

Waltham Land Trust



Waltham Land Trust, Inc. is a non-profit corporation dedicated to preserving our community's natural resources for the future through education, open space acquisition and protection.

QUARTERLY

FALL 2002

WLT Co-Sponsors Conservation Restriction Seminar

On June 10, 2002 Mayor David Gately and the Waltham Land Trust co-sponsored a seminar on conservation restrictions (CRs). The purpose was to provide background for those who will need it on the technical subject of creating conservation easements that withstand the test of time. The seminar, held at the Robert Treat Paine Estate, was attended by 52 people from the City's Law, Conservation, Planning, Assessing and other departments as well as WLT and land trusts from surrounding communities. Mayor Gately and WLT President Stephen Rourke introduced the ambitious agenda. A panel of three knowledgeable speakers presented different aspects of CRs. They later responded to a lively range of questions from participants. WLT subsequently provided all participants with a list of additional resources, now posted on the WLT website www.walthamlandtrust.org. Copies of the state's helpful CR Handbook, which is also available online at www.state.ma.us/envir/conservation/restrict.htm were provided by WLT to key city departments.

What is a conservation restriction? The state refers to a CR as a legally binding agreement between a landowner and a conservation holder (public agency or land trust) whereby the landowner limits the use of her property to protect specified conservation values. For a more detailed explanation, see "Bundle of Sticks" by Stephen Rourke, pp. 2-3 in the Winter 2001 WLT Quarterly available at the WLT web site above. See also the accompanying article on conservation restrictions in Massachusetts.

In the seminar, the three speakers discussed the need for conservation restrictions, how to make them, and ideas for how to fund them. The first speaker was



Robert Levite, Joel Lerner, Kurt Gaertner, Stephen Rourke

Robert Levite, an attorney with the U. Mass. Extension Service. He spoke on the economics of preserving open space and its potential benefits for the City's tax base. He compared the ratio of public expenditures to tax revenues for different land uses in communities around the state. It turns out that residential development has the highest public burden, industrial development is much lower, and open space preservation has the lowest public cost. Mr. Levite also discussed the economic enhancement to nearby properties and the less quantifiable benefits of open space. He recommended that the City tailor both its assessment policy and zoning to encourage landowners to consider preservation projects. There were numerous questions from the participants. The questions sparked a discussion of the City's efforts at master planning and protection of both open space and affordable housing.

The second speaker was Joel Lerner, Director of the Division of Conservation Services in the Massachusetts Executive Office of Environmental Affairs (EOEA). He was eminently qualified to explain how to get a CR approved because he performs the preliminary review

of every CR application for the Secretary of Environmental Affairs. The Secretary has given approval to over a thousand CRs to date. Mr. Lerner recounted the history of the state's adoption of the CR law. He stressed that a CR must show genuine conservation value and consistent protection terms to win state approval. He mapped out how to draft the CR deed and the practical issues in defining the land's baseline condition, establishing environmental monitoring, and obtaining a fair tax appraisal for the land after restriction. Lerner also discussed interesting examples from some of the CRs in surrounding communities. In one case, the Town of Concord, Town of Carlisle, and Harvard University all granted CRs to a land trust so they could jointly preserve their lands in the Esterbrook Woods. In another case, the City of Cambridge acquired a CR on lands in the Town of Lincoln to protect the watershed of the Cambridge Reservoir. With questions from the participants, Mr. Lerner explored the practical aspects of creating and enforcing a CR.

The third speaker was Kurt Gaertner, a grant-making specialist from the EOE. He spoke on potential funding mechanisms to enable the City to purchase CRs from landowners. He discussed using the state's current build-out analysis and fiscal software tools to quantify the City's needs for open space. Mr. Gaertner described various funding sources including state grant programs and state matching funds available through the optional Community Preservation Act. In the ensuing discussion, City Planning Director Ron Vokey noted that Waltham is now pursuing master planning and state grant funding in addition to bonding its own \$10 million open space acquisition program.

The three presentations were useful for both the City officials and the participants from non-governmental groups. The seminar provided a clearer understanding of the nature, purpose, and practical use of conservation restrictions. WLT is working actively to obtain CR's for the significant open space parcels in the City. Even City-owned parcels can benefit from this long-term mechanism that the legislature provided to ensure a livable environment for future generations. Land trust members who have questions or are interested in working on the CR program are encouraged to contact the WLT Land Committee. 🌿

Dan Melnychuk

Board Member Autobiography

I was born in New York City and grew up playing in the city streets and alleyways. When I was in second grade my family moved to a 200 acre farm in south Brookline, Mass. While walking to the school bus stop I would see pheasants, rabbits, and foxes. For many summers I lived in a small cottage by the side of a pond in Concord, Mass. The frogs became my friends as they would let me swim up and pet them. The luck of my exposure to nature so early changed my life and has had a profound effect on my outlook of how, as humans, we should live in harmony with nature.

Shortly after moving to the shore of Hardy Pond here in north Waltham in 1991 with my sweetie Amy, I became actively involved with the Hardy Pond Association and have been so ever since. When I was asked if I would join the board of WLT in 2000, I accepted, hoping that in some way I could help Waltham embrace some of that harmony of living with nature by trying to preserve our remaining open space.

It was also in 2000 that I became active in the Massachusetts Green Party, which is now an official state party. My involvement has led to my getting elected to the State Committee and working on helping the Mass Green Party to join forces with the Rainbow Coalition Party of Massachusetts. Both parties stand for environmental wisdom, social justice, non-violence, and grassroots democracy. I also donate my time to Waltham Alliance To Create Housing (WATCH), a Community Development Corporation. WATCH is wonderful organization that works for social and economic justice for all the citizens of Waltham.

As an active board member of WLT, I take care of many of the computer-related activities, from the membership database to the web site and mailing lists, as this is my field of expertise. I truly enjoy working with this organization. The other board members have so many skills and so much knowledge I am always learning something.

Often you don't know what you have until it is gone. Luckily WLT is engaged in both attempting to preserve the remaining open space and provide the education for everyone in Waltham to understand why it is essential. In working with the city, WLT has made some great strides towards both of these goals. I invite all to join a working committee and help Waltham to embrace harmony with nature today. Tomorrow may be too late. 🌿

Conservation Restrictions in Massachusetts

A property owner's rights include a broad range of activities such as occupying and using the property, controlling access and excluding trespassers, or subdividing and developing the property with structures and roads. The rights encompass selling, leasing, mortgaging, or donating portions of the property to other landowners. An owner can also transfer particular legal rights out of her bundle without relinquishing any physical portion of the property. For example a landowner can grant affirmative easements — rights to cross or access her land — to a holder in perpetuity.

The holder and his successors can hold an affirmative easement forever, whether or not any of them dealt directly with the original landowner who granted the easement. Most of us have such affirmative easements carved out of the ownership of our homes for electric and telephone lines, water and sewer pipes, gas lines, or possibly a neighbor's driveway. It is a major advantage to the utility company or other holder that an affirmative easement remains permanently valid through changes in the ownership, sales of the holder's assets, and transfers of the surrounding lands.

Traditional law was less favorable toward negative easements, which were sometimes referred to as restrictive covenants or equitable servitudes. These were restrictions that a landowner placed on some of her own development rights, to be enforced by a holder. Traditionally, a landowner could sell a negative easement to preserve an adjacent property's light and air or scenic vista from construction on the landowner's land. But such a conservation easement might not be enforceable if the holder did not own adjacent land that was directly benefited or was not the same person who bought the easement from the original landowner. And it might not be enforceable if a court determined that the neighborhood had changed enough so the public interest now favored development. Furthermore, Massachusetts law limited the life of a conservation easement to 30 years unless the holder re-recorded it in the registry of deeds then, and every 20 years after. This recording requirement created the possibility every two or three decades for the conservation easement to be destroyed if no currently active holder re-recorded the easement. See M.G.L. c. 184, s. 27–30.

In recent years all states have recognized the social value of conservation easements to preserve open lands for future generations in areas subject to development. A landowner may cash in that value by selling a nega-

tive easement to a conservation organization. Or, she may donate the development rights to obtain personal satisfaction or tax benefits from federal, state, and local authorities. To encourage landowners to create such conservation value, the states have allowed them to create negative easements that are perpetual and enforceable.

The Massachusetts legislature enacted such a law in 1969, creating a framework for negative easements to protect conservation lands, historic properties, watersheds, agricultural lands, and affordable housing facilities. The Commonwealth took a unique approach by requiring that such easements receive both city and state approval in order to remain permanently in force. In the state's lexicon, a conservation easement that has received this full approval is called a conservation restriction (CR). M.G.L. c. 184, s. 31-33.

To create a CR, the landowner must negotiate a deed that defines the specific conservation values to be preserved on the property and the use restrictions that will preserve them. Generally, to obtain the required approvals, a CR would prohibit building or any other major alteration on the parcel. Different clauses of the deed may restrict the landowner from activities such as building structures and roads, cutting trees and vegetation, excavating the land, or depositing rubbish. Passive recreational uses generally would be permitted. Public access varies, but may be required if the landowner wants to obtain tax benefits. Specific clauses of the CR deed may list the landowner's allowed uses, define access, note the holder's enforcement rights, or meet other requirements of the tax laws.

The draft deed must be worked out with the agency or conservation organization that will hold the restriction. A CR can have multiple holders to ensure future monitoring. The draft CR must be approved by the mayor and pass a vote of the city council. Finally, the CR must be reviewed by the Massachusetts Secretary of Environmental Affairs to determine whether it promotes the public interest. The Secretary must determine whether the CR has genuine conservation value for significant resources and provides adequate protection for these resources. If the Secretary approves, the CR is recorded as a permanent restriction in the title record of the land. While other kinds of conservation easements can still be used in Massachusetts, they do not permanently protect a parcel from development. Today, a conservation restriction provides the strongest available protection of the land. 🌿

Marie Daly

Met State Reuse Plans Proceed


Community representatives have been planning the disposition of the former Metropolitan State Hospital since its closure in 1991, and many have despaired that plans would ever come to fruition. However, the Massachusetts Division of Capital Asset Management (DCAM) is finally proceeding with the legal steps involved in disposing of this 336± -acre state property. Since the boundaries of Waltham, Lexington and Belmont intersect within the site, planning for its reuse was complicated by the fact that each governing body had its own, sometimes conflicting, vision of the property's reuse. The DCAM initially wanted to maximize the return on the sale of the property by developing the site as intensively as feasible with commercial, industrial or residential uses. Belmont officials wanted to locate a municipal cemetery there, but soon realized that the Belmont portion was entirely comprised of state-protected wetlands. Lexington representatives wanted to pack as many affordable housing units as possible on their section of the site. Environmentalists from all three communities and other state agencies, such as the Metropolitan District Commission (MDC), the Executive Office of Environmental Affairs (EOEA), and the Department of Environmental Management (DEM), wanted to preserve the open space. Waltham wanted to minimize traffic flow on Trapelo Road and Forest Street. Within Waltham, the vision for the site was different for open space advocates and golf enthusiasts. Clearly, with the number of conflicting priorities and advocates, some compromise was necessary if the planning process was to go forward. After ten years of tense negotiating among the three communities and the DCAM, all parties finally agreed to a reuse plan in February 2002.

The reuse plan divides the property into four parcels: 1) 23 acres of existing buildings, located entirely within Lexington, will be redeveloped into affordable housing. 2) 51.5 acres located entirely within Waltham, and consisting of the main entrance and Gaebler Unit "front lawn" sections, will be sold for \$600,000 to the City of Waltham, which will develop a nine-hole, municipal golf course. 3) 254± acres of open space, spanning Waltham, Lexington and Belmont, will be transferred to the Metropolitan District Commission, which will preserve the land as a public reservation. 4) 7.5 acres of the former Gaebler Unit, restricted to institutional reuse, will be decided at a later time.

The 254-acre MDC parcel is a key link within the Western Greenway, a swath of more than 1,000 acres of open space looping through Belmont, Lexington and

Waltham. Bordered by Belmont's Rock Meadow on the north, the MDC Beaver Brook Reservation on the east, the State-owned Fernald Center on the south, and the former Olympus Specialty Hospital on the west, the Met State parcel is laced with miles of trails that connect with open space in these bordering properties. With wooded uplands, cattail marshes, red maple swamps and mature oak-hickory forest, the variety of habitats makes the MDC portion especially valuable for nature study.

Once the property is transferred to the care and control of the MDC, demolition of the old power plant and morgue, as well as further site cleanup, will commence. An MDC planner estimated that the reservation would open to the public in about two years.

While planning the reuse of the former Metropolitan State Hospital was particularly complicated by the number of municipalities and advocates, the process highlights the value of including local community representatives and advocates in determining the reuse of surplus state property. 

Jerry Bertrand Event a Great Success

In Japan they are tearing down houses in order to build natural areas. In England more than four million people are dues-paying members of the biggest bird protection organization in the country. The global perspective on conservation, and Waltham's place in the conservation world, were brought to life by a fascinating slide presentation and talk sponsored by the Waltham Land Trust on Wednesday, June 26th. Sixty-one people came to hear Jerry Bertrand, former President of the Massachusetts Audubon Society and currently President of Bird Life International, talk about the importance of conserving our natural world.

It was a hot summer night, but the UMass Field Extension Station Auditorium was cool and the conversations before and after the event were warm and animated. More than 20 people came early for a tour of the grounds, including the community garden and the beautiful rose gardens. The field station is located on the former Cornelia Warren Estate, on Beaver Street, just east of Bentley College. During the 19th century, the estate covered two hundred acres on both sides of Beaver Street and was a well-known dairy farm with fields of corn, rye, and other grains.

At 7:30 Mr. Bertrand began a slide show featuring pictures he has taken during his thirty years as a member of the international conservation movement. As he moved through the slides, he pointed out the connections between our conservation work in Waltham and conservation efforts in Central America.

Many species of birds that summer in New England spend their winters in the rainforests of Central America. As those rainforests get developed, the squeeze on the birds' habitat has greatly reduced the number of birds able to live this intercontinental lifestyle.

Since 1985, the Belize Audubon Society, with help from Massachusetts Audubon and Bird Life International, has created a 250,000-acre rainforest preserve, to help their and our birds. This was only one of numerous examples given of efforts to preserve wildlife and their habitats.

Find out more about your natural world - come to the next Waltham Land Trust event! 🌿



Russ Cohen demonstrates edible wild plants.

WLT Has Event-Packed Summer

The Membership Outreach and Education Committee, the Land Committee, and the Development Committee all organized successful events this summer. Some highlights:

Earth Day, 2002

The WLT table at Waltham's celebration of Earth Day featured a contest where participants tried to identify pictures of local landscapes. Congratulations to Susan Brown for winning the contest. Susan wins a free one-year WLT membership.

Edible Plant Walk with Russ Cohen

On May 29, a dozen or so hardy folks braved the rain to learn about edible plants on a guided walk in Prospect Hill Park with Russ Cohen. Despite the wet weather, all found it to be an enjoyable and educational experience. Russ has a full schedule of events in the area, which can be found on his website,

<http://users.rcn.com/eatwild/sched.htm>

Waltham Historic Days

More than 50 people turned out for a guided walk through lands that were once part of the Cornelia

Warren estate. These included a portion of Lawrence Meadows, the Girl Scout Reservation, and the city-owned Waltham Woods parcel. The walk was held on June 10, as part of the Waltham Historic Days. We hope to repeat this walk in the future.

Coming Events

Western Greenway Walk

Sunday, October 20, 2002 9:00am–12:30pm

Western Greenway walk led by Roger Wrubel, director of Habitat. Meet at Habitat, the Mass Audubon Society Sanctuary, 10 Juniper Road, Belmont. The walk will proceed through the Met State property and other open space parcels, finishing at Our Lady's Parish in north Waltham. Return transportation to Habitat will be provided.

Waltham Land Trust Annual Meeting

Wednesday, October 23, 2002, 7:00–9:00pm

At the Waltham Public Library, Program to be announced. Check the events listing on the WLT website.

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An electronic version (pdf) of this newsletter is available on
our website. <www.walthamlandtrust.org>

Waltham Land Trust Officers and Directors:

Stephen Rourke (President) Marie Daly (Vice President)

Laura Cannon-Ordile (Clerk) Marc Rudnick (Treasurer)

Directors: Lela Chiavaras, George Darcy III, Dave Kehs,

Daniel Melnechuk, Allison Mooney, Joris Naiman,

Chris Rodstrom, Inge Uhler, Roger Wrubel, Eileen Zubrowski.

Waltham Land Trust's Mission

We are a group of Waltham citizens who want to save open
space in our city. Our mission is to acquire, preserve or restore
land in a way that:

- balances conservation and access,
- maximizes the natural value of land,
- reduces habitat fragmentation, and
- permanently protects and conserves natural resources;

So that

- public appreciation of natural resources grows,
- native habitat is preserved and restored, environmental
quality of life is improved (air, water, noise and light
pollution are reduced),
- biodiversity is increased, and
- a legacy of conservation is perpetuated in Waltham.

Please send any comments to the return address on the mailing
panel, or email to <memberlink@walthamlandtrust.org>.

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label. If there is no date, please consider joining today!

Waltham Land Trust Membership Application

I wish to join renew at \$15 per year.

I wish to make an additional donation:
 \$15 \$25 \$50 Other: \$ _____

I am interested in donating land or establishing
a conservation easement. Please contact me with
more information.

I wish to help by volunteering. I have skills in:

Name _____

Address _____

City _____ State ____ Zip _____

Phone(s) _____

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Comments _____

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