

COUNTY COUNCIL

OF

TALBOT COUNTY

2011 Legislative Session, Legislative Day No.: March 22, 2011

Resolution No.: 181

Introduced by: Mr. Bartlett, Ms. Price

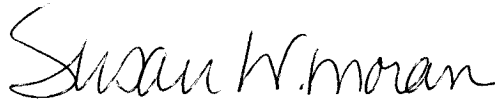
A RESOLUTION TO CONSIDER THE PETITION OF DONALD H. KIRK AND PATRICIA MARIE KIRK, 25828 ST. MICHAELS ROAD, ST. MICHAELS, MARYLAND, TAX MAP 32 PARCEL 162, IN THE SECOND ELECTION DISTRICT, TALBOT COUNTY, MARYLAND

THE PETITION REQUESTS THAT TALBOT COUNTY FORMALLY DECLINE TO ACCEPT AN OUTSTANDING, UNACCEPTED OFFER OF DEDICATION IN AND TO A PORTION OF A CERTAIN PLATTED BUT UNIMPROVED PAPER STREET KNOWN AS MILES HAVEN AVENUE

By the Council: March 22, 2011

Introduced, read the first time, and ordered posted, with Public Hearing scheduled on Tuesday, May 10, 2011 at 2:00 p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland 21601.

By order:



Susan W. Moran, Secretary

A RESOLUTION TO CONSIDER THE PETITION OF DONALD H. KIRK AND PATRICIA MARIE KIRK, 25828 ST. MICHAELS ROAD, ST. MICHAELS, MARYLAND, TAX MAP 32 PARCEL 162, IN THE SECOND ELECTION DISTRICT, TALBOT COUNTY, MARYLAND

THE PETITION REQUESTS THAT TALBOT COUNTY FORMALLY DECLINE TO ACCEPT AN OUTSTANDING, UNACCEPTED OFFER OF DEDICATION IN AND TO A PORTION OF A CERTAIN PLATTED BUT UNIMPROVED PAPER STREET KNOWN AS MILES HAVEN AVENUE

1 **WHEREAS**, Donald H. Kirk and Patricia Marie Kirk, (the "Petitioners") the current owners
2 of 25828 St. Michaels Road, Tax Map 32, Parcel 162, Second Election District, Talbot
3 County, Maryland (the "Property"), have petitioned the County to formally decline to accept
4 an outstanding, unaccepted offer of dedication in and to a portion of a certain platted but
5 unimproved avenue described in said Petition, which is incorporated by reference herein;
6 and,
7

8 **NOW, THEREFORE**, be it resolved by the County Council of Talbot County, Maryland as
9 follows:
10

11 **Section 1.** Upon introduction of this Resolution, a public hearing shall be scheduled, and the
12 date, time, place, and purpose of the public hearing shall be advertised at Petitioners' expense
13 once a week for three successive weeks in a newspaper of general circulation in the County
14 in accordance with the requirements of Article 25A § 5 (B), Md. Ann. Code. The
15 advertisement shall state the terms of any proposed disposition, the compensation, if any, to
16 be received therefor, and shall give opportunity for objections thereto.
17

18 **Section 2.** The County shall conduct a public hearing, at which time the Petition will be
19 open for receipt and consideration of public comment. Upon receipt and consideration of
20 any recommendations from the Planning Commission and Public Works Advisory Board,
21 and recommendations by the Talbot County Department of Public Works and the Talbot
22 County Roads Department, conclusion of the public hearing(s), and closing of the record, the
23 County Council will consider the merits of the Petition.
24

25 **Section 3.** This Petition pertains to the following described property or interest in property:
26

27 Miles Haven Avenue, a platted and unimproved paper street subject to a heretofore
28 unaccepted offer of dedication, (and the particular portion of said avenue that is the
29 subject of this Petition) is shown on two certain plats titled as follows: (1) "CRANFORD
30 ON MILES, A SUBDIVISION IN THE SECOND ELECTION DISTRICT, TALBOT
31 COUNTY, MARYLAND", prepared by J.R. McCrone, Jr., Inc., dated May 10, 1983, and
32 recorded among the Plat Records of Talbot County, Maryland at Plat Book 60, page 37;
33 AND (2) "MILES HAVEN, SUBDIVISION OF THE LANDS OWNED BY J.
34 FERGUSON AND HOWARD HAMMOND, ROYAL OAK STATION, MD." prepared

by W. H. Somerville, dated July 12, 1923, and recorded among the Land Records of Talbot County, Maryland at Liber No. 195, folio 433. The portion of the said Miles Haven Avenue that is the subject of this Petition is shown on a plat entitled "MAJOR REVISION PLAT ON THE LAND OF DONALD H. KIRK AND PATRICIA MARIE KIRK IN THE SECOND ELECTION DISTRICT, TALBOT COUNTY, MARYLAND, TAX MAP 32 GRID 24 PARCEL 162", prepared by Lane Engineering, LLC, dated April 15, 2010, attached hereto as Exhibit "A" and incorporated by reference herein. Said portion is more particularly described as follows:

Beginning for the same at an iron pipe found, said iron pipe found being the southeasterlymost corner of the herein described land, said iron pipe found also being a northwesterly corner of the land of Carl C. MacCartee, Jr. and Joan S. MacCartee (Liber 546 folio 793 and Liber 578 folio 001); and from said **Place of Beginning** running (1) North 80 degrees 09 minutes 00 seconds West 155.32 feet, thence (2) North 18 degrees 19 minutes 00 seconds West 34.03 feet, thence (3) South 80 degrees 09 minutes 00 seconds East 196.39 feet, thence (4) South 49 degrees 39 minutes 46 seconds West 39.06 feet to the **Place of Beginning**, containing 0.121 Acres of Land, more or less.

Section 4. The County finds that that there would be no public purpose served by construction, operation or maintenance of a public road or alley at this location and hereby declines to accept the offer of dedication of the above-described portion of Miles Haven Avenue. These findings and disposition are subject to the following conditions:

- (a) There are no drainage facilities or public utilities located in, upon, under, or through the above-described portion of Miles Haven Avenue;
- (b) The Petitioners have granted or will grant a perpetual easement to the County, in form and content acceptable to the County, for drainage and utility easements adjacent to all public roads and roadways abutting, in, upon, or through the Property, as necessary to serve the Property or other properties in the area, if any;
- (c) The Petitioners shall prepare all deeds, surveys, plats, or other documents in a form satisfactory to the County, and pay the cost thereof, including without limitation all duplication and other costs associated with all instruments prepared pursuant to this Resolution;
- (d) The Petitioners shall execute a "*Release, Waiver, and Indemnification*" substantially in the form attached hereto as Exhibit "A."

Section 5. The President of the County Council is authorized to execute a Quitclaim Deed, consistent with the terms of this Resolution, in form and content acceptable to the County Attorney, to be recorded at the Petitioners' expense among the land records of Talbot County, Maryland.

75 BE IT FURTHER RESOLVED that this Resolution shall take effect immediately upon its
76 date of passage.

77

PUBLIC HEARING

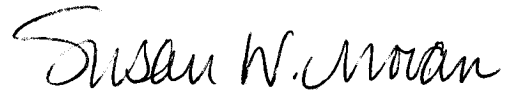
Having been posted and Notice, Time and Place of Hearing, and Title of Resolution No. 181 having been published, a public hearing was held on Tuesday, May 10, 2011 at 2:00 p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland.

BY THE COUNCIL

Read the second time:

Adopted: May 10, 2011

By Order:



Susan W. Moran Secretary

| | |
|----------|-------|
| Bartlett | - Aye |
| Hollis | - Aye |
| Pack | - Aye |
| Price | - Aye |
| Duncan | - Aye |

BEFORE THE COUNTY COUNCIL FOR TALBOT COUNTY, MARYLAND

IN THE MATTER OF

THE PETITION OF
DONALD H. KIRK and
PATRICIA MARIE KIRK

* 25828 St. Michaels Rd.
* St. Michaels, Maryland
* Tax Map 32, Parcel 162,
* Second Election District,
* Talbot County, Maryland

PETITION OF DONALD H. KIRK AND PATRICIA MARIE KIRK REQUESTING
TALBOT COUNTY COUNCIL TO DECLINE UNACCEPTED OFFER OF DEDICATION
OF PAPER STREETS

1. The undersigned, Donald H. Kirk and Patricia Marie Kirk, (the "Petitioners"), by and through Patrick J. Fitzgerald and Ewing, Dietz, Fountain & Kehoe, their Attorneys, petition the County Council of Talbot County, Maryland to formally decline to accept an outstanding, unaccepted offer of dedication in and to a portion of a certain platted but unimproved avenue described in Paragraph 2, below.

2. Petitioners are the owners of the property located at 25828 St. Michaels Road, Tax Map 32, Parcel 164, Second Election District, Talbot county, Maryland and shown as Lot 5 on a Plat entitled "CRANFORD ON MILES, A SUBDIVISON IN THE SECOND ELECTION DISTRICT, TALBOT COUNTY, MARYLAND", prepared by J.R. McCrone, Jr., Inc., dated May 10, 1983, and recorded among the Plat Records of Talbot County, Maryland at Plat Book 60, page 37.

3. Miles Haven Avenue, a platted and unimproved paper street subject to a heretofore unaccepted offer of dedication, (and the particular portion of said avenue that is the subject of this Petition) is shown on the above cited plat and on a certain plat entitled "MILES HAVEN, SUBDIVISION OF THE LANDS OWNED BY J. FERGUSON AND HOWARD

HAMMOND, ROYAL OAK STATION, MD.” prepared by W. H. Somerville, dated July 12, 1923, and recorded among the Land Records of Talbot County, Maryland at Liber No. 195, folio 433. The portion of the said Miles Haven Avenue that is the subject of this Petition is shown on a plat entitled “MAJOR REVISION PLAT ON THE LAND OF DONALD H. KIRK AND PATRICIA MARIE KIRK IN THE SECOND ELECTION DISTRICT, TALBOT COUNTY, MARYLAND, TAX MAP 32 GRID 24 PARCEL 162”, prepared by Lane Engineering, LLC, dated April 15, 2010, attached hereto as Exhibit “A” and incorporated by reference herein. Said portion is more particularly described as follows:

Beginning for the same at an iron pipe found, said iron pipe found being the southeasterlymost corner of the herein described land, said iron pipe found also being a northwesterly corner of the land of Carl C. MacCartee, Jr. and Joan S. MacCartee (Liber 546 folio 793 and Liber 578 folio 001); and from said **Place of Beginning** running (1) North 80 degrees 09 minutes 00 seconds West 155.32 feet, thence (2) North 18 degrees 19 minutes 00 seconds West 34.03 feet, thence (3) South 80 degrees 09 minutes 00 seconds East 196.39 feet, thence (4) South 49 degrees 39 minutes 46 seconds West 39.06 feet to the **Place of Beginning**, containing 0.121 Acres of Land, more or less.

4. Petitioners aver that the paper street known as Miles Haven Avenue is unimproved, that it does not now nor has it ever served the public or the owners in the subdivision where the same is located.

5. Petitioners aver that there would be no public purpose served by construction, operation or maintenance of a public road, alley, or thoroughfare at this location and it would be in the County’s interest to formally decline to accept any outstanding offer of dedication concerning the above-described portion of Miles Haven Avenue.

6. Pursuant to the requirements of Article 25A § 5 (B), Md. Ann. Code, Petitioners agree to pay for and otherwise assure publication of an advertisement once a week for three successive weeks in one or more newspapers of general circulation published in Talbot County,

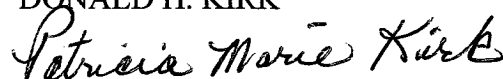
Maryland, stating the terms of the proposed disposition, stating the compensation, if any, to be received by the County therefor, and giving opportunity for objections thereto. A copy of the proposed Notice to be published is appended hereto and made a part hereof.

7. In the event this Petition is granted, Petitioners, for themselves and for the successors-in-interest or title to the Property, agree to indemnify and hold the County harmless to the maximum extent permitted by law from any and all liabilities, damages, expenses, suits, actions, causes of action, demands, or judgments (collectively "Claim" or "Claims"), including payment of reasonable attorneys' fees, costs of defense, and investigation of any such Claim or Claims arising from or relating in any way from any decision to formally decline to accept the outstanding offer of dedication of the above-described portion of Miles Haven Avenue. This indemnification and hold harmless agreement shall include, without limitation, the County's elected and appointed officials, directors, employees, agents, successors, assigns, and representatives.

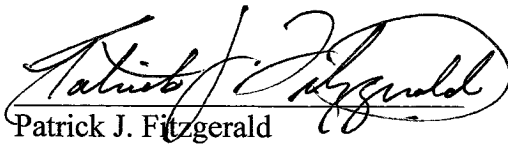
WHEREAS, your Petitioners request the County Council of Talbot County to formally determine and decide to decline to accept the outstanding offer of dedication concerning the above-described portion of Miles Haven Avenue, and to authorize the President of the County Council to execute a quit-claim deed to convey the County's interest in the same, if any, to your Petitioners.

WE DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING PETITION ARE TRUE AND CORRECT TO THE BEST OF OUR KNOWLEDGE, INFORMATION, AND BELIEF.


DONALD H. KIRK


PATRICIA MARIE KIRK

Counsel:

A handwritten signature in cursive script, reading "Patrick J. Fitzgerald", enclosed within a large, loopy oval flourish.

Patrick J. Fitzgerald
Ewing, Dietz, Fountain & Kehoe, PA
16 South Washington St
Easton, Maryland 21601
(410) 822-1988

QUITCLAIM DEED

THIS QUITCLAIM DEED, dated the _____ of _____, ²⁰¹¹~~2010~~, from Talbot County, Maryland, a charter County and political subdivision of the State of Maryland, Grantor, to Donald H. Kirk and Patricia Marie Kirk, his wife, Grantees.

The Grantor, for no monetary consideration, grants, conveys, releases, assigns and quitclaims to the Grantees, as tenants by the entireties, their assigns, and to the survivor of them, and the personal representatives, heirs and assigns of the survivor, all of the Grantor's right, title, interest and estate in a certain lot of ground described as follows:

That portion of Miles Haven Avenue, a platted and unimproved paper street subject to a heretofore unaccepted offer of dedication, shown on a plat entitled "MAJOR REVISION PLAT ON THE LAND OF DONALD H. KIRK AND PATRICIA MARIE KIRK IN THE SECOND ELECTION DISTRICT, TALBOT COUNTY, MARYLAND, TAX MAP 32 GRID 24 PARCEL 162", prepared by Lane Engineering, LLC, dated April 15, 2010, attached hereto as Exhibit "A" and incorporated by reference herein; said portion of Miles Haven Avenue being more particularly described as follows:

Beginning for the same at an iron pipe found, said iron pipe found being the southeasterlymost corner of the herein described land, said iron pipe found also being a northwesterly corner of the land of Carl C. MacCartee, Jr. and Joan S. MacCartee (Liber 546 folio 793 and Liber 578 folio 001); and from said Place of Beginning running (1) North 80 degrees 09 minutes 00 seconds West 155.32 feet, thence (2) North 18 degrees 19 minutes 00 seconds West 34.03 feet, thence (3) South 80 degrees 09 minutes 00 seconds East 196.39 feet, thence (4) South 49 degrees 39 minutes 46 seconds West 39.06 feet to the Place of Beginning, containing 0.121 Acres of Land, more or less.

Together with all improvements thereupon, and the rights, alleys, ways, waters, easements, privileges, appurtenances and advantages belonging or appertaining thereto. Subject to, however, any rights of access of adjoining property owners over any of said alleys or ways.

WITNESS the hand and seal of the Grantor.

ATTEST:

Talbot County, Maryland

Susan W. Moran
, Secretary

By: Dick K. Banlett
President, Talbot County Council

STATE OF MARYLAND, COUNTY OF Talbot, TO WIT:

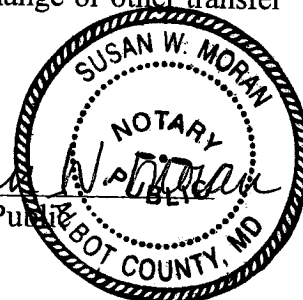
I HEREBY CERTIFY, That on this 12th day of May, 2011, before me, the subscriber, a Notary Public of the State of Maryland, County of Talbot, personally appeared Dirck K. Bartlett who acknowledged himself to be the President of the Talbot County Council of Talbot County, Maryland, a Maryland political subdivision, and that he as such President, being authorized so to do, acknowledged that he executed the foregoing instrument for the purposes therein contained, by signing the name of Talbot County by himself as President of the Talbot County Council, and further made oath, under the penalties of perjury, that the consideration as recited herein is true and correct, and further certified that this conveyance is not part of a transaction in which there is a sale, lease, exchange or other transfer of all or substantially all of the property and assets of the Grantor.

AS WITNESS my hands and Notarial seal.

My commission expires:

3/6/2013

Notary Public



RELEASE, WAIVER AND INDEMNIFICATION AGREEMENT

Grantees, on behalf of themselves, their personal representatives, heirs, successors and assigns, hereby agree to indemnify, defend, and hold Talbot County, Maryland, harmless from and against any and all claims, actions, demands, damages, liabilities, losses, expenses, suits, costs, or judgments of every kind, nature, or description whatsoever arising from or related to Resolution No. _____, declining to accept an offer of dedication for a public street or declining to improve or otherwise makes the subject paper street available for public use. Grantees' obligation to indemnify and defend shall include Talbot County, Maryland, its elected and appointed officials, officers, boards, commissions, agencies, department heads, employees, servants, and agents and shall run with and bind the land, and shall be binding upon the Grantees, their personal representatives, heirs, successors and assigns, in perpetuity.

WITNESS:

Donald H. Kirk (SEAL)

Patricia Marie Kirk (SEAL)

STATE OF MARYLAND, COUNTY OF _____, TO WIT:

I HEREBY CERTIFY, on this _____ day of _____, 2011 before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared DONALD H. KIRK, known to me, or satisfactorily proven to be the person whose name appears above, who

acknowledged himself/herself to be the same, and being authorized so to do, executed the foregoing document for the purposes therein contained.

IN WITNESS WHEREOF I set my hand and official seal.

Notary Public

My commission expires:

STATE OF MARYLAND, COUNTY OF _____, TO WIT:

I HEREBY CERTIFY, on this _____ day of _____ ²⁰¹¹~~2010~~ before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared PATRICIA MARIE KIRK, known to me, or satisfactorily proven to be the person whose name appears above, who acknowledged himself/herself to be the same, and being authorized so to do, executed the foregoing document for the purposes therein contained.

IN WITNESS WHEREOF I set my hand and official seal.

Notary Public

My commission expires:

CERTIFICATION

This is to certify that the within instrument was prepared by or under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland.

Patrick J. Fitzgerald, Attorney at Law

[illegible][illegible][illegible]

VICINITY MAP
SCALE: 1" = 500'

MAJOR
REVISION PLAT

ON THE LAND OF
DONALD H. KIRK AND
PATRICIA MARIE KIRK

ELBERT COUNTY, WYOMING
TAX MAP 32 GRID 34 PARCEL 16

DATE 4/15/2008
PAGE NO. 10011

| | | | |
|-----------|--------|----------|---------|
| Sheet No. | 1 OF 1 | Date | 4/15/10 |
| Job No. | 100100 | File No. | 1184 |
| Scale | 1"=40' | | |

Lane Engineering, LLC

—

361 Ferry Street, San Francisco, CA 94107 (415) 786-2556

MAJOR

DONALD H. KIRK AND
PATRICIA MARIE KIRK
IN THE SECOND ELECTION DISTRICT

ISSUED FOR: _____ DATE: 07/

1" = 40'

FILE NO. 1184

LOG NO. 100100

EXHIBIT A