Lancaster County Agricultural Preserve Board
Meeting Minutes
Thursday, July 28, 2016

Present: Mr. Gene Garber
Mr. Jeffrey Frey
Mr. Roger Rohrer
Commissioner Dennis Stuckey
Mr. Matthew Young
Mr. Richard Hurst
Mr. Gary Landis

Absent: Mr. Daniel Zimmerman
Mr. Edward Goodhart, III

Staff: Mr. Matthew Knepper, Director
Mrs. Nancy Ambler, Farmland Preservation Specialist
Mr. Kevin Baer, Farmland Preservation Specialist
Ms. June Mengel, Farmland Preservation Specialist & acting Recording Secretary

Guests:
Ms. Joella Garber, Monitoring Specialist, Lancaster Farmland Trust
Ms. Brielle Stander, Lancaster Farmland Trust Intern
Mr. Jeffrey Swinehart, Deputy Director, Lancaster Farmland Trust
Mr. Donald Hess, preserved farm owner, East Donegal Township

I. Call to Order

Mr. Gene Garber called the meeting to order at 8:04 a.m.

II. Review of Mission Statement

"To forever preserve the beautiful farmland and productive soils in Lancaster County and its agricultural heritage; and to create a healthy environment for the long-term sustainability of the agricultural economy and farming as a way of life."

III. Executive Session

The Agricultural Preserve Board met in executive session on July 28, 2016, at 7:15 a.m. to discuss real estate transactions.

IV. Approval of Minutes

Motion to approve the June 23, 2016 meeting minutes made by Jeffrey Frey and seconded by Richard Hurst. Approved unanimously.

MOTION CARRIED

V. Announcements

A. Mr. Matt Knepper announced that Christine Lee was no longer employed by the Agricultural Preserve Board. She was offered and accepted a position with Land Studies. Mr.

Knepper shared that the Agricultural Preserve Board was very grateful for her service and was happy that she was able to secure full time employment.

B. The State Agricultural Land Preservation Board will hosting their August 24th Meeting at Smuckerland Farms, 2660 Stumptown Road in Bird-in-Hand, Upper Leacock Township. The Smuckers will be preserving their farm and the State will be celebrating the 5,000th farm preserved in the preservation program. This 5,000 acre milestone does not include farms preserved by the Lancaster Farmland Trust nor the farms preserved solely by Lancaster County prior to the State's Program. The meeting will begin at 10:00 AM.

C. Discussion on other topics:

1) There was discussion about which County in the Commonwealth has the most acres preserved. Matt Knepper explained that Lancaster County still has more acres preserved but some of that acreage is outside the State's Program. If only accounting for those farms preserved under Act 43, the Agricultural Security Area Law, which authorized the State's preservation program, then Berks County has more acrate preserved.

2) Roger Rohrer announced that the Conservation District hosted a tour at his farm yesterday, July 27th, for teachers and students. The group was part of a program coordinated by the Chesapeake Bay Foundation to learn about Best Management Practices (BMPs), that help to minimize soil loss on farms and thus helping to protect the Bay.

3) Gary Landis shared information on agritainment articles in the July 9th issue of Lancaster Farming. One was about barn weddings and the other was about Cherry Crest Farm. Of interest, Mr. Landis pointed out that Jack Coleman, owner of Cherry Crest, really promotes the agricultural component of Cherry Crest and minimizes the non-farm activities, emphasizing the unique agricultural education that is available if visiting the farm.

VI. Business from Guests

None

VII. Old Business

None

VIII. New Business

A. Requests for Subdivision/Land Development

1) FRPP Construction Request – Leninger Farm (original Grantor) and current owners are Brandon and Jennifer Barry – Proposal to build two layer houses and associated structures. Construction projects on farms that have been preserved with federal money require APB approval because of the impervious surface restrictions with these ACEs. The maximum impervious surface permitted on the Leninger farm is 5.69 acres, after this construction project there will be 2.22 acres. This application also provided an opportunity to adjust/prorate the impervious surface calculation to account for structures that have been removed since the granting of the ACE.

Motion to approve the FRPP Construction Request as presented was made by Mr. Jeffrey Frey and seconded by Mr. Matthew Young.

MOTION CARRIED

B. Request for Rural Enterprise

None

C. Agricultural Production

1) Fill Project: Chiques Rock Farms, Don Hess
_____ East Donegal Township

Landowner, Don Hess, is requesting the APB's review and approval for a fill project on his 50.517 acre preserved farm. Mr. Hess is proposing to modify the grade of a 13+ acre field by importing clean fill. The end result is proposed to create a more farmable area. .

- Wishes to improve the contours of the valley to create more tillable farmland and less runoff, while simultaneously accommodating the need for clean fill disposal
- Process would involve topsoil removal; the addition of clean fill; and then topsoil replacement; one acre at a time, for a total area of disturbance of 13.2 acres
- Project will be done over an estimated 6 to 10 year period; each phase will have to submit a new/revised E&S Plan
- Mr. Hess also owns a portion of land, that was excluded from the ACE, where his Gypsum ag-recycling business is located.
- He owns an adjacent tract of land that contains a quarry, which has been utilized for fill for the past many years and is now at capacity.
- Conservation District required an E&S General permit --- project is considered an agricultural activity, "in preparation for agricultural use"
- Fill will likely be from federally permitted NPDES sites, but fill site itself will not require a NPDES permit
- Site will be self-monitored, periodically inspected by the Township and the Conservation District and as needed if a complaint is filed
- There will be a dumping fee collected

Mr. Matthew Knepper's comments:

- This project is not a rural enterprise, primarily because the size. It must be viewed as "Agricultural Production." The Township, the Conservation District and DEP view this type of activity as agriculture because it is agricultural use currently and it will be agriculture after. Only a General Permit is issued not an NPDES permit.
- Mr. Hess is in the process of obtaining Township approval
- Mr. Matt Knepper, Ms. June Mengel attended a meeting at the Township with Township staff and also with Mr. Don Hess and his engineer.
- Township indicated that the first proposal did not decrease the slope nor did it create more farmland, it merely brought up the entire grade. From the Township's perspective, with no net improvement, this would be a land fill.
- Township's directive to Mr. Don Hess is the same as APB's – landowner must demonstrate how this project would improve farmland.
- Mr. Hess and his engineer re-designed the site and have created a much flatter area from 11% slope to 3% slope and have added about 3 more acres of farmland
- New Storm Water Management Plan for the entire site will have a waterway and a level spreader to control water flow at the Southeast portion of the site along the woods
- Township approval is required in order for the APB to approve a rural enterprise
- Requests the APB to withhold their decision until Mr. Hess receives Township approval and the APB has an opportunity to see more of the details of the approval.
- If the APB sees proposal as an appropriate use, it will have to be permitted as an agricultural use, as agricultural production or a component of a Conservation Plan
- One of the adjoining properties is owned by Don Hess's brother and the other immediately adjoining property to the field associated with this proposed project is owned by Forrest Sheffy.

- Forrest Sheffy donated an easement on his farm. He has expressed concern that this project may impact his property and potentially the Donegal Creek.
- Because the Chiques Creek Farm is preserved, this proposal should meet a higher and/or different test than it may from the Township and/or Conservation District. The property is permanently preserved with an Agricultural Conservation Easement and the APB must demonstrate due diligence in review of this proposal. It may be prudent to have a third party soil scientist review the project and potentially offer input or devise/approve a reclamation plan for the site if approved.
- This will be a long term project, APB needs to build in long term assurances.

APB comments:

- Would the area be filled from top to bottom?
- Would there be storm water management for each phase?
- How would area be packed after fill?
- What is the depth of fill?
- How will 8 inches of topsoil over clean fill result in the same or better production than current?
- How will this project impact adjacent properties?
- There will still be a steep slope it will just be at the bottom of the property now.
- This project will create "red shale soil"
- Future productivity will in part depend on how the soils is put back.
- Achieving existing yields of 180 – 190 bu will take up to thirty years after this type of disturbance.
- Tree knobs could be removed now to create more farmland, don't need to have a huge fill project to create more farmland
- Won't have nearly the same amount of water run-off after this project is complete: slope reduction is a big deal
- Yields will be better in 5 to 7 years.
- Concern that in dry weather, this fill area will definitely not see improved yields.
- What will the percentage of load be for this site?
- Perception is a real concern, 3rd party should be involved and ensure that the site is professionally restored. Landowner should be responsible for this service. Why should APB pay for something that the landowner wants to make his farm "better."
- Mitigation of farming concerns is possible, mitigation of the concern of setting a precedent by allowing this activity is not achievable.
- Bad precedent, what if other preserved farm owners and/or entities that may buy preserved farms want to create a land fill
- This is not a land fill, it is a site for depositing clean fill. A land fill is regulated by different rules under waste management guidelines.
- Concern about underlying water holding capacity.
- Critical that the farm be brought back to higher productivity than it is now.
- Accepting clean fill is income generating – it could be more farms want to do such an activity.
- Because this is a preserved farm, this project must meet higher standards and tests, there should be full blown reclamation plan in place to ensure that over the long term (could be 20 to 30 years), that this farm eventually exceeds its current production
- There must be an overall improvement for agriculture because that is what the APB hangs their hat on.
- Restoration Plan/Reclamation Plan should address soil make-up, monitoring and long term productivity
- How is compliance assured?

Mr. Don Hess's comments:

- Took input from APB and from Township and changed the fill plan to result in an improved farmland tract.
- Submitted a revised grading plan that reduces side slopes substantially and creates 3 more acres of tillable farmland.
- Top soil will be removed and stockpiled and replaced.
- Bull dozers, payloaders and other types of heavy equipment will pack the fill in.
- Some areas where pipelines have gone through see yield improvement within 5 to 7 years.
- Compaction of the fill with dirt and soil will fill in crevices and the appropriate amount of top soil will be replaced on top. Topsoil will be imported if necessary.
- The proposed area is farmed now, and will continue to be farmed, with the exception of the 1 acre being filled; however, this may vary depending on disturbance
- Estimates the average elevation change will be an increase of approximately 20 feet
- Clean fill = concrete, rock, dirt and clay (brick), the mix will be 25% of each type of material
- Mr. Forrest Sheffy has expressed concerns about this project to Township officials and APB but not to Mr. Don Hess.
- This project, when completed, will realize a much better site to farm.
- Public is already accustomed to seeing truck traffic due to adjacent farm operations; fill operation wouldn't make much of a difference
- Agreed to wait to see a cost estimate from Rettew for analysis of current site and reclamation plan to ensure that better soil productivity after the project. Will also entertain costs associated with implementing the soil / site reclamation plan.

➢ NEXT STEP: Mr. Matthew Knepper will contact Rettew with the aforementioned request. After Rettew offers a proposal and cost estimate, Mr. Don Hess will be contacted to confirm that he is agreeable to the cost.

D. Rural Enterprise Guidelines – Discussion

Mr. Matthew Knepper's comments:

- Statute requires that rural enterprises be permitted on preserved farms.
- Purpose of rural enterprise is to supplement farm income.
- General Criteria from APBs Rural Enterprise Guidelines were distributed.
- Purpose Statement from Rural Enterprise Guidelines – "*intended to supplement farm incomes in a manner which will not adversely affect the use of preserved farmland for agricultural production and to create a healthy environment for the long-term sustainability of the agricultural economy and farming as a way of life*."
- APB has been increasingly referring back to the "Mission Statement" when evaluating projects to determine if they fit with the intent of the APB's mission.
- Is APB permitting activities that may not be appropriate on preserved farms?
- Do we need to modify or remove certain activities from the Rural Enterprise Guidelines and just tell landowners "no?"
- Do we need to be receptive to different types of activities in order to support farms?
- What actually constitutes a farmer?
- The current proposal for a wedding venue is similar to the ones the APB has already approved. What makes it standout is that the applicants are not "farmers." Does this fact/should this fact make a difference when evaluated in conjunction with the Mission Statement, the language in the Agricultural Conservation Easement and the Purpose Statement in the Rural Enterprise Guidelines.

- The APB can say “no” to requests if the reasons are identified in the Rural Enterprise Guidelines.
- Not every request will be easy to determine an answer, but we need guidelines that we can follow that are more defined or offer greater explanation and guidance of how decisions should be made.

Staff comments:

- Many of these side businesses are “retirement” work for the parent landowner.
- Focus on land use not the individual.
- If landowners are aware of what the rules are, what’s allowed and what’s not allowed, they generally can live with it.
- “Gray” areas are challenging for staff and for landowner because staff is unable to clearly advise landowners of what they can or can’t do.

APB comments:

- Have heard at Township level that some farmers are being “run-off” the farm by their “non-farm/side business relatives.” The farm becomes secondary to the business.
- Will these businesses impact farming? For example: you can’t combine soybeans because there is a wedding today?
- Do side businesses become the supplement or the value to the farm?
- Do we own the farm to farm OR do we own the farm to have a business?
- A Schedule F from the tax return is not necessarily fully telling that an individual is a farmer
- Banks/lenders often times use a cash flow benchmark of at least 50% coming from the farm to be considered a farmer or having a farm operation.
- An owner of a farm that does not farm, but rents out the land/buildings, that rental income is considered farm income by the bank; however, the owner can’t submit a Schedule F with his tax return but rather a Schedule C
- Looking at farm income as an indicator could be complex
- Must forget about the individual when making decisions, imagine being 30,000 feet in the air and what do things look like? Is the property predominantly farmland and/or livestock? Critical aspect is the primary use livestock or crop production? Everything else has to be ancillary. As soon as that line is crossed, it’s not a side business anymore. Predominant use of the cash flow is coming from that land.
- When someone preserves their farm, he/she makes a commitment to keep the property in farming; that commitment needs to continue to be honored no matter who owns the preserved farm.
- The more uses that are permitted on farms, the more expensive the farms become. Often, the price paid for a farm is driven by what can be done on the farm.
- Look to our Rural Enterprise Guidelines for key words, such as: part-time, minor, seasonal. Also, review what the Statute and Regulations say as well as the actual ACE document. These terms as well as the clear intent of these terms should be factors when making a decision. What constitutes full time? Maybe part-time is only weekends or X / year.
- Smaller farms may be more likely to have a need for side businesses.
- Special event venues will soon reach a saturation point. If, in the future, APB decides to disallow these “commercial-in-scale” wedding venues there will be another type of activity that will replace it
- Maybe the APB should stop trying to accommodate. APB always seems challenged to make something work when maybe there are some things that are just not permitted.
- APB may be in an accommodating habit because by permitting so many rural enterprises, they also make owning a farm viable.

- NEXT STEP**:** The Board collectively agreed that this topic needs much more discussion to determine what, if any, changes need to be made to the Rural Enterprise Guidelines. Mr. Matthew Knepper stated that he would contact the APB's solicitor to explore what indicators might be acceptable to use to determine if a landowner is qualified farmer, in the event that the APB would like to use that factor when making a decision. It was clear that the APB was focusing on the mission statement as well as language in the Rural Enterprise Guidelines and in the ACE, all indicating that side businesses should be supplemental to farm income, be part-time or seasonal and not adversely affect the farm.

IX. Adjourn

The meeting adjourned at 10:35 a.m.

The next schedule meeting of the Agricultural Preserve Board:

Thursday, August 25, 2016, at 8:00 a.m.
Lancaster County Government Center
150 North Queen Street, Room 104
Lancaster, Pennsylvania 17603