

Final

Minutes
Virginia Outdoors Foundation
Meeting of the Board of Trustees
Tuesday, June 24th, 2003
The Jefferson Library on Kenwood Farm at Monticello

Trustees present: Mr. Frank Kilgore, Chairman, Ms. Katherine Imhoff, Mr. Charles Seilheimer and Mr. Paul Ziluca. Trustee absent: Dr. Rupert Cutler and Ms. Jill Holtzman.

VOF Staff Present: Leslie Grayson, Director, Northern Virginia Easement Office, Ruth Babylon, Sherry Buttrick, Anna Chisholm, Faye Cooper, Kristin Ford, Leslie Trew, and Estie Thomas. Also in attendance were Mr. Fred Fisher, Senior Assistant Attorney General, Ms. Carrie Hagan from the James River Association, Ms. Lucille Miller from the Valley Conservation Council, Ms. Babbette Thorpe, Mr. David Hanna, Ms. Erica Richardson, Mr. Bob Gilgas and Mr. Gray Coyner from the Piedmont Environmental Council, Mr. and Mrs. Mike Lane, landowners from Suffolk County, and Ms. Megan Gallagher and Mr. Lucius Kellam from the Virginia Eastern Shore Land Trust.

Chairman Kilgore convened the meeting at 10:15 am. He appointed Ms. Grayson as Secretary of the meeting and she confirmed that there was a quorum present.

Ms. Imhoff made a motion to approve the Order of Business. The motion was approved unanimously.

Ms. Imhoff made a motion to approve the minutes from the March meeting. The motion was approved unanimously. Mr. Ziluca requested a change to the December meeting minutes approved already at a previous meeting which he had been unable to attend. He pointed out that each of the easements of less than 50 acres were inaccurately described as not meeting the current VOF Guidelines and made a motion that the sentence be corrected or deleted wherever it appeared. The motion was approved unanimously.

Mr. Kilgore opened the floor to questions and/or corrections to any of the easements included in the consent agenda. Easements #32 and #25 were removed from the agenda. Easements #'s 11, 12, and 18 were moved to the "non-consent agenda". Ms. Ford indicated that on easement #3 the historic resource box should have been checked. Ms. Imhoff made a motion to approve the consent agenda easements with the above modifications including #'s 1-10, 13-17, 19-24, and 26-30. The motion was approved unanimously.

Easement Proposals, Non-Consent Agenda

Ms. Cooper presented the Knipland LLC easement (#11) of 160 acres in Shenandoah County. Ms. Cooper indicated that the easement had been removed from the consent agenda because of a change in the elevation line from 1060 feet to 1100 feet for the "no-build" restrictions. Ms. Imhoff made a motion to accept the easement with the above modification. The motion was approved unanimously.

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Ms. Trew presented the Lane/Cuttrell easement (#12) of 100 acres in the City of Suffolk. The landowners presented a variation of VOF's standard cell tower language which they had tried to adapt to the terrain present in the region of their property. Ms. Imhoff made a motion to accept the easement with Ms. Trew's presented cell tower language. The motion was approved unanimously.

Ms. Ford presented the Richards easement (#18) of 50 acres in Fauquier County. She indicated that the landowners had made a change to the language in paragraph 7 which would allow the existing main house to be enlarged. Ms. Ford recommended acceptance of the easement because of the 600 foot building setback and the restricted building site for the permitted house, which is well set back from the public road. Ms. Imhoff made a motion to accept the easement as modified above. The motion was approved unanimously.

Ms. Cooper presented the Eavers easement (#31) of 25 acres in Augusta County. Ms. Lucille Miller from the Valley Conservation Council (VCC) spoke to the Trustees about the connection of this property and the following Reed easement to the Harper's Ferry Trail Staunton-to-Parkersburg Pike, an historic corridor related to the Civil War battle of McDowell. She described VCC's efforts to protect the corridor and indicated that Tea-21 funds would be used to purchase both the Eavers and Reed easements. Though the proposal was less than fifty acres, Ms. Cooper recommended acceptance of the easement because of the significant benefit it would provide for the driving public along this corridor. Ms. Imhoff made a motion to accept the easement as presented. The motion was approved unanimously.

Ms. Cooper presented the Reed easement (#34) of 14.71 acres in Augusta County. This easement was in the same region as the previous and connected to the Staunton-to-Parkersburg Pike. Though the proposal was less than fifty acres, Ms. Cooper recommended acceptance of the easement because of its importance to the region, the historic importance of the existing house, the extinguishment of five development rights, and the inclusion of additional building setbacks. Mr. Seilheimer made a motion to accept the easement as presented. The motion carried with three votes; Ms. Imhoff voted against because of the number of permitted structures on a parcel of that size.

Ms. Babylon presented the Perkins easement (#33) of 85 acres in Pulaski County. Ms. Imhoff made a motion to accept the easement subject to the separation of the cell tower parcel from the easement. The motion was approved unanimously.

Ms. Grayson presented the Ridder easement (#35) of 133 acres in Fauquier County. Ms. Grayson indicated that the proposal included language to allow the use of the property by a non-profit organization for educational purposes and allowed buildings related to that purpose. Mr. Seilheimer made a motion to accept the easement as presented. The motion was approved unanimously.

ACE and Loudoun PDR Easements

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Ms. Grayson presented the Brown easement (#36) of 415 acres in Loudoun County. Ms. Imhoff made a motion to accept the easement as presented. The motion was approved unanimously.

Ms. Thomas presented the Mehring easement (#37) of 611 acres in Albemarle County. Although, the proposed easement exceeded VOF Guidelines regarding allowable parcels, Ms. Thomas recommended acceptance of the easement because of additional siting restrictions on permitted residences. Ms. Imhoff made a motion to accept the easement as presented. The motion was approved unanimously.

Ms. Grayson presented the Zurschmeide easement (#38) of 184 acres in Loudoun County. Ms. Imhoff made a motion to accept the easement as presented. The motion was approved unanimously.

Reconsideration of Easement Proposals

Ms. Trew presented the Bayview easement (#39) of 96 acres in Northampton County. This easement was previously accepted at the March 18th Trustee meeting. Ms. Trew indicated that a discovery had been made that the local Public Service Authority owned drain fields on the property and that this would reduce the number of acres to be put under easement. Ms. Trew recommended acceptance of the easement because the effect of the change was minimal to the easement as a whole. Ms. Imhoff made a motion to accept the easement as modified. The motion was approved unanimously.

Ms. Imhoff made a motion to move the Trustees into a closed meeting pursuant to subsection A, paragraphs 1, 3 and 7 of 2.2-3711 of the Code of Virginia, to discuss and/or consult with counsel regarding legal action, land sale/acquisition and personnel issues. Mr. Seilheimer seconded the motion and the motion was approved unanimously.

The Chairman reconvened the open meeting at 1:15pm. Mr. Ziluca made a motion certifying that only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting and only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Trustees. Mr. Seilheimer seconded the motion and the motion was approved unanimously.

Ms. Imhoff made a motion directing the staff to commission an appraisal for the Mary Moody Northen property in Chesterfield County (CFD-VOF-38). The motion was approved unanimously.

The Chairman invited the public to address the Trustees. Ms. Babbette Thorpe spoke to the Trustees about PEC's concerns related to the idea of VOF charging a fee for the easement process, which was one of several funding ideas mentioned in the previous meeting due to the current state budget crisis. She suggested that a fee might have a negative effect on working farmers and also on fundraising. Ms. Thorpe also presented a folder describing the tax benefits associated with donating an easement and indicated that it was available to all landowners.

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Mr. Gray Coyner also addressed the Trustees concerning the proposed fee and offered his assistance in any fundraising to avoid the necessity of instituting any type of fee.

Aldie Mill Transfer Proposal

Mr. Ziluca presented a proposal outline for transferring ownership of the Aldie Mill to Loudoun County and describing the status of the project. Ms. Imhoff made a motion to approve the transfer idea and endorse the proposal as presented. The motion was approved unanimously.

National Park Service Transfer Proposal

Ms. Cooper presented a proposal to convey to the National Park Service the Cedar Creek and Belle Grove National Historic Park and the Richmond National Battlefield Park easements. These easement properties are owned by the Cedar Creek Battlefield Foundation (135 acres) and the Association for the Preservation of Virginia Antiquities (13.5 acres) respectively. Ms. Cooper indicated that the transfer had been anticipated at the beginning of the process and that all necessary requirements had now been fulfilled in order to accomplish the conveyance. Mr. Seilheimer made a motion to approve the conveyance of the easements to the National Park Service subject to the approval of the transfer documents by Fred Fisher. The motion was approved unanimously.

Other Discussion

Ms. Ford presented a status report on VOF easements and mountainside protection. Mr. Kilgore thanked the staff for the detailed report and indicated that the information would be helpful in future easement projects.

The Trustees discussed the idea of some kind of fee for easement donors in light of the continuing state budget crisis. Mr. Kilgore commented on the pressure from the General Assembly to increase or institute “user-fees” rather than allocate tax funds, especially in light of the generous tax benefits available to easement donors. Mr. Seilheimer spoke against any idea of charging a fee for a donation of value to the state and suggested that maybe a better publicized report of the value of VOF’s holdings and the related public benefits was in order. Ms. Imhoff pointed to insufficient state support for VOF’s program, but agreed with Mr. Seilheimer concerning the negative effect of charging a fee. Mr. Ziluca expressed concern that a processing fee would have a detrimental effect on VOF’s ability to accept easements. No action was taken.

Ms. Buttrick presented further revisions to the easement template. Ms. Buttrick indicated that the staff recommended approval of all the changes and requested permission to disseminate the new document. Mr. Ziluca made a motion to approve the revised template as presented and to form a committee including Fred Fisher, Sherry Buttrick and Leslie Grayson to investigate adding provisions to the template specifying penalties, fines, or punishments for violations of the easement terms. The motion was approved unanimously.

Budget Report

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Ms. Grayson presented the proposed budget for fiscal year 2004. Ms. Imhoff made a motion to approve the budget as presented. The motion was approved unanimously.

Ms. Imhoff made a motion to move the Trustees into a closed session pursuant to subsection A, paragraph 1, 3, 7 of 2.2-3711 of the Code of Virginia to discuss and/or to consult with counsel regarding legal advice and personnel issues. The staff was requested to stay for the meeting. Discussion involved the legal issue of including a disclaimer related to the state tax credit as part of the easement template.

The Chairman reconvened the open meeting and Mr. Seilheimer made a motion to certify the closed meeting. Ms. Imhoff seconded the motion and it was approved unanimously.

Ms. Imhoff made a motion to add tax benefit disclaimer language to the template easement subject to legal approval from Fred Fisher. The motion was approved unanimously. The approved language follows: "The parties hereto agree and understand that any value of this donation claimed for tax purposes must be fully and accurately substantiated by an appraisal from a qualified appraiser as defined in IRS regulations (see section 1.170A-13(c)(5)), and that the appraisal is subject to review, audit and challenge by all appropriate tax authorities. The Virginia Outdoors Foundation makes no express or implied warranties regarding whether any tax benefits will be available to Grantor from donation of this easement, nor whether any such tax benefits might be transferable, nor whether there will be any market for any tax benefits which might be transferable." Ms. Imhoff also suggested that press releases be reviewed by at least the Chairman, if not all the Trustees.

Confirm Next Meeting Date, Adjourn.

The dates of the next Trustee meeting were set for September 30th and October 1st at Breaks Interstate Park. The December meeting was tentatively scheduled for December 3rd and 4th in Charlottesville.

Mr. Kilgore adjourned the meeting at 4:30 pm.

Respectfully submitted,

Anna G. Chisholm