



Legal Issues and Farm Viability

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Tennessee Farmland Legacy Conference





Legal Issues and Farm Viability

- Legal issues
 - State and local focus.
- Farm viability
 - Long term success of individual farms.
 - Long term success of the farm economy.



Farm Viability

- Importance of estate and business succession planning.
 - Protecting *business* viability.
 - Strong foundation for Tennessee Farmland Legacy.
 - Ohio's approach: have we put the cart before the horse?



Defining “Agriculture”

- The changing agricultural economy
 - Confined feeding facilities
 - Agri-tainment
 - Sustainable agriculture
 - Local foods
 - Energy production
 - Green industry
- Are these activities “agriculture”?



Defining “Agriculture”

- Legal relevance: laws that--
 - treat agriculture uniquely
 - limit authority over agriculture
 - protect agriculture
- Examples:
 - zoning, right-to-farm, differential tax assessment, environmental, farmland protection




Defining “Agriculture”

- Potential impacts on farm viability:
 - Prohibition of the activity
 - Increased regulation of the activity
 - Increased financial burdens
 - Decreased protections or benefits



Defining “Agriculture”

- Challenges and solutions:
 - Align policies with clear definitions of the “agriculture” envisioned by the policies.
 - May require multiple definitions to address different kinds of “agriculture.”



Zoning and “Agriculture”

- Maple Lane Farms lawsuit - Tennessee
 - Is an agri-tourism activity “agriculture”?
- Ohio court cases:
 - Is a winery that uses grape concentrate in addition to on-site grapes “agriculture”?
 - Is a confined feeding operation “agriculture” or a commercial “agri-business”?
 - Is a nursery still “agriculture” if it also contains a retail garden center?



Land Use Regulation

- Conflicts between agricultural and non-agricultural land uses.
 - Particularly a residential development issue.
- Impacts on farm viability:
 - Neighbor complaints
 - Burdens on equipment movement/access
 - Noxious weed management
 - Trespass damages
 - Drainage impacts



Land Use Regulation

- Causes
 - Definition of agriculture
 - Mixed use zoning districts ...anything goes in AG
 - Lack of exclusivity in agricultural districts
 - No planning or no relationship between planning and zoning
 - No zoning enforcement or too many variances/rezonings



Land Use Regulation

- Challenges and solutions:
 - In addition to the challenge of defining agriculture, must also identify “incompatible land uses” and zone accordingly.
 - Adopting zoning to *protect* agriculture from non-compatible uses?
 - Addressing private property rights/takings.
 - Voluntary protective zoning?
 - Disincentives/incentives – TDR, easements, etc.
 - Planning and zoning *in tandem*.



Land Use Regulation

- Challenges and solutions:
 - Enforcement of trespass laws.
 - Civil nuisance protection.
 - Drainage mitigation.



Environmental Issues

- Water quality impacts caused by agricultural activities?
 - Fertilizers
 - Pesticides
 - Manure



Environmental Issues

- Impacts on farm viability
 - Regulation of activities
 - Changes in practices
 - Additional management planning requirements



Environmental Issues

- Challenges and solutions?
- Ohio Agricultural Pollution Abatement revisions
 - Current proposed regulations
 - Watershed approach to water quality impacts from manure and other agricultural waste
 - Allows state to declare a “watershed in distress”
 - Landowners in the watershed are subject to additional restrictions on manure application
 - Provides cost sharing for management plans and activities



Farm Animals

- Increasing attention to farm animal welfare, food production practices.
- Impacts on farm viability:
 - Additional regulatory compliance
 - Risk of undercover investigations
 - Risk of negative publicity—anti-agriculture sentiment



Farm Animals

- Ohio Livestock Care Standards Board
 - Constitutional amendment passed by Ohio voters.
 - Intent: pre-empt animal welfare advocates' plan to enact legislation prohibiting certain management practices.
 - Board is currently development farm animal welfare standards.
 - Battle continues...



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OHIO FARMLAND PROTECTION PROGRAMS AND POLICIES



Farmland Protection in Ohio

- Office of Farmland Protection established in Dept. of Agriculture.
- Priority: agricultural easements
 - Agricultural Easement Purchase Program
 - State issued bond funding
 - One time tobacco funding
 - Agricultural Easement Donation Program

Program	No. Farms	Acres
Purchase Program	209	39,650.28
Donation Program	52	6,310.19
Tobacco Program	14	2,940.36
Totals	275	48,900.83



Agricultural Security Areas

- Voluntary designation of large acreage areas as “agriculture”
- Requires approval of local governments
- All commit to “non-development” of the area
- Acreage in ASAs to date: 26,952 (36 farms)



Transfer of Development Rights

- Despite several attempts, TDR legislation has never passed in Ohio.
- Opposed by home builders associations.
- Historically, not fully supported by Farm Bureau.



New Directions

- Agricultural economic development
- Local foods
- Urban agriculture



New Directions

- New Agricultural Easement Purchase Program under development.
- Will target smaller farms in more urban areas involved in small scale food production.



New Directions

- Cleveland Urban Agriculture Incubator Pilot Project
- Pools resources from public partners to fund site preparation and improvements to transform city-owned, vacant land into an urban agriculture business incubator.
- \$1.6 million project



New Directions

- Local Roots Food Co-op Project
 - \$29,000 grant to local food co-op for renovations and commercial kitchen
 - Goal is to create jobs, encourage entrepreneurship and teach new job skills.



New Directions

- Agricultural Economic Development Planning Grants
 - Center for Farmland Policy Innovation at OSU
 - Provides planning grants for community agricultural economic development



New Directions

- Farm Link Program
 - Non-profit organization in NE Ohio
 - Links existing farmers to new, beginning farmers
 - Provides training for new farmers



New Directions

- Ohio Farmland Preservation Summit
 - Major goal of 11th annual program next week is to assess accomplishments, identify needs and set agenda of new policy priorities.