

Conservation Easement Committee – Report to Town Council

Final Draft to Council – November 10, 2020

Background

In April 2019, as a part of the Oak Ridge Town Council’s strategic plan, the Council created the Conservation Easement Committee, comprised of two members of the Planning and Zoning Board, the chair of the Historic Preservation Commission, and a resident from the Historic District. The Town’s Planning Director serves as staff liaison, while the Mayor serves as liaison to Council. The Town Manager has also attended key meetings.

The committee was charged with the task of investigating the use of conservation/preservation easements for open space and historic sites, and to make recommendations to Town Council. This charge was grounded in Goal 2.1 of the Town’s Strategic Plan:

GOAL 2.1: The Town of Oak Ridge will use creative methods to preserve farmland, open space, and historic resources.

POLICY 2.1.1: Establish a working group to investigate the use of conservation/preservation easements for open space and historic sites.

POLICY 2.1.2: Investigate open space preservation opportunities by (1) defining and prioritizing high-value open space, and (2) promoting policies that encourage preservation.

Why Use Conservation and Preservation Easements?

Typically, the term “preservation” easement is used for easements that protect historic structures, while the term “conservation” easement is used for easements that protect open space. These types of easements are the only tool that can protect properties from future changes or development in perpetuity. Although some protection is provided when the town acquires property for public use (such as the current park and the Whitaker property), the town’s limited land acquisition budget means that such purchases will continue to be rare. While town zoning can set certain requirements for development, zoning must be applied fairly and consistently, and cannot be used to prevent development. Finally, since Historic District restrictions and most landmark designations cannot prevent demolition of historic structures, easements are the best tool for ensuring the long-term protection of a historic property.

Within the Historic District, preservation easements for historic properties can support, in perpetuity, the preservation of historic resources and prevent demolition. Outside the District – where even our most significant historic properties typically have no protections at all – easements can provide much-needed protection from significant changes to key historic features while also preventing demolition. Easements can also prevent subdivision of property.

For the limited amount of open land within the Historic District, the Design Guidelines currently protect existing scenic vistas and open spaces. It should be noted that the Town already owns key properties that are exemplary in this regard, including in the Whitaker property and Town Park. Outside the District, the Town's Land Use Plan encourages the preservation of significant natural features for land that is rezoned for development. Conservation easements on open land can provide much stronger protections by limiting or preventing development, and preventing the subdivision of property, in perpetuity. It should also be noted that while Town ownership of properties and easements (such as flood plains) offers a high-level of protection for these properties, particularly for public trails, town ownership does not protect historic vistas and open space in perpetuity, since future Councils could expand recreational development outside what the current Council envisions. Although unlikely, future Councils could also sell portions of town-owned property.

Easements can therefore play an important role in preserving Oak Ridge's "unique character, historic resources, and open spaces," as articulated in our town vision, developed by Council in concert with the strategic plan:

Oak Ridge is a safe and livable community that takes great pride in its natural beauty and small-town village charm. The Town's rich history and rural roots inspire an independent, family-oriented community engaged in planning for the future while preserving its unique character, historic resources, and open spaces.

How Conservation and Preservation Easements Work

As part of the Conservation Easement Committee's investigation, committee members met with representatives from various preservation organizations to learn how easements work and what fees are involved. A conservation easement is a legal agreement between a property owner and an easement-holding organization such as Piedmont Land Conservancy (PLC), Preservation Greensboro, or Preservation North Carolina (PNC). Easements are completely voluntary and cannot be made without the consent and active participation of the property owner. Easements remain in place in perpetuity and are difficult, if not impossible, to remove. Easements do not change the ownership of the property, although they do create binding legal restrictions that travel with the property regardless of ownership. Easements may take significant time and effort to put in place and typically involve a significant financial commitment.

Conservation/preservation easements are monitored by the organization that holds the easement and are recorded with the property deed, making it incumbent on the current property owner and any future property owners to maintain the property according to the easement agreement. The organization holding the easement charges an up-front fee for

monitoring the property in perpetuity for conformance with the terms of the easement; this fee can also be called a stewardship or endowment fee. This fee is based on the extent of the use restrictions as well as precise details of the property being protected. For example: for a structure, the interior and/or exterior of a structure can be preserved, as well as the surrounding landscape; for open land, specific features can be preserved, and specific uses can be allowed (such as trails) or disallowed (such as residential or commercial development).

Easement Costs

Once the preservation details are agreed upon, the monitoring fee and associated costs can be determined. Monitoring organizations such as the PLC can charge additional fees for key documentation steps: property surveys, baseline documentation reports, environmental assessments, legal review, appraisal, title insurance, and other closing costs. Some of these fees are handled through the monitoring organization while others are paid directly to a third party. Monitoring organizations for preservation easements on historic properties may incur fewer fees, if existing documentation is available, but a property survey, appraisal, and recording costs are usually involved. Property owners typically choose to engage their own attorney to review the terms of any type of easement agreement, resulting in additional legal costs for the property owner.

It is important to recognize that, particularly in the case of easements placed on open land, that an easement reduces the value of the property significantly, typically by around 30%. As such, a property owner must accept a significant loss on both the current and future value of the property in agreeing to an easement. In return, the owner may deduct the value of the assessed value of the easement (calculated as the original appraisal value, less the assessed value of the property with the easement in place) from federal taxes as a charitable contribution; the reduced value will also be reflected in future property tax valuations.

In the case of easements placed on historic structures, there may also be a reduction in value, but this reduction may not be as significant if the structure is included in the Historic District; those outside the District may have higher reductions in value. These deductions in value may also be tax deductible based on the assessed value of the easement.

Costs for open space easements are typically much higher than those for preservation easements on historic structure:

- Apart from personal legal costs, finalizing an open land easement with the PLC for properties with a high level of regional significance can cost \$18,000 - \$30,000, depending on the size of the property, in addition to an up to 30% loss in property value. For smaller tracts with local significance PNC may be willing to provide the

easement with lower costs ranging from \$6,000 - \$10,000. (It should be noted that PNC's lower costs reflect the smaller size of most of the properties it monitors as well as the organization's ability to absorb some associated costs; in addition, PNC's use of a standard template for easement agreements may reduce legal costs.) It is also possible for the Town of Oak Ridge to hold easements on property not owned by the town, although surveys and appraisals would still be necessary, and legal fees would be incurred by the Town's attorney in crafting the easement agreement. In addition, the town would also need to commit staff time, in perpetuity, for the annual monitoring of easements held, as well as legal support for the enforcement of any breaches of easement agreements.

- Preservation easements through PNC for a historic building and its surrounding landscape may incur fees of \$6,000 - \$10,000, depending on the complexity of the easement. As with open space easements, the Town of Oak Ridge could also opt to hold easements on historic structures.

Conservation Easement Committee Recommendations

After evaluating the issues as well as the range of properties that might benefit from preservation or conservation easements, the Conservation Easement Committee has developed a five-year plan. The plan is designed to encourage easements on historic structures and open space, designed to accomplish the goals of the Town's strategic plan and the preservation of the unique character of our community.

The committee respectfully recommends the following five-year plan for establishing the Conserving Oak Ridge through Easements (CORE) Initiative. This initiative is designed to address Council's priorities, as outlined above, while building significant public support for the preservation of key historic properties and open space through easements.

Year 1 (FY 21: Jan – June 2021)

- Establish the Conservation Easement Committee as a longer-term or standing committee to continue to explore conservation/preservation easements and implement the CORE initiative. The Committee would be comprised of five Oak Ridge residents, including at least one representative each from the Planning & Zoning Board and the Historic Preservation Commission. The Director of Planning would serve as the staff liaison and a Council liaison would be appointed by the Mayor.
- Instruct the Planning Director to analyze and recommend acceptance of priority flood plain dedications that have already been dedicated to the town per existing

ordinances or other priority flood plain areas that can be pursued with local landowners, all with allowances for public trails. These areas would not require easements, since they would be owned by the town, but would help accomplish the town's broader preservation goals.

- Work with PLC, Mountains-to-Sea Trail Committee, and others to piece together properties needed for future public trails
- Consider placing an easement on the front section of the Whitaker property or on portions of the Town Park (after reviewing protections offered by the previous PARTF grant) through PLC or PNC.
- Explore establishing ongoing partnerships between Oak Ridge and PNC and PLC in order to strengthen the town's ability to encourage and support property owners interested in pursuing preservation/conservation easements.
- Announce creation of a restricted fund to support prioritized easements on open space and historic structures, seeded with an initial \$20,000 in next year's (FY22-23) budget. The seed money would support CORE grants to support 1-3 historic structures and/or open space easements, selected based on the CORE Grant description included below. The grants will be designed to offset the costs of easements, thereby minimizing the costs to owners of priority easement properties whose protection will contribute to the town's goals. Depending on the success of the initiative, additional funding over the following four years may also be requested.
- Develop fundraising strategies and goals to solicit external donations to the CORE initiative that will assist in supporting CORE grants in future years.
- Organize an open house to inform property owners and residents about the goals of the CORE initiative and to encourage their support.
- Provide additional workshops targeted toward owners of open land and historic structures to educate them about easement and encourage them to consider placing an easement on their properties.

Year 2 (FY22: July 2021 – June 2022)

- Award 1-2 CORE Grants with funds approved by Town Council.
- Publicize easements as models for future easements.
- Evaluate and adjust CORE goals as needed.
- Continue public and targeted outreach as needed.
- Report to Town Council.
- Solicit town and external funding as needed.

Years 3 – 4 (FY22: July 2022 – June 2023, FY23: July 2023 – June 2024)

- Award 1-2 CORE Grants.

- Continue to publicize easements as models for future easements.
- Evaluate and adjust CORE goals as needed.
- Continue public and targeted outreach as needed.
- Report to Town Council.
- Solicit town and external funding as needed.

Year 5 (FY24: July 2024 – June 2025)

- Award 1-2 CORE Grants.
- Summary report on accomplishments of CORE program to Town Council, with recommendations for future CORE actions, if any.

Description of CORE Grants

Preservation Easements Grants for Historic Structures

CORE Preservation Easement grants for historic structures in Oak Ridge will be considered on a case by case basis and may typically provide \$6,000 - \$10,000 for easements, depending on the project size, complexity, and need. Grant funds will be paid on the owner’s behalf directly to PNC or Preservation Greensboro to cover the stewardship fee or to the owner as reimbursement for required activities such as surveying, appraisal, and recording fees. The Town of Oak Ridge may also consider holding the easement for properties it does not own, in which case grant funds would be paid directly to the owner to cover the costs of surveys, appraisals, recording fees, and other required fees. Grants funds will be awarded only after an easement has been completed. Property owners will be responsible for personal legal fees and any other costs not covered by the grant. Grants will be reviewed and awarded by the Conservation Easement Committee.

Requirements:

- Property is at least 75 years old and of documented architectural, historic, or cultural significance
- Owner has demonstrated a commitment to preserving the property
- Owner is committed to obtaining an easement to protect the property in perpetuity
- Property is part of the historic fabric and unique character of Oak Ridge

Other considerations:

- a. Property is outside the Historic District, or is in danger of demolition, insensitive development, or other physical jeopardy
- b. Visibility of the property to the public
- c. Public access to the property
- d. Size of the property
- e. Connectivity to other easement properties

Conservation Easements Grants for Open Space

CORE Conservation Easement grants for open space in Oak Ridge will be considered on a case by case basis and may typically provide \$15,000 - \$18,000, depending on the project size, complexity, and need. Grants will be paid on the owner's behalf directly to PLC or Preservation NC to cover stewardship costs as well as any required fees, or to the owner as reimbursement for required activities such as surveying, appraisal, and recording fees. The Town of Oak Ridge may also consider holding the easement for properties it does not own, in which case grant funds would be paid directly to the owner to cover the costs of surveys, appraisals, recording fees, and other required fees. Grants funds will be awarded only after an easement has been completed. Property owners will be responsible for personal legal fees and any other costs not covered by the grant. Grants will be reviewed and awarded by the Conservation Easement Committee.

** Larger grant amounts for open space grants reflect the higher costs related with these easements as well as the decreased development value of larger tracts of land.*

Requirements:

- Must be open, mostly undeveloped land; can be agricultural, wooded, parkland, or combination, that meets the PLC's Project Selection Criteria, which prioritize farmland, water resources, and natural heritage.
- Owner is committed to preserving the property through a conservation easement

Other considerations:

- a. Extent to which the property includes scenic or open vistas, environmental, or natural features (woodlands, streams, ponds, etc., wildlife habitats, wetlands, historic farmland, flood plains, etc.)
- b. Level of need for a conservation easement to protect the property from development or encroachment
- c. Visibility of the property to the public

- d. Public access to the property
- e. Size of the property
- f. Connectivity to other easement properties

Conclusion

We believe the steps outlined above provide a realistic strategy for encouraging the long-term protection of high-priority historic structures and open spaces within our community. We further believe that the CORE initiative represents an exciting opportunity to protect key properties in Oak Ridge. As such, CORE represents an important step toward preserving what is best about our town – its unique rural and historic charm. Because Oak Ridge has one of only two rural historic districts in the state, we believe that this initiative can have a central role in preserving our identity as a rural crossroads community.

Members of the Conservation Easement Committee invite input from Council members and would be happy to answer any questions.