

OPEN SPACE COUNCIL  
March 4, 2015  
9:00 a.m.  
Legislative Hall  
Senate Hearing Room, Second Floor  
Dover, Delaware

**ATTENDANCE**

Council Members:

Mr. John R. Schroeder, Chairperson  
Senator Bruce Ennis  
Representative Gerald Brady  
Mr. Wayne Holden  
Mr. David Humes

Ex-Officio:

Raymond Bivens, State Liaison Officer, LWCF, DNREC

Advisory To):

David Small, Cabinet Secretary, DNREC, State of Delaware (present)

Staff:

Kara Coats, Deputy Secretary, DNREC  
Ron Vickers, Parks & Recreation, DNREC  
Elena Stewart, Parks & Recreation, DNREC  
Richard Phifer, Fish & Wildlife, DNREC  
Timothy Slavin, Director, Historical & Cultural Affairs, DOS  
Kyle Hoyd, Delaware Forest Service, DDA  
Jeff Stone, DEDO  
Verity Watson, Division of Research, Legislative Council

Visitors:

David Carter, Audubon Society  
Joe Caville  
Bernadette Curtis  
David Eichelberger  
Steven Horst  
Ken Mahan  
Molly Murray, News Journal  
Ted Nowakowski  
Evans Shearon  
John Still  
James Wigand  
Carl Williams

**I. Call to Order/Introductions/Announcements**

Mr. Schroeder, Chairperson, called the March 4, 2015 Open Space Council meeting to order at 9:05 a.m. He welcomed Council members, staff, and visitors. Council members introduced themselves.

**II. Approval of Meeting Minutes**

Mr. Schroeder held on the previous meeting minutes until a quorum was present. Later in the meeting Representative Brady joined the meeting thereby making a quorum. At that time Mr. Schroeder asked for a motion to approve the December 3, 2014 minutes. Motion was made to approve minutes as written. Motion carried.

**III. Financial Report**

Mr. Vickers presented the Financial Report:

• Realty Transfer Tax (FY14 & FY15):	\$11,249,446.25
• Previously Approved Projects (14):	(\$ 8,687,000.00)
• Anticipated Reimbursements (3 projects):	\$ 1,832,500.00
• Balance Available through December 15, 2015:	<b>\$ 4,394,946.25</b>
• Governor's Proposed Budget FY16	\$ 3,150,000.00

**IV. Old Business**

A. Completed Projects since December 3, 2014

- Kent Stand Alone – Pryor: 0.214 acres purchased on 12/8/14 for \$110,000 of Division of Watershed Stewardship funds; Open Space funds for closing; at Kitts Hummock, adjacent to Ted Harvey Wildlife Area
- James Branch – Rogers/Moyer: conservation easement on 51.201 acres purchased on 12/23/14 for \$190,000
- Nanticoke River – Deep Creek 1, LLC: 13.677 acres purchased with \$123,000 of Open Space funds and \$41,000 of Chesapeake Conservancy funds

Mr. Vickers reported that since the beginning of the Open Space Program in 1990 it completed **378 projects**, protecting **56,186.7902 acres**, using **\$257,423,202.01** of Open Space Program funds plus **\$75,712,690.29** of other funds for a total of **\$333,135,892.30**.

B. Agency Presentation – State Resource Areas Update

Mr. Vickers discussed the process related to updating the State Resource Areas maps. He noted that at the last meeting discussions with each county was reviewed. One of the things that the Open Space Council and the counties wanted to see was how much of the landscape was already protected by county regulations or ordinances.

Mr. Vickers presented a map and statistics for each county showing:

- agriculture easement – land protected in private ownership with development rights purchased through the Department of Agriculture's Agricultural Preservation Program

- protected by county code – ordinances vary by county as to what types of lands are protected
- public conservation land – federal, state, and county owned conservation/recreation lands
- private conservation land – owned by non-governmental organizations
- statistics on acreages for each category and overall percentage of county that is protected; overlap in categories was accounted for so there was no double counting

The county maps with statistics are attached.

Mr. Vickers continued with the State Resource Areas discussion. At the last Open Space Council meeting the Council directed the Interagency Working Group (IWG) to work on standards and criteria for State Resource Areas. The IWG, as per the Land Protection Act, is to work with the Council and provide technical advice. The IWG met on February 25, 2015 with representatives from DNREC, Delaware Forest Service, Historical and Cultural Affairs, Transportation, and Kent County Planning.

A power point presentation (attached) summarized the IWG meeting. The first part of the meeting was directed at reviewing the Land Protection Act and the relevant parts related to the State Resource Area process. It then moved into recognizing there are many different reports and efforts aimed at defining and protecting various resources. Then most of the discussion was centered on how do the land managing agencies select properties to protect. Each agency talked about what items it considers. There was some consistency in that most of the agencies consider in-holdings, adjacent lands and special or specific resource sites.

Mr. Vickers said the next step for the IWG was to get more specific direction and input from the Council and expand on specifics for criteria and standards using science, public needs and management concerns. Programmatic maps will be reviewed for overlaps and trends.

Mr. Schroeder noted this is a very serious and important topic and would like more direct involvement from the Council. He asked Mr. Holden if he and Mrs. Fleming would agree to serve as a subcommittee for the Council to work directly with the IWG.

Mr. Holden agreed.

Mr. Schroeder said he would contact Mrs. Fleming and said the process should continue to move forward in a timely manner.

Senator Ennis asked about the State Planning Office and if it should be involved in this process.

Mr. Vickers said the Land Protection Act specifically states that each county's planning and recreation departments are members of the group. Also when the law was passed in 1990, the

State Planning Office was not operating in its current capacity. He will contact the office to keep them up to date on the SRA discussion.

## **V. New Business**

### **A. Conversion of Use – Epworth Church**

This agenda item is for addressing any change in use or change in ownership of land purchased through the Open Space Program. The Land Protection Act (7 Del. Code, Chapter 75) details the purposes for acquiring land through this Program. The Act also states that one of the duties of the Open Space Council is to advise and consult regarding any change from permanently protected status of open space lands acquired or protected through the Program.

Mr. Schroeder said there is a conversion of use issue involving Epworth Church.

Mr. Vickers presented a power point presentation (attached) and spoke to the history of the church and state involvement in this area. In the early 2000s Epworth Church approached Delaware State Parks about exchanging land along Holland Glade Road, north of Rehoboth Beach. The church owned 14.54 acres that was used by the Rehoboth Little League. Epworth Church wanted to move out of its location in Rehoboth because of size and parking constraints. It also wanted to be closer to Route 1. Delaware State Parks saw this as an opportunity to acquire an in-holding and control part of a recreation complex. Discussions ensued and with support from local legislators legislation passed allowing a trade of land to go forward. All acreages were based on land values established by appraisals.

In November of 2005 the State deeded 8.19 acres to Epworth Church. This was a small field on the edge of the park. This is the current location of Epworth Church. The church deeded 8.78 acres to the State. This was over half of the Little League complex. The remaining 5.76 acres of Epworth Church land (which contained the rest of the Little League Complex) was restricted with a conservation easement limiting it to open space, recreation and cemetery use. It also allowed for one single-family residence with associated outbuildings. The new church was completed in 2008.

In late 2013 Epworth Church and Parks discussed the remainder of the church property at the Little League complex. The church needed to establish a new cemetery because of capacity issues at its current cemetery in Rehoboth Beach. Parks was interested in the remainder of the Little League complex. The land across from the church behind Tanger outlets was considered as possible trade land.

Mr. Vickers reminded Council this subject was brought before them at the March 2014 meeting for preliminary information purposes only. The Department was in the process of doing its due diligence and had not completed its review of the proposed trade land. There are two public wells in the land across from the church. Research involving cemeteries and public wells led the Department to not consider this land as an exchange area due to the soils, water withdrawal amounts and the fact the site was a wellhead protection and an excellent groundwater recharge area. The determination to not use this area was made in June 2014.

The Department and the church then looked at other potential sites in relation to any wells in the area. The idea is to maintain separation distances from drinking wells and consider the underlying aquifer and gradients. The farm field at the end of Holland Glade Road is now under consideration. It is still preliminary and needs further study. Again land values and final acreages would be based on appraisals. Any land going to the church would have the same conservation easement restrictions placed on it. Depending on the values, the one allowed residence would go away in exchange for a 1.21 acre sliver of land west of the church. This was held out as a potential road connector which is no longer feasible.

Council members asked questions about the adjacent farm complex and forestland adjacent to the church.

Mr. Bivens noted that Parks looked at the existing Little League complex and how to arrange the current fields and provide cemetery use in that area. It was very difficult because of the number of fields and the infrastructure that was in place.

Mr. Vickers again stated this is preliminary. Appraisals are still needed, site configuration needs to be designed, discussions with the adjacent Glade community are upcoming, the Council needs to review and recommend, minor subdivision approvals are required, and legislation is also required.

Secretary Small said this is on-going at this point. This was an update for the Council. No action is requested from the Council at this time.

B. Council Open Discussion

Mr. Schroeder asked for any comments from the Council.

Mr. Holden wanted clarification regarding the final acreage and appraisals.

Mr. Vickers said there may be a per acre value difference in the land at the Little League complex versus the land at the end of Holland Glade Road. When the first land trade took place in 2005 there was a difference in value. The result then was the State received more acreage than the church. In addition the conservation easement was placed on the church's remaining land. Boundary surveys would also be done.

Mr. Bivens noted that the type of land may have different values, as well as the distance from Route 1.

Mr. Stone asked about timing on this.

Mr. Vickers replied that it took several months to determine the first proposed location was not favorable. At this time we need to do more research on the proposed site at the end of Holland Glade Road.

Secretary Small said the Department was asked to attend a meeting of the Glade homeowners for their input. Depending on that input, additional research and the need to come back to the Council it is difficult to say what the timing would be. Also legislation is required, depending if this goes forward. So this may carry over into the next session.

Representative Brady asked about other approvals or processes that may be required.

Mr. Vickers said it would need to go through the minor subdivision process. Also a conditional use for a cemetery would be required. In Sussex County a private cemetery has a minimum size of ten acres. A church-related cemetery is a minimum size of five acres.

Secretary Small stated that none of these actions would take place until legislation is approved.

C. Public Comments

Mr. Schroeder asked for public comment. Noting that there were several members of the Glade community present, he asked if there was one individual speaking on behalf of the community.

Mr. John Still and Mr. Jim Wigand provided the Council with notebooks outlining the Glade community's position on the proposed land exchange. (attached)

Mr. Still thanked the Council for the opportunity to speak and said they would go through the handouts.

Mr. Wigand clarified that they are Glade homeowners, but are not representing the Glade homeowners association.

Mr. Still read the executive summary.

Mr. Wigand proceeded to go over the Issues Paper in the handouts, focusing on transparency, environmental impacts, public policy, business decisions, impacts to neighboring communities, and alternatives.

Mr. Still emphasized the need to involve stakeholders as early as possible. He also spoke to the option of working with the Cape Henlopen School District to move the Little League complex and the potential problem of supporting it with state funds. He did believe that an alternative to the proposed land exchange could be worked out. He also thanked Secretary Small for reaching out to the Glade homeowners.

Mr. Schroeder reminded the Council that there was no specific action to vote on today. This was still in the information gathering phase and that it would probably be back before the Council at the next meeting. He asked for other public comments.

Mr. Carter, representing Delaware Audubon, empathized with the Glade homeowners over the transparency issue. He spoke to issues with DNREC regarding FOIA requests and transparency, not just open space related, but other permit issues as well. He believes it is tarnishing the image of the Open Space Council. He also noted that the Chair wants the process to be open. He is submitting for the record the 2014 testimony of Delaware Audubon before the Joint Finance Committee Hearing on DNREC's 2015 budget. It contained a request to post open space information on-line. (attached)

Mr. Schroeder asked for any other public comments.

Mr. Williams, a resident of the Glade, expressed concern about any potential contaminants and the well located in the Glade community.

Ms. Curtis, a resident of the Glade, expressed concern about the fact that the Glade community was not consulted. She also asked the Council to look at the initial justification for why the land was purchased through the open space program and to adequately review the environmental issues. She also noted that the conversion of open space property is something the Council is not used to dealing with because the land is intended for preservation, not development. She thought this was open space being carved up for political trading cards.

Mr. Still said they have a petition signed by about 50% of the neighborhood that is against the land trade.

Mr. Schroeder noted there was no other discussion and entertained a motion to go into executive session.

#### **VI. Executive Session - Discussion of Site Acquisition Contracts**

The Council adjourned to Executive Session at 11:00 a.m. to discuss site acquisition contracts. The Council returned to Open Session at 11:45 a.m.

#### **VII. Project Recommendations**

Based on discussion in Executive Session, the Council recommended the following:

##### Division of Parks & Recreation

- Tunnell Properties, LP-Middle Island – Delaware Seashore State Park, Sussex County; donation of 4.8 acres of marshland/sand area for beneficial reuse project of dredge material from Massey’s Ditch; will provide nesting habitat; Council moved, seconded, and unanimously agreed to recommend to the Secretary to accept this property as a donation and to pay up to \$5,000 for closing costs.
- Callahan – Delaware Seashore State Park, Assawoman Canal, Sussex County; donation of 0.10 acres of open lot for community access to new trail; Council moved, seconded, and unanimously agreed to recommend to the Secretary to accept this property as a donation and to pay up to \$5,000 for closing costs.

##### Division of Fish & Wildlife

- Tofts – Norman G. Wilder Wildlife Area, Kent County; purchase of 13.2 acres of forest land adjacent to existing wildlife area; Council moved, seconded, and unanimously agreed to recommend to the Secretary to purchase in fee simple the Tofts property for \$50,000.

##### Delaware Forest Service

- Webb – Redden State Forest, Sussex County; purchase of 91.82 acres of forest, stream corridor and small field adjacent to existing state forest; appraised at \$6,500.00 per acre; survey pending; Council moved, seconded, and unanimously agreed to recommend to the Secretary to purchase in fee simple the Webb property at the appraised per acre value, subject to final survey.

#### **VIII. Next Meeting/Adjournment**

The next meeting of the Open Space Council is June 3, 2015 at the Legislative Hall, Second Floor, Senate Hearing Room, Dover, DE 19901, starting at 9:00 a.m.

Mr. Schroeder asked for a motion to adjourn. The meeting adjourned at 12:00 p.m.