

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
OPEN MEETING MINUTES
October 28, 2008**

TRUSTEES PRESENT:

Daniel W. Colhoun, Chairman
Vera Mae Schultz, Vice Chairman
William K. (Billy) Boniface
John W. Draper, Jr.,
Howard S. Freedlander, representing Treasurer Nancy Kopp
Jerome W. Klasmeier, representing Comptroller Peter Franchot
Jonathan C. Quinn
Robert F. Stahl, Jr.,
Joseph F. Tassone, representing Secretary Richard E. Hall, Maryland Department of Planning
Christopher H. Wilson
Douglas H. Wilson, representing Secretary Roger L. Richardson, Maryland Department of Agriculture

TRUSTEES ABSENT:

Martha A. Clark
Dr. James Pelura III

OTHERS PRESENT:

Bill Amoss, Harford County, Program Administrator
Anne Bradley, Frederick County, Ag. Preservation Planner
Tammy Buckle, Caroline County, Program Administrator
Pam Bush, Department of Natural Resources, Senior Policy Analyst
Diane Chasse, MALPF Administrator
Carol Council, MALPF Administrator
David Demme, Landowner, Harford County
Rama Dilip, MALPF Secretary
Nancy Forrester, Assistant Attorney General, Department of General Services
Carla Gerber, Kent County, Program Administrator
Billy Gorski, Anne Arundel County, Program Assistant
Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator
Donna K. Landis-Smith, Queen Anne's County, Agricultural Specialist
Joy Levy, Howard County, Program Administrator
Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture
Ralph Robertson, Carroll County, Program Administrator
Charles Rice, Charles County, Program Administrator
Donna Sasscer, St. Mary's County, Program Administrator
Ned Sayre, Harford County, Ag. Preservation Planner
Gloria Smith, Wicomico County, Program Administrator
Stewart Smith, Prince George's County, Planner
Elizabeth Weaver, MALPF Administrator

Recommendation:

To approve the request to exclude a 1.227 acre child's lot from district property. Although the proposed lot is not located adjacent to the pre-existing dwelling, it is located in an area that will cause less disturbance to the current farm operation and is along a boundary line. Access to the lot will be by right-of-way that will join an existing shared right-of-way to the County road.

Background:

Mr. Staley is the original owner of the district property. There is one pre-existing dwelling on this property. There have been no previous requests for lot exclusions. Mr. Staley rejected a 2008 MALPF offer to purchase an easement and will pursue sale of an easement through the Carroll County program. Mr. Staley is the subsequent owner of two MALPF easement properties.

According to Carroll County, Mr. Staley is requesting to exclude a 1.227 acre lot. There will be a .12 acre right-of-way access. Mr. Staley has acquired a portion of the access from an adjacent property in order to minimize the disturbance to his farm. The proposed lot access will join an existing shared right-of-way access to Mayberry Road.

The proposed lot is not being located adjacent to the pre-existing dwelling. According to the Program Administrator, Mr. Staley did not want the lot located on open land, as would have been necessary to locate the lot adjacent to the pre-existing dwelling. In addition, the Program Administrator counsels his landowners to be careful of placing lots next to farm cartilage (out-buildings) as it could result in a negative impact on the farm operation in the future. The lot is proposed to be located along a boundary and in a wooded area, which will, according to Mr. Staley, cause less interruption to the overall crop operation. The landowner has received a successful perc at the proposed lot location. The lot is proposed to be larger than 1.0 acre in order to contain the sand-mound septic system and backup area.

As this is a district property, there will be no payback for the exclusion of the lot. The local advisory board has approved the request and it meets County Planning & Zoning regulations.

This request does not meet the Foundation's Guidelines for Lot Location requirement that it be located along a public roadway or adjacent to the existing dwelling. However, it appears that to locate the lot adjacent to the public road (Littlestown Pike) or the existing dwelling would cause greater interference with the overall farm operation.

Mr. Colhoun stated that he visited the site and he believed the location was appropriate for a child's lot.

Carol Council, MALPF Administrator, commented that the access is a right-of-way that remains with the farm, and would not be made a part of the child's lot.

Motion #3: To approve the request of Mr. Kenneth W. Staley to exclude a 1.227 acre child's lot from district property.

Motion: Robert Stahl Second: Howard Freedlander
Status: **Approved**

D. SOMERSET COUNTY

1. 19-06-03 Bishop, Wallace 55.6 acres
Request for approval of a 4-acre child's lot on district property

request rather than deny the request.

Mr. Stahl commented that the letter from "Somerset County Department of Technical and Community Services" states that "The request for the 4.0 acre lot is consistent with Somerset County Zoning and Subdivision Regulations". Mr. Stahl stated that he believed that the Somerset County Health Department is asking for what is allowed by the Somerset County Zoning and for that reason the Foundation should not be changing its rules. Mr. Stahl further stated that the Board's denial should be based on size as well as location.

Mr. Douglas Wilson stated that his recommendation for denying the request is on the basis of its proposed location.

Tammy Buckle, Program Administrator, wanted to know if there is anything on the regulation that allows a 4.0 acre lot.

Nancy Forrester, Assistant Attorney General, Department of General Services, clarified that effective October 1, 2008; a provision to the law has been amended. HB 976 was passed in 2008 Legislative Session as Chapter 105.

Ms. Forrester quoted from HB 976 that "The restrictions of paragraphs (2) and (5) of this subsection concerning maximum lot sizes are altered so that the maximum lot size is as determined by the Department of the Environment in accordance with regulations *adopted by the Department of the Environment in areas where there is less than 4 feet of unsaturated and unconsolidated soil material below the bottom of an on-site sewage disposal system or in areas located within 2,500 feet of the normal water level of an existing or proposed water supply reservoir;*"

The Annotated Code Section is Agriculture Article 2-513(b)(6)(i)1.

E. HARFORD COUNTY

- | | | | |
|----|-----------|---|-------------|
| 1. | 12-88-02c | Flatau, Frances H. | 33.23 acres |
| | | Request for approval of an owner's lot on easement property | |

Request:

Ms. Flatau is the original grantor of the easement. The current request is for approval of an owner's lot for her personal use.

Background:

There are no pre-existing dwellings on the property. No other lots have been approved on the property. Ms. Flatau owns an additional easement property, from which a child's lot and a pre-existing dwelling have been released.

According to Harford County, the proposed lot is to be located along the road, in a corner of the property. The lot will be accessed via an extension drive off an existing driveway.

The request was approved by the local advisory board and conforms to local zoning regulations. If approved, the per acre payback amount will be \$2,000.00.

Recommendation:

Foundation staff recommends approval of the release of one acre plus such minimum additional acreage if required by the County Health Department, not to exceed 2 acres total based on the provisions of the deed of easement and in accordance with Agricultural Article, Section 2-513(b), Annotated Code of Maryland, which grants an allowance of a maximum lot size of up to 2 acres if required by regulations adopted by the Department of the Environment

Mr. Douglas Wilson commented that there is a distinction between whether the request is for a current failing system or is it for a potential expansion of capacities (so that the Church could have more members). The concept of the Church's expansion is no different than any other easement property. As a part of public policy, the Foundation and Rural Legacy would have to decide where to draw the line.

Mr. Tassone wondered about the stipulation that "the septic system would not be used to increase disposal capacity". This stipulation might have come from the Church saying that they have a failing system.

Mr. Robertson commented that it would be better to let MDE make the determination about the capacity. Every septic system in Carroll County needs a back up system when a new system is created.

Ms. Bush stated that she agreed with Mr. Douglas Wilson that no one wants to hurt the Church but it is a bigger policy for the State. Ms. Bush was concerned about setting a precedent.

Mr. Robertson commented that he believes that the Church and MDE should be allowed to determine what is needed to replace the failing septic system.

Mr. Stahl commented that at last month's Board meeting Mr. Dale Gray, Council President for St. Luke's Church, had testified that the Church needs to replace its failing existing septic system and the MALPF Board's motion was consistent with the request.

Mr. Freedlander asked Ms. Bush if she expected a "meeting of the minds" by the next Board meeting. Ms. Bush stated that she would try to achieve a "meeting of the minds" and also would get in touch with the Foundation staff to consolidate and resolve the issue.

IV. PROGRAM POLICY

A. Inspection Summary and Policy Request

Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator, stated that the Board had discussed the proposed policy during its last meeting. Ms. Hoxter informed the Board that the Foundation has a goal of inspecting 100% for federal properties. FY'07 results revealed 12% completion of inspection of federal properties and 98% during FY'08. The Foundation easements had a goal of completing 10% of State inspections. FY'07 had 6% completed easements and FY'08 had 26%. So the Foundation has met more than twice its goal but there were some counties that did not complete their goal of 10%.

The proposed policy establishes some deadlines for the Counties and sought the Board's direction on the future course of action in case the counties fail to fulfill their goals.

Ms. Hoxter was concerned that if MALPF is the only entity inspecting the farms, it takes away the local contact to the farm. Whenever a farmer thinks about making a change in his farm, the first person he wants to contact is the local program administrator.

Mr. Colhoun commented that the Joint Sub Committee for Program Open Space met last week. Ms. Hoxter made a presentation at the committee and it was well done and appreciated. Mr. Colhoun commended the good work of Ms. Hoxter and commented that Ms. Hoxter's work has created more work for Mr. Nielsen.

Mr. Boniface commented that after last month's Board meeting, he had discussed the issue with Harford County Program Administrators. Mr. Boniface stated that he believed the gap is due to a lack of understanding. He suggested looking at the policy itself and making sure that it is clear to the counties.

Motion #6: To direct the Foundation staff to look at the current language in the policy to make sure that it is clear to the local Administrators. To initiate a policy when the counties are out of compliance and to instruct Foundation staff to send a letter from MALPF to the local governing body that the cases are under review.

Motion: Billy Boniface Second: Douglas Wilson

Mr. Nielsen suggested using title searches as an additional monitoring tool. Ms. Forrester agreed and commented that she is finding more and more easement violations. Before anything physically happens to the property, if title searches are done, it can avoid the problems to some extent. Ms. Forrester recommended Foundation staff doing on-line title searches.

Mr. Douglas Wilson commented that he liked the concept of the Foundation staff doing title searches within a certain time frame and using the means available. Ms. Hoxter's memo indicated that the Foundation's adopted policy required counties to perform annual inspections on 10% of their existing state funded easement properties. Mr. Douglas Wilson wondered how the responsibility of 10% will be distributed between the Foundation and the individual counties. The sharing of this responsibility needs to be discussed and decided.

Mr. Douglas Wilson also stated that he believed a statutory change may be required to allow monetary penalty. Legal counsel has to be consulted before any decision is made about instituting monetary penalty.

Mr. Nielsen mentioned two pending legal cases; one in Garrett County and another in Harford County. In both cases deeds are unrecorded and date back to early 20th century. Currently the Foundation is fighting a case in Garrett County where someone has bought a landlocked parcel right next to a State park and is claiming that they have a right to use a public road. The issue in Harford County also involves a right-of-way. In a perfect scenario the Foundation should visit the farms to conduct inspection of the properties. The rights-of-way are significant in the way they affect the easements.

Ms. Forrester added that requiring surveys that show the physical aspects of the properties would be a significant help, but such surveys would be expensive.

Mr. Colhoun reminded the Board members about the motion on the table and wanted to know if any Board member has any comment on the motion.

Jonathan Quinn, Board member, stated that Cecil County Program Administrator also conveyed that he is not clear on the Foundation's inspection policy. Mr. Quinn wondered about the communication between the County Program Administrators and the Foundation staff. Mr. Quinn stated that he believed that all County Program Administrators should be present at the Board meetings.

Mrs. Schultz wanted to know the history of counties not having fulfilled their goal. When a county has not fulfilled the goal, has the County been informed about its non-compliance? What has been the County's reaction?

Elizabeth Weaver, MALPF Administrator, commented that in earlier times there were fewer

easements and fewer subsequent owners. Currently the situation has changed and the possibilities of easement violations have increased. Also in the past, the County Program Administrators tried to complete the 10% requirement.

Ms. Hoxter commented that in the past the County Program Administrators also combined the federal inspections and the State inspections. In January 2008, subsequent to the audit report from Legislative Auditors, the Foundation had clarified the policy and sent out letters to all Program Administrators.

Ms. Buckle commented that inspection has not been a State priority in the past. Currently the Foundation has a monitoring person and Ms. Hoxter does a good job of keeping in touch with the County Program Administrators. Now that it is a State priority, it would also become a County priority.

Mr. Freedlander wondered what the next course of action will be once the Foundation sends a letter to the governing body of the individual county not fulfilling the goal.

Mr. Boniface commented that he believed once a letter is sent to the governing body of the individual county the matter will be looked into. Mr. Boniface further commented that he met with the governing body in Harford County and now the County is in compliance.

Mr. Tassone commented that based on the discussions, it seemed that number of things can be worked out.

Mr. Boniface withdrew his motion.

Ms. Hoxter pointed out that the recent inspections completed by Harford County would pertain to FY'09 and Harford County is still not in compliance for FY'08.

Jerome W. Klasmeier, representing Comptroller Peter Franchot, suggested amending the language in the policy to include "minimum" so that if some County wants to do more than 10% they are in a position to do so.

Mr. Nielsen clarified that the Foundation cannot levy civil penalties.

Ms. Hoxter suggested that when the Counties come up for re-certification requests, the Foundation can review their monitoring history and check if the County has met its monitoring goal. Mr. Colhoun commented that it is a possibility and requires consideration.

Mr. Colhoun noted that Elizabeth Weaver, MALPF Administrator, was leaving MALPF by the end of October 2008. Mr. Colhoun acknowledged the commitment of Ms. Weaver and thanked her for her contributions to the Foundation and the relationships she had developed during her tenure. Ms. Schultz appreciated Ms. Weaver's contributions, acknowledged her integrity to the Foundation, and her support to the landowners.

Mr. Colhoun asked for a motion for adjournment of the meeting.

Motion #7: To adjourn Open Meeting and move into a Closed Meeting to consider the acquisition of agricultural land preservation easements, to consult with counsel to obtain legal advice, and to consult with counsel about proposed and pending litigation.

Motion: Robert Stahl Second: Douglas Wilson

Status: **Approved**

Vote: Daniel W. Colhoun, Vera Mae Schultz, Billy K. Boniface, John W. Draper, Jr., Howard S. Freedlander, Jerome W. Klasmeier,

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Jonathan C. Quinn, Robert F. Stahl, Jr., Joseph F. Tassone,
Christopher H. Wilson, Douglas H. Wilson
None: Opposed

The Open Meeting of the Board meeting was adjourned at approximately 10:40 am.

The Closed Meeting of the Board was held from 10:45 am to 11:00 am at the Maryland Department of Agriculture building, Annapolis, Maryland, pursuant to the provisions of State Government Article Sections 10-508(a) (3), (7), and (8), Annotated Code of Maryland.

- [x] (3) To consider the acquisition of real property for a public purpose and matters directly related thereto
- [x] (7) To consult with counsel to obtain legal advice
- [x] (8) To consult with staff, consultants, or other individuals about pending or potential litigation

During the Closed Meeting, the following Board members were present.

Daniel W. Colhoun, Chairman, Vera Mae Schultz, Vice Chairman, Billy Boniface, Jerome W. Klasmeier, representing Comptroller Peter Franchot, Jonathan C. Quinn, Robert F. Stahl, Jr., Christopher H. Wilson, Douglas H. Wilson, representing Secretary Roger L. Richardson, Maryland Department of Agriculture.

TOPICS DISCUSSED:

- I) Withdrawal of FY 2008 Round Two Offer
 - Motion #2: To approve that the Foundation withdraws the offer made to a landowner.
 - Motion: Douglas Wilson Second: John Draper
 - Status: **Approved**
- II) Withdrawal of FY 2007 Round Two Offer
 - Motion #3: To approve that the Foundation withdraws the offer made to a landowner with a 30-day deadline.
 - Motion: Robert Stahl Second: John Draper
 - Status: **Approved**
 - Motion #3a: To inform the landowner that if she has not formally filed the appropriate document and major taxes by November 30, 2008, the Foundation's Offer is withdrawn.
 - Motion: Douglas Wilson Second: Jonathan Quinn
 - Status: **Approved**
- III) Status Report on Pending Legal Issues
 - a) Herschell B. Claggett, Sr. vs. MALPF, et al, Case #00578
 - b) Review of Yohn Property Violations

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The Closed Meeting was adjourned at 11:00 am.

Respectfully Submitted:

Rama Dilip, MALPF Secretary

Carol Council, MALPF Administrator