



EFFECT of CONSERVATION RESTRICTIONS on PROPERTY TAX: CAPE COD EXPERIENCE & EXAMPLES



Barnstable County Assessing Association

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Dennis, Massachusetts

EFFECT OF CONSERVATION RESTRICTIONS ON PROPERTY TAX

The Cape Cod
Experience and Examples

by

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The Compact of Cape Cod
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Conservation Restriction Act

- M.G.L. Chapter 184, Sections 31 – 33
- Approved in 1969
- Can be held by nonprofit land trusts or governmental units (town, state, federal)
- Over 50,000 acres in Mass. under CR
- Over 4,000 acres on Cape Cod under CR

CRs and Assessing Issues

- *“Everyone talks about fixing CR valuation issues, but nobody does anything about it”*
- No guidance from enabling act
- No guidance from SJC except that CRs “may reduce value” and should be considered by assessors
- *Parkinson v. Board of Assessors of Medfield* (398 Mass. 112, 1986)

- Most assessors rarely see CRs
(300 CRs on Cape Cod in 15 towns in 30 years = less than one per year per town)

RESULT:

Lack of uniform approach in valuing CRs

1. Varies from town to town
2. Varies from property to property in same town
3. Creates uncertainty for landowners
4. Frustrates state policy to encourage use of CRs as cost-effective way to preserve open space

Assessors often use formulas as short-cuts

Current Use Statutes

Chapter 61 Forest Land Tax Law

Formula: 5% of FMV or \$10/acre, whichever is greater, plus stumpage tax

Chapter 61A Farmland Tax Law

Formula: range set annually by state Adv. Committee based on product; use commercial prop. tax rate

Chapter 61B Open Space or Recreation Land Tax Law

Formula: 25% of FMV

Assessors often use formulas as short-cuts

Value Determination

There may be four value determinations:

- Primary: That value determined by market analysis to be a “full and fair” cash price for a lot.
- Secondary: Sixty (60%) percent of the primary value.
- Residual: 10% - 20% percent of the primary value
- Undevelopable: (examples)
 1. Wetland: \$1,000 per acre
 2. Upland: \$3,500 up to .75 acres
 3. Waterfront upland: 10% of buildable upland per .75 acres

Can we, should we, use a formula for CRs?

*We could make a projection,
if not a promise, as policy*

RECAP:

Residual: 20% of the primary value

Chapter 61B: 25% of FMV

The actual formula or % is less important than
the consistency and certainty or approach

CAPE COD PRACTICES

In 1981, Barnstable Selectmen/Assessors adopted *Open Space Policy*, first formula for CR reduction:

- 75% reduction, if no public access allowed
- 90% reduction, if public access allowed
- CR must be in perpetuity

Model CR Program

- Based on 1981 Barnstable policy
- Promoted by The Compact of Cape Cod Conservation Trusts, Inc.
- 14 of 15 Cape Cod towns have adopted it
- Buzzards Bay towns, inc. Acushnet, Rochester and Marion, have adopted
- Town Meeting approval not required

Model CR Program

Set of three policies:

1. Selectmen:

- CRs are useful in advancing the town's open space goals;
- approval of CRs is based on acknowledgement of public benefit

2. Conservation Commission

3. Assessors

Model CR Program

Set of three policies:

1. Selectmen

2. Conservation Commission:

- Recommends approval to Selectmen based on environmental value of land under CR
- Determines if CR terms will protect identified resources

3. Assessors

Model CR Program

Set of three policies:

1. Selectmen

2. Conservation Commission

3. Assessors:

- Establishes formula or approach for reduction in value
- Identifies needed information and schedule of decisionmaking

Model CR Program

Policy issues to be debated:

1. Temporary vs. perpetual CRs
2. Public access requirement or encouragement
3. Size minimum
4. Types of resources
5. Property tax reduction

Model CR Program

1. Temporary (term) vs. perpetual CRs:

- Enabling act allows either
- Only perpetual ones generate income tax and estate tax deductions
- Less property tax relief, on a sliding scale, for term CRs (see below)
- Term CRs will encourage more landowners to participate (*breathing space*)
- Perpetual CRs require more commitment

Model CR Program

2. Public access requirement or encouragement:

- Enabling act is silent
- IRS says EITHER public access OR protection of significant resources
- Offer extra tax relief as incentive
- Most landowners prefer no access

Model CR Program

3. Size minimum:

- Enabling act silent; IRS silent
- Ch. 61, A, B requires 5 or 10 acres
- Many sensitive parcels are less than 5 acres; cannot qualify for current use tax
- Pocket parks

Model CR Program

4. Types of resources:

- Forests, farms, working lands
- Sensitive resource lands
 1. Wetlands
 2. Coastal
 3. Scenic
 4. Historic
- Parcels mentioned in local plans

Model CR Program

5. Property tax reduction

Perpetual CR approach:

- 75% minimum reduction
- More for public access

Term CR approach:

- Less reduction than for perpetual CRs
- Sliding scale: assessment rises with time
(*see below*)

Model CR Program

Sliding scale example for Term CRs: 20-year CR:

Years 1-4	65% off
Years 5-9	60% off
Years 10-14	55% off
Year 15	50% off
Year 16	40% off
Year 17	30% off
Year 18	20% off
Year 19	10% off
Year 20	0% off

Model CR Program

5. Property tax reduction

Information needed by Assessor:

1. Good legal description of land under CR
(survey plan probably required; not mandatory)
2. Full copy of CR: note reserved rights for effect on value, i.e., accessory uses

Model CR Program

5. Property tax reduction

Schedule:

- Must record CR and notify assessors before January 1 to have CR reduction formula apply for next fiscal year (the following July 1)
- Need not re-apply each year for abatement
- Notify assessors if any change in CR status

Cape Cod Town CR Programs

Comparative Analysis of Tax Reduction

<u>w/o access</u>	<u>w/ access</u>	<u>TOWNS</u>
75 % off	90% off	Barnstable, Bourne, Provincetown, Truro, Wellfleet
80% off	95% off	Falmouth, Harwich, Yarmouth
85% off	95% off	Brewster, Eastham
95% off	95% off	Dennis, Sandwich
Case by case		Chatham, Orleans

Implementation Benefits

- Consistency of approach within town and among towns in region
- Educates town officials and landowners
- Certainty for landowners = more CRs
- Relief valve for assessors

Implementation Woes

- Formula works well with vacant parcels, but problematic for parcels with dwellings
- Ignores fine tuning needed for valuable reserved rights: pools, docks, outbuildings
- Towns ignore statutory requirement to value CR land as separate parcel
- CR notations on field cards can be “lost”, particularly during triennial revaluation


CR Notation on Field Card

Property Location: WIANNO HEAD AVE

MAP ID: 114/ 002/1/

Other ID:

Bldg #: 1 Card 1 of 1 Print Date: 03/19/1999

CURRENT OWNER		TOPO.	UTILITIES	STRT./ROAD	LOCATION	CURRENT ASSESSMENT										
LEGHORN, RICHARD & NANCY & ET ALS 218 W MAIN ST HYANNIS, MA 02601						Description	Code	Appraised Value	Assessed Value	801 BARNSTABLE, MA						
						RES LAND	1300	40,300	40,300							
SUPPLEMENTAL DATA																
Account #	54648	Plan Ref.	100-S2													
Tax Dist.	300	Land Ctl#														
Per.Prop.		#SR														
#DL 1	LOT 176A	Life Estate														
#DL 2	LC2664-	Notes:														
								Total	40,300	40,300						
RECORD OF OWNERSHIP		BK-VOL/PAGE	SALE DATE	q/u	v/l	SALE PRICE	V.C.	PREVIOUS ASSESSMENTS (HISTORY)								
LEGHORN, RICHARD & NANCY & KANEB, PAUL & JILL TR & KANEB, PAUL & JILL & FITZPATRICK, H & D, BANKART BROGNA, VICTOR TRS MORRIS, CAROLINE L		C142714	11/18/1996	U	V		1A	Yr.	Code	Assessed Value	Yr.	Code	Assessed Value	Yr.	Code	Assessed Value
		C138940	11/15/1995	U	V		1A									
		C127558	08/15/1992	U	V	42,290	A									
		C126073	03/15/1992	U	V	137,500	L									
		C108343	10/15/1986	Q	V	300,000										
		C53281		Q		0										
								Total:	34,500	Total:	34,500	Total:	34,500			
EXEMPTIONS		OTHER ASSESSMENTS						This signature acknowledges a visit by a Data Collector or Assessor								
Year	Type/Description	Amount	Code	Description	Number	Amount	Comm Int.									
Total:																
NOTES																
FY95-90% FOR CONSERVATION RESTRICTION. LAND COURT DOC. 602982. 																
APPRAISED VALUE SUMMARY																
Appraised Bldg. Value (Card)								0								
Appraised XF (B) Value (Bldg)								0								
Appraised OB (L) Value (Bldg)								0								
Appraised Land Value (Bldg)								40,300								
Special Land Value																
Total Appraised Card Value								40,300								
Total Appraised Parcel Value								40,300								
Valuation Method:								Cost/Market Valuation								
Net Total Appraised Parcel Value								40,300								
BUILDING PERMIT RECORD										VISIT/CHANGE HISTORY						
Permit ID	Issue Date	Type	Description	Amount	Insp. Date	% Comp.	Date Comp.	Comments	Date	ID	Cd.	Purpose/Result				
LAND USE VALUATION SECTION																
B#	Use Code	Description	Zone	D	Frontage	Depth	Units	Acq. Price	Factor	S.L.	Factor	Adj.	Notes-Adj./Special Pricing	Adj. Unit Price	Land Value	
1	1300	Vac Land	RF1	3		1	1.00 AC	100,000.00	1.00	5	0.10	26AA	3.5013 1VAC. SIT	35,000.00	35,000	
1	1300	Vac Land	RF1	3		1	0.50 AC	30,000.00	1.00	5	0.10	26AA	3.5011 1RESIDUAL	10,500.00	5,300	
Total Land Units							1.50 AC	Total Land Value							40,300	

ACRES	VALUATION	TAX
1.32 primary	\$389,709	
<u>0.34 residual</u>	<u>\$ 23,460</u>	<u>\$3,776</u>

1.32 primary	\$389,709	
0.34 residual w/ CR	\$5,865	\$3,615

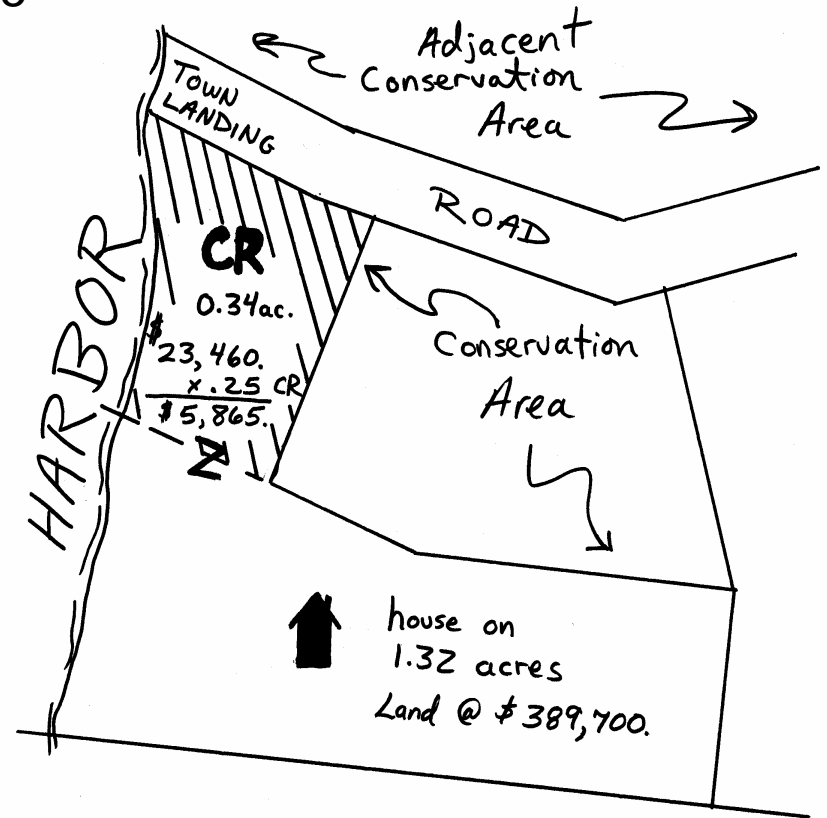
75% reduction

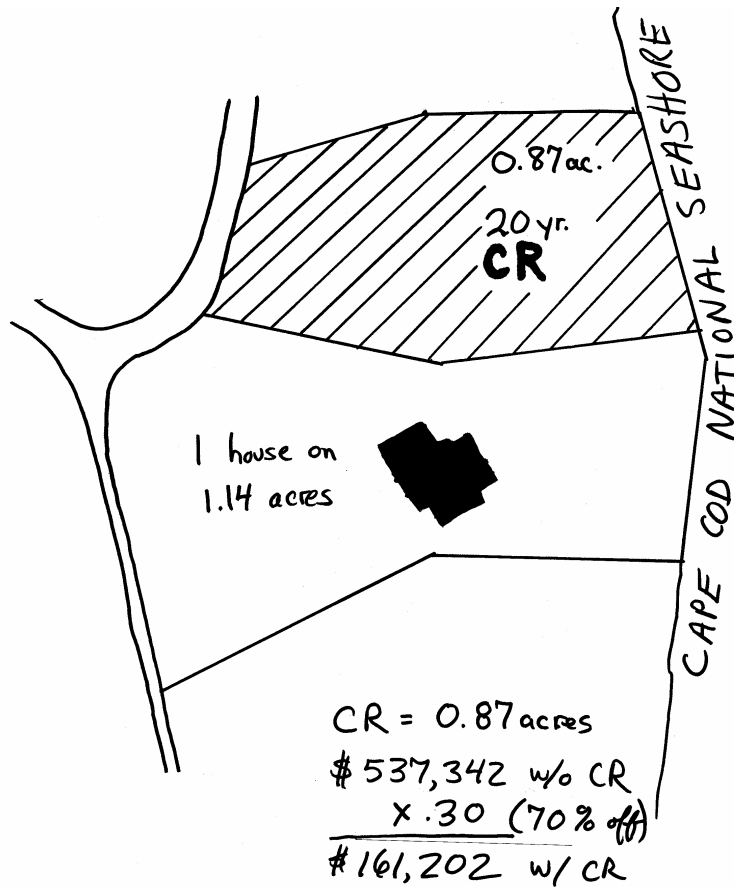
Property Tax savings from CR: \$161

Example W1.

perpetual CR on residual upland

Formula: 75% reduction





Example O1.

20-year CR on buildable lot

Formula: case by case

ACRES	VALUATION	TAX
0.87 primary	\$537,342	\$4,535
0.87 primary w/CR	\$161,202	\$1,360
70% reduction for year 1		
Property Tax savings from CR:		\$3,174



Example B1.

Perpetual CR on waterfront lot

Formula: 75% reduction

ACRES	VALUATION	TAX
1.00 primary	\$ 300,000	
10.5 residual	\$ 459,900	
<u>4.5 wetlands</u>	<u>\$ 4,140</u>	<u>\$8,985</u>

2.00 primary	\$ 334,400	
5.5 residual	\$ 202,300	
2.71 residual w/CR	\$ 27,400	
<u>4.3 wetlands w/CR</u>	<u>\$ 900</u>	<u>\$6,644</u>

75% reduction

Property Tax savings from CR: \$2,341

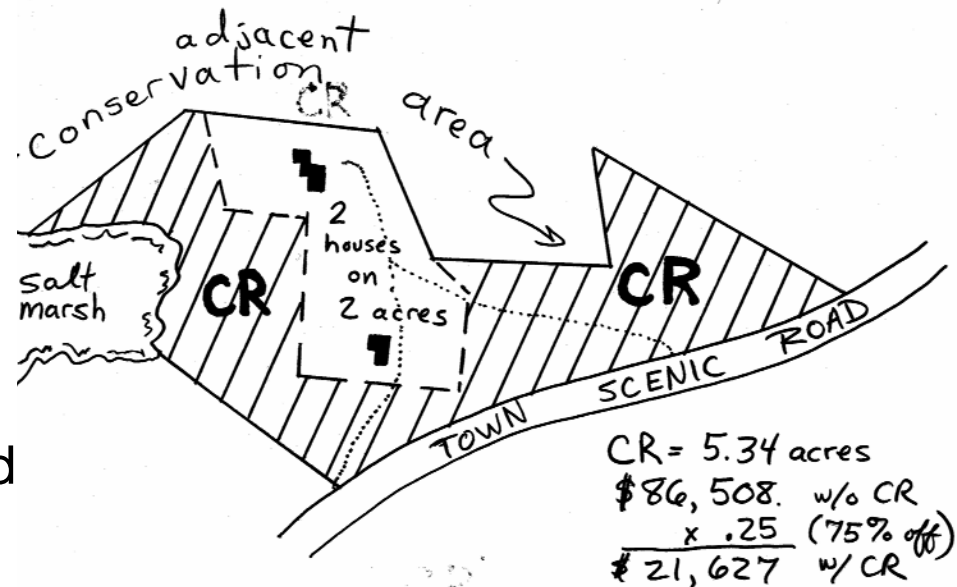


ACRES	VALUATION	TAX
1.00 primary	\$ 54,042	
1.00 primary	\$ 54,042	
6.14 residual	\$ 99,468	\$1,897

1.00 primary	\$ 54,042	
1.00 primary	\$ 54,042	
0.84 residual	\$ 14,400	
5.34 residual w/CR	\$ 21,627	\$1,317

75% reduction

Property Tax savings from CR: \$580



Example W2.

Perpetual CR on family compound

Formula: 75% reduction