

**Jefferson County Farmland Protection Board
Special Board Meeting.....Friday January 31, 2020
Jefferson County Development Authority Conference Room
1948 Wiltshire Road, Kearneysville, WV 25430**

MINUTES

- 6:00pm.....Call to Order and Opening Remarks * Action item
- Meeting called to order by President Mr. Glenn.
 - Attending the meeting were Mr. Kercheval, Ms. Johnson, Ms. Tabb, Mr. Quinn, Mr. Perry and Ms. Wheeler. Absent – JCDA representative.

Introduction of Guests:

- David DeJarnette, Nicola Smith

Approval of Minutes of Previous Meeting: Monday, January 13, 2020 *
Minutes tabled for the February meeting.

1. Discuss proposed plans for the closing of the LLL easements.
 - Mr. Glenn moved to go into Executive Session to discuss proposed plans for the closing of the LLL easements. The motion was seconded by Mr. Kercheval. The motion passed unanimously.
 - Mr. Glenn moved to come out of Executive Session and the motion was seconded by Mr. Perry. The motion passed unanimously.
 - Now declared in regular session.

 2. Consider for approval: Proposed Plans for the closing of the LLL easements. *
 - Discussed issues and concerns raised by ABPP and WVDACH. Board baffled by restrictions proposed on farming activities, especially given well know agriculture practices actively happening on local battlefields such as Antietam and Harpers Ferry. (As well as the existing 8 battlefield easements co-held by the Board).
 - Board completely against these restrictions and will continue to work and discuss with ABPP.
 - Reviewed proposed handout draft proposal as a “fallback” if ABPP deal falls through, that proposes JCFPB fully fund 140 acres now, with an option in 2021 to purchase easement for another ~100 acres, and option in 2022 for the balance acres of ~56.
 - Discussed option of collapsing into a larger easement now, with only one option instead of two.
 - Mr. Glenn moved to approve the memorandum presented to board, seconded by Mr. Kercheval.
 - Mr. Quinn moved to amend the motion, to include all of parcel 2R and 4 rather than put a partial easement of just 40 acres on parcel 4. The first easement would total approximately 190 acres, and the Board would have just one option for year 2021 for parcel 5 (104.77 acres). Seconded by Mr. Kercheval, the motion passed unanimously.
- 7:55 Adjourned

Motion: Move that the Board approve the following terms and provisions for the closing of the LLL easement:

Based on the Board's review of the current status of the proposed easement (the "ABPP Easement") to be co-funded with American Battlefield Protection Program ("ABPP") and a Forbearance Agreement between the LLL owner and the lender holding the deed of trust liens on the LLC property (the "Secured Creditor"), the Board agrees to proceed as follows with respect to the closing of the LLL easement:

The Board shall close on the purchase of a farmland conservation easement (the "Farmland Easement") on the 14.5 acre farmland parcel (the "Farmland Parcel") on the LLL property for a purchase price of \$57,117.00 by March 15, 2020 to comply with the conditions set forth in the Forbearance Agreement. All debt encumbering the Farmland Parcel must be subordinated to the terms and conditions of the Farmland Easement and insured as such by the title insurance company. The LLL owner shall use the purchase proceeds to make the required debt service payment(s) to the Secured Creditor to meet the conditions set forth in the Forbearance Agreement. Legal counsel for the LLL owner will provide the Board with written assurances that no further debt service payments are due under the terms of the Secured Creditor's loan documents until January 2021.

The Board will continue to work with ABPP to come to agreement for a final easement deed and baseline in the next 60 days.

The Board's stated preference is to close the ABPP Easement concurrently with Farmland Easement; however, the Board understands that finalizing the ABPP easement deed and baseline may require a closing later in 2020.

If in the next 60 days the Board is unable to reach an agreement with ABPP, the Board, after consultation with the LLL owner, will present ABPP with a final offer to close within 30 days or the Board reserves the right to move forward with placing an easement on the LLL property without funding from ABPP. The Board may extend such 60-day period if the Board reasonably believes (after consultation with the LLL owner) that an agreement with ABPP is possible within a reasonable period of time.

If the ABPP funding cannot be obtained, the Board agrees to proceed as follows:

1. The LLL property, which will be subdivided into 4 separate lots prior to closing (Lot 2R for 90.3 acres, Lot 3 of 2 acres, Lot 4 of 100 and Lot 5 of 104.7 acres), will be divided **for easement purposes only** into three "Easement Parcels." Easement Parcel A will cover 140.3 acres. Easement Parcel B and Easement Parcel C will cover the remaining acreage of 156.70 acres. Lot 3 is excluded from the farmland easement.

For example, Easement Parcel B will be for 100 acres and Easement Parcel C is for 56.7 acres. The Easement Parcels won't match up with the subdivided Lots because of the acreage differences.

2. If the Board cannot secure an agreement with ABPP in the next 60 days, the Board will begin drafting of a new easement deed, plat and baseline for a farmland only easement on the LLL property (i.e., Lot 2R (less the Farmland Parcel), Lot 4 and Lot 5) and seek the required County approvals thereof, so that the Board can close on the purchase of a farmland-only easement on Easement Parcel A for a price of \$3,927 per acre as soon as reasonably possible after the Board decides to move forward without

ABPP funding. The purchase funds will be used by the LLL owner to pay off all of the Secured Creditor's debt, so that the LLL owner will own Lot 2R, Lot 4 and Lot 5 lien free. The LLL owner will obtain payoff statements from the Secured Creditor stating the amount(s) required to pay off all of the Secured Creditor's debt to assure the Board that purchase price for Easement Parcel A is sufficient to pay all such debt in full at closing.

3. At that same closing, the LLL owner will grant the Board options to purchase Easement Parcel B in 2021 and Easement Parcel C in 2022 for a fixed price per acre of \$3,927. The options or a memorandum thereof must be prior to any other liens and shall be recorded to bind the successors and assigns of the LLL owner.

In addition, Easement Parcel B and Easement Parcel C will be encumbered by a covenant that will prohibit any owner of those Easement Parcels from mortgaging the land unless and until the Board's options are exercised or terminate by their terms.

The Board agrees to pay to the LLL owner an amount to be negotiated for the option, which amount will be credited to the purchase price for Easement Parcel B. That amount is forfeited if the Board fails to exercise the first option in 2021. The size of Easement Parcel will be reduced to account for the payment of the option purchase price so that the Board will pay a total of \$550,958 for the easement on Easement Parcel A and the options on Easement Parcel B and Easement Parcel C.

If the Board fails to exercise the option on Easement Parcel B in 2021, then the option on Easement Parcel C terminate as well.