

# **Commission to Study the Protection of Farms and Farmland**

## **Meeting Summary – September 3, 2008**

**Members present:** Sen. Nutting, Rep. Pieh, Sen. Sherman, Rep. Marean, Rep. Fitts, Cris Coffin, Tony Neves, Galen Larrabee, Russ Libby

### **1. Welcome and introductions**

Sen. Nutting and Rep. Pieh, chairs of the Commission, convened the meeting and called it to order. Commission members introduced themselves. Commission staff reviewed the purpose, duties and other provisions of Public Law 2007, chapter 649, section 11 that created the Commission.

The Commission was reminded that the study is part of a larger law enacted that moved the provisions pertaining to nuisance suit protection commonly known as the “Right-to-Farm” law from Title 17 to a new chapter in Title 7, c. 6. The provisions of the original bill relating to designating agriculture protection areas were removed from the bill and replaced with this study Commission.

Dates were chosen for future meetings: September 25, October 10, October 29.

### **2. Agricultural districts, incentives for farms and farmland**

Bob Wagner, Senior Director, Farmland Protection Programs, of the American Farmland Trust, presented an overview of agricultural districts in the U.S. Currently, there are 19 priority agricultural area programs in 16 states. The first program was the California Williamson Act of 1961, followed by a New York program in 1971. Agricultural districts are special areas designated for protection and to encourage commercial agriculture, they are voluntary and they provide a package of benefits and restrictions.

The presentation noted that agricultural district specifics vary across programs and that they are generally tailored to the local environment. They do have common elements, including minimum thresholds (e.g. acreage, soil quality); short-term restrictions; policy protections (e.g. from eminent domain, right-to-farm, infrastructure restrictions); economic benefits (e.g. tax relief).

Bob Wagner noted that over the years, agricultural districts have been created to address an issue of the time. When new issues arise, a new program is created rather than existed programs amended. The Commission noted that it would be important to craft a bill that provides for add-ons.

Sen. Sherman asked where the opposition for agricultural districts comes from. Bob Wagner noted that a big issue is the loss of property tax revenue for the municipalities. Opposition is generally fiscal rather than conceptual or a dislike of

farming. It may be necessary to determine if farmers could apply directly to the state if the municipalities are not interested or the community does not have enough acreage.

Russ Libby asked if acreage was contiguous or separate parcels under common ownership. Bob Wagner said the idea is often more of a neighborhood idea rather than exactly contiguous, e.g. may be within a mile of a farm parcel. There is no “best size” for minimum acreage. This should be flexible enough to incorporate the variations of Maine with large blocs in Aroostook and small ones in Gorham.

In addressing the needs of the state of Maine, it would be important to account for leased land, as farmland is often farmed in Maine by a lessee, and to determine whether forest land should be included in an agricultural district. In addition, although there are few farms in the Unorganized Territory, it may be necessary to determine how those farms might fit into the picture.

The Commission discussed the place of eminent domain within agricultural districts. Rep. Fitts pointed out that often the easiest place to site utilities facilities is where there are no houses and that this is a potential clash with any prohibition on eminent domain. Bob Wagner stated that there is a middle ground between outright prohibition and the current situation; in PA, a review process exists for any action that includes eminent domain with a board that has agricultural use as its primary focus and this provides a seat at the table.

Russ Libby suggested that agricultural districts may be able to encourage the farmers involved to also join together for marketing purposes.

### **3. Fields and Forests Forever Campaign – a regional approach to ensure that farmland is available for future generations**

Stephanie Gilbert, Dept of Agriculture, Food and Rural Resources presented an overview of the Fields and Forests Forever Campaign (FFFC), a joint effort by the Friends of Unity Wetlands, Maine Trust and DAFRR, to preserve farmlands comprised of prime and important agricultural soils and key ecological features in a seven-town area that includes parts of Albion, Benton, Burnham, Clinton, Freedom, Unity and Unity Township. FFFC worked with the Maine Natural Areas Program to establish deer wintering and rare, threatened and endangered species areas mapped by GIS. Farming and soil layers were added to show the coincidence of these factors.

The major focus of this project is to restrict non-farm development on significant farmlands in the area. Landowners with eligible farmland can receive payment in exchange for an agricultural conservation easement that will permanently protect the use of the property for farming and forestry, while restricting future development or other nonagricultural uses. The conservation plan helps get Land for Maine’s Future (LMF) and federal money to the region. The project transcends municipal boundaries and could be used as a model for agricultural districts.

The Commission had a number of questions related to LMF and conservation easements. It was determined that there would be presentations on these two issues at the next meeting. In addition to LMF, Rep. Pieh asked for more detail on Farms for the Future Program in a future meeting.

#### **4. Comprehensive Plans – the Growth Management Act and review criteria under the State Planning Office’s Chapter 208 Rule**

Sue Inches, Deputy Director of the State Planning Office, presented an overview of the comprehensive planning process and how agricultural components can be incorporated. The Growth Management Act was enacted in 1988. Currently more than 260 towns have comprehensive plans including most towns experiencing growth. There may be no compelling need for a comprehensive plan in the absence of growth. The development of comprehensive plans by towns is voluntary, as is submission of the plans to the state. The chapter 208 rule, which was overhauled in 2006-07, defines the components of comprehensive plans.

The State Planning Office focuses its review of future land use plans on encouraging development in growth areas and preservation in other areas. Included in the state goals contained in the statute goals is the goal “To safeguard the State’s agricultural and forest resources from development which threatens those resources.” The definitions contained in the chapter 208 rule include definitions of “critical rural area” and “rural area”. Sue Inches agreed with the observation of a number of Commission members that implementation of adopted comprehensive plans is up to the towns; the State Planning Office does not follow up or enforce the plans. Rep. Fitts noted that one of his communities was supposed to develop a primer for people buying houses next to a farm and that this wasn’t done.

Cris Coffin asked about state resources to help towns identify zoning needs. The comprehensive planning manual is available on the SPO website and Stephanie Gilbert, DAFRR, was involved in developing the section of the manual that relates to agriculture. The consensus was that this front-loading of information works and that the majority of comprehensive plans do address agriculture.

Paul Schumacher, Executive Director of the Southern Maine Regional Planning Commission, gave a regional perspective. SMRPC is a regional council of government that works with municipalities to develop their comprehensive plans and they have worked on 20 comprehensive plans in the last 5-6 years. They help towns to inventory and prioritize farmland to try and preserve it. In southern Maine, conservation commissions are active, and have been more successful, in preserving open space rather than farmland.

Paul Schumacher noted that there has been more interest in local agriculture recently because of increased energy costs. Farmers are encouraged to enroll in farm and open space programs. One issue can be over-zoning which may prevent farmers from setting up a farm stand (e.g. traffic problems). Although it appears that most

communities are aware that 20 acres of farmland generates far fewer costs than 20 acres of houses, the clarity of that message could be more apparent.

## **5. Maine's Current Use Property Tax Laws – Farm, Open Space and Tree Growth**

Julie Jones, OFPR and Dave Ledew, Maine Revenue Services, presented an overview of the current property tax laws as they relate to farmland, open space and tree growth. The Maine Constitution states the general rule that taxes must be assessed equally at just value and this has been defined by the Law Court as fair market value (FMV). Assessment uses a comparison of sales of similar property. Julie Jones described assessment as both a science (complicated formulas and models; professional training) and an art (all properties are unique). Some municipalities employ their own professional assessors; some combine to hire one; some contract with a private firm; and some use a board of selectmen or assessors. For buildings, there is no difference between assessed and use value. However, the Legislature has authorized exceptions for certain types of land and this includes farms, agricultural lands, tree growth, open space and commercial fishing (i.e. working waterfront). Farmland and Open Space are two separate programs in one chapter in statute. To be enrolled in farmland, there are requirements of 5 contiguous acres and more than \$2000 a year of demonstrated income in 1 of 2 or 3 of 5 years. A person eligible to enroll land as farmland may include acres of forest land. The forest land value is the same as land enrolled under the tree growth tax law but is classified under the farmland program. Tree growth requires reimbursement to municipalities for lost revenue but there is no reimbursement for farmland.

Dave Ledew presented data showing participation in current use programs over time. He explained that current use programs have been enacted to deal with trends at the time; to counter rising market values on certain properties that forced their conversion from current use to development. The tree growth law was enacted to ensure that taxes would not rise beyond what the parcel could support so the land was valued as a wood lot rather than the FMV. The farmland program is modeled on the same principle.

Incentives to enroll the land in farmland differ around the state according to developmental pressure. In Aroostook County, farmland may be worth less than other land because of less developmental pressure and therefore there is no incentive to enroll the land in the program. Farmers in areas without developmental pressures may find themselves selling off house lots to keep the farm going. The longer a landowner is in a program, the lower the penalty for change of use. In addition, it is not unusual to hear that land owners do not get into programs because of the penalties of withdrawing. The tree growth program has the highest penalty for withdrawal.

Tony Neves stated that he believed that requirements for entering the farmland program have been watered down over the years and that some parcels of land are enrolled in the program by people who are not farmers (they may have a large garden). Galen Larrabee noted that while he agreed, in the last few years some small vegetable farms have done very well.

## **6. The Voluntary Municipal Farm Support Program**

Julie Jones, OFPR and Stephanie Gilbert, DAFRR, presented a summary of the provisions of the Voluntary Municipal Farm Support Program and the status of rulemaking for the program. The program, administered by the Dept of Agriculture, allows a municipality to purchase an easement that would restrict development and compensate the land owner up to 100% of annual property taxes. The program is voluntary and municipalities could have done this on their own prior to passage of the law in 2007 but the new law creates a standardized process. The department is in the process of developing a major substantive rule to govern the program. As a part of this process, municipalities were surveyed. Of the 98 towns that have replied so far, 64 said they were concerned about protecting farmland. The rule will be submitted to the Legislature in early January.

## **7. Presentations and requests for information for the next meeting**

- LMF – statutory provisions for preserving farmland
- Conservation easements and the role of land trusts
- Economic programs – the ACES review study is looking at these
- Mapping information – soil, habitat etc; what is available?
- Agricultural development districts – a menu to choose from; includes criteria for being in a district and benefits to being in one; include leased land
- Analysis of effectiveness of saving farmland; how programs are ranked