

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
OPEN MEETING MINUTES
October 27, 2009**

TRUSTEES PRESENT:

Vera Mae Schultz, Acting Chair
Daniel W. Colhoun
John W. Draper, Jr.,
Howard S. Freedlander, representing Treasurer Nancy Kopp
Jerome W. Klasmeier, representing Comptroller Peter Franchot
Robert F. Stahl, Jr.,
Joe Tassone, representing Secretary Richard E. Hall, Maryland Department of Planning
Christopher H. Wilson
Douglas H. Wilson, representing Secretary Earl F. Hance, Maryland Department of Agriculture

TRUSTEES ABSENT:

William K. (Billy) Boniface
Dr. James Pelura III
Jonathan C. Quinn

OTHERS PRESENT:

Anne Bradley, Frederick County, Agricultural Preservation Planner
Tammy Buckle, Caroline County, Program Administrator
Patricia Campbell, Landowner, Caroline County
Diane Chasse, MALPF Administrator
James Conrad, MALPF Executive Director
Carol Council, MALPF Administrator
Rama Dilip, MALPF Secretary
Nancy Forrester, Assistant Attorney General, Department of General Services
Carla Gerber, Kent County, Program Administrator
Amanda Gibson, Assistant Attorney General, Maryland Department of Agriculture
Billy Gorski, Anne Arundel County, Planner
Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator
Donna K. Landis-Smith, Queen Anne's County, Agricultural Specialist
Wally Lippincott, Baltimore County, Program Administrator
Don Moore, Cecil County
Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture
Pat O'Connell, President, Evergreen Capital Advisors, Inc
Sarah Hall Peak, MALPF Administrator
Charles Rice, Charles County, Program Administrator
Donna Sasscer, St. Mary's County, Program Administrator
Michael Scott, Landowner, Caroline County
Charlotte Staelin, Landowner, Kent County
Darlene Vansant, Landowner, Baltimore County
Stacey Vansant, Landowner, Baltimore County

Vera Mae Schultz, Acting Chair, called the meeting to order at 9:05 am at the Maryland Department of Agriculture building, Annapolis, Maryland.

Ms. Schultz asked the guests to introduce themselves.

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Mr. Freedlander suggested having a meeting to discuss the new process. Jerome W. Klasmeier, representing Comptroller Peter Franchot, agreed with Mr. Freedlander. Mr. Freedlander also stated that he will talk with the staff members at the Maryland State Treasurer's Office (Ms. Pat Conrad and/or Mr. Steven W. Vanderbosch) to make sure of their availability.

Mr. Douglas Wilson commented that the Foundation is already using the current bonds from FY 2010 for some transactions approved by the MALPF Board.

Mr. Conrad updated the Board on the pending Board appointments and stated that he is still waiting to hear from the Governor's Appointments Office.

Mr. Conrad informed the Board that the Foundation's Newsletter is complete and is being sent to the easement holders. The FY 2008 Annual Reports were also made available to the Board members and the County Program Administrators.

II. EASEMENT AMENDMENTS

A. BALTIMORE COUNTY

- | | | | |
|----|----------|--|---------------|
| 1. | 03-99-16 | Vansant, Darlene | 133.521 acres |
| | | Request for a child's lot for daughter, Stacey Vansant | |

REQUEST - Baltimore County:

Request for one acre for a child's lot for daughter, Stacey Vansant.

RECOMMENDATION:

Staff recommends approval of the request as it meets the Foundation's Guidelines for Lot Location. The lot will be located adjacent to a wooded area and will have a right-of-way access.

BACKGROUND:

Ms. Darlene Vansant is the original owner of the easement property. No previous lot exclusions have been requested. There is one pre-existing dwelling.

According to Baltimore County, the proposed lot will be located adjacent to a wooded area and will have access along a boundary line. The lot placement will minimize disturbance to the overall farm operation.

The lot has been approved by the local advisory board and meets Planning & Zoning requirements. The county's office of Soil Evaluation has verified that the chosen location is likely perc-able, although a perc test has not yet been performed. If the request is approved, payback for the lot will be \$2988.29 per acre.

Darlene Vansant, landowner, her daughter, Stacey Vansant, and Wally Lippincott, Program Administrator, were available at the meeting. Mr. Lippincott informed the Board that the property is located in White Hall, one of the major farming areas in the Baltimore County. The property is contiguous with several easement properties.

Ms. Darlene Vansant commented that she and her husband have lived in the area for the last 45 years. Approximately for the last 33 years the farm has been involved in dairy farming. The property mostly consists of crop fields and/or woods.

Robert Stahl, Board member, encouraged the landowner not to have the lot isolated in the middle of the preserved farm and to configure the lot in a way that it is tied to the boundaries. Dan Colhoun, Board member, agreed with Mr. Stahl's suggestion. Since the perc test has not been performed, it is not clear, if the landowner will need more than one acre to meet the recommendations of Mr. Stahl.

that will be converted into living quarters. The barn is located in the vicinity of the two pre-existing dwellings and farm structures. Access will be via an existing farm lane.

Ms. Staelin is eligible for up to two tenant houses; no tenant houses have been previously requested for this property. COMAR 15.15.03.03B provides that “[a] tenant house may be approved for and occupied only by tenants in which one or more is fully engaged in the operation of the farm.” The proposed tenant house meets these requirements as it will be occupied by interns who will be working for the CSA.

The proposed tenant house will be located in the vicinity of other farm buildings and will not be located on a farm field. The County has indicated that the proposed tenant house conforms to local planning and zoning regulations. The Agricultural Land Preservation Advisory Board recommends approval of this request.

Charlotte Staelin, landowner, and Carla Gerber, Program Administrator, were available at the meeting.

Ms. Gerber pointed out that the size of the proposed tenant house is not 38 x 20 as mentioned in the agenda memo. She did not remember the exact dimensions but was sure that the proposed tenant house is less than 2000 sq ft.

Ms. Staelin stated that the CSA project has had six interns at the same time. The CSA has been operating for the last seven years and so far has been asking its members to accommodate the interns. The interns come from all over the country; Texas, Illinois, South Carolina, North Carolina, Vermont, etc.

Mr. Douglas Wilson stated that the Foundation has size requirements with regard to a tenant house. In addition, he suggested that Ms. Staelin ensure that the housing is in compliance with the migratory housing rules.

Mr. Freedlander wanted to know about the CSA project. Ms. Staelin stated that the CSA started seven years ago with 20 families and currently they have approximately 150 families.

Vera Mae Schultz, Acting Chair, wanted to know if someone was living in the second dwelling on the property that is not suitable for use.

Ms. Staelin stated that an intern was temporarily staying there for two weeks, but the dwelling is otherwise used for meetings. It is an open space and is not large enough. Ms. Gerber informed the Board that she is also on the Board of CSA.

Motion #5: To approve the request of Charlotte Staelin’s request for a tenant house on an easement property.

Motion: Joe Tassone Second: Dan Colhoun
Status: **Approved**

IV. PROGRAM POLICY

A. Allocation of Lots for Dwellings

REQUEST:

To take the issue of interpretation of lot rights to the Attorney General’s Office of Opinions.

RECOMMENDATION:

Foundation staff would now like to recommend that the issue of the interpretation of lot rights be referred to the Attorney General’s Office of Opinions.

BACKGROUND:

After further discussion with Foundation counsel, Assistant Attorney General, Craig Nielson, Foundation staff would now like to recommend that the issue of the interpretation of lot rights

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In the past, the MALPF Board had discussed the issue of Water Recharge Easements. One of the MALPF's early easement holders has been approached by the developer to sell the water allocation.

Mr. Stahl wanted to know if the subject property is within a Priority Funding Area (PFA). Mr. Conrad confirmed this. Mr. Conrad read out the draft letter presented at the meeting.

"It has come to the Foundation's attention that you may have been contacted by a developer, Meade's Crossing LLC, to inquire about the possibility of obtaining some of your water rights to facilitate the construction of a large residential development in Taneytown. Please be aware that your 137.439 acre property is governed by a Deed of Easement dated November 16, 1984 which prohibits you from entering into any agreement that may not be in accordance with the provisions of your easement. The Foundation is currently working with Maryland Department of the Environment (MDE) to determine if our easement properties have the right and/or the ability to transfer or sell their water allotment rights.

Your easement states that it is "the intention of the parties that the said land shall be preserved solely for agricultural use" and that you relinquished the right to "develop or subdivide the...land for industrial, commercial, or residential use or purpose." This is a gray area for the use of easement property and the Foundation has not yet taken a position. Again, we ask that you not sign any document which will relinquish your water rights until the Foundation has had an opportunity to weigh in on this important issue".

Mr. Conrad commented that currently no policy or regulations address this issue.

Mr. Stahl remarked that he believed the concern is about the statutory issue of using a preserved property for development elsewhere within the PFAs. The second issue involving Hydrology can be worked out in association with MDE.

Mr. Conrad stated, that during the discussions on Natural Gas issues it was established that the Foundation does not control sub-surface rights. But it is necessary to create a viable farming operation which needs adequate water as farming input.

Mr. Stahl stated that it is different in a hard rocky area where there is no ability to irrigate. You could establish enough water in the area off of that farm without additional re-charge. It is not like in Salisbury where you can drill well down 50 feet and have water for irrigation. This is in a rocky area where there is so little water that you can never assume irrigation will be possible.

Mr. Conrad added that it is also not just irrigation. The Foundation is already aware of a dairy operation that has run out of its allocation based on the existing acreage and has purchased another farm adjacent to meet the water requirements of a dairy operation. The Foundation is already aware of cases where the farming operation itself is consuming more water than what is available based on MDE's calculation.

Mr. Nielsen commented that the Foundation's Deed of Easement has evolved over time and is now better than its earlier version. But even the older Deeds of Easement indicate that the easement holder agrees to conserve soil and water resources and not to use the property for commercial non-agricultural purposes. Mr. Nielsen stated that he understands the tough economic times and that Taneytown wants to extend jobs. The issue has to be worked out with sensitivity. There can be legitimate legal arguments to say that we don't want any water reallocated, but this is a perpetual easement. Water is important for the farm and the Foundation is being firm. The Department of Natural Resources (DNR) has a policy that does not allow water recharge rights under the State parks.

Mr. Colhoun commented that the Water Recharge Committee had worked on the issue and

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had been in touch with Agro Ecology to do a technical study. The MALPF Board realizes that it does not have the expertise to resolve the issue. Unfortunately, the request for funding was turned down. A letter signed by Mr. Colhoun and Mr. Conrad was sent to the Governor's Office. This letter sought funds from the Governor's Office to look at the technical issues to assist the MALPF Board's decision making process. But there had been no resolution.

Mr. Conrad stated that currently there are two pending research proposals; one to look at available water resources in Western Maryland and one for the Piedmont area. Ms. Gibson had spoken to MDE and learned that MDE feels that it might make some decision on committing certain amount of withdrawals from certain properties requiring a transfer of allocations.

Mr. Colhoun stated the reason for approaching the Agro Ecology is to get better expertise from an agency that represents agriculture rather than just relying on MDE.

Mr. Stahl commented that there are also groups other than MDE, like the Geological Survey. Mr. Stahl also stated that he believes that there are two sides to preservation. While it is important to preserve the land, it is also important to promote development in the Priority Funding Areas.

Mr. Conrad stated that the draft letter being passed out is for informational purpose. The content of the letter is to caution the easement holders and to let them know that the issue is not yet resolved. The Foundation wants the easement holders to be careful and not to get into a situation where they are in violation of the easement. The letter is still not final and is to be reviewed by the County. The burden will be on those requesting the reallocation of water, including the County to indicate whether or not there is adequate water and how much they plan on committing. It will be up to the Foundation to develop a policy. Is it something the Foundation can approve or is it something the Foundation would like to decide on a "case by case" basis or the Foundation gets the issue addressed by the Governor's Office?

C. Quarterly Inspection Report - Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator

Ms. Hoxter informed the Board members that no counties have sent their inspection reports except Washington County. The Washington County has inspected 17% Federal and 3% State easements.

Mr. Conrad suggested including a written report in the next month's agenda packet.

Mr. Freedlander asked Diane Chasse, MALPF Administrator, if the Governor's Office/Treasurer's Office has the ability to see the maps locating preserved properties. They have the ability to see other preserved properties in the State of Maryland.

Diane Chasse stated that the maps are provided by the Maryland Department of Planning. Mr. Tassone confirmed that the Maryland Department of Planning has the ability to provide the maps but so far his Office has not been approached by anyone from the Governor's Office.

Ms. Schultz asked for a motion to adjourn the meeting and move into a closed session, pursuant to the provisions of State Government Article Section 10-508 (a) (7) and (8) to consult with legal counsel staff, consultants, or other individuals about pending or potential litigation.

