

FPAB OPAV Informational Meeting: Mass & NY State Presentations
Wednesday, June 9, 2021

DRAFT Meeting Minutes (taken by Cam Weimar)

FPAB Members Present: Robin Chesmer (Chair), Jiff Martin (Vice Chair), Ellie Angerame, Robert Chang, Will O'Meara, John Hall, Jason White, Ben Freund, Joann Nichols

FPAB Members Absent: Terry Jones, Elisabeth Moore

CT Dept. of Agriculture: Jaime Smith, Cam Weimar

Guest Presenters: David Viale, Massachusetts Dept. of Agricultural Resources (MDAR)
David Howard, National Young Farmers Coalition, New York
Chris Krahling, Agriculture Stewardship Association, New York

Others Present:
Jim Oldham, Equity Trust
Benneth Phelps, Dirt Capital Partners
Kip Kolesinksas, Working Lands Alliance
Chelsea Gazillo, Working Lands Alliance
Thomas Morgart, USDA-NRCS

Meeting began 3:19pm- Jiff called to order.

Robin acknowledged Will O'Meara, who brought up the agenda.

Will provided an overview of farmland protection in Connecticut, farmland access issues, and an overview of option to purchase at agricultural value ("OPAV"), with slides provided by American Farmland Trust.

David Viale presented on the Massachusetts Dept. of Agricultural Resources ("MDAR") farmland preservation program history, and the inception of the OPAV in the late 1980s.

OPAV incorporated into the APR document (conveyance deed), had statutory authorization and MDAR created regulations. David described the process and timeframe of when an OPAV is reviewed by MDAR, and the process of whether MDAR will exercise and/or assign the right to acquire the preserved farmland in Fee.

Over 33 years of the OPAV in Mass, MDAR exercised the right 12 times, and got to a successful assignment 4 times. Farmers have expressed concerns about the consequences of the OPAV. Not pleased with having to pay for an appraisal to obtain the current agricultural value. MDAR does not have a mechanism to retroactively acquire an OPAV for pre-existing preserved farmland. [Vermont Land Trust & VHCB do]

The OPAV review timeframe is challenging for MDAR staff. OPAV has become a high priority for MDAR, and need a dedicated staff person to focus on OPAV.

David Howard of National Young Farmers Coalition presented.

Many farmland-focused land trusts are taking on farmland accessibility, and have their own OPAV-type programs, such as Peconic Land Trust, Agriculture Stewardship Association, and land trusts in upper Hudson Valley. New York state statute was modified in 2017 (A1031B) to enable a “pre-emptive purchase right” (“PPR” similar to OPAV) for land trusts that receive New York state funding for agricultural conservation easements. Coalition involved New York Farm Bureau and American Farmland Trust, but not other groups also focusing on farmland accessibility. Land trust shouldered the work in getting the word out and outreach to farmers about the new option.

Chris Krahling of Agriculture Stewardship Association, New York, presented.

The first PPR was acquired in 2009 by the Agricultural Stewardship Association. None have been exercised yet. The PPR is integrated directly into the agricultural conservation easement. PPR is now an eligible expense for NY State to contribute towards. PPR, like OPAV, is determined by an appraisal. PPR is an option, not an obligation, can be waived, and can be assignable. PPR does not have an affirmative covenant to require active farming production.

Question & Answer Session

Jiff- does the USDA-NRCS ALE program provide funding for the OPAV component, which is within the APR deed?

David Viale- yes, the ALE program does pay for the OPAV, that is within the Massachusetts

Chris Krahling- ASA does not do many projects with ALE funding.

Cam- to David Viale - did Mass have to create/pass specific language to enable ALE funding to contribute towards OPAV? David V. stated no.

Cam- to Chris. Do NY state easements have a square footage limitation, in addition to PPR? ASA uses the NY State deed template (does not have much leeway), and it does not have a square footage limitation.

Cam- to David Howard – are there other land trusts, besides ASA and Peconic Land Trust that have incorporated OPAV and/or PPR into their agricultural conservation easements?

David H. Yes- Scenic Hudson, Saratoga PLAN, Orange County Land Trust, Columbia Land Conservancy, Mohawk Hudson Land Conservancy.

RELATED WEBSITE: <https://www.youngfarmers.org/resource/farmland-for-farmers/>

Jim Oldham offered that there is a list of NY PPR farm projects he worked on where you can see all the land trusts that hold them: <http://equitytrust.org/hv-farms/>

David Viale- Mass does “private APRs” - AFT and Essex County Greenbelt have recently done them.

Chelsea asked for any specific regulatory documents related to how PPR was enabled in New York State. David Howard provided this website:

<https://www.nysenate.gov/legislation/bills/2017/a10301>

Kip asked for references for specific appraisers (in Mass) who have experience appraising the OPAV portion of agricultural conservation easements. David Viale said he would provide a (short) list of such appraisers. Benneth said she could provide a list of appraisers as well.

Tom Morgart stated that the USDA NRCS Connecticut office is supportive of working with entities (sic.) – state FPP program and land trusts in funding an OPAV component in Connecticut.

Robin asked what the average time of the easement w/ an OPAV takes from time of application to completion.

Chris Krahling- an average of 18-24 months with NY state funding, can be much quicker with a donated easement.

David Viale – almost all MDAR APR projects go through ALE program. Goal is 18 months, but unexpected challenges can make it 36 months.

Chelsea asked David Howard how Connecticut to learn from the New York coalition's experience with the PPR legislative action (25AAA), with incorporating more equity, accessibility, and diversity components.

David Viale mentioned that there is pending legislation in Massachusetts for a stake-holder led, statewide Farmland Action Plan.

David Howard also shared this link regarding related legislation from State of Vermont:
<https://legislature.vermont.gov/bill/status/2022/H.273>

Jaime Smith asked Chris K. and David Viale how much staff they have, and how many current easement projects they have.

From Chris K.: ASA has 26 current, active easement projects. Reliant on NY State grant funding, to fund the dev. rights purchases.

From David Viale: MDAR APR gets 20-30 applications/year, with 10-15 funded per year. MDAR does not give out grants, and has its own staff conduct the due diligence, and hold and steward the APR easements.

Will asked to adjourn the meeting. Jiff made motion to adjourn, Robin seconded, at 4:56pm.