

MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
OPEN MEETING MINUTES
August 26, 2014

TRUSTEES PRESENT:

John Draper, Jr., Chair
Bernard L. Jones, Sr., Vice Chair
Susanne Brogan, representing Treasurer Nancy Kopp
Michael Calkins
Craig Highfield
Patricia A. Langenfelder
Donald T. Moore
James (Bubby) Norris, Jr.
Jonathan C. Quinn
Eugene Roberts, Jr.
Dan Rosen, representing Secretary Richard E. Hall, Maryland Department of Planning
Mary Ellen Setting, representing Secretary Earl F. Hance, Maryland Department of Agriculture

TRUSTEES ABSENT:

Jerome W. Klasmeier, representing Comptroller Peter Franchot

OTHERS PRESENT:

David Bowersox, St. Mary's County, Landowner's Attorney
Michelle Cable, MALPF Administrator
Diane Chasse, MALPF Administrator
Tamekia Dent, MALPF Temporary Staff
Rama Dilip, MALPF Administrative Specialist
Nancy Forrester, Assistant Attorney General, Department of General Services
Angela Gaither, MALPF Secretary
Billy Gorski, Anne Arundel County, Assistant Program Administrator
Rob Gunter, Queen Anne's County, Program Administrator
Justin Hayes, Assistant Attorney General, Maryland Department of Agriculture
Kim Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator
Donna MacDonald, Carroll County, Landowner
Jeanine Nutter, Prince George's County, Program Administrator
Mason Rutler, Howard County, Intern
Donna Sasscer, St. Mary's County, Program Administrator
Chana Turner, MALPF Administrator
James Wallace, MDA, Director of Administrative Services
Carol West, MALPF Executive Director

OTHERS PRESENT BY WEB CONFERENCING:

Bill Amoss, Harford County, Program Administrator
Katrina Tucker, Kent County, Program Administrator
Debbie Herr-Cornwell, Caroline County, Program Administrator
Stephen O'Connor, Cecil County, Program Administrator
Veronica Cristo, Calvert County, Program Administrator
Martin Sokolich, Talbot County, Program Administrator

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John W. Draper, Jr., Chair, called the meeting to order at 9:04 a.m. at the Maryland Department of Agriculture building, Annapolis, Maryland. The guests and then the Board and staff introduced themselves.

I. APPROVAL OF MINUTES

A. Approval of Open Minutes: July 22, 2014 Minutes.

Motion #1: Approve minutes with changes for July 22, 2014.

Motion: Susanne Brogan Second: Eugene Roberts
Status: Approved

II. ADDITION / DELETION OF AGENDA ITEMS

A. NONE

III. ANNOUNCEMENTS

A. Follow-up to Long Letter

Ms. West gave a follow up to the letter she received from Robert Long, neighbor to the Oak Ridge Farm LLC easement property in Howard County. Mr. Jones, Mr. Calkins, Ms. Hoxter and she visited the Oak Ridge Farm, LLC property per instruction from the Board Meeting at the July 22, 2014 meeting. They were joined by Ms. Levi, Howard County's Program Administrator, and Mr. Bonner, Oak Ridge Farm, LLC.

Currently there is no evidence of operation of the mulching operation other than two aisles of mulch that have been on the property for several months. As of this time Mr. Bonner has not received conditional use approval from the county and is unable to operate.

Ms. West mentioned that Mr. Bonner is very frustrated since he is unable to operate his mulching business. After the MALPF Board approved the use, he was supposed to pursue the conditional use approvals from the county. Mr. Bonner did not proceed at that time and since then the situation has escalated and his operation is on hold indefinitely.

Mr. Jones agreed with Ms. West and replied that he only saw Mr. Bonner cutting grass and does not see any indication of what Mr. Long's letter was talking about concerning Mr. Bonner's mulching operation.

B. Regulations on Renewable Energy

Ms. West mentioned that Mr. Nielsen, Mr. Hayes and she are working on follow up Regulations on SB259 and HB851 on Renewable Energy Generation Facilities. Secretary Hance, Ms. Setting, Mr. Wallace, Mr. Nielsen, Mr. Hayes and she met with the Maryland Energy Administration on August 25, 2014. From this meeting the Maryland Energy Administration made some suggestions for changes to the Regulations and currently Mr. Nielsen and Mr. Hayes are working to incorporate those changes. The Board will receive the draft Regulations on the first week of September to review and be prepared to discuss at the September 23, 2014 Board meeting. If the Board has suggestions or changes they will be incorporated and then submitted to the County Program Administrators to review before they are sent to Administration, Executive, and Legislative Review (AELR).

C. Volunteer for Site Visit in Cecil County

MALPF staff is asking for a Board member to volunteer to go on a site visit of a property in Cecil County. The landowner is a FY 2015 easement applicant and he is proposing to place

an easement on a property that consists of less than 50 acres. The landowner owns about 46 acres and it is not contiguous to another property but, MALPF's Regulations have an exception clause. Part of that exception review process is to have at least one Board member perform a site visit. Mr. Moore and Mr. Quinn volunteered to visit the property with Ms. Cable and Mr. O'Connor, Cecil County Program Administrator. The site visit will be conducted before the September 23, 2014 Board meeting.

D. New Program Administrators

Ms. West informed the Board of the five new County Program Administrators:

OLD	NEW	COUNTY
Carla Gerber-Martin	Katrina Tucker	Kent County
Eric Shertz	Stephen O'Connor	Cecil County
Donna L. Smith	Robert Gunter	Queen Anne's County
Yates Claggett	Jeannine Nutter	Prince George's County
John Nelson	Debbie Carpenter	Garrett County

IV. EASEMENT AMENDMENTS

A. CARROLL COUNTY

1. 06-01-16A Rawlings, Samantha & John, Jr. and
 Rawlings, Ramona & John, Sr. ~72.8 acres

Request –Carroll County:

Request to relocate a pre-existing dwelling.

Recommendation:

Staff recommends approval in accordance with COMAR 15.15.04, subject to the following conditions: 1) the new dwelling being non-subdividable from the easement property, 2) the existing dwelling being demolished within 60 days of the owners receiving a use and occupancy permit for the new dwelling or sooner, if required by county law, 3) the land beneath the existing dwelling being restored to agricultural use, and 4) execution of a written agreement memorializing the relocation approval and conditions.

Background:

The Rawlings are subsequent owners of the easement property. The easement was originally established in November 2002 by Helen Sledd. There have been no requests made regarding this easement property. There is one documented pre-existing dwelling on the property, which is currently uninhabitable. This is the dwelling the property owners seek to relocate.

The proposed relocation site for the dwelling is located internally on the property, adjacent to the farm buildings. The location does not comply with the Foundation's lot location policy; however, the owners have agreed to relinquish the right to subdivide the dwelling from the farm, resulting in a non-subdividable building envelope. Access to the dwelling will use an existing farm lane along the property boundary, extending a driveway to the new dwelling. Since the dwelling will never be divided from the farm, MALPF Staff supports the relocation of the dwelling as the farmland and the dwelling will always remain under the same ownership.

The relocation request meets the criteria established in COMAR 15.15.01.03 (Eligibility) and .04 (Application Procedure). The owners are aware and have agreed to the requirement that they need to remove the existing dwelling and reclaim the area to be available for agricultural use within 60 days of obtaining the occupancy permit for the new dwelling, if not sooner.

The request has been approved by the County and is in accordance with all County requirements. No payback is necessary since the Foundation did not pay for the 1-acre surrounding the existing dwelling at

the time the easement was acquired.

Ms. Cable presented the item and was available for questions and comments.

Discussion:

Mr. Draper asked if the original dwelling will be demolished. Ms. Cable replied affirmatively, that this dwelling has been uninhabitable for years and the property owner is working to demolish as much as he can on his own. He is also trying to get the fire department to use it as a practice burn to complete the demolition. The owners submitted a letter stating that the dwelling will be demolished and reclaimed for agriculture within 60 days of obtaining the use & occupancy permit for the new dwelling, if not sooner.

Mr. Highfield asked why the dwelling is being relocated into the wooded area. Ms. Cable replied that the landowners have recently cleared a portion of the wooded area to expand their cattle operation. The owners want the dwelling near the new barn area, sharing the access lane already established. The owners have provided a copy of the forestry plans for both forest harvest and for the remainder of the wooded area on the property. Harvesting/clearing trees is permitted under the terms of the MALPF easement, in accordance with any required State or County forestry requirements/regulations.

Motion #2 Approve request to relocate the pre-existing dwelling to the new location shown in the application, subject to the following conditions: 1) that the relocated dwelling may never be released or subdivided from the easement property; 2) the existing dwelling must be demolished within 60 days of the owners receiving a use and occupancy permit for the new dwelling; 3) the land beneath the existing dwelling must be restored to agricultural use, and 4) a written agreement memorializing the relocation approval and conditions must be prepared.

Motion: Michael Calkins Second: Mary Ellen Setting
 Status: Approved

2. 06-90-23 Roger M.B. Schnell Residuary Trust U/W ~115 acres
 (Barbara Schnell, David Penn, Beverly Penn, Trustees)

Request – Carroll County:

Request from David Bowersox, attorney for the Richards family, to address the Board regarding the conditions surrounding the Board's June 24, 2014, approval to correct the legal description of the Schnell easement.

COPY OF BOARD MEMO FROM JUNE 24, 2014:

Request –Carroll County:

Request to correct easement legal description by releasing ~15,000 square feet of easement area that was erroneously included in the easement grantor's title description.

Recommendation:

Staff recommends approval in accordance with COMAR 15.15.11, which permits corrective easements to correct erroneous legal descriptions.

The legal description for the entire easement perimeter is difficult to discern in this case. Accordingly, if the Board authorizes a corrective easement to permit a release of the 15,000 s.f. area in question, Staff recommends that the Board should require the applicant to submit surveys for the area to be released, as well as the area to remain under easement. The corrective easement will incorporate the new survey area submitted by the applicant. The Board has the authority to require this condition because the Foundation may include such other terms or conditions in corrective easements that it finds appropriate. COMAR 15.15.11.03.A

Background:

Roger M.B. Schnell was the original owner of the easement property, established in November 2001. No requests have been made regarding this easement. There are two pre-existing dwellings documented on the property. The current owners inherited the property in 2010.

The Richards family owns property across Houcksville Road from the Schnell property. The Richards have been working with the Schnells over the past few months regarding an approximately 15,000 square foot area on the South / Southeast side of Houcksville Road that has historically been openly used and maintained by the Richards family for five generations. The Richards have consulted with an attorney to search the title of this area in question and have come to a proposed solution to resolve the matter with the Schnells without proceeding with an adverse possession claim. All parties have agreed to the solution.

Through the documentation provided, it seems apparent that the 15,000 square feet in question never should have been included as part of the Schnell's property, and therefore should not have been encumbered with the MALPF easement.

COMAR 15.15.11. states the following regarding boundary line adjustments:

.02 Definitions.

B. Terms defined.

(2) "Boundary line adjustment" means a change in the legal description contained in the Deed of Easement for the purposes of this Chapter.

.03 Criteria

C. Boundary Line Adjustment.

(3) If the proposed corrective easement only involves the correction of an error in the legal description contained in the easement, the Executive Director of the Foundation may approve the correction of the error, with concurrence of the Chairman of the Board of Trustees and the Secretary of Agriculture.

.05 Requirements Upon Approvals.

A. A landowner may not proceed with plans pursuant to the approval until the corrective easement has been recorded among the land records in the county in which the land is located, unless the Foundation issues a letter permitting the landowner to proceed.

B. Boundary Line Adjustment.

(1) If the Foundation approves the request for corrective easement for boundary line adjustment, the landowner shall submit to the Foundation, 10 copies of a survey plat, signed and sealed by a surveyor registered in the State of Maryland depicting the land area to be released from the easement, if any, and the land area to be encumbered by the easement, along with separate written metes and bounds descriptions of those areas; and

(2) If the Board of Public Works approves the request, the landowner shall remit funds in the amount and manner directed by the Foundation to cover the costs of the transaction as specified in Regulation .03 of this chapter, and shall furnish such other documentation as directed by the Foundation.

The Richards family has agreed to pay the expenses associated with documenting the revised legal description of the Schnell property. The Board may also require compensation for the area to be excluded from the easement. If the Board approves the legal description correction, per COMAR 15.15.11.03.C.(3), this action is not required to be approved by the Board of Public Works. MALPF Staff and attorneys will work with the Richards and Schnell owners to complete the necessary documentation to be recorded in the Land Records of Carroll County to memorialize the revised legal description.

The request has been approved by the County and is in accordance with all County requirements.

COPY OF DISCUSSION SECTION FROM JUNE 24, 2014, MINUTES:

Discussion:

Ms. Cable confirmed that the Foundation will be compensated for the 15,000 square foot area being released. The purchase price was \$2,797.38/acre, which results in a reimbursement of slightly under \$1,000.00.

The Richards' attorney has been informed that a survey may be required. The legal description used to acquire the Schnell easement is not very good. If the property were to receive an easement offer today, a new survey would be required to provide an accurate description of the easement perimeter. The Board may require a survey as a condition of approving the release of the acreage requested.

Motion #3 Approve request to correct the easement legal description by releasing ~15,000 square feet of easement area as shown in the application, conditional upon a new survey to delineate the area to be released, as well as the remainder of the entire Schnell easement property, as well as a payback for the area to be release at \$2,797.38/acre.

Motion: Jonathan Quinn Second: Susanne Brogan
Status: Approved

New information for August, 2014, meeting:

The Board was provided two letters. The first is the Board's approval letter to document the June 24, 2014, decision. The second is a letter from David Bowersox, Esquire, requesting to address the Board regarding the conditions of the June 2014 approval, specifically the requirement to procure a new boundary survey of the entire Schnell easement property. Mr. Bowersox represents the Richards family.

Ms. Cable presented the item. Donna MacDonald-Richards, Carroll County landowner, and David Bowersox landowners' attorney, were available for questions and comments.

Discussion:

Mr. Bowersox wanted to address the requirement of procuring a new perimeter boundary survey of the Schnell property as a condition of the approval to release the 15,000 square foot area that was acknowledged to be a boundary line correction between the Schnell and Richards properties.

The Richards family has been doing estate planning this past year. During this process, they learned that approximately 15,000 square feet on the south side of Houcksville Road was included in the Schnell's historical chain of title. No modern or current survey has been done on the Schnell property. Mr. Bowersox can speculate it may be possible at some point the road was relocated in such a way that it divided a portion of the historical boundary of the Schnell property.

The Schnell and Richard families are not disputing the actual history of the utilization of the property by the Richards and the State Department of Assessments and Taxation records also state that the Richards property is on the south side of Houcksville Road. No one disputes that the approximately 15,000 square foot area has been openly used and owned by the Richards family for multiple generations. The Richards and Schnell families are cooperating and desire to see this matter resolved, without having to go through an adverse possession lawsuit.

Mr. Bowersox stated that the Richards family has volunteered to cover the Schnell expenses of releasing this area from the MALPF easement, thinking that this was a straight forward and fair solution. However, he contends that the Board's condition of a new perimeter survey requirement of the Schnell property, that is estimated to start at \$25,000, is not a fair requirement for such a minor boundary line correction.

Mr. Bowersox asked the Board to revise their June decision, removing the requirement of a new perimeter survey of the Schnell property, as well as permitting him to work with the Assistant Attorney General to determine what title work is required by the State to complete the transaction. His clients are willing to pay back the per-acre rate of the area to be released from the easement.

Mr. Bowersox concluded that his clients will provide the metes and bounds description of the approximately 15,000 square foot area to be released and cover the recording expenses of memorializing the transaction in the Carroll County Land Records.

Ms. Forrester advised the Board that the conditions of approval instituted as a part of the June 24, 2014 approval are within the Board's discretion. She mentioned as attorney to the MALPF Board that she will always recommend obtaining the maximum benefit to the Foundation in any transaction. She believes what Mr. Bowersox is requesting is reasonable and is under the Board's discretionary authority.

Mr. Draper asked Ms. Forrester if she concurred that the easement description stated it was to the one side of Houcksville Road. Ms. Forrester stated that while the expectation may have been that MALPF was only buying on one side of the road, the Foundation did pay for all of the acreage that was determined by examining the description of this property. Mr. Roberts asked if there was a survey of the Schnell property at the time of the acquisition. Ms. Forrester said there was no survey in the DGS file. She also stated that if the Schnell property was applying to be placed into the program today, a survey would be required.

Motion #3 To modify the June 24, 2014 Board decision by removing the requirement of a new perimeter survey of the Schnell property and to permit Mr. David Bowersox and MALPF Attorney to discuss and determine the necessary title work to complete the transaction.

Motion: James Norris, Jr. Second: Bernard Jones, Sr.
Status: Approved

B. FREDERICK COUNTY

1. 10-01-02 Thompson, Franklin and Pamela ~138.5 acres

Requests –Frederick County:

1. Request to exclude up to 2.0 acres from the easement for an owner's lot.
2. Request to exclude up to 2.0 acres from the easement for a child's lot for Charlotte.
3. Request to exclude up to 2.0 acres from the easement for a child's lot for Phil.

Recommendation:

Staff recommends approval of the lots with the following conditions:

1. The first built lot must be #1 on the map, the second built must be #2 on the map and the third built must be #3 on the map.
2. There must be no "gap" between lots that would effectively separate part of the farm from other parts of the farm; landowners must present a proposed site plan or plat prior to recordation so that staff may ensure it complies with the Board's approval.
3. If the county requires a road dedication along Simpsons Mill Road, that acreage must be included within the 2.0 acre maximum size of the first built lot.

Background:

Franklin and Pamela Thompson are the original owners of the easement property. The easement was established in April 2003. There is one pre-existing dwelling on the property. There was one previous request on this property which was for a child's lot for Franklin, Jr. – it was approved in 2003 and built in 2006.

The three lots will be clustered with each other and Franklin's lot. They will also be located along the boundary of a property. The lot locations along the perimeter of the farm will have minimal to no impact on the farming operation. The locations of the lots meet the Foundation's Lot Location Policy.

The request has been approved by the County and is in accordance with all County requirements. The reimbursement amount will be \$1,345.88 per-acre being released.

Ms. Chasse presented the item and was available for questions and comments.

Discussion:

Ms. Chasse mentioned that she discussed with Ms. Bradley, Program Administrator of Frederick County, the staff recommendation that each lot be constructed in numbered order. Ms. Bradley indicated that she did not think it would be a problem.

Ms. Chasse mentioned that the second recommendation is to make sure when the lines are actually platted, that no gaps exist between the lots. They will be tightly clustered together. Also if there is any road dedication that it would be placed within the approved lot area as well.

Ms. Langenfelder asked if each lot would share the same driveway and Ms. Chasse replied yes they would share the same driveway.

Mr. Norris asked whether the landowners understood that there is a three year window to act upon family lots that have been preliminarily released. Ms. Chasse said the owners understand this requirement.

Motion #4 Approve requests to exclude up to 2.0 acres from the easement for one owner's lot, and two child lots for Charlotte and Phil.
Staff recommends approval of the lots with the following conditions:

1. The first built lot must be #1 on the map, the second built must be #2 on the map and the third built must be #3 on the map.
2. There must be no "gap" between lots that would effectively separate part of the farm from other parts of the farm; landowners must present a proposed site plan or plat prior to recordation so that staff may ensure it complies with the Board's approval.
3. If the county requires a road dedication along Simpsons Mill Road, that acreage must be included within the 2.0 acre maximum size of the first built lot.

Motion: James Norris, Jr. Second: Dan Rosen
Status: Approved

V. EASEMENT PETITIONS

A. FREDERICK COUNTY

1. No File Number Kline Farm Properties, LLC ~191.92 acres

Ms. Chasse presented the item and was available for questions and comments.

This is a FY 2015 easement application. Unfortunately, the property consists of one parcel of record that is separated by the county road. If the county road did not exist, the properties still would not be contiguous. Therefore, the application does not meet MALPF's requirements and the law, which requires applications on contiguous acreage only. Accordingly, the Board agreed to approve the staff recommendation for each portion to have its own application. Staff recommends that each portion of the property be placed on separate easement applications.

Motion #5 Approve recommendation that each portion has its own application.

Motion: Bernard Jones, Sr. Second: Michael Calkins
Status: Approved

VI. PROGRAM POLICY

A. Draft Regulations for Easement Maximum and Minimum Purchase Price

Ms. West presented the item and was available for questions and comments.

The Board agreed to review the Draft Regulations for Easement Maximum and Minimum Purchase Price. At the September 23, 2014 meeting, the Board will have a full discussion of the draft Regulations. Following that meeting, the Draft Regulations will be sent to the County Program Administrators for review and comment. The Board will consider a vote on publication for comment in the Maryland Register at the October Board Meeting.

VII. INFORMATION AND DISCUSSION

A. News Articles

VIII. CLOSED SESSION

John W. Draper, Jr. asked for a motion for adjournment of the meeting to move into a closed session, pursuant to the provisions of State Government Article Section 10-508 (a) (3) to consider the acquisition of real property for a public purpose and matters directly related thereto.

Motion #5 To adjourn the regular session to move into a closed session to consult with counsel to consider the acquisition of real property for a public purpose and matters directly related thereto.

Motion: Patricia Langenfelder Second: Michael Calkins

Favor: John Draper, Jr., Bernard Jones, Sr., Susanne Brogan, Michael Calkins, Craig Highfield, Patrica A. Langenfelder, Donald T. Moore, James Norris, Jr., Jonathan Quinn, Eugene Roberts, Jr., Dan Rosen, and Mary Ellen Setting.

Status: Approved

The Open Board Meeting was adjourned at approximately 10:07 a.m.

The Closed Meeting of the Board was held from 10:14 a.m. to 10:43 a.m. at the Maryland Department of Agriculture building, Annapolis, Maryland, pursuant to the provisions of State Government Article Sections 10-508(a) (3), Annotated Code of Maryland:

State Government Article Section 10-508(a):

[X] (3) To consider the acquisition of real property for a public purpose and matters directly related there thereto;

During the Closed Meeting, the following Board members were present: John Draper, Jr., Bernard Jones, Sr., Susanne Brogan, Michael Calkins, Craig Highfield Patrica A. Langenfelder, Donald T. Moore, James Norris, Jr., Jonathan Quinn, Eugene Roberts, Jr., Dan Rosen, and Mary Ellen Setting.

TOPICS DISCUSSED:

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VIII.A Approval of June 24, 2014 Closed Session Minutes

VIII.B Status Report of Pending Legal Issues

VIII.C Cecil County FY 2015 Easement Applications

The Closed Meeting was adjourned at 10:43 a.m.

Respectfully Submitted:

Angela Gaither, MALPF Secretary

Carol S. West, Executive Director