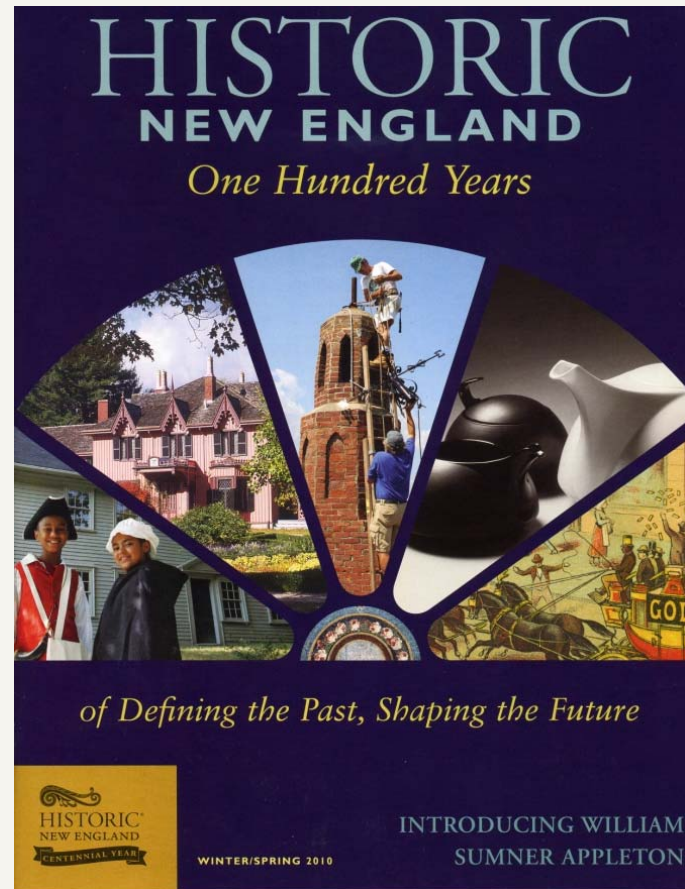


Preservation Restrictions and the Community Preservation Act (CPA)

Jess Phelps, Team Leader, Preservation Services

Historic New England

Defining the past. Shaping the future.



Disclaimer

This material does not create an attorney-client relationship with the speaker and/or Historic New England. Recipients should not construe any information in this material as a legal opinion on any specific facts or circumstances, and should not act on such information without seeking legal or other professional counsel.

Any information pertaining to federal taxation in this material is neither intended, nor provided, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein, and cannot be used for such purposes.

The language of the CPA is untested with regard to some of these questions, so the conclusions herein are not definitive.

Topics

- Preservation Restrictions (PRs)
- Community Preservation Act
- Conditioning grant funds with PRs
- Acquisition of Real Property
- Acquisition of PRs

Preservation Restrictions/Easements

- Legal agreement between a property owner & easement holder to preserve the property by granting the holder a limited property interest
- Recorded with the deed & all future owners bound to agreement
- Improvements and repairs to the property require easement holder's approval
- In event of violation, easement empowers easement holder to take action to enforce compliance

Protection of Significant Features: Potential Scope of Easements



Protected Interior Features



Historic New England's Stewardship Easement Program

- Established 1981 to fill a regional need for an easement holding organization
- Four full-time staff to monitor easements
- Comprehensive easements (interior, exterior, and landscape)
- Willingness and resources to enforce against violations (legal defense fund)
- One of the few programs or organizations to take on the critical issue of preserving historic interiors.

90 Easements, 155 Buildings, 760+ Acres of Land



Community Preservation Act

Chart 1
COMMUNITY PRESERVATION FUND ALLOWABLE SPENDING PURPOSES (G.L. c. 44B, § 5)

	OPEN SPACE	HISTORIC RESOURCES	RECREATIONAL LAND	COMMUNITY HOUSING
DEFINITIONS (G.L. c. 44B, § 2)	Land to protect existing and future well fields, aquifers and recharge areas, watershed land, agricultural land, grasslands, fields, forest land, fresh and salt water marshes and other wetlands, ocean, river, stream, lake and pond frontage, beaches, dunes and other coastal lands, lands to protect scenic vistas, land for wildlife or nature preserve and land for recreational use	Building, structure, vessel, real property, document or artifact listed on the state register of historic places or determined by the local historic preservation commission to be significant in the history, archeology, architecture or culture of the city or town	Land for active or passive recreational use including, but not limited to, the use of land for community gardens, trails, and noncommercial youth and adult sports, and the use of land as a park, playground or athletic field Does <u>not</u> include horse or dog racing or the use of land for a stadium, gymnasium or similar structure.	Housing for low and moderate income individuals and families, including low or moderate income seniors Moderate income is less than 100%, and low income is less than 80%, of US HUD Area Wide Median Income
ACQUISITION Obtain property interest by gift, purchase, devise, grant, rental, purchase, lease or otherwise. Only includes eminent domain taking as provided by G.L. c. 44B	Yes	Yes	Yes	Yes
CREATION To bring into being or cause to exist. <i>Seideman v. City of Newton</i> , 452 Mass. 472 (2008)	Yes	X	Yes	Yes
PRESERVATION Protect personal or real property from injury, harm or destruction	Yes	Yes	Yes	Yes
SUPPORT Provide grants, loans, rental assistance, security deposits, interest-rate write downs or other forms of assistance directly to individuals and families who are eligible for community housing, or to entity that owns, operates or manages such housing, for the purpose of making housing affordable	X	X	X	Yes, includes funding for community's affordable housing trust
REHABILITATION AND RESTORATION Make capital improvements, or extraordinary repairs to make assets functional for intended use, including improvements to comply with federal, state or local building or access codes or federal standards for rehabilitation of historic properties	Yes if acquired or created with CP funds	Yes	Yes	Yes if acquired or created with CP funds

Source: Community Preservation Coalition

Community Preservation Act and Privately-Owned Properties

DOR Opinion 2006-230:

“There is nothing in the CPA that prohibits the use of funds simply because the property is privately owned.”

In the case of [the property] we understand that the town will acquire a historic preservation restriction and the [private] organization must use the funds received in exchange to finance the rehabilitation. **In other words, it appears the town is receiving an interest in the property to ensure its investment of public funds benefits the public”**

Conditioning Funding on Grant of PR

- **Example: Falmouth's CPC:**
- The CPC reserves the right to require a historic preservation deed restriction as a condition of funding for historic preservation projects. The CPC determines the need for deed restrictions on a case by case basis. If a deed restriction is required, it will be noted under Special Conditions in the Letter of Agreement that is to be signed by the applicant and CPC prior to Town Meeting.

Conditioning Funding on Grant of PR: Unity Church, North Easton, Mass.

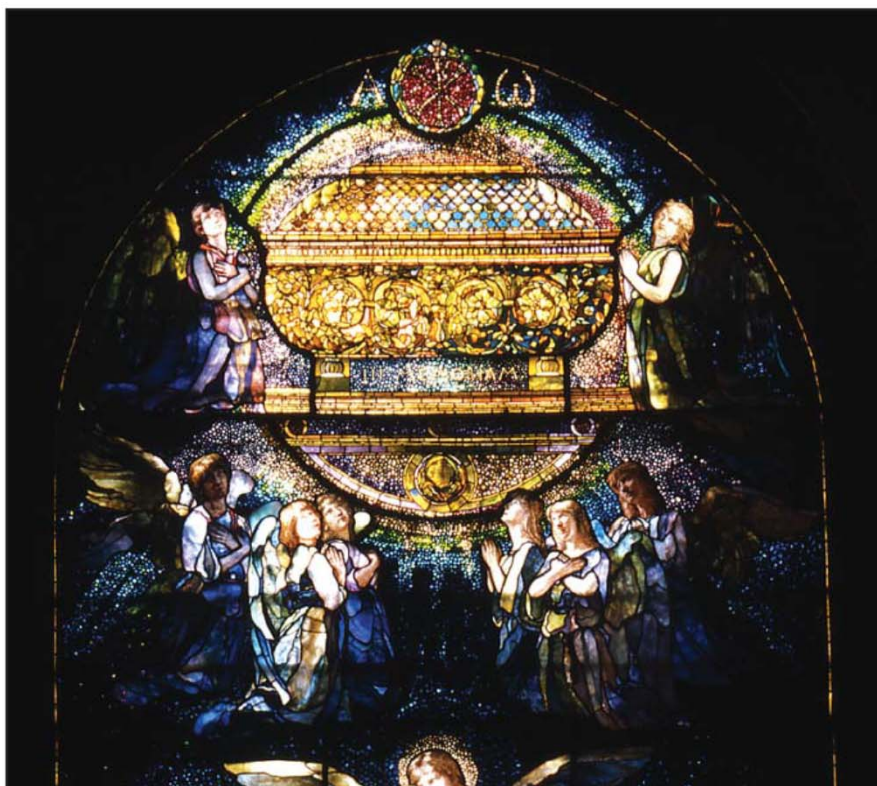
TWO AMERICAN MASTERPIECES:

La Farge Windows in North Easton, Massachusetts

by Robin Neely

“I have done the Ames window... and have suffered much from it”

By the time John La Farge wrote to his friend historian Henry Adams about the completion of the *Angel of Help* stained glass window for Unity Church in North Easton, Massachusetts, he was already considered one of America’s leading artists. Well known for works in painting, book illustration, stained glass, and murals, La Farge had just completed what a critic declared in the 1887 *Art Review* to be “the most elaborate window made in the United States.” What La Farge did not know is that this would be the first of two masterpieces he would create for the church, two important windows that would become the crown jewels in a small New England town already resplendent with architectural treasures.



Source: Stained Glass Magazine (Spring 2007)

Community Preservation Act – Section 12(a)

A real property interest that is acquired with monies from the Community Preservation Fund **shall be bound by a permanent restriction . . .** limiting the use of the interest to the purpose for which it was acquired.

The permanent restriction shall run with the land and shall be enforceable by the city or town or the commonwealth.

Community Preservation Act – Section 12(a)

The permanent restriction **may also run to the benefit of a non-profit organization**, charitable corporation or foundation selected by the city or town with the right to enforce the restriction.

The legislative body may appropriate monies from the Community Preservation Fund **to pay a non-profit organization . . . to hold, monitor, and enforce** the deed restriction on the property.

Real Estate Acquisition – Keith Homestead



Keith Homestead, Bridgewater, Mass.



Keith Homestead, Bridgewater, Mass.



Lakeside Estates – The Proposed Subdivision



Source: Jennifer Goldson, JM Goldson Community Preservation & Planning

C6	31.76	65.00	27°59'33"
C7	24.02	65.00	21°10'31"
C8	107.91	65.00	95°07'19"
C9	108.65	65.00	95°46'17"
C10	99.20	65.00	87°26'33"
C11	55.78	65.00	49°10'04"
C12	111.53	960.00	6°39'23"
C13	57.09	960.00	3°24'26"
C14	29.40	960.00	1°45'19"
C15	64.26	220.00	16°44'06"
C16	20.01	220.00	05°12'41"
C17	120.01	220.00	31°15'17"
C18	55.50	40.00	79°30'00"

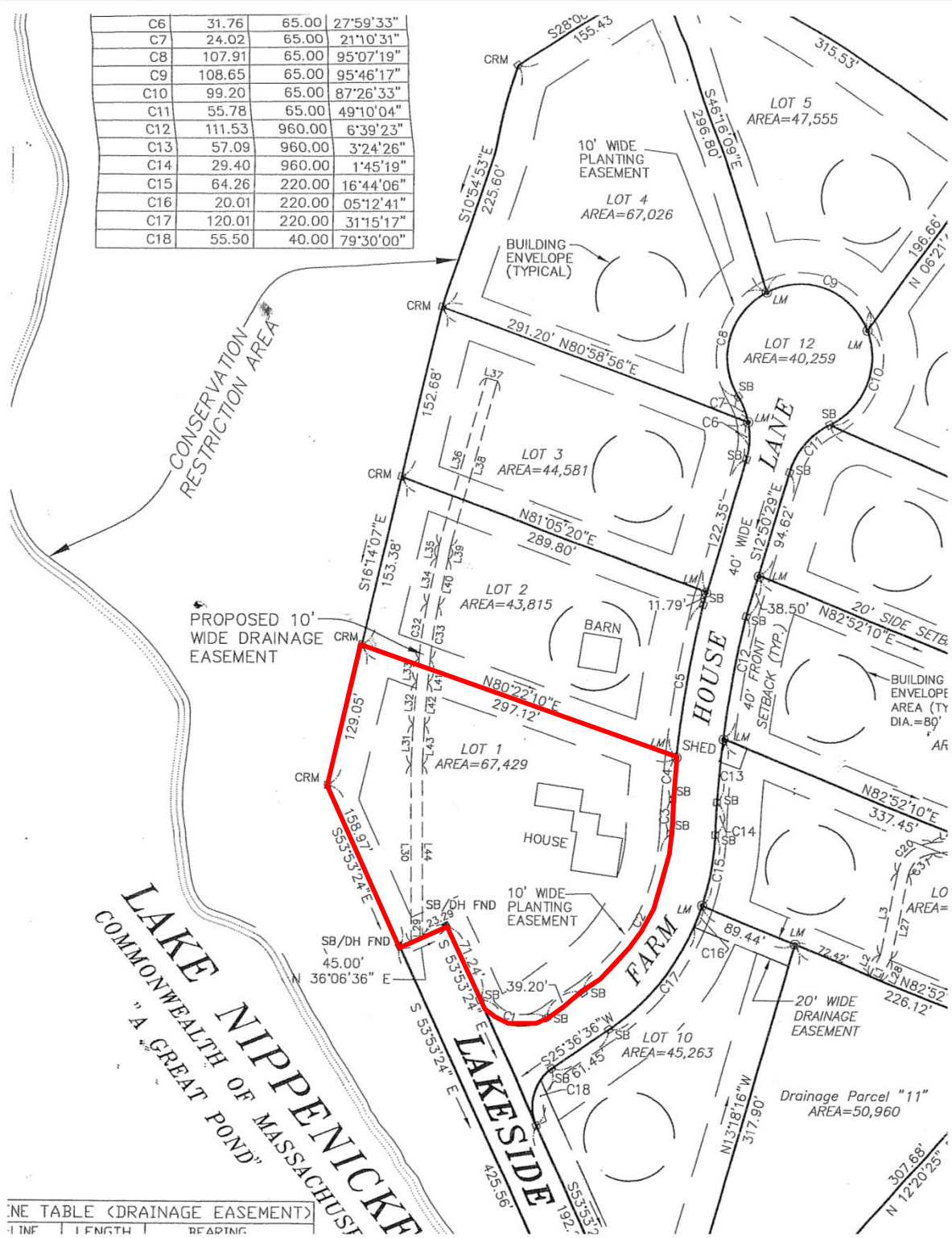


TABLE (DRAINAGE EASEMENT)
LINE | LENGTH | BEARING

Project Status – Under Agreement

Town of Bridgewater, MA

Request for Proposals

Disposition of 515 Lakeside Drive Historic Keith Homestead

August 14, 2013

PRESERVATION RESTRICTION AGREEMENT

SOCIETY FOR THE PRESERVATION OF NEW ENGLAND ANTIQUITIES

The Parties to this Preservation Restriction Agreement (this "Agreement") are the **SOCIETY FOR THE PRESERVATION OF NEW ENGLAND ANTIQUITIES, D.B.A. HISTORIC NEW ENGLAND**, a Massachusetts charitable corporation having an address at Harrison Gray Otis House, 141 Cambridge Street, Boston, Massachusetts 02114-2702, (hereafter "Grantee") and the **TOWN OF BRIDGEWATER, MASSACHUSETTS** having an address at 25 South Street, Bridgewater, Massachusetts 02324 (herein together with their heirs, successors, administrators and assigns called "Grantor").

RECITALS

Grantor is the owner in fee simple of certain property known as the Robert Keith House located at 515 Lakeside Drive, also known as Lots 1 and 2 on Farm House Lane, Bridgewater Massachusetts, consisting of approximately 2.55 acres of land, being more particularly described in Exhibit A attached hereto, together with all improvements thereon (the "Premises"). For Grantor's title see Certificate of Title No. 116465 in Registration Book 582, Page 65 of the Plymouth County Registry District of the Land Court and that certain deed dated as of August 31, 2011, filed with said Registry District as document number 681425 with said Certificate (the "Deed"). The Premises are also shown in the photographs and diagrams attached as Exhibits B, C and D hereto. The building protected by this Agreement consists of the Robert Keith House (the "Robert Keith House") as labeled and more particularly shown in Exhibits B, C and D.

Grantee is a charitable corporation created in 1910 and exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code. By its Articles of Organization and By-Laws, Grantee is authorized to create, impose, accept and enforce preservation restrictions to protect sites and structures historically significant for their architecture, archaeology or other associations.

Keith Homestead, Bridgewater, Mass.



Direct Acquisition of Preservation Restrictions: Weston, Mass.



Process

- Selection Criteria
 - Historical Significance
 - Visibility from public way/visual prominence
 - Risk of loss/under current threat
- Discussions with owner
- Appraisal (CPC Administrative Funds)
- Town meeting vote
- Purchase and record restriction (with MHC approval)

Project Status

2003: 787 Boston Post Road, \$155,000

2004: **809-11 Boston Post Road, \$225,000**

2007: **823 Boston Post Road, \$250,000**

2007: 412 Highland Street, \$200,000

2011: **116-18 Conant Road, \$250,000**

2011: **171 North Avenue, \$80,000**

2012: **699 Boston Post Road, \$225,000**

2013: 88 North Avenue, \$165,000

= \$1,030,000

Source: Town of Weston, Weston's CPA Funded Historic Resource Projects, FY2003-FY2014

823 Boston Post Road, Weston, Mass.



171 North Avenue, Weston, Mass.



699 Boston Post Road, Weston, Mass.



118 Conant Road, Weston, Mass.



Community Preservation Act – Section 12(b)

Real property interests under this chapter **shall be owned and managed by the city or town**, but the legislative body may delegate management of such property to the conservation commission, the historical commission

The legislative body **may also delegate management** of such property to a non-profit organization

Co-Holding or Management of HPRs

- Potential options:
 - Co-grantee of easement
 - MOU with non-profit to monitor and enforce historic preservation restriction

Lessons Learned

- Think creatively about CPA and how to best protect your community's built environment.
- Evaluate each project to determine which pathway will accomplish your goals.
- Towns do not have to necessarily acquire historic properties to prevent demolition or insensitive alteration.
- Consider non-profit easement-holders as can effectively manage risk, oversee rehabilitation efforts, and monitor and enforce the restrictions over time.