U.S. members. These are top level representatives that include some of the same people that are negotiating NAFTA.

The issue is that there is a surplus of milk in NYS, North America and the world. U.S. exports are down 3%.

Milk Marketing Advisory Committee is working on what the state can do. Increasing processing capacity is one way. ESD under Commissioner Zensky is supportive adding

\$50 million for plants. The renovated Batavia plant is expected to be up and running this summer which will help.

There are record level of dollars in the EPF. There is funding for storage for CAFOs. The Governor is supportive and is willing to add dollars.

Dairy not expected to change in 2018. The NYS Grown and Certified program will help along with Farm to School, which increased funding from 5.9 cents to 25 cents.

NASDA – Food Safety Modernization Act. Negotiations continue with the FDA. State Commissioners will meet with FDA later this spring.

On Rural Broadband. This is a big concern., There are 20 Agencies in the state that have rural concerns as part of their responsibility. NYS Agriculture and Markets is the conduit to address all the aspects of providing rural broadband across NYS. The expectation is to 90% of the State covered this year and 100 % next year.

On the Federal Farm Bill; waiting now to see what the legislation will hold. Listening sessions were held across the stet last year.

On Hemp production. Mixed signals from WDC. 106 applications received to participate in pilot project. ESD has been working with DAM with processing end. Hemp holds possibilities for farmers across the state and nation.

USDA Sec. of Agriculture is very capable individual. New York is well represented in his group of advisors.

L. Sobolewski commented on dairy industry saying that issues are bigger than we even know. The EU is releasing stored powder milk onto the market that will have effects worldwide.

Sec. Perdue was successful in getting flavored milk back in schools. 2 % milk, though, not whole milk. Senator Gillibrand is proposing a base price. Lisa noted that at a recent meeting of producers in Syracuse there was still optimism among producers. At least we have water in New York. States like CA are running out of water.

B. Reeves posed why not quotas?

N. Rea explained that some coops have bases in place and will pay less for over base production. Smaller farms are more negatively affected.

Agrimark has a new dry milk plant over the border in MA that takes a lot of NY milk.

F. Beyrodt ask why don't they donate the surplus?

Commissioner Ball discussed the challenges involved with donation. Fluid milk is perishable and requires refrigeration which not all Food Pantries have. Processing is needed. Food Banks can use but not there yet, making progress.

While butter, cheese and yogurt use is up, fluid, Class 1, is declining.

We need to look at new options and marketing.

Other Business: Jeff Kehoe discussed the new Land Trust Grants program, its purpose is to further agricultural protection efforts identified by towns and counties in their Farmland Protection Plans. Land Trusts with an active farmer on their board are eligible for grants of up to \$50,000 per year. Furthermore, each organization must have its application endorsed by the Agricultural and Farmland Protection Board for each county in which the funded activities will be implemented.

Seven of seven applicants will be funded in this first round. Proposals include development of viable agricultural land inventories, creating a collaborative screening process to gauge landowner readiness, and land access outreach activities including farm succession to new or beginning farmers, legal mechanisms to transfer farmland, and tax benefits of farmland conservation.

Chair Rea thanked everyone for attending and for providing their time today.

Commissioner Ball thanked everyone for attending.

Adjourned at 3:10 PM