



The Town of Barnstable
 Growth Management Department
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Carol Puckett – Administrative Assistant

LAND ACQUISITION & PRESERVATION COMMITTEE

Minutes
Monday,
November 7, 2011

Kris Clark - Chair	Present
Phyllis Miller – Vice Chair	Present
Laura Cronin	Absent
Steve Farrar	Absent
Duncan Gibson	Present
Thomas Mullen	Present
Steve O'Neil	Absent
James Hinkle, Jr.	Present
Tom Lee – ConComm Representative	Present
John Norman – Town Council Liaison	Absent

Also present was Carol Puckett – Administrative Assistant

As a quorum has been met, Kris Clark opens the meeting at 5:40 PM.

Members introduce themselves

Approval of Minutes

▪ **Minutes from LAP meeting of October 3, 2011**

A motion is made by Phyllis Miller and seconded by Duncan Gibson to accept the minutes as submitted.

Vote:

All in favor

▪ **Minutes from LAP meeting of September 12, 2011**

A motion is made by Duncan Gibson and seconded by Tom Mullen to approve minutes as submitted.

Vote:

All in favor

New Business

- **Mark Robinson, Executive Director of Compact of Cape Cod Conservation Trusts**
- **New Massachusetts state tax credit for land donations**

Mark Robinson is here to talk about the new tax credit. He hands out information to the members. He indicates that Cape Cod Conservation Trust is a nonprofit association that assists the local land trusts and is here to explain the Massachusetts Conservation Land Tax Credit program. He indicates that in 2009, the legislature passed the bill and signed it for people who donate land or their interests in land for conservation purposes for the benefit of the public. He indicates that there are six or seven landowners on Cape Cod that were part of the first poll of 28 that have applied for this and thinks this is a positive step. They hope it will encourage landowners through this incentive to preserving their property with the tax credits and indicates that a tax credit is better than a tax deduction. He summarizes the handout:

MASSACHUSETTS CONSERVATION LAND TAX CREDIT (CLTC) PROGRAM

What type of land conservation transactions may qualify:

~ Donations of land, conservation restrictions, life estate and bargain sales of land. > Basic requirements:

- Must be a perpetual conveyance:
 - donation of a conservation restriction (CR) to a qualified organization, or
 - donation of land to a government agency or town, or
 - donation of land to an incorporated land trust, subject to a CR. • Must protect natural resources.

How to take the credit:

• Landowner(s) do not need to be Massachusetts income tax payer(s) or residents.);- Need certification by state that land is eligible (see process below).

). Tax is credit applied to the applicant's state tax liability during the year of the donation.

If credit is larger than the liability, the State will issue a check for the remainder of the approved credit. (With refundability, the credit cannot be carried into future tax years.));- Credit is allocated in proportion to (each) owner's interest in the property.

> State tax credit can be taken in addition to a claim for federal income tax deduction.

State tax credit is taxable as income by the IRS in the following year.

Limitations on taxpayer:

> Credit limited to 50% of fair market value of land or interest, as appraised, or \$50,000,

whichever is less.

> Refunded credit from state is taxable income for donor's federal income tax purposes. > If married, must file joint return with spouse.

);- The tax credit is non-transferable (that is, it is specific to the donors/taxpayers).

Limitations on State:

> \$2,000,000 cap per year on the total of reduced tax liability plus refund checks.

Certification Process Steps:

1. Landowner submits Application 10 EEA, providing information to demonstrate that (a). Conveyance will protect the land in perpetuity AND

(b). Donation is in public interest, for "natural resource protection" including drinking water supplies, wildlife habitat and biological diversity, agricultural and forestry production, recreational opportunities, or scenic and cultural values.

2. EEA determines eligibility of the donation.

3. Applicant submits appraisal to EEA within 30 days of EEA's Notice of Eligibility.

4. EEA issues a Notice to Proceed, based on a determination that the annual tax credit

limit will not be exceeded.

5. Within 60 days of the Notice to Proceed, the applicant must complete the following: (a). Subordination or release of all lien holders,

(b). Survey or metes and bounds description, shown on a plan or sketch plan,

(c). Satisfactory title certification evidencing capacity to convey a clear title,

(d). Certification that each owner of an interest in the property has agreed to the donation.

In addition, Mark Robinson indicates that there are planning tools available to determine the significance and conservation worthiness of any parcel. He gives an example of a parcel that has a fair market value of \$200,000, which is donated to a land trust or the Town of Barnstable. He indicates that the \$200,000 gift of value would make a person eligible for the state tax credit even if sold for \$120,000, and that the \$80,000 difference is factored in as a charitable gift. He indicates that the state tax credit would limit a person to 50% of the value of the donation which, in this case, would be \$40,000 accrued from that transaction. He indicates that they also just found out that anyone who owns land, resident or not, taxpayer or not, can take this credit. He indicates that originally, people could take the tax credit over as many as ten years to use against their state income tax but that as of this past January, the law was amended so that it is now a refundable tax credit which the state would issue a check for the difference between a person's taxes for this year and the amount of value that the person donated in the conservation gift. He indicates that this tax credit is in addition to the federal tax deduction but that one of the limitations of the program is that there is a 2 million dollar cap each year statewide. However, because this is a new program, they have not approached the cap for 2011. He then explains that the limitation on the taxpayer is that the credit is limited to 50% of the fair market value of the property or the value that is being donated or \$50,000 whichever is less. In addition, the person donating the land has to hire a qualified appraiser that will certify to the state what the value of the land or the restriction that is being donated. He indicates that the tax credit is refundable but not transferable. He reviews the process and encourages people to apply sooner than later and that they hope to do more workshops for land owners working with local land trusts and if anyone is interested to contact him:

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Kris Clark asks staff to request a link to this information on their webpage

▪ **Tom Cambareri, Chair, Town's Water Quality Advisory Committee**

Kris Clark indicates that Tom Cambareri has not arrived as of yet and will therefore table this until he arrives.

▪ **Conservation Restriction for Freezer Point – Attorney John Kenney**

Kris Clark indicates that when she was notified of this issue she did not get any supporting documents on this and will accept a discussion but not a decision as of yet.

First Assistant Town Attorney - David Houghton indicates that he has a draft of the conservation restriction and hands copies to Kris Clark to disburse to the members.

Attorney Kenney is here representing Stuart Bornstein and hands out a copy of the plan to the LAPC members.

Attorney Kenney indicates that:

- Area A will be covered by the conservation restriction.
- Area B will be covered by a private restriction with the Town and the applicant. Attorney Kenney indicates that Mr. Bornstein has been granted a use variance in order to build a single family home by the Zoning Board of Appeals and has agreed to put a conservation restriction on the property. He indicates that they offered a private restriction and in negotiations with the Town Attorney's office they came up with a bifurcated approach with a conservation restriction on the outside of the property and a private restriction enforceable by the Town in the area where the home is to be built. He indicates that there is an Order of Conditions issued by the Conservation Commission for mitigation and plantings. Attorney Kenney indicates that this conservation restriction before LAPC is different as most conservation restrictions have a premise about not doing work in this area. However, they are asking to have access and paths leading to this area in order to maintain the plantings. They are still working with the Town Attorney's office on the private restriction. He indicates that they are on a tight timeframe and would ask the members to review it and send any comments to the Town Attorney's office so that they could return to the next LAPC meeting with a complete document for final approval.

James Hinkle indicates that he is familiar with this property and that, as a committee, they will look at it seriously but he is not prepared to ask any questions tonight. Tom Mullen asks if the location of the proposed home's footprint includes the historic piece and the new location. Attorney Kenney explains the majority of the historic home is to be removed and only a small portion of that is to remain and used as a garden shed with no utilities or water connectivity to this structure. James Hinkle asks for clarification on the delineation between parcels A & B.

Attorney Kenney indicates that they would have to go back to Old King's Highway regarding the proposed shed down by the dock

Kris Clark comments that in 2009 there was another request for a conservation restriction regarding Baypoint, owned by Mr. Bornstein, and asks what the status is on that Attorney Kenney comments that he was not aware of that, as he did not represent Mr. Bornstein on that matter.

David Houghton – First Assistant Town Attorney, indicates that according to their records, the latest matter outstanding with Baypoint is an easement from the Cotuit Fire District to maintain a portion around one of its wells, an easement to install one or more monitoring wells, and that his office understands that there is not a conservation restriction which will be placed on the property but rather an easement and that the matter is not closed.

Tom Lee from the Conservation Commission comments that he has previously seen this conservation restriction presented here tonight and asks if they are planning to come before the Conservation Commission (ConComm).

Attorney Kenney indicates that they are coming before ConComm on the 15th of November.

Duncan Gibson points out a note on the map handed to the LAPC members by Attorney Kenney about priority/rare species and is wondering if the conservation restriction includes the list of those priority/rare species. Attorney Kenney doesn't believe it does and indicates that the conservation plan deals with what can be planted.

Assistant Town Attorney - David Houghton indicates that under the purposes section they have made a request to Growth Management to provide additional information as to what it will be protecting and some of that information might include rare species.

Staff to give LAPC's Conservation Restriction criteria to Attorney Kenney

Attorney Kenney again suggests that LAPC members forward their comments their comments could be forward to the Town Attorney's office.

Tom Cambareri arrives.

- **Tom Cambareri, Chair, Town's Water Quality Advisory Committee**

Kris Clark explains that this is in regards to a LAPC meeting with the Water Quality Advisory Committee.

Tom Cambareri speaks and indicates that the Water Quality Advisory Committee deals with drinking water from four separate water purveyors. Its water is obtained from a sole source aquifer that is tied to our water supplies, wells, and embayments. He indicates that the Water Quality Advisory Committee begun in the early 1970's and that the latest rendition, which he is involved in, involves four representatives from the four water purveyors COMM, (Centerville, Osterville, Marstons Mills), Barnstable Fire District, Barnstable Water Company and Cotuit Water Company and several at-large members that meet on a as-needed basis. Most recently, they have met to re-evaluate the recharge areas for the drinking water supply wells or Zone 2 wells. Instead of each district having the Zone 2's being delineated separately, this was a way to apply one model/method that would best serve the town. He indicates that several new wells have been brought online and groundwater models have been improved by the US Geological Survey and that they had a contract that was put together with the Cape Cod Commission to provide that service to their committee. They have also looked at interconnections, backflow and the silent spring report and how that was put together. They are concerned with well protection and land protection.

Kris Clark indicates that the desire of LAPC is to meet with his committee in order to enable acquisition and to identify parcels on his wish list.

Tom Mullen asks if Mr. Cambareri has seen any major changes in comparing the new Zone 2's with the old ones.

Tom Cambareri indicates that there has been some expansion in some areas where the new wells are and that the draft form of this report can be seen at his office. Tom Cambareri believes that there are priority parcels out there, which they can discuss.

Tom Lee thinks there is money available through the Community Preservation Committee for open space and especially for well protection for Zone 1 wells and would like to get that message to the water suppliers and water districts.

Kris Clark and Tom Cambareri agree to set up a meeting at the beginning of next year.

Old Business

- **LAPC vacant position update; waiting for the Appointments Committee's recommendations**

Kris Clark indicates that there is still a vacancy on the committee for anyone who is interested and that LAPC is waiting for the Appointments Committee recommendations. James Hinkle indicates that Tom Lee has an appointment with the Appointments Committee in the near future and believes it is good progress.

- **Videotaping session for LAP Chair "infomercial": postponed- date to be determined**

Kris Clark indicates that this has been postponed.

- **Act To Sustain Community Preservation HB765/SB1841 update**

Kris Clark indicates that she has heard from Sue Rohrbach who works for Senator Dan Wolf's office and has indicated that this issue is high on Senator Wolf's priority list and that his aide does not know of any new developments but will keep them up-to-date

- **Request for information from the Town's Grant Administrator: re: open space opportunities**

Kris Clark indicates Marcia King forwarded a list to LAPC regarding various programs for which they can find parcels to fit and is also willing to meet with LAPC in the future.

- **Response from Mark Milne, Finance Director**

Kris Clark indicates that she has heard from Mark Milne who is willing to speak to LAPC at next month's meeting regarding CPC funding as it applies to Open Space.

- **Open Space and Recreation Plan's implementation strategy: Kris Clark**

- **Update on Meeting with Barnstable Fire District, et. al.**

Kris Clark indicates that she has received information from Peter Eleftherakis who was offering to meet on Tuesday, January 17th with his Prudential Committee and their water commissioners for the village of Barnstable. Kris asks the members if she should go back to Mr. Eleftherakis and ask if they could adjust their meeting to coincide with LAPC's. James Hinkle thinks that they need to meet with the Barnstable Fire District first and then they could reach out to other groups such as Audubon, etc., in order to attend another larger meeting. **Kris will ask Mr. Eleftherakis regarding a date and place for a meeting with the Barnstable Fire District.**

- **CPC update**

- **October 24th meeting: Phyllis Miller**

Phyllis Miller indicates that she was at the last Community Preservation Committee (CPC) meeting at which there were two new members, one who was sworn in and one yet to be. Their members will change at the next meeting and, as such, they did not vote on their officers which they will do so at the next meeting. On their agenda was a piece of property offered for sale on Lake Wequaquet which did not come before LAPC which CPC voted unanimously not to pursue the application because of a ½ interest which they felt was not in the Town's best interest. Also, CPC Chair – Lindsey Counsell brought up LAPC and made a statement the he would write a letter to LAPC's Chair - Kris Clark, recommending that this committee start looking for parcels to submit to CPC. Kris reads the letter into the record. Jim Hinkle asks for Kris's comments on it.

Kris indicates that she thinks they are pointed in the same direction but was unaware that the trio of villages were being targeted as the neediest and given their discussion with Tom Cambareri and LAPC's initiative with the village of Barnstable does not put it at odds. Duncan Gibson indicates that he believes that this letter has been forwarded to John Norman but thinks it should be noted as such. Jim Hinkle thinks that Ann Canedy should also receive a copy and thinks that CPC should also be pursuing parcels in the underserved areas as well. Duncan Gibson would like clarification on the sentence... ".....with the advise and approval of the Town Manager" and in his opinion doesn't believe that they ever needed to go through the Town Manager in order to go forward. They discuss finding parcels on their merits regardless of what village it is located in.

Kris Clark will respond to Lindsey Counsell's letter and asks the members for any suggestions.

Jim Hinkle indicates that he can see a value of the officers of LAPC meeting with the officers of CPC in order to communicate in a positive way. Duncan Gibson would suggest that as proposals are talked about it should not be limited to just the officers. They discuss a joint meeting. Kris will request that they have a joint meeting with CPC.

- **November 28th meeting: Laura Cronin**

Kris Clark indicates Laura is Cronin is not present but is scheduled for CPC's November 28th meeting. .

- **2012 sign-up sheet**

Kris Clark indicates that the sign-up sheet for 2012 is available in order for members to choose a date(s) that they can attend the CPC meetings.

Committee Updates

- **Pathways: Tom Mullen**
 - **Volunteer stewards – link on webpage?**

Tom Mullen indicates that they cleaned up the trail between Barnstable Village and the Community College for the walk that took place on October 8th but that there are still various trees down in several areas and asks for volunteers to help with the clearing. Volunteers to contact staff.

- **Improvements to the Pathway: field signs, maps, thanks to Charlie Genatossio and Tom Mullen for removal of downed trees from Hurricane Irene**
- **Report on Fall Walking Weekend walk- “From College to the Courthouse” (Oct. 8th)**

Kris Clark indicates that there were twelve walkers at the Cape Cod Commission’s walking weekend and hands a list of the walkers to staff.

- **Santuit Preserve Update: Steve Farrar**

Kris Clark indicates that there is no update.

New Business

- **Response from Mark Milne, Finance Director, Town of Barnstable**

Kris Clark indicates that, as previously stated, she did get an update from Mark Milne who will attend next month’s meeting.

- **Webpage updates: new tax credit information, CPC update on CPC finances**

Kris Clark indicates that it has been posted to LAPC’s website as a link

Announcements

None

Correspondence

None

Items not reasonably anticipated by the Chair

Duncan Gibson asks if a letter could be sent to Steve Farrar about his absence. James Hinkle would prefer to have Kris Clark call instead. Kris indicates that she will call Steve Farrar.

Public Comment

None

Other

None

Motion is made by James Hinkle and seconded by Tom Mullen to adjourn.

Vote:

All in favor.