

Final Status Report
Sidney P. Du Bose Trust

Bob Plank, October, 2007

Background

As reported earlier, the AIS Foundation is the sole beneficiary of the Sidney P. Du Bose Trust. The specific purpose of the trust is to support an iris library, in trust, as a memorial to Sidney P. Du Bose and Ben R. Hager.

Sid died in May, 2006, just one week after his 84th birthday. Trust assets included all of the remaining personal property of Ben and Sid, including a 2003 Honda Element, \$9,000 in a checking account, and \$174,000 in government securities; plus all of the remaining real property, known as Melrose Gardens, a commercial iris, daffodil, and daylily nursery near the city of Stockton, California. Included in the personal property are the awards, mementos, manuscripts, presentations, letters, photographs, and hybridizing records spanning the illustrious careers of Ben and Sid.

After selecting the choicest items appropriate for inclusion in a memorial library, remaining assets were to be liquidated, proceeds from which will be held as an endowment, in trust. For the next 20 years, the income (only), without invasion of principal, will be distributed by the trustee to the AIS Foundation to support the library. Thereafter, the principal will be made available to the Foundation to continue library support.

Adjacent neighbors, Mitch and Carol Mitchell, had filed suit, claiming ownership of 4.3 of the 10.09 acres. The claim was based on an oral promise of a gift or sale that Sid purportedly made in 2005, a recorded lot line adjustment that Sid signed shortly before his death, and newly planted walnut trees Sid permitted the neighbors to place on part of the then-disputed property.

A lot line adjustment is a county administrative procedure that simply verifies that a *proposed* change between two adjacent properties would not violate zoning or building codes. It is a necessary, but not sufficient step to pass title, absent a recorded deed.

As earlier reported, no additional writing had surfaced evidencing consideration, if any, or a legally sufficient alternative to consideration, or whether the property was to be conveyed as a gift or sale. Although it was undisputed that the neighbors had shown much kindness towards Sid in his later years, of the ten people contacted (seven from the iris side, two from the daffodil direction), all reported that Sid spoke to them more recently only in terms of a sale to the Mitchells, or possible sale, at or slightly below market price.

Status Update

Last spring, on way to the Portland convention, Jeanne and I handed over to Tracy and Will Plotner for safekeeping a mini-van load of items appropriate for inclusion in the eventual memorial library.

The 2003 Honda Element netted \$5,000 at public auction.

After a brief round of depositions and the production of a handwritten memo indicating that the neighbors had made a note to themselves to pay Sid an unspecified amount for the 4.3 acre lot line adjustment, the dispute was quickly resolved in mediation. The neighbors offered to drop the suit and to pay \$45,000 to the trust for clear title to the property. We figured that the offer was pretty close to what Sid was expecting, based on the inputs from several of his closest friends. Settling the lawsuit set the stage for selling the remaining 5.79 acres. Whereas the 4.3 acres acquired by the Mitchells were zoned only for agriculture, the remaining 5.79 acres were zoned much more favorably as a single, buildable residential lot.

Meantime, while the lawsuit was pending, the bottom dropped out of the housing market. Stockton became *the* number one city in the United States for highest percentage of homes in foreclosure. The delay occasioned by the lawsuit also allowed the growth an additional annual crop of weeds, and the unoccupied buildings became safety hazards. We were repeatedly deviled by the fire and environmental health departments. All existing structures were declared uninhabitable, and would have to be gutted or razed. We had a bid of \$64,000 to clear the property of all structures and debris. The bid, however, identified but excluded the all costs associated with the permitting, handling, and disposition of identified hazardous materials such as waste oil, pesticides, lead paint, and asbestos siding, flooring, and roofing. We ended up selling the remaining 5.7 acres to another neighbor for \$225,000, *as is*

and with no brokerage fees. The buyer, Vince Belli, is a walnut farmer and developer with large surrounding land holdings under cultivation. His initial intent is to clear the land and extend a walnut orchard onto the newly acquired property.

Incidentally, Vince had been only casually acquainted with Sid and Ben. Vince knew they “dabbled” in plant breeding, but had absolutely no inkling that they were world famous.

As of this writing, all assets of the trust, including the government securities and personal and real property, have been liquidated and the proceeds placed in an interest-bearing account. From this account must come final payments of property tax and the services of the tax accountant, the attorney that handled the litigation, and the attorney and the successor trustee that handled the administration of the trust during its liquidation. We expect to receive a final accounting by the third week of November, after which Phil Edinger has agreed to continue serving as trustee, without remuneration, at least initially for the balance of the twenty year trust, as was originally intended by Sid and Ben.

Postscript

With permission of the two new owners, Jeanne and I visited Melrose Gardens recently to complete a photo documentary of the grounds while en route to Visalia for a Region 14 fall meeting. The Belli half of the property was hardly recognizable. Most high weeds, bamboo, scruffy fruit trees, and woody plants had been cleared. A start had been made on bulldozing the old barn and some of the remaining out buildings. Junk had been collected into piles for pick up. Trash had been pushed into piles and burned in situ.

The Mitchells had completed the planting of walnut trees in the front half of the property. Mitch photographed me in my favorite pose on one of two antique tractors that we had thrown into the settlement for his taking. I told Mitch that I would also like a photograph of the future site of a memorial garden that the Mitchells mentioned during deposition. We now have photos of Mitch and of Jeanne holding a bronze banner bearing the inscription, SIDNEY P. DUBOSE MEMORIAL GARDEN. The banner, together with Sid's ashes, will be permanently placed at the base of a redwood tree that Sid was known to have particularly admired, as was formerly surrounded by fields of daylilies, irises, and daffodils.