



Appendix E: Land Acquisition

Chapter Outline:

1. Overview
2. Partnerships
3. Regulatory Methods
4. Land Management
5. Open Space Acquisition
6. Land Acquisition for the Bolin Creek and Jones Creek Corridors

1. Overview

There are multiple methods for the Town of Carrboro to secure trail right-of-way for the Bolin Creek Greenway. The recommended trail alignment traverses public land (easements, parks, and Town-owned parcels) wherever possible; however a majority of the corridor will require working closely with land owners to secure easements. Land acquisition and resource protection methods should be strategic, efficient, and respectful. The Town of Carrboro should work with non-profit land protection agencies, land trusts, or environmental organizations when attempting to acquire or manage property. These entities often have a great deal of experience selling the greenway benefits of conservation. Because these types of organizations do not have the power to tax, they often have excellent personal and professional relations with local landowners. Many options are available to obtain different degrees of control and ownership relationships to regulate resource use. The following is a list of potential tools that include developing partnerships, development regulations, land management techniques, and acquisition/donation.

2. Partnerships

Land trust organizations, such as the *Trust for Public Land* and *Conservation Trust for North Carolina*, are valuable partners when it comes to acquiring land and right-of-way for greenways. These groups work directly with landowners and conduct their business in private so that sensitive land transactions are handled in an appropriate manner. Once the transaction has occurred, the land trust will usually convey the acquired land or easement to a public agency, such as the Town of Carrboro or Orange County for permanent stewardship and/or ownership.

Private land manager relationships (including OWASA) are other potential partnerships that could be strengthened during the land acquisition process. Many utility companies have long recognized the value of partnering with local communities, non-profit organizations, and private land owners to permit their rights-of-way to be used for trail development. This has occurred all across the United States and throughout North Carolina. The Town of Carrboro should actively update and maintain relationships with OWASA, UNC, and other private land owners to ensure that the trail maintains continuity community-wide. The Town will need to demonstrate that maintenance and operations will be addressed, liability will be reduced and minimized, and utility needs access will be provided.

3. Regulatory Methods

This type of resource protection is used to shape the use and development of the land without transferring or selling the land. The rules for this type of tool are established and enforced by a governing body. Examples include:

Exactions

An exaction is a condition of development approval that requires development to provide or contribute to the financing of public facilities at their own expense. For example, a developer may be required to build a greenway on-site as a condition of developing a certain number

of units because the development will create the need for new parks or will harm existing parks due to overuse. This mechanism can be used to protect or preserve greenway lands, which are then donated to the City of Mount Holly. Consideration should be given to include greenway development in future exaction programs. Most commonly, exactions are in the form of mandatory dedications of lands for parks and infrastructure, fees in lieu of mandatory dedication, or impact fees.

Mandatory Dedication

This is a type of exaction where subdivision regulations require a developer to dedicate or donate improved land to the public interest. A dedication may involve the fee simple title to the land, an easement, or some other property interest. Sometimes, the construction of an improvement itself is required such as a park or greenway.

Fee-in-Lieu

An exaction can take the form of a fee-in-lieu of mandatory dedication. It can also complement negotiated dedications (described below). Based on the density of development, this program allows a developer the alternative of paying money for the development/protection of open space and greenways in lieu of dedicating greenway and park lands. Payments are made representing the value of the site or improvement that would have been dedicated or provided. This allows local governments to pool fees from various subdivisions to finance facilities like parks and greenways. This money can be used to implement greenway management programs or acquire additional open space.

Impact Fee

A final type of exaction, an impact fee can fund a broader range of facilities that serve the public interest. They are commonly imposed on a per unit rather than a build out basis, making them more flexible and keeping developers from having to pay large up front costs. These do not have to be directly tied to any requirements for improvements or dedications of land. They can be more easily applied to off-site improvements.

Growth Management Measures (Concurrency)

Concurrency-based development approaches to growth management simply limit development to areas with adequate public infrastructure. This helps regulate urban sprawl, provides for quality of life in new development, and can help protect open space. In the famous case with the Town of Ramapo (1972), the Town initiated a zoning ordinance making the issue of a development permit contingent on the presence of public facilities such as utilities and parks. This was upheld in Court and initiated a wave of slow-growth management programs nationwide. This type of growth management can take the form of an adequate public facilities ordinance.

Performance Zoning

Performance zoning is zoning based on standards that establish minimum requirements or maximum limits on the effects or characteristics of a use. This is often used for the mixing of different uses to minimize incompatibility and improve the quality of development. For example, how a commercial use is designed and functions determines whether it could be allowed next to a residential area or connected to a greenway.

Incentive Zoning (Dedication/Density Transfers) Also known as incentive zoning, this mechanism allows greenways to be dedicated for density transfers on development of a property. The potential for improving or subdividing part or all of a parcel can be expressed in dwelling unit equivalents or other measures of development density or intensity. Known as density transfers, these dwelling unit equivalents may be relocated to other portions of the same parcel or to contiguous land that is part of a common development plan. Dedicated density transfers can also be conveyed to subsequent holders if properly noted as transfer deeds.

Conservation Zoning

This mechanism recognizes the problem of reconciling different, potentially incompatible land uses by preserving natural areas, open spaces, waterways, and/or greenways that function as buffers or transition zones. It can also be called buffer or transition zoning. This type of zoning, for example, can protect waterways by creating buffer zones where no development can take place. Care must be taken to ensure that the use of this mechanism is reasonable and will not destroy the value of a property.

Overlay Zoning

An overlay zone and its regulations are established in addition to the zoning classification and regulations already in place. These are commonly used to protect natural or cultural features such as historic areas, unique terrain features, scenic vistas, agricultural areas, wetlands, stream corridors, and wildlife areas.

Negotiated Dedications

This type of mechanism allows municipalities to negotiate with landowners for certain parcels of land that are deemed beneficial to the protection and preservation of specific stream corridors. This type of mechanism can also be exercised through dedication of greenway lands when a parcel is subdivided. Such dedications would be proportionate to the relationship between the impact of the subdivision on community services and the percentage of land required for dedication—as defined by the US Supreme Court in *Dolan v Tigar*.

Reservation of Land

This type of mechanism does not involve any transfer of property rights but simply constitutes an obligation to keep property free from development for a stated period of time. Reservations are normally subject to a specified period of time, such as 6 or 12 months. At the end of this period, if an agreement has not already been reached to transfer certain property rights, the reservation expires.

4. Land Management

Management is a method of conserving the resources of a specific greenway parcel by an established set of policies called management plans for publicly owned greenway land or through easements with private property owners. Property owners who grant easements retain all rights to the property except those which have been described in the terms of the easement. The property owner is responsible for all taxes associated with the property, less the value of the easement granted. Easements are generally restricted to certain portions of the property, although in certain cases an easement can be applied to an entire parcel of land. Easements are transferable through title transactions, thus the easement remains in effect perpetually.

Management Plans

The purpose of a management plan is to establish legally binding contracts which define the specific use, treatment, and protection for publicly owned greenway lands. Management plans should identify valuable resources; determine compatible uses for the parcel; determine administrative needs of the parcel, such as maintenance, security, and funding requirements; and recommend short-term and long-term action plans for the treatment and protection of greenway lands.

Conservation Easement

This type of easement generally establishes permanent limits on the use and development of land to protect the natural resources of that land. When public access to the easement is desired, a clause defining the conditions of public access can be added to the terms of the easement. Dedicated conservation easements can qualify for both federal income tax deductions and state tax credits. Tax deductions are allowed by the Federal government for donations of certain conservation easements. The donation may reduce the donor's taxable income.

Preservation Easement

This type of easement is intended to protect the historical integrity of a structure or important elements in the landscape by sound management practices. When public access to the easement is desired, a clause defining the conditions of public access can be added to the terms of the easement. Preservation easements may qualify for the same federal income tax deductions and state tax credits as conservation easements.

Public Access Easements

This type of easement grants public access to a specific parcel of property when a conservation or preservation easement is not necessary. The conditions of use are defined in the terms of the public access easement.

5. Open Space Acquisition

Land acquisition is a method used to acquire property rights to protect resources or to allow access and free movement of users on a property. This type of method is permanent. Acquisition methods can be divided into two categories: 1) landowners retain ownership of the land and preserve a resource through an easement or other mutual agreement; or 2) land ownership and management is transferred or donated from a landowner to a conservation agency (local government, land trust, or other preservation organization). Examples include:

Donation or Tax Incentives

In this type of acquisition, a government body, public agency, or qualified conservation organization agrees to receive the full title or a conservation easement to a parcel of land at no cost or at a "bargain sale" rate. The donor is then eligible to receive a federal tax deduction of up to 30 to 50 percent of their adjusted gross income. Additionally, North Carolina offers a tax credit of up to 25 percent of the property's fair market value (up to \$5000). Any portion of the fair market value not used for tax credits may be deducted as a charitable contribution. Also, property owners may be able to avoid any inheritance taxes, capital gains taxes, and recurring property taxes.

Fee Simple Purchase

This is a common method of acquisition where a local government agency or private greenway manager purchases property outright. Fee simple ownership conveys full title to the land and the entire "bundle" of property rights including the right to possess land, to exclude others, to use land, and to alienate or sell land.

Easement Purchase

This type of acquisition is the fee simple purchase of an easement. Full title to the land is not purchased, only those rights granted in the easement agreement. Therefore the easement purchase price is less than the full title value.

Purchase / Lease Back

A local government agency or private greenway organization can purchase a piece of land and then lease it back to the seller for a specified period of time. This lease may contain restrictions regarding the development and use of the property.

Bargain Sale

A property owner can sell property at a price less than the appraised fair market value of the land. Sometimes the seller can derive the same benefits as if the property were donated. Bargain Sale is attractive to sellers when the seller wants cash for the property, the seller paid a low cash price and thus is not liable for high capital gains tax, and/or the seller has a fairly high current income and could benefit from the donation of the property as an income tax deduction.

Installment Sale

An installment sale is a sale of property at a gain where at least one payment is to be received after the tax year in which the sale occurs. These are valuable tools to help sellers defer capital gains tax. This provides a potentially attractive option when purchasing land for open space from a possible seller.

Option / First Right of Refusal

A local government agency or private organization establishes an agreement with a public agency or private property owner to provide the right of first refusal on a parcel of land that is scheduled to be sold. This form of agreement can be used in conjunction with other techniques, such as an easement to protect the land in the short-term. An option would provide the agency with sufficient time to obtain capital to purchase the property or successfully negotiate some other means of conserving the greenway resource.

Purchase of Development Rights

A voluntary purchase of development rights involves purchasing the development rights from a private property owner at a fair market value. The landowner retains all ownership rights under current use, but exchanges the rights to develop the property for cash payment.

Land Banking

Land banking involves land acquisition in advance of expanding urbanization. The price of an open space parcel prior to development pressures is more affordable to a jurisdiction seeking to preserve open space. A City or County might use this technique to develop a greenbelt or preserve key open space or agricultural tracts. The jurisdiction should have a definite public purpose for a land banking project.

Condemnation

The practice of condemning private land for use as a greenway is viewed as a last resort policy. Using condemnation to acquire property or property rights can be avoided if private and public support for the greenway program is present. Condemnation is seldom used for the purpose of dealing with an unwilling property owner. In most cases, condemnation has been exercised when there has been an absentee property ownership, when the title of the property is not clear, or when it becomes apparent that obtaining the consent for purchase would be difficult because there are numerous heirs located in other parts of the United States or different countries.

Eminent Domain

The right of exercising eminent domain should be done so with caution by the community and only if the following conditions exist: 1) the property is valued by the community as an environmentally sensitive parcel of land, significant natural resource, or critical parcel of land, and as such has been defined by the community as irreplaceable property; 2) written scientific justification for the community's claim about the property's value has been prepared and offered to the property owner; 3) all efforts to negotiate with the property owner for the management, regulation, and acquisition of the property have been exhausted and that the property owner has been given reasonable and fair offers of compensation and has rejected all offers; and 4) due to the ownership of the property, the timeframe for negotiating the acquisition of the property will be unreasonable, and in the interest of pursuing a cost effective method for acquiring the property, the community has deemed it necessary to exercise eminent domain.

6. Land Acquisition for the Bolin Creek and Jones Creek Corridors

When negotiating easements or property for trail development, corridor width may flex, depending on constraints. The ideal width for trail easements is 50 feet. This allows for comfortable trail construction, adequate space for maintenance, in addition to areas for water access and conservation. Where space is constricted, a 20-30 foot corridor may be used. For the purposes of the Bolin Creek Greenway, many OWASA sewer easements are 30 feet wide, which is appropriate for successful trail construction.