



Town of Barnstable
COMMUNITY PRESERVATION COMMITTEE



www.town.barnstable.ma.us/CommunityPreservation

Email: CommunityPreservationCommittee@town.barnstable.ma.us

Committee Members

Lindsey B. Counsell – Chair • Tom Lee – Vice Chair • Marilyn Fifield – Historical Commission • Terry Duenas – At Large • Katherine Garofoli – At Large
 Stephen Robichaud– Planning Board • Tom Lee – Conservation Commission • James Tenaglia – Recreation Commission
 Deborah Converse – Housing Authority • Farley Lewis – At Large • Jessica Rapp Grassetti – Town Council Liaison

Monday, March 20, 2023
Regular CPC Meeting APPROVED Minutes
Remote Access Meeting via Zoom Link: <https://zoom.us/j/82063818593>
5:30 PM

Lindsey Counsell – Chair	Present
Marilyn Fifield – Clerk	Present
Terry Duenas	Present
Tom Lee-Vice Chair	Present
Katherine Garofoli	Present
James Tenaglia	Present
Deborah Converse	Present
Stephen Robichaud	Present
Farley Lewis	Present
Jessica Rapp Grassetti – TC Liaison	Present

With a quorum present, Chair Lindsey Counsell called the meeting to order at 5:30 pm and read: “Please note that tonight’s meeting is recorded and broadcast on Channel 18 and, in accordance with MGL Chapter 30A, s.20, I must inquire whether anyone is taping this meeting and to please make their presence known.” No one present was recording the meeting.

Call to Order (Roll Call)

Present: Terry Duenas – **yes**, Marilyn Fifield – **yes**, Katherine Garofoli – **yes**, Tom Lee – **yes**, James Tenaglia – **yes**, Deb Converse – **yes**, Stephen Robichaud – **yes**, Farley Lewis – **yes**, and Lindsey Counsell - **yes**.

Discussion:

- Discussion with Assistant Town Attorney Kathleen Connolly regarding Conservation Restrictions, Historic Preservation Restrictions, Recreation Restrictions and Housing Restrictions.

Attorney Connolly explained that under the Community Preservation Act, Chapter 44B, Section 12, if property is purchased with CPA funds, a perpetual Restriction can be applied. She cited Chapter 184, Sections 31-33, as the statute that governs Conservation Restrictions, Historic Preservation Restrictions, Agricultural Preservation Restrictions and Affordable Housing Restrictions. She explained that, in the alternative, if a property was not purchased with CPA funds, the Restriction applied must be limited

to a period of 30 years or less, and she cited Section 23 of Chapter 184 which limited the duration of the Restriction to 30 years.

Attorney Connolly explained that Massachusetts is the only state in the country that requires State approval of local Conservation Restrictions, with permanent Conservation Restrictions requiring approval by the State Executive Office of Energy and Environmental Affairs (EOEEA). She said that the way the statute is written, if a Conservation Restriction is within Town borders, and even if the Town is not involved, the Town must approve the Restriction with an extensive review by the EOEEA, following weighing in on local Restrictions approved by the Town Manager and Town Council. She said this review usually results in requests for changes and, once fully executed, Conservation Restrictions are recorded at the Registry of Deeds.

During member discussion, Attorney Connolly noted that Preservation Restrictions for historic properties are governed by a different statute, and permanent Restrictions are applicable to properties receiving CPA funds regardless of whether they were purchased with CPA funds. She added that a Restriction placed on property is voluntary and something that property owners agree to, although CPA funds will not be released without the Restriction. She noted that there are a lot of things that CPC can require, such as signage that acknowledges CPA funding, and requesting the grantee to voluntarily enter into the Restriction if a lot of money is granted to a project. Attorney Connolly added that awarding of CPA funds is always discretionary, and signing a Restriction is a condition of receiving the CPA funding. There was discussion regarding the backlog of State approval of Conservation Restrictions due to COVID and a change in the main Conservation Restriction reviewer. Attorney Connolly noted that some long-awaited old Conservation Restrictions have recently come back from the State with comments, saying that CRs usually take about a year, but lately it's been more like a year and one-half. It was confirmed that Affordable Housing Restrictions do not require approval by the CPC and a follow-up with the Trust to ensure that granted CPA funds are secured by the Affordable Housing Trust with Restrictions. Attorney Connolly will provide template motions for CPC projects with Restriction language included.

- Discussion with Assistant Town Attorney Kathleen Connolly regarding options for potential Recreation Restriction on Armstrong-Kelley Park, 675 Main Street, Osterville, MA, Map 141, Parcel 038.

Tom Lee recused himself. Attorney Connolly said that she is familiar with this project and went on the site visit last July. At that time, she explained to the project engineer that to be eligible for CPC funds for a project involving rehabilitation of open space, Armstrong-Kelley Park would have had to be purchased with CPA funds, which it was not. She explained that the project could be eligible if a Recreation component was proposed. The project was subsequently redesigned for eligibility, and the CPC voted to recommend it, contingent on the execution of a Recreation Restriction. The Recreation agreement was not signed and is being worked out between Attorney Connolly and the attorney for the Trustees of Reservations. Attorney Connolly noted that the attorney for the Trustees did not violate ethics rules by distributing a letter to CPC meant to be kept between attorneys only, as this was a mistake by the attorney's client but it is harmless that CPC saw a copy.

Attorney Connolly explained that the Recreation Restriction for Armstrong-Kelley Park is one of the Restrictions that cannot be imposed for a duration longer than 30 years. She noted that because the property is privately owned and was not purchased with CPA funds, a Restriction can be negotiated, but it is limited to a 30-year term, as the statute does not allow for a permanent Restriction. She reported that the Trustees of Reservations have tentatively agreed to the 30-year restriction through their attorney, and she noted that, generally, for all perpetual Restrictions, another entity must hold the Restriction, as it cannot be held by the property owner.

CPC considered possibly adding a stipulation that, if the Trustees of Reservations decide to sell or no longer manage the property for any reason prior to 30 years, CPC would receive a prorated refund. It was decided that the Director of Finance, Mark Milne, would need to be consulted regarding this.

Motion/Vote:

The November 21, 2022, motion and vote of the Community Preservation Committee to grant funds for Armstrong-Kelley Park with the requirement for an executed Recreation Restriction was updated by Katherine Garofoli and seconded by Terry Duenas to state that the term of the required Restriction shall not exceed a term of 30 years, with the caveat that, if the project or ownership by Trustees of Reservations ceases prior to the 30 year term, the Community Preservation Committee will seek a prorated refund of the funds granted to the Trustees of Reservations, with interest to be determined.

Roll call vote: Terry Duenas – yes, Marilyn Fifield – yes, Deb Converse – yes, Katherine Garofoli – yes, Farley Lewis – yes, Stephen Robichaud – yes, James Tenaglia – yes, and Lindsey Counsell – yes. Motion carried with 8 Yes and 0 No.

Tom Lee returned to the meeting.

Minutes

The motion of Farley Lewis was seconded by Tom Lee to approve the February 27, 2023, Regular Community Preservation Committee Meeting Minutes as submitted. Motion carried with a roll call vote: **Yes – 8, No – 0, Abstained – 1.**

Letters of Intent

None received.

Applications:

None received.

Correspondence Received:

- Community Preservation Fund Schedule of Unreserved Fund Balances by Program Area as of March, 2023, by Finance Director Mark Milne.
- Letter dated February 27 to Mark Ells from LAPC Chair Ann Canedy, with copy to CPC, regarding unanimous vote of the LAPC to recommend consideration of a CPC-funded purchase of an 18-acre vacant parcel at 2320 Meetinghouse Way, West Barnstable, for water protection purposes.
 - Chair Counsell noted that an appraiser has been engaged, and a water resource specialist will be involved, as well. There was discussion regarding hiring an engineer to investigate the possibility of devoting a

portion of the property for community housing. There was discussion regarding the water districts and the need to acquire new land for water, and it was reported that the Barnstable Water Department is looking to partner with the Hyannis Water District as Barnstable Village is quite limited for open land. Town Councilor Kris Clark said that Hyannis Water Board Chairman Sam Wilson spoke to the LAPC and suggested that this 18-acre property be considered to augment the already-protected conservation land in West Barnstable. She noted that it happens to be one of the six or seven sites that were evaluated in the first round by the engineering expert for purchase for potential future municipal water supply wells, adding that this property is Chapter 61B property which means that it should first come to the Town for right of first refusal because it has had tax relief. Further, she said that this parcel was also on a list developed by the LAPC back in 2015 when this Committee visited each of the water districts in Executive Session, and it was one of those parcels on the wish list for possible future water supply. She reminded that all of the Town plans list the number 1 justification for purchasing Open Space as for water resources, calling this a rare opportunity. Councilor Clark explained that there is a process requiring review by the Town's regulating bodies for Chapter 61B property and a time limit for response to the right of 1st refusal. Deb Converse reminded that there is also a need for Affordable Housing and asked if a portion could possibly be used for that purpose. It was decided that a professional consultant will also explore the potential for Affordable Housing there.

Motion was made by James Tenaglia and seconded by Stephen Robichaud for a thorough professional review of the Meetinghouse property for Open Space, Water Protection and Affordable Housing purposes, to be paid for from the CPC Administrative Fund.

Roll Call Vote: Terry Duenas – yes, Marilyn Fifield – yes, Deb Converse – yes, Katherine Garofoli – yes, Tom Lee – yes, Farley Lewis – yes, Stephen Robichaud – yes, James Tenaglia – yes and Lindsey Counsell – yes.

Motion carried: 9 yes, 0 no.

Project Updates:

Chair Counsell provided the following updates:

- Tales of Cape Cod – Phase III funding is now available.
- Phase 3 & 4 Cape Cod Rail Trail and Unitarian Church of Barnstable CPC Applications are included on the Town Council Agenda for March 16, 2023, for 1st read with Public Hearings scheduled for the April 6, 2023, Town Council meeting.
- Osterville Recreation Playground CPC Application is anticipated to be included on the April 6, 2023, Town Council agenda for a 1st read with a Public Hearing anticipated for the April 27, 2023, Town Council meeting.

Member Discussion:

- Meeting Format for April 24, 2023, CPC meeting.
 - It was decided that the April 24, 2023, CPC meeting will be held remotely if State legislation has been passed to allow this.

- Annual Community Preservation Committee Meeting.
 - Katherine Garofoli reported that she and Deb Converse have discussed dates and options for possible presenters and found that the Hearing Room is available on June 5 and June 8 beginning at 5:30 p.m. She hoped that one of the two dates would work for the presenters that they invite. Different formats were considered: Option 1 – Invite someone from the Community Preservation Coalition to make a presentation about the importance of CPC funds and then have the CPC committee liaisons give very brief overviews of recently-funded projects, with one grantee from each CPC category providing a short impact statement about how important the CP funding was for their project. Option 2 – Invite a local elected official or former elected official to make a presentation about the importance of CPC funds in Barnstable and then follow the same process included in Option 1.

CPC members expressed their support for these ideas and said that the meeting would be more dynamic and engaging with speakers and offered suggestions for each CPA category. Tales of Cape Cod, Hyannis Harbor Hawks, Affordable Housing Trust, and Barnstable Land Trust were mentioned, as well as someone from the Community Preservation Coalition. There was discussion of the dates available, with June 21 and June 22, 2023, as viable choices in the Hearing Room at Town Hall, with other suggested locations in town that are appropriate for public hearings to be explored.

Town Councilor Jessica Rapp Grassetti reminded Chair Counsell and Terry Duenas that they must notify Cynthia Lovell in the Town Council Office of their interest in reappointment to CPC as their terms expire at the end of June 2023.

Public Comment:

None

General Discussion:

None

Adjournment:

Motion was made by Tom Lee and seconded by Katherine Garofoli to adjourn.

Roll Call Vote: Terry Duenas – yes; Marilyn Fifield – yes; Deb Converse – yes; Tom Lee – yes; Katherine Garofoli – yes; Farley Lewis – yes; Stephen Robichaud – yes; James Tenaglia – yes; Lindsey Counsell – yes. Motion carried: Yes – 9, No – 0.

Meeting adjourned at 6:42 p.m.

Next Regularly Scheduled CPC Meeting April 24, 2023

List of documents/exhibits used by the Committee at the meeting:

Exhibit 1 –CPC Agenda, April 24, 2023.

Exhibit 2 –Draft CPC Regular Meeting Minutes from the February 27, 2023, meeting.

Exhibit 3 – Community Preservation Fund Schedule of Unreserved Fund Balances by Program Area as of March, 2023, by Finance Director Mark Milne.

Exhibit 4 - Letter dated February 27 to Mark Ells from LAPC Chair Ann Canedy, with copy to CPC, regarding unanimous vote of the LAPC to recommend consideration of a CPC-funded purchase of an 18-acre vacant parcel at 2320 Meetinghouse Way, West Barnstable, for water protection.

Respectfully submitted,

Ellen M. Swiniarski

Community Preservation Coordinator

Planning & Development Department

and edited by CPC Clerk Marilyn Fifield

Please Note: The list of matters is those reasonably anticipated by the chair, which may be discussed at the meeting. Not all items listed may be discussed and other items not listed may also be brought up for discussion to the extent permitted by law. It is possible that if it so votes, the Committee may go into executive session. The Committee may also act on items in an order other than they appear on this agenda.

*** Public files are available for viewing during normal business hours at the Community Preservation office located at 367 Main Street, Hyannis, MA**