

TOWN OF BROOKLINE CONSERVATION RESTRICTION POLICY

Whereas, the protection of the environment, including open space, scenic areas, clean air, pure water resources, natural habitat of wildlife and plants, is a primary concern of the Town of Brookline; and

Whereas, the Town prepared Brookline Open Space Plan 2005 and the Brookline Comprehensive Plan 2005-2015, which established strategies to protect and preserve the natural resource values cited above; and

Whereas, conservation restrictions pursuant to Massachusetts General Laws, Chapter 184, sections 31-33 are an important and appropriate means to preserve and protect Brookline's natural resource values and further the goals of the Brookline Open Space Plan and the Brookline Comprehensive Plan; and

Whereas, in order to best protect these natural resource values, the Town's strong preference is for conservation restrictions to exist in perpetuity; and

Whereas, the Board of Selectmen and the Conservation Commission must determine the extent to which a conservation restriction on a particular property is in the public interest;

NOW THEREFORE, the Board of Selectmen declares it to be a policy of the Town of Brookline that it shall accept and approve conservation restrictions that provide significant public benefits; that conservation restrictions may be held by qualified conservation organizations within the meaning of Section 170 of the Internal Revenue Code or by the Town of Brookline or state or federal agencies; that conservation restrictions held by the Town shall be controlled and enforced by the Conservation Commission; and that approval of the conservation restrictions by the Board of Selectmen as required by Massachusetts General Laws, c. 184, sections 31-33 shall be conclusive confirmation that the same yield significant public benefits of the type cited herein.

1. CRITERIA FOR ACCEPTANCE

In determining whether a conservation restriction is "in the public interest,"¹ the Conservation Commission and the Board of Selectmen will consider several factors. These factors may also be considered by the Board of Assessors in determining the value of the land subject to the Conservation Restriction. Typically, no single factor will be determinative, and a balancing of factors, based upon the unique features of the property will be necessary.

- a. Does the Restriction protect native plant and wildlife habitat?
 - i. What native species are present on the property?
 - ii. Will the property be undisturbed or minimally managed for conservation purposes?
- b. Does the Restriction protect water bodies or wetland resource areas?
- c. Does the Restriction protect water quality or contribute to stormwater control?
- d. Does the Restriction ensure that the land will remain in farming, forestry, or recreational use?

¹ See G.L. c. 184, § 32, para. 5.

- e. Does the Restriction preserve a scenic or historic view?
- f. Does the Restriction protect significant trees?
- g. Does the Restriction permit public access and under what conditions?
- h. Does the Restriction protect property adjacent to land which is under conservation restriction or is otherwise protected or preserved?
- i. Does the Restriction address the goals of the Brookline Open Space Plan and the Brookline Comprehensive Plan?
- j. Is the property to be restricted sufficiently large to provide significant resource value protection and/or significant public benefit?

2. REASSESSMENT FORMULA

It is generally understood that the Assessor's policies will be applied to properties encumbered by approved and recorded Conservation Restrictions in the following manner:

First, the current fair market value of the parcel will be determined as if the parcel were not encumbered by or subject to the Conservation Restriction.

Second, *generally*, such unencumbered fair market value will be adjusted according to the following criteria:

Open to the Public

In general, the assessed value of a parcel encumbered by a Conservation Restriction in perpetuity, which permits public access, will be 5% of the parcel's unencumbered fair market value. For restrictions granted for a term of years, a case-by-case review will be conducted.

Closed to the Public

In general, the assessed value of a parcel encumbered by a Conservation Restriction in perpetuity, which does not permit public access to the property, will be 25% of the parcel's unencumbered fair market value. For restrictions granted for a term of years, a case-by-case review will be conducted.

Notwithstanding the foregoing, the terms of each Conservation Restriction will be reviewed by the Board of Assessors on a case by case basis, and a parcel's assessed value may be reduced by less than the foregoing baseline reductions (i.e., 75% and 95%) because of individual factors, such as specific uses or activities reserved for the parcel by the landowner in the Conservation Restriction, limitations or restrictions on public access, or because the parcel is not suitable for development either under the Zoning Bylaw or for other reasons.

For parcels on which structures or other improvements are located, if the Conservation Restriction covers the entire parcel, the structure(s) and the area satisfying the minimum lot requirement under the Zoning Bylaw will be assessed and taxed at the unencumbered fair market value (i.e. there will be no reduction in assessments or taxes for the structure(s) or other improvements or the minimum lot area). The excess land may receive the benefit of the 75% or 95% reduction.

Any land already subject to statutory agricultural or recreational abatements cannot be considered simultaneously eligible for a Conservation Restriction property tax reduction. Landowners with these other abatements, however, may elect to replace their temporary reduction status with a permanent Conservation Restriction.

To receive tax benefits, the landowner must record the Conservation Restriction by January 1st preceding the beginning of the fiscal year (e.g. restrictions recorded before January 1st, 2009 will receive tax benefits beginning in fiscal year 2010). It is not necessary for the landowner to apply for a reduction yearly.

3. RELEASE OF CONSERVATION RESTRICTIONS

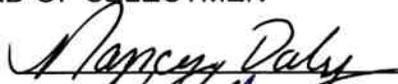
In order for the community to make proper and accurate land use decisions for the future, it must be able to ensure that protected open space remains protected. For that reason, Conservation Restrictions are intended to be in effect in perpetuity. Only in cases of demonstrated extreme hardship or public necessity, and after a public hearing and public notice, will the Town consider releasing any restriction. In most cases, the following will be required:

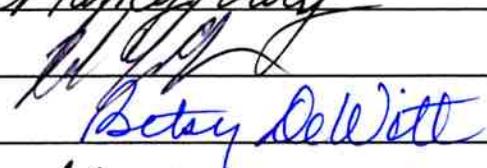
- a majority vote of the Conservation Commission
- a majority vote of the Board of Selectmen
- a two-thirds majority vote of Town Meeting
- approval by the Massachusetts Secretary of Energy and Environmental Affairs, and
- a two-thirds majority vote of the Massachusetts General Court and signature by the Governor

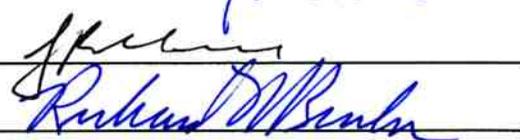
A conservation restriction represents a real property right. In order to release this right the Town will require compensation. Such compensation may be financial. It may also include protection of other land in Town with equal or greater natural resource values.

This Conservation Restriction Policy adopted this 2nd day of December, 2008.

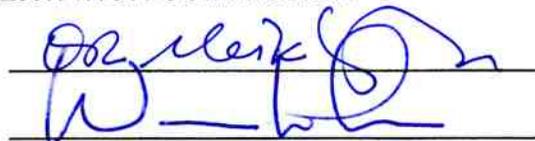
BOARD OF SELECTMEN







CONSERVATION COMMISSION





Bill McAllister
[Signature]
Kate Brundage
Conrad K. Schnoor

BOARD OF ASSESSORS

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Mark J. Maguire