



Land for Maine's Future Program
Minutes of the Meeting
March 18, 2014

Department of Agriculture, Conservation & Forestry
Bolton Hill Facility, Augusta, Maine

Board Members Present:

Ben Emory, James Gorman, Jr., Norman Gosline, James Norris, Neil Piper, Walter Whitcomb, Chandler Woodcock

Board Members Absent:

Bill Vail, Patrick Keliher

Staff Members Present:

Sam Morris Tom Miragliuolo R. Collin Therrien Ed Meadows

Others

Shannon Ayotte, DACF Commissioner's Office
Bob Marvinney, DAC, Bureau of Resource Info. and Land Use Planning
Kathy Eickenberg, DACF Bureau of Parks and Lands
Jeff Romano, Maine Coast Heritage Trust
Sarah Demers, Inland Fisheries and Wildlife

1. Welcome and Introductions

As Chairman Vail was unavailable, Jim Norris filled in as chair and called the meeting to order, welcomed everyone and asked for introductions around the room. He introduced new Board member Mr. Neil Piper whose nomination had been confirmed by the Maine Senate that morning.

2. Minutes of the Previous Meeting

Motion: by Commissioner Whitcomb, 2nd by Mr. Gosline to accept the November 19, 2013 minutes of the meeting. Passed unanimously.

3. Bureau Presentation

Mr. Meadows introduced Robert G. Marvinney, Ph.D., Director of Bureau of Resource Information and Land Use Planning. LMF is now a part of this bureau. Dr. Marvinney described the programs and structure in the Bureau and discussed opportunities for synergy between the programs, which include Maine Geological Survey, LMF, Municipal Planning Assistance, Coastal Program, Land Use Planning Commission, Natural Areas Program and Flood Plain program.

4. Final Round 8 Workbook and Final Working Waterfront Workbook

Mr. Meadows presented an overview of the Habitat Management Area Agreement (HMA) developed with input from IFW, Parks and Lands and LMF staff. This HMA will be the basis for managing deer wintering areas (DWA) acquired with bond funds as directed by Chapter 696, the statute that requires the LMF Board to give preference in scoring to projects that contain priority deer wintering area habitat. These DWA must be managed according to a protocol approved by the IFW, which is the HMA document. At the November 2013 Board meeting when the Board adopted the 2013 Workbook for Round 8, the HMA had not been finalized, and the Board asked that the HMA be brought back to the board at the next meeting.

Brief discussion ensued about the HMA. Mr. Meadows noted that the HMA includes provision for how modifications may be made to the protocol and which modifications require LMF staff or board approval. Modifications may be necessary because over time forest conditions on the ground can change. Commissioner Woodcock commented that DIFW reviews conservation easements on a regular basis, so monitoring the HMAs will be feasible.

Mr. Meadows also informed the Board that updates to the Working Waterfront Workbook also had been completed and copies are available online. He reported DMR Commissioner Patrick Keliher would invite a member of the LMF board to serve on the DMR Commissioner's WWAPP Proposal Review Panel.

5. Summary of Funds (Cash & Bonds)

Mr. Meadows presented an overview of the bond funds, cash balances and current commitments. Funding is available to complete projects approved by the board. LMF staff have asked financial personnel to review the cost of transaction expenses for projects in the previous round.

6. Project Updates

Mr. Meadows presented an overview of the current projects. Several project changes were noted:

- Seal Bay property at Smith Cove on Vinalhaven, Island will not proceed. The parcel was sold and the project withdrawn by the applicant.
- Expanding Wildlife Management Areas - letter received from DIFW indicating an anticipated unexpended balance from the project.
- Forest Legacy Projects - The landowner of the Great Pond-Lower Penobscot and Machias River Phase III projects has withdrawn these projects. Agreement could not be reached with the US Forest Service regarding certain provisions. This means \$1,623,512 of LMF funding reserved for these projects can be directed to new projects.

7. Projects to be Voted On

Projects for Board action: Sears Island Parcels

Sam Morris introduced the discussion of two parcels being recommended for funding; the Sprague- Hastings and Thomas lots in the Town of Lincolnville. These parcels are part of the Sears Island Consent Decree Fund.

Public Notices: Published in the Kennebec Journal and Republican Journal on March 6th.

No written comments were received and there were no comments from the audience in attendance.

Background: In 1996, the Maine Dept. of Transportation was sued by the U.S. EPA and others for filling wetlands on Sears Island. The parties negotiated a consent decree to settle the suit. Funds were transferred from MDOT to the Land for Maine's Future Board for administration. The funds are for the sole purpose of acquiring properties to conserve the Ducktrap River, to protect in perpetuity Atlantic Salmon habitat. The consent decree identified specific parcels for acquisition, among them the Sprague- Hastings and Thomas lots. The LMF Chair signed a Memorandum of Agreement with MDOT which detailed the respective obligations and responsibilities of the parties to achieve the land conservation purposes of the decree.

Acquisitions for this Decree are to follow the LMF acquisition process, including review of appraisals.

Mr. Norris, who had chaired the Appraisal Oversight Committee (AOC) March 4 meeting, summarized the status of the appraisals, and the review by the AOC. He stated he felt the appraiser provided adequate response to AOC's questions and, on balance, he was ready to accept the appraiser's result.

Mr. Norris, who was chairing the Board meeting, asked Commissioner Whitcomb to preside so that Mr. Norris could participate in the discussion as a member of the AOC.

Mr. Emory presented the recommendation of the Appraisal Oversight Committee. Appraisals of the parcels were completed by an independent appraiser as required by LMF standards. The AOC reviewed the appraisal and discussed it at length. Ms. Doyle and Mr. Gosline disagreed with certain aspects of the comparable sales. They specifically disagreed with the 200% adjustment for location on three of the comparable sales. Mr. Gorman expressed concern about acquisition of the parcels because they did not have legal access on a public road.

The AOC agreed to provide several questions for the appraiser to address and then indicate by email, satisfaction with the appraiser's response, prior to the March 18 Board meeting. Subsequently, the appraiser responded, and the AOC members were divided as to whether the responses were satisfactory. (Although Ms. Doyle did respond, her email was not received until after the board meeting had adjourned.)

Mr. Norris stated he had reviewed the appraisal carefully and done his own analysis based on information in the report. Discussion ensued on the technical details of the report. Discussion centered on the finding in the report that the lack of recent sales of similar properties in the immediate vicinity required the appraiser to use comparable sales from neighboring towns. Differences in the types of property and their location are the reasons the appraiser used adjustments to establish the value of the subject parcels.

Mr. Gosline expressed serious concern over the appraiser's adjustment of 200% for location. He felt this adjustment is extremely high and results in the value of the subject parcels being higher than they should be. There was considerable discussion of this issue, with the subject properties located in the coastal community of Lincolnville and the comparable sale parcel in an interior town.

Mr. Norris expressed his belief that using a lesser adjustment results in a value that is within a normal range of the appraiser's conclusion of value. Mr. Gorman questioned "what is the value of land that you cannot get to?" Mr. Gosline indicated the appraiser should have deducted the cost to acquire access from the value. (Note: the parcels are landlocked, however they are adjacent to existing state land and land trust ownership that do have access, so the public will be able to get to the property).

Mr. Norris pointed out that no AOC or LMF Board member had visited the property or provided definitive data to indicate the appraiser's value is not appropriate. He stated that on balance, he felt the appraiser's value was reasonable.

Mr. Emory, chair of the AOC, had not been able to attend the March 4 AOC meeting, but had read the appraisal, the appraiser's response and participated in communications between AOC members. He stated that the AOC are laymen and need to rely on the professional judgment of appraisers hired under contract. He had sent a message to the AOC members regarding his judgment of the appraisal. He requested that a portion of that message be read into the minutes of this meeting, as follows:

"We have a disagreement between two professional, experienced appraisers as to whether such a large adjustment is warranted. My sense is that AOC was never intended or expected to be a body with the expertise to adjudicate disagreements between professional appraisers. Historically, LMF rarely has had a professional appraiser on the board. I believe that AOC should continue to be a

body that simply tries to use layman's common sense to judge whether the State's best interests seem to be being adequately protected. In the case of the current appraisal we have the benefit of an appraisal firm with long experience and a track record of having done many appraisals for LMF. I find the appraisal as presented and the responses to the queries well-presented and logical. As a layman I am not going to second guess the professional judgment of the professionals who did the appraisal, and I believe that it is reasonable for the State to rely on the appraisal."

Mr. Gosline repeated he feels the appraiser's justification was not adequate. He requested that the minutes of the meeting indicate that he has given up his appraiser's license but he still does appraisal work for government agencies and the courts, using his broker license which authorizes him to do appraisals. He requested the record show that he had made the original motion for the AOC to accept the appraisal, subject to satisfactory response by the appraiser. However he did not find the appraiser's response satisfactory. He stated he had done his own independent analysis of the value but did not feel it was his responsibility to share his conclusion with the AOC or the Board. He stated there was no apparent threat to the property by the Town to develop or to undertake timber harvest operations on these tax acquired properties.

He requested the AOC again vote that the AOC approve the appraisal subject to the appraiser satisfactorily addressing the questions posed by the committee.

Discussion ensued on the motion. Mr. Emory stated he was concerned with LMF getting a reputation of being difficult to work with, and if we continue to have disagreements between appraisers over technical details, it will be difficult to find appraisers willing to do LMF-related work. He stated we need to find a better way to handle these issues.

Mr. Whitcomb stated that it is "a given" that appraisals are going to be scrutinized. It also is a fact that board members will sometimes have difference of opinions. This needs to be acknowledged as we conduct our review of acquisition projects.

Mr. Woodcock stated that he welcomed the discussion because it is important for board members to openly express their views, and in particular because not all the Board members are part of the AOC and did not hear the discussion at the AOC meeting.

Mr. Gosline referred to an upcoming continuing education class for appraisers on April 9 and expressed hope that appraisers attend so they would get up to date information on LMF requirements.

Having heard the discussion among the AOC members, the Board discussed how it wanted to proceed. Mr. Whitcomb then called for a vote by the AOC members on the pending motion:

Motion: by Mr. Gosline, 2nd by Mr. Gorman: That the AOC accept the appraisal, subject to satisfactory response by the appraiser to questions raised by the Committee. The vote was 2-2 and the motion failed on the tie vote. Emory and Norris in favor; Gorman and Gosline opposed.

Motion: by Emory, 2nd by Norris: That the Board, having heard the discussion by the AOC, accept the appraisal. Approved 3-2. Norris, Emory and Woodcock in favor. Gosline and Gorman opposed. Mr. Whitcomb, as chair pro temp, did not vote.

Motion : by Mr. Emory, 2nd by Woodcock: To approve Sears Island Mitigation funds in the amount of \$79,000 for the Sprague-Hastings lot & \$78,000 for the Thomas lot to support the acquisition.

Approved 4-2. Norris, Emory, Whitcomb and Woodcock in favor. Gosline and Gorman opposed.

Following the votes, Mr. Meadows offered comments on generally accepted appraisal procedures and the Board's discussion. He summarized the transaction as being part of a court-ordered Consent Decree which requires the state to acquire specific parcels. This means the transaction is not a normal "arms-length transaction" and the buyer and seller are not "typically motivated." Additionally, since the Consent Decree requires acquisition of specific parcels, the market principle of "substitution" does not apply (that is, a typical buyer will seek an alternative property if the one they are looking at costs too much). These factors are relevant to the Lincolnville properties since these terms are part of the definition of "fair market value," which is what an appraisal is to determine. These factors are reasons why the appraisal profession does not consider government transactions to be "arms-length" and the sale prices involved may not be determined purely by the normal factors in the real estate marketplace.

Mr. Meadows advised that the definition of an appraisal is the appraiser's estimate of value. The client relies on the appraiser to apply professional experience, expertise, available data and judgment to determine that estimate. The appraiser appraised the property using all these factors. The Board is not in position to definitively refute the appraisal. The Board has not provided documentation to show the appraiser's value is not valid. This is not a typical arms-length transaction. In addition, adjacent owners have shown interest in buying land in the neighborhood. There is market demand for the parcels, and therefore competition from other buyers. If the Town had chosen to sell the property 4 or 5 years ago when the real estate market was stronger, the price might have been higher.

He commented it is appropriate for the board to make a business decision and accept that the appraiser's report is reasonable, particularly in light of the fact that the appraisal is the estimate of value and the Lincolnville transaction is not a true arms-length transaction for the reasons stated above. These are the reasons we hire appraisers who have expertise in the marketplace.

8. **Timelines** Round 8 - Mr. Meadows presented an overview of the adopted timeline for Round 8, including Working Waterfront proposals. The Board adopted the change for Scoring Committee meeting to May 20.th

He advised there are several potential Round 8 Discussion items for next meeting:

- Funding "set aside" for expenses paid by LMF, such as legal fees, access improvements and others.
- Other items include discussion of the need for 3rd party enforcement rights to be held by state agencies, project signage and funding for local and regional projects. A discussion ensued.
- Mr. Emory stated that in Round 7 the Nominations Committee put too much emphasis on scores, and not enough emphasis on other factors such as location, project types and other considerations. Scores are meant to be a guide. He suggested review of the role of the Nominations Committee prior to the July 15th board meeting when decisions will be made on which projects to fund.

9. **Scoring Workshop April 28th**

Mr. Meadows encouraged all Board members to attend the workshop, since revisions have been made to scoring criteria and several members are new to the board since the last round and.

10. **Board & Committee Membership**

Jim Norris stated that there is currently an opening on the Scoring Committee with Diane Doyle's term being up. Also only three members on Nominations Committee and there should be at least one more member. It was noted that Chairman Vail will be reviewing committee membership prior to the next meeting.

Mr. Meadows noted that Diane Doyle completed the limit of two consecutive terms on the Board as of January 31.

MOTION: by Mr. Gosline, 2nd by Mr. Gorman: That the staff prepare a letter from the Chair to Diane Doyle thanking her for her eight years of service on the Board. Passed unanimously.

11. Maine Natural Areas Program Survey

Mr. Meadows presented the LMF Fund surveys completed by the Maine Natural Areas Program in 2013. Copies of these reports go to the land managing agency for consideration in managing the properties.

12. Staff Updates

- Mr. Meadows gave an update on closed projects and pending closings.
- LMF outreach – two workshops on the Round 8 Workbook and updated procedures were presented for potential applicants
- Staff are putting on two workshops to reach out to Land Trusts at the Maine Land Trust Network Conference to help obtain good appraisals and update them on the LMF program.
- Staff have been receiving letters to the Board supporting incoming proposals.
- Mr. Meadows informed the board that he would present a continuing education class for appraisers for the Appraisal Institute on April 9. The seminar will cover appraising conservation transactions, requirements of various funding sources, and how appraisers can work with state agencies and the land trust community on appraisal needs. Mr. Gosline commented that the seminar is not just for appraisers but also the land trust community.

A letter from the Trust for Public Lands (dated November 7, 2013) was distributed, providing comments on the project scoring and selection process.

13. Board Per Diem Payments

Members may submit Per Diem travel and expense vouchers included in their meeting packets.

Next Meeting: The next LMF Board meeting is May 20, 2014 at 1:00 p.m. at the DACF Bolton Hill Facility. [This meeting was subsequently cancelled to provide more time for the Scoring Committee to meet].

Adjournment: 3:16 p.m.