

Installment 11 of 12: *A History of Farmland Protection in West Virginia*

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This is the eleventh article in a year-long series that focuses on farmland protection in Berkeley County. The topic this month concerns the history of farmland protection. I'll begin with a top-down tour to place the farmland protection program in Berkeley County (as well as neighboring Jefferson and Morgan Counties) within the greater context of farmland protection across the United States.

At the moment, every state in the union except North Dakota has some sort of legislation passed that specifically permits the use of conservation easements to protect farmland. In some states, the protection is only at the state level while many states, like West Virginia, use a dual system with a state-level farmland protection organization (the West Virginia Agricultural Land Protection Authority) as well as county-level farmland protection boards. In all states, before any effort to protect farmland could proceed, the first issue was to enable the use of conservation easements regardless of the purpose. This effort was necessary because in common law, applying a permanent land use restriction was not an option. Thus, all fifty states have at some point enacted laws to enable the placement of permanent, protective easements on real property. For West Virginia, the precursor was passage of West Virginia Conservation and Preservation Easements Act, which passed on 9 March 1995. The bill was sponsored by Senators Yoder, Ross, Dittmer, and Grubb and was signed by Governor Caperton.

With passage of that Act, development of a state farmland protection law could proceed. I'm proud to say that this effort was spearheaded by local citizens who formed a group in the summer of 1999 called the Eastern Panhandle Peoples Empowerment Coalition. Their effort ultimately led to the passage of Senate Bill 209 in March 2000. Senator John Unger was the primary sponsor of the bill, which was named the Voluntary Farmland Protection Act. The Act was originally in Chapter 8 section 24-72 through 24-84 of the West Virginia Code. Subsequently, that section was repealed and the Act was placed into the new Chapter 8A, section 12. This occurred in 2004 when the legislature separated municipal (Chapter 8) from County (Chapter 8A) planning and land use functions. In 2002 the Legislature modified the Voluntary Farmland Protection Act to permit counties to levy a real estate transfer tax to fund their local farmland protection programs. Together, these bills set the stage in West Virginia for counties to begin their individual farmland protection programs. In terms of the greater national trend, West Virginia isn't the first, nor certainly the last, state to enable this type of legislation. The states in the vanguard were Maryland and Massachusetts, both enabling legislation to protect farmland back in 1977, followed by Connecticut in 1978. New Mexico appears to be the late-comer in this regard, creating their statute in 2010. Around the time period that West Virginia created the Voluntary Farmland Protection Act (1999-2002), seven other states also created their farmland protection legislation.

Within West Virginia, Berkeley County was the first to adopt a farmland protection program, enacting an ordinance on 15 June 2000 and beating out Morgan County by a single day – their ordinance was passed on 16 June 2000. The transfer tax to fund the Berkeley County program was enacted by an Act of the County Commission on 19 June 2003, and in that regard Berkeley lagged behind Jefferson and Morgan Counties, which passed their transfer tax ordinances a year earlier.

In the years since 2000, many counties in West Virginia have adopted farmland protection boards. These are (in alphabetical order) Berkeley, Fayette, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jefferson, Lincoln, Mineral, Monongahela, Monroe, Morgan, Pendleton, Pocahontas, Preston, Putnam, Roane, Summers and Upshur Counties. Of these, only Harrison (which was just created), Monongahela, and Putnam have yet to establish a transfer tax to fund their programs. Has the program been successful? I think the numbers speak

for themselves. Throughout West Virginia, over 24,000 acres have been protected, and the overwhelming majority of this land is specifically under a farmland protection program. Locally, in Berkeley County we've protected more than 4,700 acres on 46 properties. Jefferson County has protected over 3,700 acres on 38 properties, and Morgan has nearly 900 acres over 12 properties. As a common bumper sticker declares, "Farmland Lost is Lost Forever". Farmland Protection efforts in West Virginia are working to ensure that important farmland will never be lost.

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