

# Martinsburg Journal Year-Long Series on Farmland Protection

The twelve articles below were written by F. Mark Schiavone (Susan Whalton, a board member authored the article titled *The View from the Board*) and published in the Martinsburg Journal between October 2015 and September 2016. Together they outline the farmland protection program in Berkeley County and serve as a good introductory guide to the process of placing a property into a conservation easement.

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## Introduction into Farmland Protection in Berkeley County

When you drive around the Eastern Panhandle, no doubt you have seen signs on some properties stating that the property is protected forever. Most commonly the sign is for one of the county farmland protection programs although other non-profit groups such as the Land Trust of the Eastern Panhandle, or the Potomac Conservancy also manage conserved land in the panhandle. So what does protected forever mean? From what is the land being protected? Can any type of land be part of one of these programs?

I run the Farmland Protection Program for Berkeley County and in this and subsequent articles we’ll explore farmland protection efforts in Berkeley County, the Eastern Panhandle, and other counties across West Virginia.

When you see a protected forever sign on a farm it means that the property owner and the Berkeley County Farmland Protection Board (there are also farmland protection boards in Jefferson and Morgan Counties as well as 15 other West Virginia counties) have entered into a legal agreement known as a conservation easement. A conservation easement is a legal document, ultimately filed in the court house as a new deed to the protected property, which defines permitted and restricted land uses. These conditions that create the protected status are perpetual, and although forever really is a long time, the practical view is that the protected status remains as long as there is a legal system to enforce the terms of the conservation easement. Protected land means it may not be subdivided or have certain land use activities. In general, activities that relate to agriculture and the quiet use and enjoyment of the property are permitted. Examples of restricted uses would be commercial activities (beyond agricultural types of business), additional residences, billboards

and large signs, and industrial operations. As a farmland protection board our focus is to enter into a conservation easement with owners of properties that have high value to either agriculture or to conservation. Land on very poor soil, former industrial sites or brownfields, and commercial properties would not be appropriate land use types for a conservation easement.

A conservation easement is usually purchased by the Farmland Protection Board, and occasionally with matching funds from the USDA Natural Resource Conservation Service (NRCS). Some property owners choose to donate the full value of the conservation easement to our board. In either case once the conservation easement is in place the property owner still fully owns their land. They are free to sell or bequeath their land at any time. As a party with interest in the conservation easement, our role as a farmland protection board is to ensure that the terms of the conservation easement are honored by the current and all future property owners. We do this by regularly scheduled property visits and the property owner is always encouraged to walk their land with us. These monitoring visits are documented and the reports are filed along with the records for the protected property. They become part of the permanent record of the easement property and serve to ensure that the terms of the conservation easement are being honored. In the next article, I'll discuss in more detail why some individuals participate in a farmland protection program.

## Why Participate in a Farmland Protection Program?

Last month I gave an overview of the Berkeley County Farmland Protection Program; including what a conservation easement is and what having an easement means to the landowner. This month I'd like to explain some of the reasons individuals place their land into a conservation easement. In Berkeley County we presently have 46 properties under easement representing 44 different property owners. Some of these easements were purchased by the Berkeley County Farmland Protection Board, some were also purchased with matching funds from the USDA and the West Virginia Agricultural Land Protection Authority, and a surprising number of easements were fully donated. We received a generous donation of a 206 acre farm in June of this year. Despite these differences in how or whether a property owner is compensated for their conservation easement, when I talk with our property owners their reasons really boil down to three common reasons.

The first and perhaps the most frequently heard reason is to fulfill a sense of connection to generations past. Many of our property owners live on land purchased by their parents, grandparents, or generations even further back. They recognize the hard work and dedication their ancestors made to take land and make it into a working farm – a farm that usually kept food on the table, paid the bills, and even sent children off to college. The current property owner feels that by putting their farm into a farmland protection program they are ensuring that the agricultural legacy of their land will continue into the future.

Related to the first reason is a group of property owners who may not be connected to their land through many generations of family, yet still feel deeply connected to their property. Some of these owners have only recently purchased their farms but already sense that there is something important about their property that needs to be preserved into the future. They may be on a quiet stretch of Back Creek or have a farm with a 200 year-old house but something about their property is so special that they feel it needs to be protected forever. Personally, I'm in this second group of people. My property is in Jefferson County and my home, built in 1835, is centered on my land. Back then the land was likely planted in wheat and corn. In more recent times it was a working dairy farm. It is

open pasture and woodland now. My hope for my property is that it never becomes a townhome subdivision with my grand but small stone house serving as the club house for the community. Putting my property in the Jefferson County Farmland Protection program (the easement is also held by the Land Trust of the Eastern Panhandle) has guaranteed that this will never happen. Many of our property owners under easement in Berkeley County feel the same way too.

The last common reason folks go into a farmland protection program is financial. If the property scores highly on our local or on the USDA ranking, and if sufficient funds to purchase the conservation easement are available then the easement is purchased. This can amount to a significant amount of money for the property owner who still owns the land once the conservation easement has been purchased. In the case of full or partial donations of a conservation easement, there may be significant tax or estate planning advantages to the donor.

So these are the most common reasons people enter into our Farmland Protection program. Next month we will explore what it is like to live under a conservation easement.

## What life looks like after the conservation easement takes effect?

In my article back in November, I talked about why people choose to place their farms under a conservation easement with the Berkeley County Farmland Protection Board. This month I'll talk about what life is like after the easement goes into effect. The short answer is nothing much changes. The property owner still owns their land but the development rights have been sold or donated to the Farmland Protection Board. Activities that focus on the so-called use and quiet enjoyment of the property, as well as all farming operations, continue as they had before the easement went into place. Future activities such as subdivision of the land are prohibited, unless the property owner established exempt areas before the easement went into effect. The easement typically also prohibits commercial activities although many home-based businesses are permitted. Many of our easement properties have residential and/or farm complexes which are defined within the conservation easement document as well as on a survey of the property. Within these areas one may continue to build structures or add paved surfaces, provided that the structures are compatible with either residential or agricultural activities. Typically, there is a limit to the total amount of impervious surface area that is created on the easement property. Most of our deeds limit this to 2% of the total acreage. Since an acre is 43,560 square feet, that amounts to 871 square feet of structure or paving for each acre under easement. Despite these new restrictions, most property owners simply continue farming and/or living on their property much as they did before.

One big change after an easement goes into effect is that annually, one or more members of the Berkeley County Farmland Protection Board visit the easement property. These are called monitoring visits and their purpose is to ensure that the terms and conditions of the conservation easement are being honored. Our board members do not visit an easement property without advance notice to the property owner and we strive to be able to meet with the property owner during these visits. They are a great time to catch up with the property owners and to answer any questions that may have come up, and to walk the property together. We photograph property lines, especially where an easement property adjoins a highly developed, neighboring property. A report is written and this is presented to the full board for approval at one of their regularly scheduled board meetings. A copy of the approved report is mailed to the landowner for their records. Besides our annual site visits, another time the board becomes involved is when an easement property changes ownership. This is either when someone inherits a property under easement or when someone purchases one of the properties. When ownership changes hands we like to meet with the new owners. We check to make sure they have a copy of the deed of conservation easement as well as a copy of the original baseline report. The baseline is a document that establishes what the property looked like at the time the

easement went into effect. Both our board and the property owners use this document as a reference when changes to the property are being considered, or whenever a violation of any of the terms of the conservation easement have occurred.

So this is what life is like for a property owner once their land is under a conservation easement with the Berkeley County Farmland Protection Board. In next month's article I'll discuss the benefits of conservation easements on a larger scale. Many of these benefits go beyond the individual property owners and include everyone in Berkeley County.

## Who benefits from farmland protection?

In the previous articles on the Berkeley County Farmland Protection Program I have focused on the basics of a conservation easement, why individuals would consider participating in such a program, and what life looks like after a conservation easement is in place. This month I'll address some of the benefits—both personal and public—when a property goes into a conservation easement. For the land owner the benefits are easy to identify. In many cases the Farmland Protection Board purchases the conservation easement outright, so there is a cash payment as a benefit. If all or part of the conservation easement was a donation there may be tax advantages as well. Also, for many of our farmers who participate in this program there is the satisfaction that they know their farm will be protected forever.

Can a conservation easement on a farm extend its benefits to the greater community? The short answer is yes it can. Properties under a conservation easement ensure that agriculture will remain a viable part of the local economy. Since the development rights have been extinguished, easement properties go on the real estate market generally at a reduced price. This means farmers, or people wishing to go into farming, have an opportunity to purchase farmland at less than full market value and that means that farming continues to be a viable activity. Growing agricultural products locally means the continuation of a vibrant economy and keeps farmer's markets, granaries, livestock auctions, agriculture equipment vendors, and restaurants that focus on farm to table dining in the mix. Diversified economies are healthier and less prone to economic downturns than economies that are based on fewer economic sectors, so having a local economy that is in part based on agriculture keeps us diverse. Nationally, a growing segment of the economy is made up of businesses that sell products derived from local agriculture (think restaurants, wineries, distilleries, Christmas tree farms, and custom butcher shops to name a few).

Since conservation easements prevent subdivision of the land, another benefit is the maintenance of open space. How open space benefits a community will differ depending upon with whom you speak to, but I think most people would agree that the beautiful views of North and Sleepy Creek Mountains and the distant Blue Ridge are some of the things that make life special in the Shenandoah Valley. Properties that have been farms for 200 years will never be converted into a development when under a conservation easement; so local history is preserved as well. Beyond the aesthetic quality of open space, acreage not covered in hard or impervious materials helps recharge the ground water table and this is especially true for our farms and wooded lands that lay over limestone. Many communities derive their drinking water from ground water (think of all the private wells in the county in addition to water the public service district pulls from springs, which are directly coupled to ground water). Open spaces also tend to buffer storm water runoff and this helps prevent flash flooding in local streams and creeks. These protected properties also offer habitat for wildlife, and when several protected properties are adjacent to one another it's possible to create wildlife corridors where native plants and animals may thrive.

Lastly, farms and open space tend to demand very little of public infrastructure. The demand for roads, schools, police protection, and emergency medical services will always be much lower for open space and farms than it is for residential or commercial development. That lower demand helps keep taxes low and allows policy makers to focus on supplying public infrastructure where it is needed most.

So these are just a few personal and social benefits protecting farmlands and open space bring to the county. In February, I'll talk about the various funding sources used to purchase conservation easements.

## Funding Sources for the Purchase of Conservation Easements

Over the past four months I have outlined some of the basics about conservation easements and how they are used to help protect farmland and other important properties in Berkeley County. I have discussed why a property owner might want to participate in such a program and what life looks like for the property owner after an easement goes into effect. Last month I outlined the benefits of conservation easements, both to the property owner and to the community at large. This month I will discuss the various funding streams that make purchasing an easement possible.

A conservation easement may be purchased by the Berkeley County Farmland Protection Board or it may be donated by the property owner. If an easement is purchased, the funding may come from one or more sources and each of these has a different focus. At present there are four or five possible sources of funds. The backbone of the farmland protection program in Berkeley County is the local transfer tax. This tax is a \$2.20/\$1,000 assessed value fee attached to the transfer of all real property in the county. It was enabled by the County Commission in 2004 and over the years it has been the source of about 60% of the funds used to purchase conservation easements. Whenever the possibility of external matching funds exists, the Berkeley County Farmland Protection Board tries to use those monies, frequently getting a 50-50 match, which basically doubles our purchasing power. The external funds to date have come from one of two sources: the federal Farm Bill has traditionally set monies aside for the purchase of conservation easements, and the State of West Virginia implements a state-wide agricultural conservation easement program through the WV Agricultural Land Protection Authority (also known as the State Authority).

The Federal funds come through the Natural Resource Conservation Service (NRCS), which is a part of the USDA. Over the past 12 years those monies have been implemented through a program which is now called the Agricultural Land Easement program, or ALE. That program looks to fund easements on properties with soils of national and/or state-wide importance that are also in active production of a commodity crop. Roughly 65% of the farmland conservation easements in Berkeley County have been co-funded through ALE or its predecessor program. Funds occasionally come from the State Authority but usually not as a 50-50 match and those funds are often used to help fully fund an easement purchase. To date, less than 5% of the funds used to purchase local easements have come from the State Authority.

A new funding stream will start up soon in West Virginia, although it may only last a few years. The Regional Conservation Partnership Program (RCPP) is a USDA grant program, created by the most recent Farm Bill. The State Authority, in conjunction with eight WV counties of the Potomac River drainage basin, has been awarded two years of funding to purchase conservation easements. These funds may only be used within this eight county area and Berkeley, Jefferson, and Morgan Counties are within this group. Lastly, there is always the possibility that a private, non-profit organization will step in and help. In Jefferson County several easements have been funded with monies from the Civil War Trust. To date in Berkeley County we have not yet been able to partner with such an organization; but we do look for potential funding partners all the time. All of these funding sources imply that there are plenty of funds available for the purchase of conservation easements but that isn't the case. ALE funding in West Virginia has been cut over the years and our local funding stream drops when real estate transactions drop, as they did during the last recession. Since funding is tight and involves public money, the purchase of a conservation easement is a very competitive process. All applicant properties are rated and compete against each other. Only the top-rated properties are selected for funding. Each funding source rates properties differently due to different program goals. In the article next month I'll explain how these various rating schemes work.

## Rating applicant properties

If you've been following this series for the past 5 months you've learned about conservation easements and how they protect farmland and land with significant agricultural or ecological resources. I've discussed what life is like once a conservation easement goes into effect, and last month I addressed the various funding sources used by the Berkeley County Farmland Protection Board to acquire a conservation easement. The question I'll answer this month is "how are properties selected for a conservation easement?"

The process of selecting candidate properties is much the same regardless of whether the easement is being purchased or donated. Because each of the purchased easements involves public funds, the Farmland Protection Board follows a specific procedure to evaluate and rate applicant properties. Only highly scored properties are then chosen; either to purchase a conservation easement or receive a donation of the easement. I mentioned in last month's article that in any given year there may be multiple funding sources and each one seems to focus on a separate aspect of conservation, and you can see that in the scoring process. Locally, the Farmland Protection board uses a score sheet that is approved by the County Council. We award points for properties under development pressure, offers of large acreages, land that contains high quality soil, or that have demonstrated historic, scenic or ecological values. Locally we also award points for outright donations or reduced price offers of a conservation easement. All applications are scored locally and when funds are sufficient we purchase conservation easements on the top-rated properties using our transfer tax revenue. At the Federal level, the largest funding stream to date comes from what's now called the Agricultural Land Easement (ALE) program. This program is a direct authorization from the Farm Bill and properties funded under ALE are awarded points based on the agricultural value of the land. Large farms, significant acreage of prime or statewide important soils, production of commodity crops, and the presence of highly erodible soils are all important considerations when a property is scored for ALE funding. The Agricultural Land Easement program has become increasingly competitive and, with reduced funding, fewer local farms are being selected locally.

A third funding stream is about to start up. Another authorization from the Farm Bill, the Regional Conservation Partnership Program (RCPP) that I discussed last month will set aside some \$2 million dollars for conservation easements over the eight West Virginia counties that are within the Potomac River watershed. This program focuses on the protection of waters that drain into the Chesapeake Bay, and thus the scoring criteria for RCPP are very different from ALE. For example, high scores will be granted for properties offering large acreages, significant amounts of qualifying soils, long lengths of stream exposure, large acreage on karst, or where caves, sinkholes, or springs are present.

At the moment, we are in a period where three different funding sources emphasize different features of a property. This should ensure that a broader diversity of land types are placed under easement. Certainly many of these have been and will continue to be working farms, but protecting ground water, good trout streams, and important ecological sites helps keep our local environment and economy diverse. So let's imagine that funding is available, you've applied to put your farm under a conservation easement, it rated at the top on the scoring sheet and the farmland protection board has formally offered to purchase a conservation easement on your land. What comes next? I'll outline the steps involved in the acquisition of a conservation easement next month.

## Your property has been selected – what's next?

For the past six months I've been talking about farmland protection in Berkeley County and each month I have tried to get deeper into the details concerning how our program works. This month I will set up a scenario to illustrate the steps the Berkeley County Farmland Protection takes once a property has been selected and the property owner is willing to sell or donate the conservation easement. This procedure isn't

necessarily followed by our counterparts in Jefferson and Morgan County, but the overall task of documenting, surveying, and ensuring clear title to the land is common to all farmland protection boards in West Virginia.

In this scenario I'm assuming that your property rated at the top of either our local scoring, or the scoring used by the USDA Natural Resources Conservation Service (NRCS) for one of their applicable programs. The Farmland Protection board has extended an offer to purchase the conservation easement, and the landowner has accepted the offer. What happens next?

We start by ordering a series of technical actions and reports, each conducted by a specialist in a particular field. In Berkeley County, the Farmland Protection Board pays for all of these services. If the land owner wishes to seek legal counsel or tax or financial planning advice, those costs are not covered by the board. We first review the existing documentation and the current deed. We then meet with the property owner to discuss any areas of the property to be designated as excluded from any conservation easement, as well as to discuss areas such as the residential and farmstead envelopes that the surveyor will note on the final plat. The Farmland Protection Board requests an appraisal of the property, using appraisers qualified in creating either restricted use or yellow book appraisals. Both of these determine two values for the property: the fair market and the restricted use value. Fair market is what your property would sell on the open market. It's the best and highest value of your land. The restricted use value is what your property would sell for if it already had a conservation easement in place. The difference between these two amounts is the conservation easement value and that's what the Farmland Protection Board will pay for. Once the appraisal is complete (and in the case of federal matching funds, the appraisal has been reviewed and approved by an independent appraiser) we encourage the property owner to consult with a tax or financial planning professional as there may be tax advantages or implications that may affect the final asking price. We order a survey of the property and a full title search. Both the surveyor and the legal team look for potential problems like existing easements or right-of-ways that may interfere with the conservation easement. If the USDA is involved, they will order and pay for an environmental assessment of the property (called a Phase I study). This is a site visit by a professional who assesses any environmental risks.

We then create a baseline documentation report. This technical document records what the property looks like about the time that we create the deed of conservation easement. The baseline report involves a thorough visit and many points on the property are documented photographically, and buildings and impervious surfaces are measured. These points, called waystations, are also recorded using GPS (global positioning system). About the same time that this report is being created, the final touches are being made to the deed of conservation easement. The baseline report and the deed are then reviewed by the property owner and by the Farmland Protection Board. Once final edits are made, and our closing checklist is complete, the conservation easement is finalized as a closing; much like you would experience if you sold property. We meet at our lawyer's office and sign the deed of conservation easement as well as the baseline documentation report. These become the legally binding documents that assist in maintaining the terms of the conservation easement. If we are paying for the easement, this is also when the payment is made. The process is complete when the new deed of conservation easement is recorded in the Court House.

## **After the conservation easement has been closed**

If you've been following this series for the past seven months, you have read about conservation easements, how the Berkeley County Farmland Protection Board selects and funds their acquisition, and last month, what steps are required to close on a conservation easement. This month the topic is what happens once the easement is in place? I answered this question in an early overview article and the answer is still the same: not much! Once the easement is in place the property owner continues to use and enjoy their land, and is free to sell the land or convey it by will to beneficiaries upon death. There are restrictions on future subdivision, and

the size and location of future buildings (limited to residential and/or agricultural uses) and other impervious surfaces, but in general the land continues to be used as it was before the easement became effective.

Our role changes somewhat in that we shift into a stewardship role when we acquire an easement. This means that we annually visit the property for the purpose of ensuring that the terms and conditions of the easement are being honored. These visits are a great time to catch up with the property owners while we walk the land. It is during these regular visits that we can answer questions which the property owner might have, and check to ensure that neighboring property owners are not encroaching on the easement property. With properties which are no longer under the original owner, our annual visit is the continuation of our promise to protect the land forever. A monitoring visit usually involves a hike around the property line while we document important points through photographs. These pictures, along with our field notes, are included in an annual monitoring report. These reports are reviewed by the Farmland Protection Board, and once approved, a copy is delivered to the property owner. The original report is filed along with the easement documentation report (also called a baseline report). I mentioned that document last month. It serves to document the state of the property about the time that the easement went into effect. The annual monitoring reports serve to extend that documentation. For example, if a new loafing barn or ground silo is constructed, those structures and their sizes are recorded in the annual monitoring. Likewise, if a barn is destroyed and not replaced, that fact is also recorded (not replacing the barn basically credits some of the impervious surface area and needs to be accounted for).

One purpose of these annual visits is to ensure that any potential violations of the easement are corrected quickly. We've been blessed with great property owners and pretty good neighboring owners so violations are few and far between. Speaking academically though, most conservation organizations such as ours recognize three levels of violations. Minor violations don't seriously affect the conservation value of the property. For example, a misunderstanding of where a temporary building can be placed. These usually are quickly remedied. A moderate violation may begin to affect the conservation value but is also usually quick to fix. Allowing a neighbor to harvest trees for firewood is an example (only the property owner may utilize their dead trees this way). Major violations are the serious ones as they do affect the conservation value of the property. Building a structure within the easement area (and not in one of the permitted building envelopes) or harvesting trees for commercial sale are examples of this type of violation. A major violation can end up with both parties in court to seek a resolution. Again, in Berkeley County we've been very lucky in that we have not had any serious violations, although some conservation organizations have real tales of woe regarding major violations. I'd like to think that our annual property visits help in this regard as we have the opportunity to meet with the property owners, review the terms of the easement, and talk about their plans for the land. As the Executive Director for the Berkeley County Farmland Protection Board, I really enjoy these visits with our property owners. Since the majority of our annual visits are also scheduled in early spring, it is a great time to get out of the office after a long and cold winter!

## The View from the Board.

“Good farmers, who take seriously their duties as stewards of Creation and of their land's inheritors, contribute to the welfare of society in more ways than society usually acknowledges, or even knows. These farmers produce valuable goods, of course; but they also conserve soil, they conserve water, they conserve wildlife, they conserve open space, they conserve scenery.”

— **Wendell Berry, *Bringing it to the Table: On Farming and Food***

This article in the ongoing series introduces the 7 members of the Berkeley County Farmland Protection board of directors, a small but dedicated group who believe deeply in the mission of the program, and its lasting benefit to Berkeley County.

For 3 board members, all early adopters of the program, serving on the board is a way of giving back.



Chairman Floyd Kursey serves in order to keep the open space and agricultural movement alive in Berkeley County. He recognizes that our rural setting is why people come to live here - "to be able to look out across open space and fields, whether they are in crops or livestock. This program is an opportunity for people who would like to know that those fields will be there in 100 years. It's a way to meet great people, and help secure a future for agriculture and open space."

Vice-Chair Dan Lewis echoes those sentiments. "In Berkeley County we are lucky to have a way to protect forever land designated as farmland. My farm is protected by Berkeley County Farmland Protection. I feel that by serving on the board, I can help others protect their farms."

Secretary Susan Whalton said "Farmland Protection gave us an opportunity to protect our farm without giving up ownership of the farm, or our enjoyment of it. I serve because I want to tell other people about this great opportunity."

County Councilperson Elaine Mauck sees the value of the program in terms of its benefit to the County's health, vibrancy, prosperity, and identity. "Historically, farms and orchards were the backbone of Berkeley County. Protecting them increases and enhances our quality of life."

Barbara Bratina is the Board's "city mouse". She and husband Bill Caldwell own LA Roberts Jewelers, and Barbara taught at Martinsburg High School. But her roots are rural, growing up on a farm in Leetown, "Prato Rio". Barbara's contributions reflect an appreciation for the rich and diverse fabric of life in the Panhandle. But she knows that maintaining those values takes work, and commitment.

No one understands that better than Treasurer Carla Kitchen, who owns and manages Kitchen's Orchard and Farm Market, an 800-acre operation in Falling Waters. Kitchen knows that the County cannot rely on only the largest farming operations to maintain the balance that is needed. "For the County's agricultural future to be preserved, to protect water, and to maintain a continuing source of healthy food and produce, we need to conserve as many of the remaining farms as possible. We need to see them as a living network of co-supporting, co-sustaining parts of a whole - each parcel contributing to the health of the other. Just as farmers cooperate as a community, so does the land."

Susan Whalton witnessed first hand how quickly and irrevocably farms and open spaces can disappear due to development. "I have lived where that happened. It happened bit by bit - and one day everything was gone - the fields, the farms, the trees - all the old landmarks and beautiful views. I learned never to take our natural surroundings or farms for granted."

Sandra Hamilton, interim Director for the Berkeley County Development Authority, brings a unique perspective to the Board. Hamilton grew up on the old Bishop Baden farm in south Berkeley, where some of her best memories were playing with her sisters. "We had a great garden, cows, a horse. We played in the outbuildings and pretended they were different things - one was a store that we ran, one was our house. We had nothing costly or "plugged in" to play with - just our imaginations. There was a stream with huge rocks and a willow tree, and I would go out there with a stack of books and read for hours. It breaks my heart to go back there now and see how much of the land is cut up with lots and houses."

While Hamilton acknowledges that some people might see her roles in both economic development and land protection as a conflict, she asserts, "It's not a conflict at all. We can coexist and be good stewards of what we've been given." In fact, Hamilton says "it is critical as we bring in new businesses that we also maintain our land for agricultural purposes and beauty, and that we preserve it, and have a balance for generations to come."

There is a sense of urgency felt by all Board members, as the old guard of Berkeley County farmers look towards the uncertain future of the land that they and their families have worked for generations. Said Bratina, "None of us can know what farming will look like in 100 years, but we do know that through Farmland Protection, the land, streams, forests and wildlife can be preserved, and be here for everyone to enjoy. And there can be peace of mind for farmers in knowing that long after they are gone, their farms and legacies will be sustained and protected."

For information on the Farmland Protection Program, Board members invite you to call them at 304-260-9250.

## An update on funding sources

Way back in February I discussed how the purchase of conservation easements are funded. The Berkeley County Farmland Protection Board usually seeks matching funds when we purchase a conservation easement since this helps stretch our public monies. Most of the outside funding agencies match our local dollars on a one to one basis, so this approach basically doubles our buying power. When I discussed funding in February, some new programs had not started up yet, so this is a good opportunity to update everyone on the current programs. Two programs are federal and come from the current Farm Bill. Although each is a USDA program, the focus on important conservation values differs enough that it's worth spending some time outlining each of them. A new, third funding program comes from the West Virginia Department of Environmental Protection and focuses on conservation values that are different from the USDA programs.

One of the USDA funding sources is the Agricultural Land Easement, or ALE program. I've discussed this one before as it is the program that has funded more than 50% of our easements. This is the classic farmland protection program and it focuses on large properties with high quality soil. Properties under agricultural production (commodity crops, beef or dairy operations, hay and pasture) are ranked higher than properties not in full production. The deadline for applications for ALE is usually sometime in December, and this program usually has \$1 million in matching funds. ALE is very competitive and our board vies with up to 17 other WV counties for matching monies.

The other USDA program is new and goes under the name Regional Conservation Partnership Program, or RCPP. This program is funded for a minimum of two years (we are hoping for a third year extension!) and focuses on conservation efforts that protect the waters of the Potomac River and ultimately the Chesapeake Bay. There are only 8 WV counties in the Potomac River drainage area and this program, like ALE, has roughly \$1 million to match for each year. This smaller focus area should benefit our local efforts greatly. RCPP focuses on properties with creek or river frontage, with springs and wetlands, caves and sinkholes, and land atop karst or limestone. The deadline for RCPP applications for the first year funding is September 1. Both RCPP and ALE are limited to properties with less than 66% forest cover – that's a limitation from the Farm Bill and cannot be overridden.

Lastly, we have a grant from the WV Department of Environmental Protection (in conjunction with the WV Conservation Agency) to help protect the waters of Back Creek. This is a very specific funding program and applicant properties must be within the watershed of Back Creek (basically from the western side of North Mountain to the eastern slope of Sleepy Creek Mountain). The funding for this program is much less than that of the USDA programs, and we figure we should be able to place about 100 acres under conservation easements at a cost of roughly \$2,000 per acre. That cost is a bit lower than how conservation easements have been appraising in the eastern portion of the county, but property values in Back Creek tend to be lower. Also, we are expecting that the selected properties will include land that is in the flood plain, a factor that always lowers property value. The properties that will rank highest in this program will have frontage on Back Creek or its tributaries, or have wetlands or unique environments. Unlike the two USDA programs, this program does not have a forest cover limitation. The deadline for applications for the first of two years for the Back Creek watershed program is September 15<sup>th</sup>.

So these new programs should bring additional money into the county and assist the Berkeley County Farmland Protection Board in the purchase of additional acreage of conservation easement. The ultimate goal

is to help protect agriculture and the splendid natural resources which make this county such a great place to live.

## A History of Farmland Protection in West Virginia

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

Uphsurs 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.

## The Technology Behind Farmland Protection

This article is the twelfth and final post in a year-long series intended to explain how the Berkeley County Farmland Protection Board operates. I've discussed the basics of conservation easements, how applicant properties are rated and scored, what our funding streams are, and what life looks like after an easement goes into effect. I'd like to end this series with a discussion of how we leverage technology in our daily work. This subject involves a story of rapidly changing opportunities, which is what we have all come to expect with technology. If you simply think of how quickly mobile phone technology has changed you will understand how quickly technology has changed in many fields, including those involved with conservation easements. When the first easement for farmland protection went into effect in Berkeley County in 2004, mobile phones were little more than devices to place calls with. No mobile phone back then had a camera and certainly touch screens were only a dream. How things have changed.

The modern smart phone is an extension of an office computer. We use cell phones in our daily work when conducting our annual monitoring visits, or when walking a new applicant property with the land owner. Smart phones are equipped with GPS (Global Positioning System) and when photographs are taken, the GPS coordinates are embedded in the image. Back in the office, the GPS data are extracted from the photographs and used to note the near exact position, on high resolution satellite imagery, where each photo was taken. Often the spatial resolution is better than 20 feet and the vertical resolution may be as good as 10 feet. The high resolution satellite imagery we use is available to everyone. It's simply Google Earth, an incredible and free application that I like to think of as GIS (Geographic Information System) for everyone. You can measure distances or acreage, fly over landscapes, mark property boundaries, or locate the closest gas station using this powerful tool. Sharing this information between users is very easy and we frequently do this when applicant properties are being considered for funding by outside agencies.

Just these two technologies: smart phones and Google Earth remind me of how far we've come in this field. Back in the early part of this new millennium I took photographs using a 35 mm camera with rolls of film, which were then sent off to a developing lab. It could take a week or longer before you received your prints in the mail! We didn't have access to high resolution satellite imagery back then. We used aerial photography taken from planes. Nowadays, using Google Earth, placing the mouse on a point on the image yields the GPS coordinates and the elevation. Layers can be added to the application to help analyze the underlying geology or information about watersheds. Any view in Google Earth can be saved to disk or sent to a printer. The USDA offers a similar web-based application called the Web Soil Survey where you can analyze the soils on a property, again using high resolution satellite imagery. Gone are the days when you went to the local USDA service center and got a copy of a printed soil report for the county. All of that data are now available on line. Our office operations are also moving into the future. Every document of importance is scanned and stored electronically (the originals go to a fireproof safe). We use databases, one tracks information on easements and another tracks applications. Each record tracks data including satellite imagery, soil maps, surveys, and electronic copies of deeds. With a database, we can answer questions quickly. How many acres currently held in easement? (6,516). What's the amount of matching funds received between 2008 and 2011? (\$2,793,609.50). Databases reduce the workload by making it easier to lookup information and ask questions

about the data. So we leverage technology in the conservation world, as is done in many businesses, in order to improve the quality of our products and to reduce our costs. However, no matter how much technology we use, it is only a supplement to that enjoyable experience of meeting property owners and walking their land.

So I think it's appropriate to end this year-long discussion with one that looks to the future. I've enjoyed writing this series and have greatly appreciated all of the feedback from readers. I hope this discussion has been helpful, especially to those interested in protecting farmland in Berkeley County.