



**Town of Barnstable**  
**COMMUNITY PRESERVATION COMMITTEE**



[www.town.barnstable.ma.us/CommunityPreservation](http://www.town.barnstable.ma.us/CommunityPreservation)

Email: [CommunityPreservationCommittee@town.barnstable.ma.us](mailto:CommunityPreservationCommittee@town.barnstable.ma.us)

Committee Members

Lindsey B. Counsell – Chair • Tom Lee – Vice Chair • Vacant – Clerk/Historical Commission • Terry Duenas – At Large • Katherine Garofoli – At Large  
 Stephen Robichaud– Planning Board • Tom Lee – Conservation Commission • Vacant – Recreation Commission  
 Deborah Converse – Housing Authority • Farley Lewis – At Large • Felicia Penn, President – Town Council Liaison

**Monday, August 19, 2024**  
**Regular Public Hearing APPROVED Minutes**  
**367 Main Street, Hyannis, MA – 2nd Floor Hearing Room**  
**5:30 PM**

<b>Lindsey Counsell – Chair</b>	<b>Present</b>
<b>Tom Lee-Vice Chair</b>	<b>Present</b>
<b>Katherine Garofoli</b>	<b>Present</b>
<b>Deborah Converse</b>	<b>Present</b>
<b>Stephen Robichaud</b>	<b>Absent</b>
<b>Farley Lewis</b>	<b>Present</b>
<b>Terry Duenas</b>	<b>Present</b>

**Call to Order:**

Notice of Recording: 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 else is taping this meeting and to please make their presence known.” No one present was recording the meeting.

**Moment of Silence in Memory of Marilyn Fifield, Community Preservation Committee Clerk and Historical Commission Representative**

Chair Counsell shared that Marilyn Fifield had passed away since the last meeting of the CPC on July 15, 2024. He said that Marilyn was a Charter member of the Community Preservation Committee and served as the Clerk providing her support in the creation of minutes and was a strong advocate for historic projects serving as the CPC liaison to the Barnstable Historic Commission. (Moment of silence)

**Minutes:**

- Approval of the Draft Community Preservation Committee Regular Meeting minutes of July 15, 2024.
- Approval of the Draft Community Preservation Committee Annual Meeting minutes of July 15, 2024.

The motion of Katherine Garofoli was seconded by Tom Lee to approve the minutes from the July 15, 2024, Regular and Annual CPC Meetings as submitted. 5 yes, 0 no. 1 abstained. Motion carried.

## **Discussion – Cotuit Federated Church**

Chair Counsell acknowledged the correspondence received by the Community Preservation Committee regarding the Cotuit Federated Church:

- Letter from Attorney Garnick dated May 2, 2024, with 5 Exhibits.
- Letter from Attorney Connolly to Attorney Garnick dated June 18, 2024.
- Letter from Attorney Garnick dated July 30, 2024, with 5 Exhibits.
- Letter from Attorney Connolly to Attorney Garnick dated August 8, 2024.

Attorney Gerald Garnick said he is representing the Cotuit Federated Church in the presentation concerning the Community Preservation Committee's (CPC) withholding of \$179,369 of previously granted funds. He said the presentation tonight is intended to convince the CPC to respectfully release the funds to the Cotuit Federated Church.

Attorney Garnick said that in compliance with Kaplan v. Acton concerning the use of public funds for religious organizations, only non-religious portions of the project were to be funded with CPA funds to improve the historic portion of the building:

- To become ADA compliant.
- To change the location of the sanctuary doors to School Street which was the original orientation of the entrance in 1901 when the building was built.
- Restoration of non-religious stained-glass windows.
- Return of historic shingles on the historic portion of the building.
- Installation of fire suppression systems into the historic portion of the building.

Attorney Garnick displayed a chart outlining estimates of costs associated with each item to be funded by the approved CPA grant totaling \$179,369 including a 25% contingency of \$35,874. He noted that the Church is not located in an historic district and restoration could have been accomplished without keeping with the historical tradition of 1901 building, however the Church chose to do so. He said the Church believes the matter is the result of a mutual mistake between the parties based upon not knowing that the Massachusetts Historical Commission (MHC) would deny approval of a Preservation Restriction. He stated the Church's position that the 2021 CPC Handbook in effect at the time of the Church's application, had recently been updated in 2024 adding to the application process the requirement for MHC approval of the Preservation Restriction. He further stated that a local Preservation Restriction in place of a MHC-approved Preservation Restrictions had been granted previously by the Town to the Marstons Mills Library after their denial from MHC and he made comparisons to the Church's denial from MHC.

Attorney Garnick noted that the Church's renovation of the historic portions of the building added costs requiring them to borrow from its endowment fund which will need to be paid back. He said that the CPC is being asked to reconsider their withholding of the grant funds and distribute them to the Cotuit Federated Church.

In response to Attorney Garnick's presentation, Chairman Counsell read the June 18, 2024 letter, from Attorney Connolly to Attorney Garnick into the record as the CPC's position on the matter, the content is partially outlined as follows:

Attorney Connolly's letter states that the Cotuit Federated Church was made aware from the beginning of the Letter of Intent and Application process that an application for historic designation by the Massachusetts Historic Commission and an historic Preservation

Restriction were required as a part of the grant. In support of this, Attorney Connolly cites review of CPC meeting videos, and email correspondence between the Church and the attorney CPC engaged to assist the Church with its application to MHC. The Church was unable to obtain MHC's approval for an historic designation therefore CPC was unable to release funds granted contingent upon MHC approval.

Attorney Connolly's letter clarifies also that the requirement for an applicant to obtain MHC approval of historic designation for an historic Preservation Restriction is not a new requirement added in 2024. It is noted that both the 2021 CPC Handbook and the 2024 CPC Handbook outline these consistent requirements although located in different sections of the Handbook.

Attorney Connolly's letter outlines the differences between the Marstons Mills Library's denial by MHC and the subsequent Option to Purchase referenced by the Church as a private local restriction that is not being offered to them. An Option to Purchase is not a Preservation Restriction. It is noted that unlike the Cotuit Federated Church, the Marstons Mills Library was found by MHC to be historic but was issued a denial letter similar to that issued to the Church. However, there are other factors distinguishing a library from a Church under the anti-aid amendment limiting the type of funding a CPC can grant a Church. In 2008, the Town Council established a policy not to enter into any private restrictions as they are too much work for the town to enforce. Only MHC-approved Preservation Restrictions have been accepted since 2008. While the CPC could consider a new Application, there remains the requirement that the MHC designate the property as historic in order to approve the Church for an historic Preservation Restriction.

Attorney Garnick objected to the position of the CPC provided in Attorney Connolly's letter and repeated the same points previously made and contained in his letter of July 30, 2024 to Attorney Connolly.

Public Comment:

Victoria Viera said she is a lifelong Cotuit resident and committed member of the Church. She noted the valuable historic relics that were unearthed during the Church's renovation and said the Church is a harbinger of the people of Cotuit.

Bruce Murphy said he was a long-time Church member, and he listed the many community uses of the Church such as ballroom dancing, AA groups, blood drives and meal out food preparation. He noted that the Church hall is the largest space in Cotuit and is used by the library, community nursery and the Historical Society of Santuit and Cotuit. He said also that building is the most ADA compliant in the village.

Amy Fish said she is serving as assistant moderator, which is lay leader of the Church, and said she was also on the building restoration and expansion team for the past 4 years. She also noted the valuable historic relics uncovered and the addition of solar panels to eliminate the use of fossil fuels and upgrades to the septic system to protect waterways. She said the release of the grant funds is being followed closely by the congregation and surrounding community members.

There was CPC member discussion about the changes to the CPC grant process and requirements since the examples from 18 years ago that Attorney Garnick used.

Katherine Garofoli clarified that the restrictions are all held locally by the Town of Barnstable, however, MHC sign off has been required since 2008 with no exceptions. Chair Counsell confirmed this has been a consistent requirement since 2008 and that the Cotuit Federated Church did not receive this sign off from MHC.

Chair Counsell asked CPC members if they would like to come forward with a motion and no CPC member made a motion.

There was continued CPC member discussion, and it was noted that although unfortunate, CPC is a grant program under which the Cotuit Federated Church did not meet requirements. The rules cannot be changed for one group, it puts CPC in the situation of granting private restrictions to anyone who applies.

Reverend Ballou said it was untrue when the Church had been told that a private restriction had never been granted by CPC and said that the Committee has the ability to vote to release the funds. Chair Counsell repeated that what had been said was that a private Preservation Restriction had never been granted noting that the Option to Purchase granted to Marstons Mills Library is not the same as a Preservation Restriction. Reverend Ballou said the Church waited to start the CPA-funded work until Town Council approval was obtained. Chair Counsell reminded Reverend Ballou that he had warned her in person that if the Church proceeds with the CPA funded work before receiving MHC approval for the Preservation Restriction and the restriction is denied, release of CPC grant funds would be declined. He reminded Reverend Ballou that in response she had said they could not wait any longer and he had advised her that the Church was at their own risk if they proceed without approval from MHC. Chair Counsell noted that ultimately the Church did not receive MHC approval of the Preservation Restriction, and the terms of the grant program were not fulfilled as required to receive the funds.

Chair Counsell said that the CPC's position has been provided tonight regarding the matter and he referred Attorney Garnick to the Assistant Town Attorney.

**Letter of Intent:**

- A Letter of Intent has been received from Orenda Wildlife Land Trust Inc. seeking \$100,000 in Community Preservation Open Space Funds for the acquisition and preservation of a 5.5-acre property on Smith's Creek, a major tributary of the Barnstable Great Marsh in West Barnstable. The total purchase price is \$400,000 with matching funds to be provided through a State Conservation Grant and private fundraising. Acquisition of this property would continue the decades-long effort by the Town of Barnstable, State Fish and Game, Barnstable Land Trust and Orenda to preserve this major Cape Cod Bay embayment. The property is a priority habitat for rare species and its preservation would protect the freshwater and tidal wetlands lying within 300 feet. The Town of Barnstable will co-hold the conservation restriction with Compact of Cape Cod Conservation Trust.

Mr. Mark Robinson, Executive Director of the Compact of Cape Cod Conservation Trust said he is an adviser to Orenda Wildlife Land Trust Inc. He noted that the request Orenda is making is a significant add on to the work that the Town, the Land Trust, and the State has done to preserve the watershed to the Great Marsh and Barnstable Harbor over many years. He narrated a presentation that provided background saying that the property is 5.5 acres composed of two parcels and owned by the extended Hinkley

family of West Barnstable having been in the family for a long time. He described the property as wooded vacant land that reaches to the stream bed of Smith's Creek. He displayed several maps that outlined the different areas of endangered and threatened species saying that Cape Cod Bay is one of the few places that Diamond Back Terrapin Turtles come up from the creeks in the spring, dig holes and bury eggs and go back into the woods for winter making this a very important nesting habitat for that marine turtle. He displayed maps showing ecological significance and studies and location within the State designated area of critical concern from 1979 for the harbor and marsh. He noted there is a small 65 ft frontage on Route 6A making the property both historic and natural. He displayed a building site plan saying an appraisal of \$410,000 for a single-family house site had been obtained, however Orenda negotiated a price of \$400,000. A State grant for \$200,000 has been applied for with awards to be announced in the fall. Orenda is seeking \$100,000 in open space CPA funds with the Town to co-hold the restriction with Cape Cod Compact.

There was CPC member discussion, and it was clarified that there are no structures on the property other than an historic stone wall that delineates a property line and a deer hunting stand on a tree that will be removed. Because of steep topography along Rte 6A frontage, public access will be from Meadow Land properties within walking distance and also owned by Orenda. Katherine Garofoli mentioned that she has volunteer with Orenda for turtle monitoring and has seen terrapin turtles that have been hit by cars in this area noting that it is encouraging that the Trust can protect the nesting habitat.

The motion of Katherine Garofoli was seconded by Terry Duenas to move the Letter of Intent of Orenda Wildlife to the Application stage. Yes 6, No 0. Motion carried.

### **Application**

- An Application has been received from the Historical Society of Santuit and Cotuit of 1148 Main Street, Cotuit, seeking \$33,000 in Community Preservation Historic Preservation Funds for Phase II work for their project: Grand Plan to Expand – Building a Future for Cotuit's Past. This funding request for Phase II work had been previously approved in their 2021 grant, but due to overages in other awarded project areas, did not commence. Phase II work includes the installation of an HVAC system in an attic storage space for archives and restoration of an area to the original buttery. The total cost of the project is \$500,000 with matching funds to be provided privately. A Preservation Restriction has previously been recorded for the Dottridge Homestead property.

Beth Johnson, President of the Historical Society of Santuit and Cotuit said she was there to answer any questions that the CPC may have. She provided background saying that the CPC had awarded funds to HSSC for their expansion project back in 2022 which is 90% complete. She noted two items from that 2022 grant that additional funds are being asked for in this application: the HVAC system in Dottridge Homestead attic, and restoration of the buttery. Ms. Johnson explained that 2022 estimates for the foundation plan were \$8,500 however, once construction began it was determined that the foundation was not legal, and the town required a structural engineer to redesign the foundation. Additionally, additional drainage systems were needed to provide a completely dry basement where archives and collections were being stored. The actual cost of the foundation work was \$41,225 resulting in an overage of almost \$33,000 more than the estimate. Ms. Johnson explained that the CPC funds requested in this

application had been used to pay for foundation work and she apologized in hindsight for not notifying CPC. The funding request of \$33,000 for phase II work is for reapproval of the two items that have not been started in the original CPC grant due to overages in the foundation work.

There was CPC member discussion regarding how the Historical Society of Santuit and Cotuit will pay for future upkeep and larger projects. Ms. Johnson said there is an endowment fund for capital expenses and scholarships and the rest of the funds are generated from private donations and grants. She said that the Board works throughout the year to maintain the property. It was suggested that the HSSC have a stewardship plan for the property.

The motion of Tom Lee was seconded by Deb Converse to approve and recommend the Application of the Historical Society of Santuit and Cotuit for \$33,000 in Community Preservation Historic Preservation funds for the completion of Phase II work. Yes 6, No 0. Motion Carried.

### **Correspondence Received:**

Chair Counsell reviewed the following correspondence received:

- Letter from the Open Space Committee to the Town Manager regarding Barnstable Main Pathways Trail in Cummaquid.
  - Farley Lewis said this has been a long-standing issue and an easement across these parcels would be good, clarification will be needed.
- A total of 22 emails were received in support of the acquisition of 153 Oakmont Road, Cummaquid. 1 email was in opposition. The names of those who submitted public comment were read into the record and it was noted 153 Oakmont is not an item on the agenda. There was brief discussion regarding process and the need for a status update from the Barnstable Water District.
- Letter from Attorney Garnick dated May 2, 2024, with 5 Exhibits.
- Letter from Attorney Connolly to Attorney Garnick dated June 18, 2024.
- Letter from Attorney Garnick dated July 30, 2024, with 5 Exhibits.
- Letter from Attorney Connolly to Attorney Garnick dated August 8, 2024.
- Invoice from Community Preservation Coalition - FY 2025 Dues
  - The motion of Kathrine Garofoli was seconded by Terry Duenas to approve payment of the FY 2025 Annual Membership Dues for the Community Preservation Coalition in the amount of \$7,900 from the Community Preservation Administrative Fund. Yes -6, No-0. Motion carried.

### **Member Discussion:**

- Format for the September 16, 2024, CPC meeting.
  - After a brief discussion it was decided that the September 16, 2024, CPC meeting will be held remotely.
- Election of Officers
  - After a brief discussion, it was decided that the Election of Officers would wait until the CPC has full membership.
- Draft FY 2025 CPC Plan – proposed revisions/vote to accept.
  - The motion of Deb Converse was seconded by Katherine Garofoli to accept the Draft FY 2025 CPC Plan without further revision. Yes-6, No-0. Motion carried.

### **Project Updates:**

- The Santuit Woodlands Conservation Restriction was approved by the Town Council on July 18, 2024.
- The Marina Enterprise Fund acquisition of 211 Cedar Tree Neck Rd was approved by the Town Council on July 18, 2024.
- The Federated Church of Hyannis is gathering the required 3 bids for their application for restoration of the Universalist Cemetery.
- Additional information will be obtained and provided with the Barnstable Water District's Application for 153 Oakmont Road, Cummaquid open space acquisition.
- The Town Council acceptance of the Wheeler Holly Preserve trail easement was postponed due to a lack of quorum at their July 18, 2024, meeting.
- The Olde Colonial Court House building project has been completed. Chair Counsell noted that he and Tom Lee visited the building and said the project came out superbly. The final funding request for reimbursement will be approved.
- Progress is being made on the Centerville and Osterville Playground projects.
- CC Rail Trail Phase 3 CR's review has begun. The CR's are for mitigation of the land used for the easement for the pathway. Bidding for the project is scheduled for August 2024.
- The Affordable Housing Growth & Development Trust Fund Board's Semi-Annual Report to CPC is anticipated to be received for the September 16, 2024, CPC meeting.

### **Public Comment:**

None.

### **General Discussion:**

There was a brief discussion regarding the CPC process in general and the changes to the CPC grant process that have been made to facilitate the process such as the requirement that approval be obtained from Massachusetts Historical Commission prior to application for CPA historic preservation funds and the execution of a Grant Agreement that clearly outlines all of the terms and retirements of the CPA grant.

### **Adjournment:**

The motion of Katherine Garofoli was seconded by Tom Lee to adjourn the meeting. 6 yes, 0 no. Motion carried, meeting adjourned at 6.58 p.m.

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

- Exhibit 1 –CPC Regular Meeting Agenda, August 19, 2024.
- Exhibit 2 – Draft Minutes for the July 15, 2024, CPC Regular Meeting.
- Exhibit 3 – Draft Minutes for the July 15, 2024, CPC Annual Meeting.
- Exhibit 4 – Letter from Attorney Garnick dated 5/2/2024 with 5 Exhibits regarding Cotuit Federated Church.
- Exhibit 5 – Letter from Town Attorney Connolly to Attorney Garnick dated June 18, 2024 regarding Cotuit Federated Church.
- Exhibit 6 – Letter from Attorney Garnick dated July 30, 2024, with 5 Exhibits regarding Cotuit Federated Church.
- Exhibit 7 - Letter from Attorney Connolly to Attorney Garnick dated August 8, 2024 regarding Cotuit Federated Church.
- Exhibit 8 – Power Point Presentation – Attorney Garnick – Cotuit Federated Church.

Exhibit 9 – Letter of Intent – Orenda Wildlife Land Trust – acquisition of a 5.5 acre property on Smith’s Creek, West Barnstable as open space.  
Exhibit 10 – PowerPoint Presentation – Orenda Wildlife Land Trust – Smith’s Creek  
Exhibit 11 – Application - Historical Society of Santuit and Cotuit – Phase II historic preservation work  
Exhibit 12 – Updated List of Correspondence Received as of August 19, 2024.  
Exhibit 13 – Invoice from the Community Preservation Coalition for Annual Membership Dues in the amount of \$7,900.

Respectfully submitted,  
Ellen M. Swiniarski  
Community Preservation Coordinator  
Planning & Development Department

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 for specified allowable reasons. 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**