

# DARTMOUTH

Community Preservation Committee



# MASSACHUSETTS

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*Howard Baker-Smith, Chairperson*  
*James Bosworth*  
*Michael Kehoe*  
*Elaine Lancaster*  
*Margaret Latimer*  
*Stuart MacGregor*  
*Damon May*  
*Kevin Shea*  
*John Sousa*

## MINUTES

August 25, 2015

Members present:     Howard Baker-Smith, Chair  
                              James Bosworth  
                              Elaine Lancaster  
                              Margaret Latimer  
                              Damon May  
                              Kevin Shea  
                              John Sousa

Members absent:     Michael Kehoe  
                              Stuart MacGregor

The meeting was called to order at 6:33 p.m.

### Motion:

Mr. Sousa made a motion to approve the minutes of the July 7, 2015 meeting. The motion was seconded and approved by a 5-0 vote. Mr. Baker-Smith and Mr. Shea were not present for the vote.

A voucher with a receipt attached was circulated. A request for reimbursement was submitted by Susan Dorschied for a postage expense in the amount of \$11.66.

A voucher with invoice attached from Anthony Savastano in the amount of \$385 for legal services was circulated.

### Motion:

Mr. Sousa made a motion to approve payment to Susan Dorschied in the amount of \$11.66. The motion was seconded. A brief clarification followed.

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The motion went to a vote and was approved by a 5-0 vote. Mr. Baker-Smith and Mr. Shea were not present for the vote.

Motion:

Mr. Sousa made a motion to approve payment of the invoice from Attorney Savastano in the amount of \$385. The motion was seconded. A brief discussion for clarification followed.

The motion went to a vote and was approved by a 5-0 vote. Mr. Baker-Smith and Mr. Shea were not present for the vote.

Mr. Baker-Smith and Mr. Shea were both en route, and the CPC discussed suspending the meeting until both have arrived.

Motion:

Mr. Sousa made a motion to suspend the public meeting. The motion was seconded and approved by a 5-0 vote.

The meeting was recessed at 6:37 p.m.

Motion:

Mr. Sousa made a motion to reopen the meeting to a public hearing. The motion was seconded and approved by a 7-0 vote.

The public hearing opened at 6:53 p.m.

The Committee was in receipt of one application for funding for the October, 2015 Town Meeting.

***Community Preservation Land Acquisition Fund - May 2015***

The Town of Dartmouth is seeking \$100,000 to establish a Land Acquisition/Conservation Fund to be funded annually in an amount to be determined. Deborah Melino-Wender spoke on the application. The Town has had a number of properties come out of 61A and "go by the wayside" due to the Town's inability to act upon the potential acquisitions. Such properties could have been acquired for agricultural, conservation or recreational uses. The purpose of establishing the fund would be to accumulate funds over time in order to develop sufficient reserves to make sizable purchases, most likely in conjunction with another non-profit.

A list of numerous priority properties had been compiled for the proposal. The fund would be structured similarly to the Housing Rehab. Loan Fund in that it would have a designated purpose and contain strict guidelines. Similar to the Conservation Fund, a list of priorities would be developed in advance and submitted for Town Meeting approval. Other boards and commissions would be included in the process, by agreement. Ms. Melino-Wender said the fund would be

capitalized annually, as the CPC sees fit, and would not be drawn upon until it reached \$350,000. The Town is looking to acquire only sizable parcels.

The CPC had forwarded a list to the Town of several questions it had regarding the proposal. David Cressman was present and addressed those inquiries which included the following:

The fund is not to be committed to a specific amount. \$100,000 is a starting option. He proposed returning annually for funding in order that funds build up over time. No particular amount has been designated. Mr. Cressman identified three properties that he considered missed opportunities where the Town lacked the necessary funds for acquisition. Had the proposed fund been in place, the Town may have been able to take action on at least one.

The priority list was created in early 2015 by a number of staff members. The CPC would need to vote on a list for recommendation to Town Meeting. Some properties on the list can be designated as multi-purpose. The CPC had asked the Town to identify the statutory authority for a town to establish such a fund governed by the Selectboard. Mr. Cressman said it would be similar to the Housing Rehab. Loan Fund in that there is no board, including Town Meeting, selecting the properties to be rehabilitated. The fund would be used solely for land acquisition, unless a building exists on the property.

Mr. Cressman said the Town made a number of purchases of properties several years ago, borrowing funds against the CPA fund. A percentage of revenues is allocated annually to cover the debt service. That percentage is currently over 30%. Future bonding is not recommended by the Selectboard and Finance Committee, and having a ready funding resource may enable a parcel to be acquired without the necessity of bonding.

Audience members were invited to comment. Beverly King said that while it is important to have a fund that is accessible, enabling a quicker response, she is not in favor of the proposal. Decisions will be taken away from larger groups who know more about the particular pieces of property and putting them into the hands of a smaller group--the Selectboard. She feels the CPC has always done a good job with it, and she is happy to leave it with the CPC. Mr. Cressman responded that there will be a recommending committee which will consist of one member of the Selectboard, Conservation Commission, Community Preservation Committee, Parks and Recreation Board, Agricultural Preservation Trust Council and the Agricultural Commission. That committee will convene, and upon consultation with the CPC, make a recommendation to the Selectboard and Conservation Commission. For the Selectboard to utilize the fund without that recommendation would be extremely inappropriate.

Diane Gilbert said this would be a "bad deal for the Town of Dartmouth." The goals may be noble, but it would create another layer of bureaucracy. She is not in favor of the Town forming another committee. She pointed out that some of the members would be from boards who are already represented on the CPC. She voiced several other concerns including the disposition of historical structures on acquired parcels, the clarity of the draft MOU and the role of the Selectboard. Some members of the community may deem this a "power grab" by the Selectboard. This matter should reside with the CPC. The program is flawed and would create more problems than solve them.

Mr. Cressman responded saying he was insulted by the accusation of this being a power grab. The proposal was not the suggestion of the Selectboard, rather it came from consultation among department heads and the staff as how to address the issue. "To insinuate that it is a power grab by the Selectboard is incorrect and totally inaccurate." Mr. Cressman said the staff worked from the list that was created by the Agricultural Commission several years ago. That was the genesis of the project.

Committee members provided questions and comments. Mr. Shea asked Mr. Cressman about the disposition of the three properties considered missed opportunities. He said two have been converted, one having been built upon and the other containing an approved subdivision plan. The third is in the 120-day review. Mr. Sousa asked that if the fund were in place and a property became available several years later, would the Town submit a CPC proposal for additional funding? Mr. Cressman said it is a possibility. Mr. Sousa felt Mr. Cressman had criticized the previous CPC for purchases made requiring bonding. Mr. Cressman responded that he was not criticizing the committee nor the decisions it made. He said that, as a result of those decisions, the Finance Committee and Selectboard made a (debt service) policy decision. Mr. Sousa asked if it is intended that any future purchases made through the fund will be done without the need for bonding. Mr. Cressman said they will try to avoid it, but an opportunity may arise where the CPC and Land Acquisition Committee feel it would be prudent to bond the purchase. Mr. Cressman's preferred decision is to put funds away to avoid the need to borrow.

Mr. May said that it was the opinion of another community's legal counsel that the creation of this kind of fund is not possible. What is the opinion of Dartmouth's legal counsel? Mr. Cressman said Attorney Brian Cruise said there is no case law on the issue. He added that Dartmouth has been engaged in the Housing Rehab. Loan Program for several years with far less oversight from the CPC and Town Meeting. Mr. Baker-Smith had consulted with the Community Preservation Coalition and said land acquisitions are regarded as "higher-bar" decisions for communities. Also, the fund would not be created for any one specific eligible use, rather it would allow for a choice to be made. The decision-making body is Town Meeting, by legislation, and that mechanism would be bypassed.

Mr. Baker-Smith said that he understands the reasons behind the proposal, and feels the subject of setting aside funds could be taken up by the CPC, particularly when the annual Needs Assessment is reviewed. The CPC's current approach is to carry as many unrestricted funds as possible to give the Committee the widest range of use. Mr. Baker-Smith also said the property list is a good guide for the Committee. Even though the proposal addresses matters that are relevant to the CPC, he doesn't believe it would be one they could recommend to Town Meeting under the law. Mr. Cressman responded that if the CPC does not go forward with the proposal, it may wish to consider allocating a portion of its undesignated funds into an area to protect it (clarified as the open space reserve). He truly believes it is an important issue to the Town's people.

Derek Christiansen, Chair of the Agricultural Commission, said he believes control of land acquisition decisions should stay with the CPC. The CPC has a wider knowledge base than the Selectboard. He does like the idea of setting aside funds for quicker action. Mr. May said the

idea of setting aside funds has a lot of merit. He feels the wording of the draft MOU needs improvement. Mr. Baker-Smith said CPA funds may not be eligible for this kind of fund, primarily because it removes the decision making of different uses and specific properties, in terms of land acquisition, from Town Meeting. The Department of Revenue needs to issue an opinion. The CPC must exercise due diligence before recommending projects to Town Meeting.

Ms. Latimer said she is concerned about the intent. The ability of the Town to act without the necessity of a Town Meeting vote should not be the direction they should be going. She and Mrs. Lancaster also feel the draft MOU needs additional revision. A legal opinion regarding this matter should be sought.

There were no more comments or questions from the public.

Motion:

Mr. Shea made a motion to close the public hearing. The motion was seconded and approved by a 7-0 vote.

The public hearing closed at 8:21 p.m. The Committee took a brief recess.

The open meeting resumed at 8:26 p.m.

Mr. Baker-Smith addressed the Committee asking if there was a motion to recommend funding the Land Acquisition Fund. No motion was made. Members provided follow-up comments.

Mr. Sousa said that even if the MOU were to be revised based on comments provided that evening, he would not vote in favor of the proposal. The Community Preservation Act provides for setting aside funds for a purpose. The proposal would create another bureaucracy when the process already exists. He disagrees with Mr. Cressman that the properties mentioned were missed opportunities. Mr. Sousa said he is very proud of the track record Dartmouth has for preserving open space, recreation and farming. It has done an outstanding job compared to any other community in the south coast. He sees no need to create a process that bypasses Town Meeting. A much better approach would be to allocate additional funds to the open space reserve.

Ms. Latimer said it appears the main purpose in the MOU is removing the need for Town Meeting approval. It is creating a new structure that is imprecise in how it runs. The list contains 39 properties, of number of them containing multiple parcels. How would a priority get set? The comments made by Stuart Saginor from the Coalition are very serious. Town Counsel said there is no case law on the matter. Should we proceed because it's never been tested? Removing the function of the CPC and Town Meeting is untenable.

Mr. Shea says the process is working now. The CPC's vetting process is thorough. The new fund would allow quicker action, but not by much.

A discussion took place regarding the warrant article to set the fund reservations. Projects were funded at the June Town Meeting for affordable housing and historic preservation, satisfying the required 10% reservations for those purposes. Mr. Baker-Smith distributed copies of a spread sheet regarding FY2016 budget projections. Information included revenue, expenses and fund balances. The current state match projection is 31.5%. He proposed allocating a minimum of \$86,000 to the open space reserve. At the close of the fiscal year, the unrestricted reserve balance will be over \$984,000. He proposed the Committee consider moving a portion of those funds into the open space reserve. The matter was discussed.

*Motion:*

Mr. Sousa made a motion to transfer \$204,511 of unrestricted funds to open space. The motion was seconded and approved by a 7-0 vote.

*Motion:*

Mr. Sousa made a motion to appropriate \$86,000 from FY2016 revenue to the open space reserve. The motion was seconded. After clarification, the motion went to a vote and was approved by a 7-0 vote.

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## PROJECT UPDATES

### *Stone Barn Farm*

Gregory Barnes was present to discuss the project. In 2011 the Massachusetts Audubon Society entered into a contract with the Town for approximately \$688,000 to engage in a project on the Stone Barn Farm, including its tractor barn. He feels they did the project in compliance with the contract that had been signed. After the work was complete, there was a period of time until the restriction was ready to be put in place on the property. In the years following the project's inception, the legal interpretations of what are allowable expenditures became stricter. One criterion of the Community Preservation Act is public accessibility. The work on the tractor barn is now in question because a portion of the building is an apartment, which is not open to the public.

A meeting is scheduled in September with Mass. Audubon representatives to try to resolve the matter. A possible solution would be to substitute the expenses. The invoices were not broken down by task location. Mr. Barnes said this is a difficult situation because the Town can only pay for expenses based on legality. The final requisition is for \$128,080.46, coming in under budget by approximately \$44,000. He reiterated that he sees no violation of the contract by Mass. Audubon. There was no distinction between the interior and exterior. Additionally, there was a legal opinion obtained in 2010 that did not distinguish between the two areas. Mr. Barnes said the definition has been refined over time, and he must comply with that of the present.

Mr. Sousa asked how much money is involved in this matter. Mr. Barnes said the requisitions were not broken down between interior and exterior or even by building. He said the exterior work is an allowable expense since it can be viewed by the public. The amount expended on the

interior of the tractor barn will be deducted from the final disbursement. It matters not when the task was performed during the course of the project. Mr. Sousa said this situation makes it appear the Town is reneging on the deal. He hopes the Town will recognize the importance of the Audubon Society's presence in town, now and in the future, as a partner in acquiring open space. He does not wish to see a national organization such as theirs fail to benefit from available funding from outside sources due to their lack of desire to do business with the Town of Dartmouth. Mr. Barnes stressed that if there is a legal way to resolve the matter, the Town will do it. Mr. Baker-Smith said contracts cannot supersede the law, and the anti-aid amendment was in place prior to the signing of the contract.

Diane Gilbert asked if the \$44,000 that is to be turned back could be used toward the interior work on the tractor barn. Mr. Baker-Smith said more will be learned at the meeting with Mass. Audubon. Mr. Barnes said he is committed to resolving the issue in a mutually agreeable manner.

### *O'Connor-Sisson House for Veterans*

Mr. Barnes said there are three project agreements. The first is with the Housing Authority, and the second and third are with Partners in Housing. The funds from the first agreement are almost exhausted. Mr. Barnes received a requisition from Partners In Housing to pay the Executive Director of the Housing Authority for the hours she spent on the project in her off time. Mr. Barnes said the requisition must come from the Housing Authority as a reimbursement. Additionally, he received a requisition from the Housing Authority to reimburse the premium of an insurance policy on the O'Connor-Sisson House. Because of the delay in the construction, the insurer disallowed builders risk and instead issued a vacant building policy. The Act does not allow for maintenance or holding costs. The Authority had the intention of obtaining builders risk but was forced to purchase vacant building. Mr. Barnes contacted Attorney Cruise and Attorney Patricia Hunt from the Division of Local Services for their opinions on the matter. Both expressed concern, and as a result, Mr. Barnes is disallowing the reimbursement.

Mr. Barnes said he sent the DLS the various CPA documents that the Town formulated, and he was told they are of superior quality. A point was made about the approval process for grantee requisitions. The Committee does not sign-off as part of that process. Many communities will vote to delegate one member for that task. Mr. Baker-Smith asked Mr. Barnes to propose a mechanism to accomplish that process and present it at the next meeting. Mr. Baker-Smith had a question about the policy regarding the requirement to pay prevailing wage on all CPA-funded projects. Mr. Barnes said there are exceptions that are written in the policy, but he will review the document and refine the language to make it clear.

A brief discussion took place clarifying the Housing Authority matter.

The next meeting will be October 6, 2015.

There was no further business.

Motion:

Mr. Sousa made a motion to adjourn. The motion was seconded and approved by a 7-0 vote.

The meeting was adjourned at 9:40 p.m.

Respectfully submitted,



Susan D. Dorschied  
Administrative Clerk

Approved,



Howard Baker-Smith  
Chair