



The Town of Barnstable
Growth Management Department
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LAND ACQUISITION & PRESERVATION COMMITTEE

Minutes
Monday,
December 5, 2011

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

Also present were Carol Puckett – Administrative Assistant

A quorum being met, Kris Clark opens the meeting at 5:38 PM.

Approval of Minutes

• **Minutes from LAP meeting of November 7, 2011**

Motion is made by James Hinkle and seconded by Phyllis Miller to accept the minutes as presented.

Vote:

All in favor

Guests

• **Mark Milne, Finance Director, Town of Barnstable: Update on Open Space funds from CPA account**

Mark Milne has three handouts, which he gives to the members which are forms CP1 and CP2 and an amortization schedule. He indicates that the must be filed by the Town every year with the Department of Revenue Division of Local Services. The amortization schedule is for the remaining Debt Service on Community Preservation fund bonds. He then explains the forms for state matching funds under the CP1 which is the Community Preservation Surcharge Report which the Town files every year in order to get reimbursed for state matching funds under the Community Preservation Program (see Attachment Form CP-1). He explains the amounts. Based on this submission he believes that the Town of Barnstable received approximately \$720,000 which they received the end of October for fiscal year 2012 distribution. He thinks the Town of Barnstable is one of the larger communities and highest recipients who participate in the program. Form CP2 is an analysis of the revenues and expenditures for the program for the last fiscal year as well as what the fund balance consists of at the end of the fiscal year. (See Attachment Form CP-2). He explains the figures. He indicates that Special Purposes = Existing Appropriations made by Town Council for which there hasn't been an expenditure or an encumbrance made to it as of yet.

Steve Farrar comments that the ending Community Preservation fund balance reserved for open space is 1.8 million and asks if a portion of the 3.1 million dollars fund balance reserved for the Community Preservation Act is also available for them to spend. Mark Milne indicates that it could be designated for any one of the three program areas. Kris Clark asks if the land bank funds are drawn out of the 3.1 million which he had made reference to under expenditures for Debt Services. Mark Milne indicates that when they converted from the land bank to the Community Preservation fund it required them to first take any money they collected from the surtax and state distributions and to set aside enough to pay for the entire land bank outstanding debt service. Anything that is left over can be split three ways between the programs.

Mark Milne then explains the third handout which is the amortization schedule for the land bank bonds (see Attachment Amortization). Phyllis Miller indicates that at the last CPC meeting Lindsey Counsell made a comment about having more input from LAPC on land but also stipulated that they would like the land/funds to go to underserved villages. Phyllis indicates that in the past they never looked at the individual villages but at the Town of Barnstable as a whole and what was important to the citizens. She was wondering if it was possible to combine the land bank money given to each village and have it shown on a spreadsheet and another spreadsheet to get an idea of how much has been expended under CPC. Mark Milne indicates that it can be reconstructed and that he can talk to CPC about the figures.

Duncan Gibson would like to see the income for the surcharges by precinct. Mark Milne doesn't believe they can track by precinct.

- **Atty. John Kenney: Freezer Point Conservation Restriction proposal**

Phyllis Miller has recused herself and left the room. Attorney John Kenney is here representing Stuart Bornstein. Attorney Kenney indicates that there was a site visit on Wednesday, November 30th with some of the members of LAPC. He asks if Kris Clark received an email about a clean copy of the conservation restriction which he had sent to First Assistant Town Attorney - David Houghton. Attorney Kenney indicates that in Paragraph 1 of the draft conservation restriction, his client has requested a time limit of 99 years, which has not yet been agreed to by the Town, nor has the value. The suggested value by the Town was \$100,000. Attorney Kenney indicates that he had made an offer with Attorney David Houghton that if they went with the \$100,000 then he would go with the 99 years and could resolve both issues at once. However, David Houghton wanted to give it further consideration and wanted further guidance from LAPC on this. Attorney Kenney then indicates that on Page 3, after paragraph 14, is a key provision of this document which is the end of the prohibited uses that should give the members some background. He indicates that the genesis of this conservation restriction came out of a decision for a use variance which was granted by the Zoning Board of Appeals. As part of the ZBA decision, Attorney Kenney indicates that his

client offered to have a conservation restriction and to restrict the property which evolved in negotiations with the Town Attorney's office into a conservation restriction and private restriction.

Also, Attorney Kenney indicates that under paragraph B, section D, 8.6 regarding extinguishment, the Town proposed a formula whereas; if the property appreciated then the conservation restriction would appreciate. He indicates that the last conversation with the Town Attorney's office was that if the land value goes down then the conservation restriction should also go down proportionately. However, Attorney Kenney indicates that his client would agree to a value of \$100,000 and if there was appreciation in value there would be no appreciation in the conservation restriction, if there was depreciation in value there would be no depreciation in the conservation restriction. Also, his client wants to be able to maintain plantings that he puts in pursuant to the conservation order on an ongoing continuance basis. He has been before the Conservation Commission briefly and explained the intent and the general consensus was that it would be beneficial and tied into what they wanted on their ongoing Order of Conditions.

Steve Farrar would like to see the finished conservation restriction before voting on this.

James Hinkle thinks that the 99 years and \$100,000 is reasonable

Duncan Gibson asks the chair if LAPC has ever voted on a conservation restriction that was not in perpetuity. Kris Clark indicates that she does not recall ever voting on anything other than one in perpetuity. Attorney Kenney indicates that it is not a requirement for it to be in perpetuity. Attorney Kenney indicates that the purpose of this restriction was to limit construction.

Laura Cronin comments that the majority of this space, by its face, is unbuildable, is in the Sandy Neck barrier beach area and an area of rare species habitat and asks why they would need to take it off the tax roles as there is no public access which is what they look for when they take properties off the tax role. She also asks if there was another way this could've been built into the agreement with zoning without a conservation restriction. Attorney Kenney explains what had transpired through hearings with the Zoning Board of Appeals and that some people in opposition to the proposal didn't think that his client would build a home but instead a condominium. Therefore, his client agreed to a private restriction and a conservation restriction which are to be approved by Town Council. Laura Cronin asks that if the property owner decides not to build the retirement home is there any possibility to go back to the 40B again. Attorney Kenney indicates that he hasn't seen the private restrictions as of yet but the intent, from what he understands, is no. Attorney Kenney clarifies that the conservation restriction and the private restriction will be approved in tandem by the Town Council.

Town Attorney – Ruth Weil speaks and addresses the issue about the terms of years and explains that if it was a state restriction under 184 Sections 31 through 33 it could be in perpetuity. However, some of the conditions that the state has put on these restrictions have not been acceptable to the Town. The Town likes to hold their own restrictions and the state requires an independent third party which they don't think is legally correct and that this can also be a time consuming and onerous process which was not what the ZBA required in their decision. She believes the intent was to have a period of time that equated to perpetuity. She indicates that they did different iterations and that through the communications between Attorney Kenney and David Houghton. Mr. Houghton deferred it to LAPC for input.

Kris Clark indicates that she would be more comfortable with it being in perpetuity and asks why the conservation restriction can't be done in perpetuity. Ruth Weil indicates that they couldn't do it legally according to 184 Sections 31 through 33 which would derail the process. Duncan Gibson comments that if this was an agreement in perpetuity they would have to follow the state rules and asks what is it that the Town doesn't agree to that has been

agreed to for all prior conservation restrictions. Ruth Weil indicates that one is the holding by a third party entity and that there are other requirements. She indicates that they have had numerous problems with the language, which the state requires the Town to abide by. She indicates that this is an unusual situation that they felt was unfair as far as subjecting this restriction to that process. Duncan Gibson indicates that in the past the conservation restrictions have been in perpetuity and was the intent of the donor to be in perpetuity. Ruth Weil indicates that restrictions are usually brought forward by a third party land trust or applicants who want tax benefits which doesn't pertain to this restriction.

Steve O'Neil agrees with James Hinkle that the time and value are okay.

Kris Clark asks Tom Lee for his opinion. Tom Lee indicates that when Attorney Kenney came before the Conservation Commission they only looked at this and the Order of Conditions in general. They knew that this was coming before LAPC and that it will be before the Conservation Commission on Tuesday, December 13th.

A motion is made by James Hinkle and seconded by Steve O'Neil to accept this conservation restriction with the 99 year limit and \$100,000 assessment as outlined in the conservation restriction and presented by Attorney Kenney.

Vote:

AYE: James Hinkle, Steve O'Neil

NAY: Steve Farrar, Laura Cronin, Duncan Gibson, Kris Clark

Steve Farrar would like to see the complete document.

Duncan Gibson would like to see the secondary agreement to make sure that they give which he indicates is LAPC's fiduciary responsibility

Attorney Kenney indicates that his client is willing is to go 99 years and that it is his position that 99 years is sufficient. He indicates that they are not willing to go beyond the 99 year term and that if changed they would have to go back to the Zoning Board of Appeals and ask to have their decision modified in order to drop the time span for the conservation restriction.

The members discuss the year limit of the conservation restriction.

Attorney Kenney indicates that the conservation restriction cannot be finalized until he has the time and value but will draw up a draft conservation restriction for LAPC to consider at the January 9th LAPC meeting. He will get the document out this week and asks that comments be provided before the first of January.

Old Business

- LAPC vacant position update; waiting for the Appointments Committee's recommendations
Kris Clark indicates that there is still a vacancy and the Appointments Committee will be meeting soon. .
- **Videotaping session for LAP Chair "infomercial": postponed to December 16**
Kris Clark indicates that this has been postponed to December 16th.
- **Act To Sustain Community Preservation HB765/SB1841 update**
Kris Clark has had no update on the status of this.

▪ **Response to CPC's letter/email**

Kris Clark indicates that she had a conversation with Lindsey Counsell who indicated that the Community Preservation Committee will be meeting with Town Council and that it may be helpful if LAPC could also attend.

▪ **Webpage review**

Duncan Gibson found one date for which there were minutes but no agenda and will email Carol with that date.

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

- Update on Meeting with the Town's Water Quality Advisory Committee

Kris Clark has emailed Tom Cambareri but they have not come up with a new date for a meeting with both committees.

- Update on Meeting with Barnstable Fire District

Phyllis Miller returns to the meeting.

Kris Clark indicates that there was a suggestion for a preliminary meeting at the Unitarian Church in

Barnstable on January 24, 2012 to discuss land proposals for the village of Barnstable and that it will be

the only thing on the agenda for that meeting. James Hinkle suggests 7:00 PM on January 24, 2012. Kris then

indicates that GIS would do a map for open space parcels with the groundwater protection districts and existing open space parcels and asks for any other suggestions for the map. Kris asks if there is a consensus to go

forward with January 24, 2012 at 7:00 PM. Everyone agrees.

▪ **Community Preservation Committee update**

▪ **November 28th meeting representative: Laura Cronin**

Kris Clark asks Tom Lee what transpired at the last meeting. Tom Lee indicates that the meeting was brief as there weren't any applications before the committee and that they voted to close out five projects in order to return some of the balance of cash to the CPC funds. He also indicates that they postponed voting for any officers until the next meeting.

▪ **December 19th meeting representative: Duncan Gibson**

▪ **2012 sign-up sheet**

Kris Clark passes around the 2012 sign-up sheet.

Committee Updates

▪ **Pathways: Tom Mullen**

Kris Clark indicates that Tom Mullen is not here; therefore there isn't any update.

▪ **Santuit Preserve: Steve Farrar**

▪ **Santuit Pond Dam update**

Kris Clark indicates that she has spoken with Lindsey Counsell who attended the last meeting in Mashpee regarding the Santuit Pond Dam Project and said minutes were taken by Alisha Parker and will arrange to have those shared with LAPC.

▪ **January's guest speaker, Bill Keto of the Friends of Santuit Pond**

Steve Farrar doesn't have an update and notes that the speaker Bill Keto will speak to it at the next meeting.

▪ **New Business = None**

- **Announcements = None**
- **Correspondence = None**
- **Items not reasonably anticipated by the Chair = None**
- **Public Comment = None**
- **Other = None**

Motion is made by James Hinkle and seconded by Steve Farrar to adjourn

Vote:

All in favor