



**NEWTON
CONSERVATORS**

SPRING ISSUE

NEWSLETTER

Newton's land trust working to preserve open space since 1961

NEWTONCONSERVATORS.ORG • SPRING 2020

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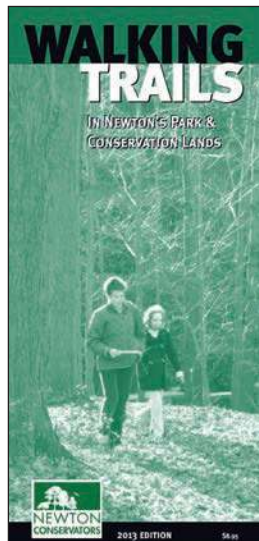
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Are the Private Golf Courses in Newton Protected as Open Space?

By Ellen Katz and Jay Werb

Editor's Note: Driving through Newton and seeing the expanses of the golf courses in the city, one might be under the impression that Newton has ample open space. However, the city has very limited control over these privately-owned open spaces.



The Newton Conservators' *Walking Trails* guide covers roughly 600 acres of open space owned by, or held in trust for, the public within the borders of The Garden City. Cold Spring Park, for example, covers 67 acres. The guide also notes 120 acres of public golf courses, and another 100 acres owned by the Newton Cemetery & Arboretum.

Another 548 acres of open space is privately owned and managed by Newton's three country clubs. Charles River Country Club (219 acres), Brae Burn Country Club (196 acres), and Woodland Golf Club (133 acres) are zoned for single-family residences, mostly as SR1 and SR2. For a century or more, these institutions have kept their open space intact while most of the surrounding privately-owned land was developed over the generations. Today, in a world of million-dollar teardowns on quarter-acre lots, how can we continue to protect this open space from development if a country club wants to sell some or all of its land? How can we protect the public benefits of undeveloped or open land that include ground water recharge, wildlife habitat, flood prevention, outdoor recreation, aesthetics, and reduced burden on municipal resources such as sewer, police, and schools? Part of the answer lies in the provisions of Massachusetts General Law Chapter 61, designed to encourage landowners to keep their land as open space.

Initially created in the 1970s, and amended in 2006, Chapter 61 promotes conservation of farmland, forest, and open space including golf courses. Prior to Chapter 61, rising property values were forcing many landowners to sell their land because of an increasing tax burden. Under Chapter 61, a landowner commits to maintain a property in agricultural, forest, or recreational use for a period of time. Participation is voluntary. To



Google Earth image of Woodland Golf Course to the left and Brae Burn to the right.

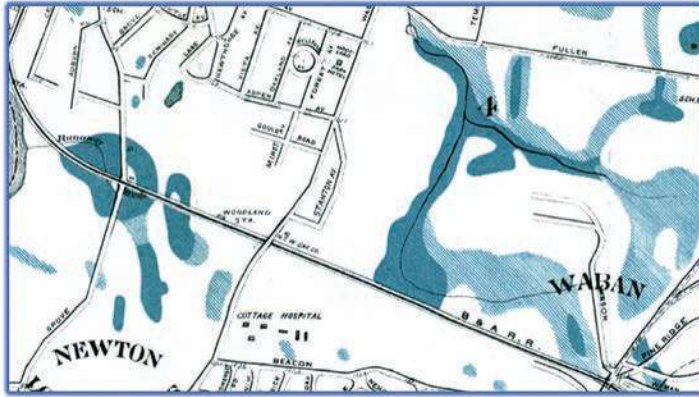
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enroll, the landowner must submit a written application for classification, and then reapply annually. The town or city then establishes a local property tax assessment based on “current use value” rather than “development value,” and

normally undertaken in a stadium, gymnasium, or similar structure.

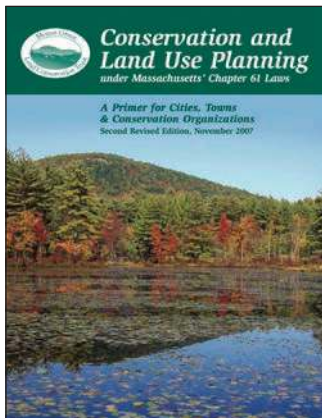
All of these variants of Chapter 61 are “current use tax programs.” Enrolled property is assessed based on current use, which can be a fraction of the property’s fully developed value. If not enrolled in a Chapter 61 program, property is assessed at commercial value (under Chapter 59).

In Newton, Chapter 61B applies to Newton’s three country clubs and their combined 548 acres of open space. Under Chapter 61B, country club land is assessed at its “recreational use value,” which cannot exceed 25% of its fair market value. Based on that assessment, the land is taxed at the commercial rate. In addition, country club buildings, which are not covered by Chapter 61B, are assessed on their actual value and taxed at the commercial rate. Other structures such as driveways, pro shops, pools, golf cart storage sheds, and tennis courts are also taxed at the full commercial rate.



Graphic of areas requiring drainage in 1892 showing area where Woodland Golf Course would be built to the left and the Brae Burn Golf Club to the right. See <http://www.newtonma.gov/civicax/filebank/documents/39235>

in exchange is granted right of first refusal to purchase the property if the land is converted to a use not covered by Chapter 61.



Chapter 61 is divided into three sections: Chapter 61, Chapter 61A, and Chapter 61B. Chapter 61, the Forestland Act, applies to properties of contiguous forestland of ten acres or more. Over 60% (3.1 million acres) of Massachusetts is forested, and 79% of those forests are privately owned. Chapter 61A, the Farmland Assessment Act, is for at least five acres of land that is used

primarily for agriculture or horticulture.

Chapter 61B, the Recreational Land Act, promotes conservation of open space and recreational land. Eligible properties have five or more acres of land that is retained as “substantially natural, wild or open condition” or “recreational use” or “in a managed forest condition” or “pastured condition.” The land must be (1) open to the public or members of a non-profit organization and (2) used for one of the following purposes: hiking, camping, nature study and observation, boating, golfing, non-commercial youth soccer, horseback riding, hunting, fishing, skiing, swimming, picnicking, private non-commercial flying, including hang gliding, archery, target shooting, and commercial horseback riding and equine boarding. Land may not be used for horse racing, dog racing, or any sport



Brae Burn clubhouse in winter.

In exchange for granting a tax abatement, the City gets the right of first refusal (ROFR) when owners decide to sell their land to a

developer or develop the land themselves. The City has 120 days to its exercise its ROFR option. The City may assign its ROFR to a non-profit conservation organization or to the Commonwealth of Massachusetts, which is not uncommon as a 120-day deadline draws near. While ROFR does not prevent the land from being developed, it does provide the City with an opportunity to affect the nature of the sale and subsequent development.

If the City does not exercise its ROFR, and the land is developed, five years of “roll-back” taxes must be paid to the City. The 61B roll-back tax is the difference between taxes paid in the last five years under the program compared to what would have been paid had the land had been taxed at fair market value, plus 5% simple interest. (For properties enrolled in the program for fewer than five years, a conveyance tax may apply instead.)

Massachusetts Chapter 61 programs not only temporarily protect open space. These programs can have economic benefits as well. Development incurs costs for the



Google Maps aerial of Woodland Golf Course

municipality for services such as schools, roads, and sewers. When a Chapter 61 property is privately developed, costs to the City may approach or even exceed the cost of purchasing the property for conservation. The City may also have municipal uses for the property, such as a school or a senior center.

Someday, if one of Newton's country clubs decides to sell some or all of its land, the City's right of first refusal could provide an opportunity for Newton to acquire some of New England's most valuable real estate under reasonable terms. In the meantime, Chapter 61B tax abatements allow Newton's country clubs to continue their responsible stewardship of these beautiful expanses of Newton's open space, as they have for over a century.

Note: Sources and tables for this article can be found on NewtonConservators.org/newsletters. ♦



RENEW YOUR MEMBERSHIP OR JOIN TODAY!

YES, count me in! I want to be a nature steward and help Newton Conservators protect and preserve the natural areas in our community.

Please renew/accept my tax-deductible membership at the level checked below:

- | | |
|--|---|
| <input type="checkbox"/> \$250 Directors' Circle | <input type="checkbox"/> \$50 Family Membership |
| <input type="checkbox"/> \$125 Patron | <input type="checkbox"/> \$35 Individual Membership |
| <input type="checkbox"/> \$100 Donor | <input type="checkbox"/> \$15 Student Membership |
| <input type="checkbox"/> \$75 Sustaining Member | <input type="checkbox"/> Additional Contribution \$ _____ |

**Want to make an even bigger impact?
Help us support these conservation areas:**

Woodcock Meadow \$ _____ Trail Fund \$ _____
 Ordway Endowment Fund \$ _____
 Land Stewardship Areas (Dexter Rd., Bracebridge Rd.)
 \$ _____

New members receive Walking Trails in Newton's Parks and Conservation Lands.

NAME _____ EMAIL _____

ADDRESS _____ ZIP _____

I would like to volunteer!
Please email me.

Please make checks payable to Newton Conservators, Inc. and send to P.O. Box 590011, Newton Centre, MA 02459, or visit newtonconservators.org/membership/ to renew/join online. Consider including Newton Conservators in your estate planning. Contact us at president@NewtonConservators.org.

MISSION

Newton Conservators, Inc.

The Newton Conservators promotes the protection and preservation of natural areas, including parks, playgrounds, forests and streams, which are open or may be converted to open space for the enjoyment and benefit of the people of Newton. It further aims to disseminate information about these and other environmental matters.

A primary goal is to foster the acquisition of land, buildings and other facilities to be used for the encouragement of scientific, educational, recreational, literary and other public pursuits that will promote good citizenship and the general welfare of the people of our community.

The Newton Conservators was formed as a not-for-profit organization 59 years ago in June 1961.

The Newton Conservators' Newsletter® is

published four times each year by the Newton Conservators, Inc., in June, September, December, and March. Deadlines for these issues are the second Friday of the month before the issue is published.

We welcome material related to our mission from any source. Send proposed articles or letters by email in MS Word or rich text format to articles@newtonconservators.org. Digitized photographs, maps and diagrams are also welcome.

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Golf Course Article: Tables and Sources

Description	Chapter 61B Open Space – recreational land Incentivizes conservation of recreational land by reducing tax burden.
Eligibility requirements	Minimum of five acres. The land must retained in a substantially natural, wild, open, pastured, managed forest or landscaped condition, or used for an approved recreational purpose.
Defined use	Land retained in a substantially natural, wild or open condition or in a landscaped condition in such manner as to allow to a significant extent the preservation of wildlife and other natural resources OR Land to be used for certain permitted recreational purposes such as golf and open to the public or members of a non-profit organization. The recreational use must not materially interfere with the environmental benefits of the land.
Buildings and other structures	Any clubhouse, driveway, pool, storage shed, tennis court or other buildings are considered structures not part of the golf courses open space. Land associated with these structures is assessed at full value and not given the exemption.
Enrollment and renewal process	To enroll, the landowner must submit a written application to the Assessing Department of the city by October 1 for classification during the next fiscal year. For example, the application must be submitted by October 1, 2019, to be eligible for the July 1, 2020 – June 30, 2021 fiscal year. The landowner must then reapply annually to the Assessing Department by October 1.
Property tax	Property taxes are based on the property’s use for open space or recreation. The reduction is at least 75% of what the Chapter 59 tax assessment would be, based on the fair market value of the property.

Lien	Once the classification is approved, the municipality records a lien on the property at the Registry of Deeds. This tax lien and notice informs all potential purchasers that the property is subject to the provisions of Chapter 61B.
Notice to city	<p>A landowner who has properly classified in Chapter 61B must notify the Mayor and City Council, as well as the Assessing Department, Planning Department, and Conservation Commission, by certified mail, when all or a portion of the land is being sold for, or converted to, a disqualifying use. The requirement of the landowner extends for one year after not being taxed under the program.</p> <p>This notice by the landowner triggers the 120-day option period, during which the city has the right of first refusal to meet a bona fide offer to purchase the land, or, in case of a conversion of use by the landowner, to pay fair market value for the property. In both cases, the city may elect to assign its right to a qualified organization or agency. (This may be useful if more time is needed to arrange financing.)</p> <p>Note: a landowner who is not changing the use of the land, but is simply withdrawing from the program at the end of, or at any time within, the one year period in Chapter 61B, triggers neither a requirement of notification, nor a right of first refusal.</p>
Change of use withdrawal and failure to reapply	<p>Any land valued, assessed and taxed under the provisions of Chapter 61B, if sold for another use or changed to another use not consistent with any of the Chapter 61 programs, is subject to a Conveyance Tax or a Roll-Back Tax.</p> <p>The landowner will only pay the higher of the two tax penalties, not both. Roll-Back Taxes will apply when the amount of those taxes exceeds the amount, if any, imposed under the Conveyance Tax section for Chapter 61B. In the same way, when Roll-Back Taxes do exceed the amount imposed for the Conveyance Tax penalty, then the land is not subject to the Conveyance Tax.</p>
Change of use of part of the property	If a change of use occurs on a portion of the land under Chapter 61B, and that change is not to a land use covered

	by any Chapter 61 programs, then only that portion of the land where the change of use occurred will be subject to Roll-Back Taxes or Conveyance Taxes.
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