

Conservation Easements and How They Are Acquired in Tamworth

The purpose of this document is to give a brief description of conservation easements and how the Town of Tamworth acquires them. This is not meant to be a complete description of easements and the acquisition procedures—it should be treated as an introduction to the topic and is meant to describe Tamworth's general practice.

A conservation easement (CE) on a parcel of land is a deed which describes what can and cannot be done with that parcel of land. It is in perpetuity and passes from one owner to the next when the underlying property is sold. Amending a conservation easement requires the approval of the Charitable Trust Division of the New Hampshire Attorney General's office and is not often done, so it is important that the CE deed be written carefully. In Tamworth a conservation easement usually requires that the property be left in the state in which it was at the time the easement was executed. For example, if the property is a woodlot, it will usually continue to be managed as a woodlot; if a field, it will continue to be farmed or used as pasture. In both cases activities such as logging, raising livestock or crops would be permitted. That being said, most CEs allow woodlots to become fields or pastures and open spaces can become woodlots. Buildings are not part of an easement unless the building is associated with some allowed activity. Examples are barns for livestock or sap houses and greenhouses. CEs are usually held by the Town or some type of land trust. In Tamworth, most of the CEs, at least in acreage, are held by entities such as The Nature Conservancy, Lakes Region Conservation Trust, and the Society for the Protection of New Hampshire Forests (SPNHF). Placing a CE on a parcel does not reduce the tax rate; most lots on which the town acquires CEs are already in current use. The owner retains all ownership and responsibility for the property, but at the same time allowing public access, usually with some restrictions.

Why have conservation easements? In Tamworth, it usually stems from the desire of the landowner to protect his or her property because it is a scenic area, a lot on which the public already uses for recreation, provide wildlife habitat, protect a watershed, or to ensure that Tamworth's limited supply of arable land is not diminished. In most cases the landowner approaches the Conservation Commission about having a CE on the property. The landowner may be willing to donate the easement or may ask for the town to purchase the easement. At this point, the Commission must decide if the proposed CE is worth pursuing. The Commission has a number of guidelines to help determine the value of the proposed easement. Some factors to be considered are (1) does the proposed CE abut existing protected areas which is particularly important if the lot is small, (2) are there extensive wetlands that need additional protection, (3) is this a parcel which would benefit the public (e.g., hiking or skiing trails could be built), (4) would protecting this parcel benefit wildlife, (5) does it protect valuable farm land, (6) would it be beneficial to the watershed.

If the Conservation Commission deems the proposed CE meets its criteria, the next step is for the landowner and the Commission to draw up a tentative list of boundaries, what needs to be protected, and reserved rights of the landowner. At this point the CE proposal is brought before Board of Selectmen so that they are aware of the project and have an opportunity to voice objections and clarify issues before any expenses are incurred by either the landowner or the Town. Assuming no objections from the Board of Selectmen, the Commission and the landowner will agree, in writing, to proceed with establishing an easement.

If the town is purchasing the easement, this will usually require fund raising on the part of the Commission and also an appraisal of the value of the conservation easement. The value of a conservation easement is the difference between the selling price of the land with and without an easement. Also a purchase and sale would be executed between parties listing the price to

be paid and specifying a time limit for fund raising. If the Commission is unable to raise the necessary funds, the deposit would be forfeited and the easement project would end.

If the landowner is having only a portion of the tax lot put under easement, then a survey will be needed to establish the boundaries of the easement. The Commission frequently pays for the survey, sometimes aided by grants from organizations such as the NH Charitable Foundation. This is an item which is frequently part of the negotiations between the land owner and the Commission. The Conservation Commission does not require a stewardship fee for accepting a CE since the Commission receives a portion of the town's Land Use Change Tax which can be used for this purpose. [Most land trust do require a stewardship fee when obtaining an easement.]

The next step is to write the Conservation Easement deed. The Commission usually start with a template that originated with SPNHF. The deed will list what is being protected and why, allowable activities, activities which are not allowed, notifications required (such as timber harvests), and numerous legal requirements. Once the document is approved by both the landowner's attorney and the town's attorney, the deed is submitted to the Board of Selectmen for their approval and signatures along with the signatures of the landowner and the Conservation Commission Chair. The final step in the process is submitting the original of the signed deed to the Carroll County Registrar's office.

The Town, acting through the Conservation Commission, is required to monitor the property under easement and work with the land owner or abutters to rectify any activities which are incompatible with the easement. Generally this is done once a year. Some easement involve a third party which has an executory interest in the CE. If, for some reason, the original owner of the easement could not fulfill its fiduciary requirements, then the organization holding the executory interest would acquire the easement.