

TOWN OF LAKEVILLE

Community Preservation Committee Meeting Minutes January 10, 2024

On January 10, 2024, the Community Preservation Committee held a meeting at 6:30 PM at the Council on Aging, 1 Deer Crossing. The meeting was called to order at 6:32 PM by Chairman Nancy Yeatts. Community Preservation Committee Members present were Chairman Nancy Yeatts, Paula Houle, Amy Knox, John Lucey, Michele MacEachern, Barbara Standish, and Susan Spieler. Absent were Kathleen Barrack and Nancy LaFave. Also present Cathy Murray, Planning Department Clerk. LakeCAM was recording the meeting for broadcast.

Guest: Scott MacFaden from Wildlands Trust to discuss Step 2 application for land acquisition/1 Elliott Way

Scott MacFaden couldn't attend the meeting but will attend the CPC meeting on February 1, 2024. Chairman Yeatts passed out information regarding the Wildlands Trust and gave a background on the Trust. The Trust holds a conservation restriction on the Chistolini property and are helping with the Step 2 application. There is a restrictive covenant on this land which Chairman Yeatts passed out for members to review on their own time.

Review emails from Coalition and Town Council regarding procedure for Town acquiring property/discussion/possible vote

The emails from the Coalition and Marc Resnick were presented with Town Counsel opinions regarding land acquisitions. Chairman Yeatts felt there shouldn't be too much discussion regarding these as she would like to hear Scott MacFaden from Wildlands Trust opinions. He will be assisting with Step 2 on the Chistolini property and will have more information. Ms. MacEachern felt the email presented was cut off and wanted to see the entire email chain. Chairman Yeatts said nothing was cut off, but she did cut off the privacy info from KP Law. Ms. MacEachern's opinion is that Step 2 should go to other committees for their opinion such as Open Space, Conservation, Select Board, and Master Plan since this is a land acquisition along with the Coalition for review.

A motion was made by M. MacEachern, seconded by Amy Knox, it was:

VOTED: to send Step 2 application to Open Space, Select Board, Conservation Commission, Master Plan and Community Preservation Coalition
Unanimous in favor

2024 Coalition membership dues/ discussion/possible vote

A committee vote is needed to pay the Coalition dues. Ms. MacEachern commented that the Coalition was instrumental in bringing CPA to Lakeville. The Coalition helps communities understand, adopt, and implement CPA and advocate for CPA at the state level thereby advancing smart growth and sustainable development in the communities across Massachusetts. She mentioned at the last meeting Mr. Lucey stated he thought the Coalition had a lot to do with housing. Ms. MacEachern stated that there are non-profit organizations involved with the Coalition such as the Trust for Public Land, Massachusetts Affordable Housing Alliance, Preservation Massachusetts, Citizens' Housing and Planning Association, Mass Audubon, and Trustees. There are only two groups that are affiliated with housing and others with land preservation, so it's not really concentrated in one bucket. If we are going to Town Counsel for advice when we could be going to the coalition, this is what we pay the dues for. Chairman Yeatts clarified that the advice that we get from the Coalition should still go to Town Counsel since it's not lawyers giving the advice. We need to protect the town and not take legal advice from the Coalition. The Coalition was instrumental in assisting Ms. Barrack submit the CP3 so we could get our match since the town is not allowed to submit this report. Ms. Houle understood that the Coalition is an advisory board and not legal. Ms. MacEachern agreed it's not a substitute for legal opinion, but we have a sample warrant article that other towns have used that was written by an attorney that was obtained from the Coalition. Chairman Yeatts said it still says it's not a legal opinion, all and warrants still need to go through Town Counsel. Ms.

MacEachern stated that things that do not need to go through Town Counsel will cut down on the legal expenses to the town. Ms. Houle stated what if the Coalition advises us on something not pertinent to Lakeville shouldn't we still go to Town Counsel. Chairman Yeatts is in favor of paying the dues and asking the Coalition for opinions but the bottom line for her is to protect the town and still go through Town Counsel and there is plenty of money in the budget. Ms. MacEachern stated she's not saying not to go to Town Counsel but lean on the Coalition and use their services as much as we can without having to go to legal. She stated only one email from Stuart from the Coalition was presented and there were two, and she had asked Chairman Yeatts to print the backup. Chairman Yeatts agreed about the one email but didn't have both with her and it's not on the agenda. Ms. MacEachern said the snippet that was presented does not show the entire email together. Chairman Yeatts said she would like to hear what Scott has to say at the next meeting and this is about paying the dues. Ms. Spieler stated she would like to see the entire email chain including what Marc Resnick sent to Town Counsel. Chairman Yeatts requested Ms. Murray to get the entire email chain so it can be placed on the next agenda. Ms. Murray will email to all members and Chairman Yeatts will see if it will go on the next agenda depending on the other business we need to do.

Motion made by M. MacEachern and seconded by A. Knox, it was:

VOTED: to approved to pay the Coalition Dues of \$875

P. Houle-abstain, J. Lucey-aye, M. MacEachern-aye, B. Standish-aye, S. Spieler-aye, A. Knox-aye, N. Yeatts-aye.

Budget Report 12/31/23

M. MacEachern stated the budget doesn't include last year's remaining balance but is showing interest. The committee would like Todd Hassett, Town Accountant, to come to another meeting to explain the budget. Chairman Yeatts will ask if he could attend the February 1, 2024 meeting at 6:30 and Scott MacFaden on the agenda for 6:45.

Review MOA for approved projects/discussion/possible vote

Chairman Yeatts stated we need to sign an agreement with the three entities that were granted CPA funding. She presented a Memorandum of Agreement for approval so the three projects can proceed. Chairman Yeatts wanted to approve the proposed agreement with any pending changes from Town Counsel. Ms. MacEachern stated she compared the agreement with the town's Community Preservation Plan. She noted the plan mentions a memorandum of understanding not agreement and we should be consistent with what the plan refers to. There are also a few references to City not town and Planning Department, which is under discussion since the Town planner has left. She would like to see other agreements closely resembling Lakeville. On page 3 of the agreement, it states the project should be completed in one year and our plan states unless there is a compelling and documented reason, projects receiving CPA fund must be completed within 24 months following Town Meeting approval. CPC may recommend at a subsequent Town Meeting the rescission of any authorized CPA funds remaining unexpended or undocumented after 12 months. The agreement needs work and needs to match our plan. Chairman Yeatts wants this to get done so projects can start. Chairman Yeatts asked Mr. Lucey, who is an attorney, if it matters whether it's called an agreement or understanding. Mr. Lucey said in this case it really doesn't matter. Chairman Yeatts will give the rest of the changes and information to Town Counsel so it will be ready for the next meeting. Ms. MacEachern stated that either the agreement needs to match our plan, or the plan needs to match the agreement. Ms. Spieler mentioned the recent developments at the Select Board meeting where it was announced the City of Taunton approved the tie-in with water through Blueberry Estates but there is push back from Blueberry Estates. The Select Board decided not to proceed with the tie-in and ARPA funding would not pay for a well. Ms. Spieler doesn't feel the Parks project for John Paun Park should move forward with the engineering plans since there may not be any water. Ms. Houle was aware and said this was a discussion for the Parks Commission to have at their next meeting. They may have to put in a well and didn't want to dismiss the funding until they have met and decided their next steps. Chairman Yeatts will put on the next agenda after the Parks Commission has met for further discussion.

Discuss timeline/application submittals for 2024

Chairman Yeatts said we need to review and update the plan and hold a public hearing. The plan can be updated after the public hearing with any resident input and add the three projects that were approved. The committee discussed whether to have projects for the Annual Town Meeting or wait until Fall Town Meeting. Ms. Spieler felt it was too soon to take another round of applications and best to grow the fund before expending more money and wait until Fall. Chairman Yeatts felt CPA was passed and we need to get things done. Ms. MacEachern stated we could put some money aside if the public wanted money set aside. Resident John Gregory asked to speak and thanked Chairman Yeatts for forwarding his question to the assessor's office. He stated there were only 25 senior CPA exemption applications submitted and 24 were approved for senior or low income. He stated there were 15% of the population are seniors which is about 1500. He felt seniors were not getting informed they can apply for an exemption. Ms. MacEachern stated it was our hope that the exemption form would be sent out with the tax bill, but it didn't happen. Instead, a letter was sent in its place and included the link. She asked Mr. Gregory if he automatically received the form in the mail the following year, which he did. Chairman Yeatts said we need to have a public hearing and the need an explanation from the Board of Assessors. Ms. Houle stated that maybe Mr. Gregory should go to the Senior Center and speak with the director to get publicity on the CPA exemptions and put something together to present to the seniors.

Set meeting and Public Hearing Dates for annual plan/discussion/possible vote

The committee selected the following dates for meetings and public hearing for 2024:

February 1-27	Step 1 Applications opens
February 29	CPC Meeting to review Step 1 applications, Public Hearing
March 4	Step 2 starts
March 29	Deadline to submit Step 2 applications
April 4	CPC Meeting to review Step 2 applications
April 18	CPC Meeting to review Step 2 applications, if needed
June 10	Annual Town Meeting

Review and approve meeting minutes August 1, 2023 (amended) and December 13, 2023

A motion was made by P. Houle and seconded by B. Standish, it was:

VOTED: to approve the minutes of August 1, 2023 meeting as amended
Unanimous vote

Ms. MacEachern wanted to comment on the December 13th meeting after watching the video. She felt the committee took a vote, appointed Ms. Spieler as secretary and Chairman Yeatts didn't work with Ms. Spieler and instead worked with Ms. Murray. She felt it was uncalled for and we need to put reorganization on the agenda. Mr. Lucey brought the subject of reorganization up in October and Chairman Yeatts stated we reorganize in July when reappointments are made.

A motion was made by Ms. MacEachern and seconded by A. Knox to put reorganization on the next agenda. Ms. Houle asked if there is something in the bylaws that states when reorganization is done. Chairman Yeatts said this was discussed previously and it happens in July. She stated we are talking about the minutes right now and Ms. MacEachern stated we have a motion and a second on the floor. Ms. MacEachern stated Chairman Yeatts told her privately she was going to change the date of this meeting and she didn't. Chairman Yeatts stated she sets the agenda and does everything through the town clerk. If the committee wants to put this on the agenda, it's her purview to put whatever she wants on the agenda. Ms. Murray stated she didn't understand why Ms. MacEachern was so offended by her helping with the minutes. Ms. MacEachern said she had nothing against Ms. Murray, but she saw the email exchange between Chairman Yeatts and Ms. Spieler it was it awful. She said instead Chairman Yeatts decided to work with Ms. Murray. Ms. Houle was disappointed that we are discussing this, it's no way to run a meeting, we need to respect each other and move on. Chairman Yeatts asked for a motion to accept the minutes.

A motion was made by Ms. Houle and seconded by Ms. Yeatts, it was:

VOTED: to accept the minutes of December 13, 2023

P. Houle-aye; J. Lucey-abstain; B. Standish-abstain; M. MacEachern-abstain; A. Knox-abstain; N. Yeatts-aye
Motion failed; minutes will be placed on agenda for next meeting.

Ms. Spieler requested to discuss a few old business items. She stated the CPA project sign examples were never brought to the committee as stated at a previous meeting. Ms. MacEachern stated Roberts Rules of Order states it's not just the chair that can set the agenda, it's the committee and Chairman Yeatts is refusing to take a vote. Chairman Yeatts stated she forgot to take the vote because the committee was discussing the minutes.

A motion was made by M. MacEachern, seconded by A. Knox, it was:

VOTED: to put reorganization on the next agenda

P. Houle-aye; J. Lucey-aye; M. MacEachern-aye; B. Standish-aye; S. Spieler-aye; A. Knox-aye

Ms. Spieler mentioned the draft plan was still on the website, all agendas and related documents were missing for 2022, missing minutes from August 2, 2022, and missing minutes from May 2, 2023, possibly on the tape recorder. Chairman Yeatts will follow up on these items.

A motion was made by Chairman Yeatts, and seconded by B. Standish, it was:

VOTED: to adjourn at 7:46 pm

Unanimous

Documents presented at meeting

Attachments:

Wildlands Trust Fact Sheet

Restrictive Covenant – 1 Elliot Way

Community Preservation Coalition Warrant Article Draft and information

ABOUT WILDLANDS TRUST

OUR MISSION

Wildlands Trust works throughout Southeastern Massachusetts to permanently protect native habitats, farmland, and lands of high ecologic and scenic value that serve to keep our communities healthy and our residents connected to the natural world.

OUR VISION

We envision a future where our region's water and air are pure and open lands are abundant, with forest farms, wetlands, fields, ponds and coastal areas commonplace sightings on our landscape.

OUR COMMITMENT TO DIVERSITY, EQUITY AND INCLUSION

Wildlands Trust is committed to protecting land and providing access to nature for the people of our region, regardless of income, race, ethnicity, religion, sexual orientation, or gender identity. We will approach our work with complete respect for the cultures and perspectives of the communities we serve as we endeavor to connect and inspire all people to care about the natural world and the future of our planet.

OUR HISTORY

Founded in 1973, Wildlands Trust is one of the largest and oldest regional land trusts in Massachusetts and has helped to ensure the protection of nearly 14,000 acres of natural and agricultural lands. Currently, we have seven full-time and four part-time staff carrying out the day-to-day activities of the organization. We also have interns, seasonal employees and volunteers who assist us on a regular basis. Our Board of Directors comprises 19 committed individuals from the communities we serve.

Partnerships play a large role in our work to protect land and we are proud to partner with dozens of agencies and non-governmental organizations including the Massachusetts Department of Fish and Game, The Nature Conservancy, Massachusetts Audubon Society, Trust for Public Lands, The Trustees of Reservations and the Manomet Center for Conservation Sciences.

BOARD OF DIRECTORS:

Chairman Emeritus - Douglas E. Hart, Duxbury

Chairman - Samuel Chapin, Plymouth

Vice Chairman - Scott Ford, Braintree

Treasurer - Greg Lucini, Berkley

Secretary - Deborah Sedares, Plymouth

(over)

Director Emeritus - Charlotte Russell, Plymouth
Marilynn Atterbury, Plymouth
Robert Bird, Plymouth
Matthew Cammack, Milton
Crystal Farrar Gould, North Marshfield
Brian Harrington, Plymouth
John Hornstra, Hingham
Lucy Hutchinson, North Marshfield
Russell Keeler, Rochester
Patricia Loring, Duxbury
Virginia M. Murray, Plymouth
Sandy Olney, Duxbury
Wayne R. Petersen, Hingham
Mark Russo, Plympton
Peter Tyack, Hanover
Ethan Warren, Plymouth

SPECIAL COUNSEL:

Michael S. Nuesse, Hull

STAFF:

Karen Grey, *Executive Director*
Scott MacFaden, *Director of Land Protection*
Erik Boyer, *Director of Field Operations*
Rachel Bruce, *Director of Special Projects*
Sue Chamberlain, *Donor Relations Manager*
Kyla Isakson, *Membership and Digital Media Coordinator*
Thomas Patti, *Communications Coordinator*
Max Phelps, *Programming Coordinator*
Owen Grey, *Stewardship Operations Manager*
Tess Goldmann, *Conservation Restriction Coordinator*
Zoë Smiarowski, *Stewardship Coordinator*
Tom D'Allessandro, *Office Manager*
Kealy O'Brien, *Accountant*
Malcolm MacGregor, *Trail Guy*

M.R. BOOK 17372
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GRANT OF RESTRICTIVE COVENANT

This Grant of Restrictive Covenant is by and between Elliot E. Cornell and Barbara A. Cornell, husband and wife, tenants by the entirety, of Highland Road, Lakeville, Massachusetts ("Grantors"), their successors and assigns and those claiming through or under them and the Town of Lakeville, a municipal corporation acting by and through its Board of Selectmen ("Town"), its successors and assigns and those claiming through or under it with an office and place of business at 346 Bedford Street, Lakeville, Massachusetts.

WHEREAS, Highland Road is a public way within the Town of Lakeville; and

WHEREAS, Grantors are the record owners of property located off Highland Road in Lakeville, Massachusetts. For Grantors' title see deed recorded with the Plymouth County Registry of Deeds in Book 17372, Page 99 (the "Property"); and

WHEREAS, Grantors desire to access their Property from Highland Road; and

WHEREAS, the Town is concerned about the safety of the proposed access; and

WHEREAS, it is agreed that public safety will be enhanced by limiting access to the Property off Highland Road.

NOW, THEREFORE,

1. The Grantors and the Town agree and covenant for themselves, their successors and assigns and those claiming through or under them, for consideration the sufficiency of which is hereby acknowledged, as follows:

- a. The Grantors agree and covenant that no more than one single family dwelling shall be constructed on the Property.
- b. The Grantors and the Town agree and covenant that access to the single family dwelling on the Property will be through a curb cut on Highland Road which shall be in the location shown on the plan entitled "Driveway Profile Plan, Highland Road and Rte. 140, Lakeville, MA", dated 9/13/99, prepared by Mount Hope Engineering, Inc., recorded herewith.
- c. The Grantors agree and covenant that the sole access to the Property for any commercial use, including use as cranberry bogs, shall be the easement described in Schedule A of the deed to the Property recorded with the Plymouth County Registry of Deeds in Book 17372, Page 99, unless other access is approved by vote of the Board of Selectmen.

PROPERTY ADDRESS:

maul
Return to:
Deborah A. Eliason, Esq.
Kopelman and Paige, P.C.
31 St. James Avenue
Boston, MA 02116

d. The Grantors hereby release the Town from any responsibility for Grantors' personal injury, losses or damages related to the Highland Road access, and Grantors agree and covenant for themselves, their successors and assigns and those claiming through or under them that they will not assert or bring, nor cause any third-party to assert or bring, any claim, demand, lawsuit or cause of action against the Town arising out of the construction or use of the Highland Road access.

e. The Grantors are the record owners in fee simple of the Property and that there are no mortgages of record or otherwise on any of the Property, except such as are described below and subordinated to this restrictive covenant, and the present holders of said mortgages have assented to this restrictive covenant prior to its execution by the Grantors.
Holders of Mortgage: Widow's Corner Realty Trust,
Donald G. Bissonnette, Trustee

2. The covenants contained herein shall run with the land in perpetuity and shall be enforceable by the Town of Lakeville, acting by and through its Board of Selectmen, and by the Grantors or their successors and assigns or those claiming through or under them. The Town shall have the option to enforce said restrictive covenant, but does not have the obligation to do so. By its acceptance of this restrictive covenant, the Town does not undertake any liability or obligation relating to the condition or occupancy of the Property, nor does the Town's acceptance of said restrictive covenant operate as a waiver of the requirements of any state or local law applicable to Grantors' use of the Property, including without limitation, subdivision control, wetlands protection or zoning law as any or all may be applicable to the Property or its use.

3. The covenants contained herein shall be contained in or referenced in any deed of conveyance of the Property or any other instruments conveying an interest in all or any portion of the Property.

4. The rights hereby granted include the right to enforce the restrictive covenant contained herein by appropriate legal proceeding and to obtain injunctive and other equitable relief against any violation (it being agreed that the Town and/or the Grantors may have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Town and/or the Grantors.

5. Any forbearance with respect to any violation of the covenants contained herein, or failure to enforce said covenants, for however long such forbearance or failure to enforce shall continue, shall not preclude enforcement at a later time with respect to the same violation or a subsequent violation. Any

election by the Town and/or the Grantors as to the manner and timing of its right to enforce these covenants or otherwise exercise the rights hereunder shall not be deemed or construed to be a waiver of such rights.

6. The Grantors, the Town, and their successors and assigns shall forego any action at law or equity attempting to contest the validity of any provision of the covenants contained herein and shall not, in any enforcement action, raise the invalidity of any provision of said restrictive covenant as a defense. If any provision of said restrictive covenant shall nevertheless to any extent be held invalid, the remainder shall not be affected.

7. The covenants contained herein shall be governed by the laws of the Commonwealth of Massachusetts. The parties hereby consent to exclusive jurisdiction of the Courts of the Commonwealth of Massachusetts sitting in the geographic area known as Plymouth County.

8. This covenant shall become effective and shall forthwith be recorded in the Plymouth County Registry of Deeds by the Town of Lakeville upon execution by both parties and upon the Grantors or their successors and assigns or those claiming through or under them obtaining all necessary permits from municipal, state and federal authorities to construct on the Property a single family dwelling, a septic system for the single family dwelling and a driveway from the single family dwelling accessing onto Highland Road, and all appeal periods from the granting of said permits having concluded with no appeal being taken; or, in the event of an appeal in any instance, upon the final disposition of any such appeal in favor of the Grantors or their successors and assigns or those claiming through or under them.

EXECUTED as a sealed instrument as of the 29th day of February, 2000.

Town: TOWN OF LAKEVILLE
BOARD OF SELECTMEN

Grantors:

Clawner
Hurd

[Signature]
Gerard R. White

[Signature]
Elliott E. Cornell
[Signature]
Barbara O. Cornell

ASSENT OF MORTGAGEE(S) [if any]:

[Signature]
Name: Donald G Bissonette v/d/t DATED MARCH 12, 1997 BK 15155
Title: Trustee of Widow's Corner Realty Trust

Name:

Title:

munlaw#3\cornell.cov


PG 141

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

Date: February 29, 2000

Then personally appeared the above named Elliot E. Cornell and Barbara A. Cornell and acknowledged the foregoing instrument to be their free act and deed, before me,

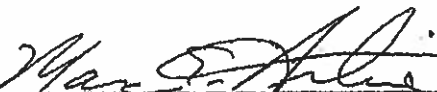

Marc E. Antine - Notary Public
My commission expires: 01/26/01

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

Date: February 23, 2000

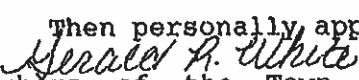

Then personally appeared the above named Donald G. Bissonnette, Trustee of Widow's Corner Realty Trust and acknowledged the foregoing instrument to be his free act and deed, before me,



Marc E. Antine - Notary Public
My commission expires: 01/26/01

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

Date: ~~February~~ March 2, 2000

Then personally appeared the above named  and , the Members of the Town of Lakeville Board of Selectmen, and acknowledged the foregoing instrument to be their free act and deed, before me,


Susan M. Conway
Notary Public
My commission expires: April 15, 2005



Community Preservation Coalition

Preserving our past. Building our future.

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Drafting CPA Land Purchase Warrant Articles



By Kathleen M.

O'Donnell, Esq. Milton, MA

As we near the spring town meeting season, it seems an appropriate time to review some pointers for successful Community Preservation Act articles to acquire land. Every town has its own particular drafting "style" for its warrant articles, but as you put together your drafts for CPA projects, here are some issues to keep in mind.

- If you are looking for authorization to purchase a piece of property, the amount that you request shouldn't be limited to the purchase price. There may be other costs associated with the purchase that should be included in the article; i.e. appraisals, land surveys, base line studies to establish conservation values, title research, legal fees, costs regarding the issuance of the required restriction on the land, and other closing expenses for the project.
- The Community Preservation Act requires a municipality to grant a perpetual restriction on any real estate interest purchased with CPA funds. Your article should include the authorization to the Board of Selectmen or Mayor to execute a perpetual restriction to a qualified holder. A restriction is a conveyance of an interest in land and the grant of a restriction requires local approval by the legislative body. Consider using language similar to this example:

"and further to direct the Board of Selectmen to grant a permanent conservation restriction on said property pursuant to G.L. c. 44B Section 12 and G.L. c. 184 Sections 31-33"

- If you intend to grant your perpetual restriction to a not-for-profit conservation organization, the amount you request at Town Meeting may have to include a grant to the holder to establish an endowment for ongoing site monitoring by the holder.
- Historic preservation and affordable housing are pretty easy to understand but open space is a category that can be subject to much wider interpretation of allowable uses. Under the definitions included in Section 2 of CPA, use of the broad term "open space" might allow active recreational uses, such as athletic fields. If the municipality wants to set the land aside for conservation and passive recreation only, it would be advisable to make that limitation clear in the warrant article. The article should state if more active uses are anticipated, and it could say that the appropriation would be used not only for the purchase of the land, but also to build tennis courts, soccer fields, and playgrounds, for example.
- Some land purchases are completed with state or federal grant funds, and you'll want to mention that possibility in the warrant article with language similar to this:

"and further that the Board of Selectmen shall be authorized to file on behalf of the Town any and all applications deemed necessary for grants and/or reimbursements from the Commonwealth of Massachusetts and/or any other grant programs in any way connected with the scope of this article, said gifts or grants to be deposited in the town's Community Preservation Fund"

- Purchases might also be completed with the assistance of private funds. To reassure Town Meeting, the article could state that the purchase will be partially funded by a stated amount of private funds, and that the land purchase is contingent upon the Town's receipt of these funds by a date certain. Here's suggested language:

"and further, to aid in the funding of the purchase of said parcel, a sum of (specify amount) must be donated to and received by the town by (specify exact date) in a gift fund established for that purpose;"

- If the project will be bonded, the Community Preservation Committee (CPC) has the option to specify the term of the bond as part of their recommendation. The amount of the annual debt service payments will vary greatly depending on the term of the borrowing (just like your mortgage) and the amount that has to be set aside for these payments will impact how much CPA funding is available for future projects. Absent a specific recommendation from the CPC on the term of the bond, this decision will be left to the town treasurer.
- If the property is being purchased by the municipality for multiple CPA purposes, the article could refer to a sketch plan that shows the division, if you know how the land will be divided up, or the purchase could be for all CPA purposes, with the uses to be decided after acquisition. To avoid problems after Town Meeting, the warrant article should state the procedure the town will use to make the land use decisions.

Check the legal description of the property and included a reference to the Assessors Map and Parcel and the approximate acreage, for example, 7.6 acres, more or less. If you know that there are easements or other rights that are necessary for your use, add language authorizing acceptance of those easements and rights, in addition to the property itself.

Allow enough time for the necessary review of the article by the Selectmen, the Warrant Committee, the Finance Committee, Town Counsel, etc. And remember that bond counsel should review and approve any article that authorizes borrowing.

View sample language for a CPA land acquisition warrant article:

- [WORD version](#)
- [PDF version](#)

Good luck!

Kathleen M. O'Donnell Esq. is a former member of the Coalition's Steering Committee. Her real estate practice includes the representation of community preservation committees in the acquisition of conservation land and the support of community housing. She can be reached at 617-794-2794 or kmodonnellesq@gmail.com

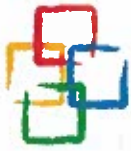
The above information is not intended to be legal advice, and municipal counsel should be consulted on proper procedures for all CPA land acquisitions.

Mar. 2012

Source URL: <https://www.communitypreservation.org/warrant-articles>

Sample CPA Land Acquisition Warrant Article (with bonding)

ARTICLE 21: To see if the Town will vote to appropriate \$50,000 in legal and acquisition costs, and \$700,000 in land purchase expense, for a total appropriation of \$750,000 to enable the Town of (name of town) to acquire for conservation purposes under Chapter 44B, the Community Preservation Act, and to authorize the Board of Selectmen to accept the deed to the town of fee simple interest or less, of a parcel of land on (name of street and town), consisting of 7.5± acres of open land identified as Map 26, Lot 2, Parcel 6 in the records of the town assessors; a map being on file with the Town Clerk, together with all flowage rights and easements and subject to all well rights and easements; said land to be managed by the (name of town) Conservation Commission; and that to meet this appropriation the sum of \$50,000 be transferred from the Undesignated Community Preservation Fund balance, and the treasurer, with the approval of the Selectmen, be authorized to borrow the sum of \$700,000 for 10 years as authorized under the Community Preservation Program pursuant to Massachusetts General Laws, chapter 44B section 11, and to authorize the Conservation Commission and the Board of Selectmen to submit on behalf of the town any and all applications deemed necessary for grants and/or reimbursements from the Commonwealth of Massachusetts, or the United States, under the Self-Help Act (M.G.L. Chapter 132A § 11) and/or any other state or federal programs including those in aid of conservation land acquisition; and/or any others in any way connected with the scope of this Article; said gifts or grants to be deposited in the Undesignated Community Preservation Fund balance; and that the Board of Selectmen be directed to grant a perpetual conservation restriction in said parcel of land meeting the requirements of M.G.L. Chapter 44B, § 12 and M.G.L. Chapter 184, §§ 31-33, and to enter into all agreements and execute any and all instruments as may be necessary to affect said purchase, said funds to be expended by the Conservation Commission and the Community Preservation Committee; or take any other action thereon.



Community Preservation Coalition

Preserving our past. Building our future.

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[Home](#) > Conservation Restrictions 101: The Rules on Conservation Restrictions on CPA Acquired Land

Conservation Restrictions 101: The Rules on Conservation Restrictions on CPA Acquired Land

A Conservation Restriction (CR) is a legal agreement that prevents development and other activities on important natural and recreational resources like drinking water supplies, agricultural lands, wildlife habitat, and hiking trails. Although not as common, a CR can also be placed on active recreational land such as recreational fields and parks. A CR is a legal document, approved by the state's Executive Office of Energy and Environmental Affairs (EEA) and filed at the Registry of Deeds, which details exactly what activities can and cannot take place on the parcel of land in question.



Are Conservation Restrictions required by CPA?

Yes -- Conservation Restrictions are required for all lands acquired with CPA funds for Open Space and Recreation; until this document is completed and filed, the terms of the CPA acquisition have not been technically completed. Ideally the CR should be filed immediately after the purchase (along with the deed to the property), but the CPA legislation does not have a specific time requirement for completing CRs. As a result, this step is often completed as soon as possible after a community has closed on a CPA acquisition.

Section 12a of the CPA legislation details the requirement for CRs:

Section 12. (a) A real property interest that is acquired with monies from the Community Preservation Fund shall be bound by a permanent restriction, recorded as a separate instrument, that meets the requirements of sections 31 to 33, inclusive, of chapter 184 limiting the use of the interest to the purpose for which it was acquired.

Can a municipality own both the land and the Conservation Restriction?

Due to the common law "doctrine of merger," separate legal entities must hold the fee in the land and the conservation restriction. So, if the city or town will own the land being acquired with CPA funds, a separate governmental organization or qualified third party will need to hold the CR, such as a nonprofit land trust, an athletic association, or a similar organization. The state's EEA can provide details on which organizations are qualified to hold CRs. Basically to be qualified to hold a CR, an organization must (a) be authorized by their articles of incorporation to hold real property interests and (b) their purposes must include the conservation of land or water areas (or in the case of an active recreation CR, their purposes must include active recreation), and (c) they must be able to monitor and enforce the CR to ensure that its terms are not violated.

An organization that agrees to hold a Conservation Restriction has responsibilities to fulfill, such as monitoring the parcel to ensure it is used according to the terms of the CR. To cover those costs, many nonprofits will request payment of a one-time endowment to cover their future costs for holding the restriction. The amount will vary depending upon the situation. The good news is that Section 12a of the CPA legislation allows a municipality to use CPA funds to pay this one-time endowment - if the land was purchased with CPA funds.

This arrangement can also work in reverse; a land acquisitions is made by the third party, and CPA funds are used by the municipality to purchase and own the Conservation Restriction.

Is there guidance available to help write a Conservation Restriction?

The Executive Office of Energy and Environmental Affairs (EEA) wrote a **model conservation restriction**, which can easily be edited to adapt to the CR you are crafting. The Secretary of Energy and Environmental Affairs must approve conservation restrictions in order for certain legal protections to apply to their creation. EEA's Director of Conservation Services is charged with making recommendations for approval, modification, or rejection of such requests to the Secretary.

Your first step is to prepare a draft of the CR, and submit it to the Director of Conservation Services for preliminary review, before proceeding with executing the document and seeking the necessary local approvals. This draft should be submitted with a **Conservation Restriction Application form** and a plan of the land in question. If available, or if you are unsure what environmental qualities the land has, a USGS topographical map of the area, and a 'Field Report' and information from Natural Heritage and Endangered Species is helpful. You will also need a 'Municipal Certification' filled out by your local Conservation Commission. If there are any mortgages or liens, including any construction loans, you must obtain a subordination from the leinholder which must be recorded with the CR.

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