

MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
OPEN MEETING MINUTES
July 22, 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
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
Donald T. Moore

OTHERS PRESENT:

Michelle Cable, MALPF Administrator
Diane Chasse, MALPF Administrator
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
Justin Hayes, Assistant Attorney General, Maryland Department of Agriculture
Kim Hoxter, MALPF Monitoring, Enforcement and Database Coordinator
David Kelleher, Department of General Services, Appraiser
Jeanine Nutter, Prince George's County, Program Assistant
Steve O'Connor, Cecil County, Program Administrator
Chana Turner, MALPF Administrator
James Wallace, MDA, Director of Administrative Services

OTHERS PRESENT BY WEB CONFERENCING:

Bill Amoss, Harford County, Program Administrator
Chris Boggs, Washington County
Deborah Bowers, Carroll County, Acting Program Administrator
Carla Gerber, Kent County, Program Administrator
Debbie Herr-Cornwell, Caroline County, Program Administrator
Ned Sayre, Harford County, Ag Preservation Outreach Specialist
Eric Seifarth, Washington County, Program Administrator

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John W. Draper, Jr., Chair, called the meeting to order at 9:01 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: June 24, 2014 Minutes.

Motion #1: Approve minutes with changes for June 24, 2014

Motion: Patricia Langenfelder Second: Mary Ellen Setting
Status: Approved

II. ADDITION / DELETION OF AGENDA ITEMS

Ms. Chasse stated that she had no additions or deletions to the agenda items.

III. ANNOUNCEMENTS

Ms. Chasse informed the Board that Ms. West will not be at this morning's Board meeting.

Ms. Chasse mentioned that MALPF has received the easement applications for FY 2015 and staff is currently reviewing them.

MALPF staff will be presenting easement applications that have unusual circumstances or withheld acres easement applications at the August 26, 2014 Board meeting.

IV. EASEMENT AMENDMENTS

A. CARROLL COUNTY

1. 06-11-04 Pipe Creek Run Farm, LLC/Thomas ~177 acres

Request – Carroll County:

Request to exclude up to 2.0 acres from the easement for an owner's lot.

Recommendation:

Staff recommends approval. If Carroll County requires the farm access lane to be owned in fee with the lot, as well as any road frontage dedication, that acreage must be included within the approved acreage to be released for the lot.

Background:

Pipe Creek Run Farm, LLC is the original grantor of this easement, established in 2012. There is one documented pre-existing dwelling. No requests have been made regarding this easement property.

This owner's lot will be located at the end of a pre-existing farm lane, along the north border of the easement property, approximately ¼ mile off Sharrett Road. The driveway entrance to Sharrett Road may need to be relocated to meet County sight-distance requirements. While the location of the lot is not adjacent to the road, based on the topography and soils of the farm, this location will impact the agricultural operation of the farm the least. It is one of two areas that will meet health code standards for well and septic requirements. Since it is located along a perimeter of the property, the lot location meets 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 \$5,567.37 per acre being released.

Ms. Turner presented the item. Deborah Bowers, Carroll County Program Administrator, was present by

web conferencing for questions and comments.

Discussion:

Ms. Brogan asked for clarification concerning a statement in the memo that says that "...this [lot] location will impact the agricultural operation of the farm the least." Ms. Cable responded that while MALPF's preference would be to have the lot located on the road, a letter was provided by the surveyor/engineer explaining that this property has only two locations that would meet the health department's septic requirements. The second location was not provided by the surveyor, as the requested location is the least impactful to the property.

Ms. Langenfelder questioned access to property. Ms. Cable mentioned that some counties require access to a public road to be owned in fee simple, adding that she is not sure what Carroll County's requirements are. Ms. Cable said that if the access is required to be owned in fee simple, the acreage would have to be included within the maximum of the 2 acre lot size. Ms. Langenfelder asked if access would be determined prior to the final lot release. Ms. Cable confirmed that legal access will be determined prior to final release of the lot.

Motion #2 Approve request to exclude up to 2.0 acres from the easement for an owner's lot subject to the location provided in the landowner's application.

Motion: Jonathan Quinn Second: Michael Calkins
Status: Approved

2. 06-11-03 ("the Easement") Braswell, George ~128.7 acres

Request - Carroll County:

Request to locate a 1.0 acre building envelope and waive survey requirements.

Recommendation:

Staff recommends approval of location of the building envelope.

While the terms of the Easement require a survey to delineate the building envelope, Staff recommends modifying the requirement to allow the landowner to provide an engineering or site plan that would sufficiently identify, as determined by Foundation Staff, the location of the one acre building envelope. Staff recommends working with attorneys to record a document in the Carroll County Land Records to memorialize the location of the building envelope for the benefit of current and future owners of the property.

Background:

Walter Huber applied to sell the Easement in July, 2010. As there were no pre-existing dwellings, Mr. Huber withheld 1.0 acre from the Easement application for a future dwelling, and the property was appraised on 127.7 acres. Mr. Huber entered into the option contract with MALPF to sell the Easement but died before the transaction was complete. His estate completed the sale of the Easement with a modification regarding the withheld area. The estate decided that instead of withholding one (1) acre from the Easement, they would prefer a 1.0 acre "floating, non-subdivideable building envelope" that would allow a dwelling site in the future with location approval of the Foundation.

The Easement dated April 9, 2012, contains the following language:

1. The Grantor reserves for itself, its successors and assigns, the right to improve the land by constructing one (1) principal dwelling with prior written approval of the Grantee.

Current request.

2. The dwelling and all accessory structures designed, constructed and utilized to serve the principal dwelling (for example, garage & pool) must be located within a 1.00 acre building envelope, the location and configuration of which must be approved by the Grantee.

Current request.

3. Access to the building envelope must be over an existing right of way on the land, or directly from a public road.

The proposed access route will use a portion of a shared common driveway, extending it to the location of the dwelling.

4. The Grantor, or her successors or assigns, must provide a survey showing the location and configuration of the building envelope, and access thereto, with written metes and bounds description, signed and sealed by a Maryland Registered Surveyor, within ninety (90) days of approval by the Grantee.

The landowner has requested a waiver of this requirement. Staff suggests that a metes and bounds description of the 1.0 acre building envelope may not be necessary in this case because the site cannot be subdivided from the Easement. However, as noted above, Staff recommends modifying the survey requirement to require that the landowner provide a site plan or location drawing showing the location of the building envelope and any planned accessory residential improvements. MALPF will review the plan provided by the landowner to ensure that it is sufficient to accurately identify the 1 acre building envelope and create a document to be recorded in the Carroll County Land Records to memorialize the building envelope location.

5. The building envelope may not be subdivided or conveyed separate and apart from the land, as now described herein on Exhibit A.

Current request.

The proposed dwelling site has not changed from Mr. Huber's original withheld acreage request. The proposed site is Class II soils. Disruption to the farm operation should be minimal.

The Carroll County Agricultural Advisory Board has approved this request. The landowner is in the process of obtaining a building permit from Carroll County. While a Corrective Easement is not required, it is Staff's recommendation to record an agreement to document the location of the building envelope.

No pay-back is required.

Ms. Cable presented the item. Deborah Bowers, Carroll County Acting Program Administrator, was present by web conferencing for questions and comments.

Discussion:

Mr. Draper asked Ms. Cable about the original lot selection for this easement. Ms. Cable responded that the original owners waived all lot rights, but reserved a 1-acre building envelope with location approval by the Foundation.

When asked whether the Board would establish any precedent by agreeing to waive a survey for the building envelope. Mr. Hayes responded that the Board's future decisions would be based on the specific circumstances of each request on a case by case determination. In the pending request, the owner seeks to waive the survey requirement because of costs and the building envelope will be non-subdividable. The Foundation has separate interests in requiring a survey so that it may determine the location of allowable improvements within the building envelope. Staff's suggestion of allowing the landowner to provide a building site plan/engineering drawing may be a possible solution, but only if it

Recommendation:

In accordance with the Foundation's Agricultural Subdivision regulations, Staff recommends approval, subject to conditions agreed upon by the landowners.

Background:

Oller Easement - This easement was established in 2009. Betty Oller was the original easement grantor. Ms. Oller recently passed away. The property is currently owned by Ms. Oller's estate and is bequeathed to her nephew, Colby Oller. There is one pre-existing dwelling and an unrestricted lot right. No requests have been made regarding this easement property.

Misty Meadow Farm Easement – This easement was established in 2000. Misty Meadow Farms, Inc. is the original easement grantor. There are four documented pre-existing dwellings on the property. In 2010, the Board approved a creamery and farm store on this easement property. No other requests have been made regarding this easement property.

Subdivision Regulation Criteria:

Under COMAR 15.15.12.04 B if the Board approves an agricultural subdivision, approval shall accommodate a plan that the Foundation has determined will benefit the agricultural operation. The required Corrective Easements may include other additional terms, conditions, waivers, or restrictions that the Foundation considers appropriate to protect the agricultural purpose and the future profitability of resulting divided parcels. The regulations provide landowners the ability to request a subdivision if the following conditions are met:

- (1) The proposed agricultural subdivision serves an agricultural purpose;

The farm will be divided to facilitate separate farming operations on the land. Mr. Oller will retain ownership of the ~66.8 acre parcel of the Oller land, continuing as a crop-raising operation that supports a neighboring dairy operation. Mr. Oller plans to sell ~30 acres of the northern portion of the farm to the neighbors, Misty Meadow Farms, Inc. (#21-90-01csR), to merge the ~30 acre parcel with their ~183.8 acre property, to be used to grow additional feed benefitting the current dairy operation .

The subdivision will allow Mr. Oller to maintain and continue his crops operation while allowing Misty Meadow Farms, Inc. to expand the lands for their dairy operation.

- (2) The proposed agricultural subdivision will enhance or have no effect upon the agricultural operations being conducted upon the land; and

The agricultural subdivision will enhance the overall operations of Misty Meadow Farms, Inc. and will have no effect on the continued crop operation of the Oller farm.

- (3) The resulting divided parcels from the agricultural subdivision are able to sustain long-term agricultural production, independent from each other.

Each parcel will be able to maintain agricultural production independently of the other, given the 30 acre parcel will be merged with another easement property. The resulting parcels meet the soils criteria of the regulations.

This request also meets the exception for the 50 acre size requirement. The regulation states that the Foundation may permit resulting dividing parcels of less than 50 acres of land if:

- (1) One of the following exists for the resulting divided parcel comprised of less than 50 acres:

(a) The Foundation determines that physical limitations of the land, including but not limited to, bodies of water, public roads, and steep slopes create constraints making the 50 acre minimum impractical, and the resulting parcel of less than 50 acres continues to meet minimum soils requirements as provided by COMAR 15.15.01.03D independently of the original farm; or

This provision is inapplicable.

- (b) The resulting divided parcel comprised of less than 50 acres

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(i) is conveyed to owners of adjoining land encumbered by an easement in favor of the Foundation; and

The ~30-acre parcel will be conveyed to the owners of the land subject to the Misty Meadow Farm Easement 21-90-01csR.

(ii) the easement encumbering the adjoining land is amended to encumber the resulting divided parcel, or an overlay easement in favor of the Foundation is placed over the entire acreage constituting the resulting divided parcel and the adjoining land; and

A corrective easement will be done for the resulting configuration / ownership of both the Oller farm and the newly enlarged farm owned by Misty Meadow Farms, Inc.

(iii) the resulting divided parcel and the adjoining land together meet minimum soils requirements as provided by COMAR 15.15.01.03D;

The final configuration of both properties continues to meet the qualifying soils requirement.

In accordance with the regulations, Mr. Oller and Misty Meadow Farms, Inc. have confirmed that they will be responsible for the expenses associated with the transaction and corrective easement process. They have also been informed that the termination request provision will be extinguished through the corrective easements for both newly configured easement properties.

Mr. Oller will retain the unrestricted lot right on the ~66.8 acres that he will own. Mr. Oller has agreed to make the pre-existing dwelling on the property non-subdividable from the easement.

Misty Meadow Farms, Inc. was the original grantor of the easement, selecting family lot rights. MALPF Staff does not know at this time if any of the original member(s) of the corporation have had continued ownership in the property and the resulting impact on whether or not the current members of the corporation have the ability to request any family lot rights. This will be determined and documented as part of the corrective easements. Misty Meadow Farms, Inc. has agreed to make the main dwelling (identified on the map) non-subdividable from the easement.

This request has been approved by the local advisory board and meets Planning & Zoning requirements.

Additional Information:

Misty Meadows Farm, Inc., runs a successful creamery and farm store, selling dairy products such as ice cream and yogurt, as well as other packaged dairy and meat products. MALPF Staff learned in 2013 that other prepared food items were also being sold at the farm store location.

In March 2014, the Board approved food preparation and serving guidelines as part of the permitted uses policies. Misty Meadow Farms, Inc. has indicated that they are willing to submit a request under the newly approved policy regarding that aspect of their business. The County has agreed to work with the owner to prepare and submit the retroactive request.

Per the Corrective Easements regulation, the Foundation may take current easement violations into account when new requests are submitted for review.

COMAR 15.15.11.03.H:

H. Existing easement violations. The Foundation may refuse to approve a request for a corrective easement if an easement violation exists upon the land.

Ms. Cable presented the item. Mr. Seifarth, Washington County Program Administrator, and Chris Boggs, Program Assistant, were present by web conferencing for questions and comments.

Discussion:

Mr. Seifarth added that Mr. David Herbst is one of the original owners of the corporation, and has maintained a continuous ownership in Misty Meadow Farms, Inc., thereby retaining the ability to request

23	Worcester	100	%	5	5	11	%	4	36
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Ms. Hoxter, presented the item and was present for questions and comments.

Discussion:

Ms. Hoxter added that Carroll County sent a few more state inspections and they have moved from 10% to 11%. She has not received any dates for the federal properties but she was informed that they were completed but this information has not been verified. Talbot County missed their federal goal by one, however they completed it on July 6, 2014.

B. Discussion – Board response to Long letter

This Howard County easement originally consisted of ~232.88 acres and was owned by Mr. A. G. Warfield. On February 28, 1995 the Board approved a ~40 acre agricultural subdivision of the portion of the easement located on the north side of Ellicott Road. Mr. Robert Long is the subsequent owner of the southern ~193 acre portion of the easement. As a requirement of the Board approval for the agricultural subdivision, the ~40 acre portion was merged with an adjacent ~43 acre easement. Those two parcels are now owned by Oak Ridge Farm LLC.

On March 26, 2014 the Board approved the request of Oak Ridge Farm LLC to conduct a mulch production operation on the easement. At the meeting, Joy Levy, Howard County Program Administrator, explained that the County was in the process of undertaking an update of their comprehensive zoning that would focus on positive changes to help with farm uses. Ms. Levy stated that the mulch operation was consistent with current and would be consistent with the future county zoning, if the updated comprehensive zoning was adopted. As the request met the Foundation's requirements for processed value-added forest products, it was approved.

Mr. Long has made many calls to Foundation staff complaining about dust, noise and water pollution coming from the Oak Ridge Farm LLC easement property. His letter which was received in the MALPF office June 23, 2014 lists 10 points of contention. Staff notes that most of Mr. Long's objections to the operation are county issues that are not yet resolved. The Maryland Department of the Environment have been called, have visited the property, have tested the air, and have found no basis to declare dust pollution to be a problem.

Howard County staff has confirmed that there is currently a zoning violation, however the landowners have applied for a Conditional Use approval. Their application places the violation on hold. The larger comprehensive zoning issues are also on hold awaiting resolution by the County Council. A task force to study the uses issue has been appointed and will report back to the County Council by the end of the year.

In a memo from Carol West, staff recommends drafting a letter for John Draper's signature that will state that the Oak Ridge Farm LLC is not currently in violation with the Department of the Environment or the MALPF Deed of Easement. As to the county issues, we will have to wait for the outcome of the comprehensive zoning use issues before we can make any determination as to whether this particular use can continue on MALPF easement property in Howard County.

Ms. Hoxter, presented the item and was present for questions and comments.

Discussion:

Ms. Hoxter made corrections to Ms. West's memo regarding a proposed response to the Long letter. She said the Board's approval for the mulching use occurred on March 26, 2013 and that the attached minutes are also dated March 26, 2013.

Ms. Hoxter mentioned that Mr. Long would like for the Board to revoke the approval of the Oak Ridge Farm, LLC Mulch operation.

Mr. Draper asked Ms. Hoxter if she has inspected this operation since the complaint. Ms. Hoxter replied that she had not.

Ms. Brogan commented that most of Mr. Long's letter is about environment or zoning issues, with the exception of item 6. This item addresses the loss of agricultural land due to heavy traffic soil compaction. She wanted to know if the MALPF program should have concerns with the concept of this land being taken over with a commercial operation and MALPF losing more land that could be used for agriculture.

Mr. Hayes agreed with Ms. Brogan that item 6 in Mr. Long's letter related to the MALPF program and that 2% is the cap of that area that is allowed for the facility or the operation. This is something that he is concerned about regarding going outside of that area.

Also to figure out if there is a violation happening MALPF must look at the policy that this was approved under in March 2013. If a letter of approval was issued with any other conditions this should be reviewed as well. The policy and the letter of approval need to be reviewed to see if this use violates MALPF's conditions of approval.

Ms. Brogan suggested that in addition to Ms. West's suggestion that MALPF should wait until the outcome of the Howard County zoning issues, more investigation is needed on our part regarding item 6 in Mr. Long's letter.

Mr. Hayes mentioned 3 things that could be done:

- 1) Review Uses Policy
- 2) Review the letter of approval (stating conditions of operation)
- 3) Conduct another inspection (to determine whether Oak Ridge, LLC is operating within the confines of the restrictions set with regard to the 2% property limit.)

The Board agreed that a letter should be sent out to Mr. Long stating that they are reviewing his complaint.

They also recommended proceeding on the following 3 items that Mr. Hayes mentioned:

- 1) Review Uses Policy, 2) Review the letter of approval (stating conditions of operation) 3) Conduct another inspection (to verify that Oak Ridge, LLC is operating within the confines of the restrictions set).

Then, report back to the Board, and MALPF staff will follow up with Mr. Long in writing.

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

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Status: Approved

The Open Board Meeting was adjourned at approximately 9:58 a.m.

The Closed Meeting of the Board was held from 10:05 a.m. to 10:31 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, James Norris, Jr., Jonathan Quinn, Eugene Roberts, Jr., Dan Rosen, and Mary Ellen Setting.

TOPICS DISCUSSED:

VIII.A Approval of May 27, 2014 Closed Session Minutes

VIII.B Status Report of Pending Legal Issues

VIII.C Discussion – Upcoming Mullinix Hearing

The Closed Meeting was adjourned at 10:31 a.m.

Respectfully Submitted:

Angela Gaither, MALPF Secretary

Carol S. West, Executive Director