

By Mrs. Pope of Wayland, petition of Susan W. Pope and Susan C. Fargo (by vote of the town) for legislation to establish a land bank fund in the town of Wayland. Taxation. [Local Approval Received.]

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Seven.

AN ACT ESTABLISHING A LAND BANK IN THE TOWN OF WAYLAND.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The purpose of this act shall be to enable the town
2 of Wayland to acquire, hold and manage land and interests in land,
3 including structures thereon, in furtherance of said town's goals
4 for open space, recreation, and housing as defined in section 2.

1 SECTION 2. For the purpose of this act, the following words
2 and phrases shall have the following meanings:—

3 "Collector" — the Wayland town collector.

4 "Fund" — the Land Bank Fund, defined in section 3.

5 "Housing" — housing whether rehabilitated from existing stock
6 or newly constructed, which is set aside for low or moderate
7 income persons, including, but not limited to, elderly persons,
8 families, and town employees and is subject to rent and resale
9 restrictions.

10 "Net purchase price" — the purchase price for a nonexempt
11 transfer less \$100,000.

12 "Open space" — land or water areas predominantly in their
13 natural, scenic, and open condition or in agricultural, farming or
14 forest use.

15 "Purchaser" — the transferee, grantee, buyer, or recipient of
16 any real-property interest.

17 "Purchase price" — all consideration paid or transferred by or
18 on behalf of a purchaser directly or indirectly to a seller or his
19 nominee, or for his benefit, for the transfer of any real property

20 interest, including, but not limited to, all cash or its equivalent so
21 paid or transferred; all cash or other property given up by or on
22 behalf of the purchaser to discharge or reduce any obligation of
23 the seller; the principal amount of all notes or their equivalent, or
24 other deferred payments, given or promised by or on behalf of the
25 purchaser to the seller or his nominees; the outstanding balance of
26 all obligations of the seller which are assumed by the purchaser or
27 to which the real property interest transferred remains subject
28 after the transfer, determined at the time of the transfer; but
29 excluding real estate taxes and other municipal liens, other than
30 the fee established pursuant to section 5 of this act, which are not
31 overdue at the time of the transfer; and the fair-market value, at
32 the time of transfer, of any other consideration or thing of value
33 paid or transferred by or on behalf of the purchaser, including, but
34 not limited to, any property, goods and services paid, transferred,
35 or tendered in exchange for such real property interest.

36 “Real property interest” — any present or future legal or equi-
37 table interest in or to real property, and any beneficial interest
38 therein, including the interest of any beneficiary in a trust which
39 holds any real or equitable interest in real property, but which
40 shall not include any interest which is limited to any or all of the
41 following: the dominant estate in any easement or right of way,
42 the right to enforce any restriction, any estate at will or at suffer-
43 ance, any estate having a term of less than thirty years, any rever-
44 sionary right, condition or right of entry for condition broken, the
45 interest of a mortgagee or other secured party in any mortgage or
46 security agreement, and the interest of a stockholder in a corpora-
47 tion, or a partner in a partnership.

48 “Recreation” — passive recreational activities such as hiking,
49 nature study, non-motor boating, and swimming, and active
50 athletic activities such as baseball and soccer.

51 “Seller” — the transferor, grantor, or immediate former owner
52 of any real property interest.

53 “Time of the transfer” of any real property interest — The time
54 at which such transfer is legally effective as between the parties
55 thereto, but for a transfer evidenced by an instrument recorded
56 with the registry of deeds or registered with the assistant recorder
57 of the appropriate registry, not later than the time of such
58 recording or filing.

1 SECTION 3. There is hereby established in the town of
2 Wayland a Land Bank Fund of which the town treasurer shall be
3 custodian.

4 The town treasurer shall invest and reinvest the assets of said
5 fund in investments which are legally authorized for municipal
6 funds, and any income therefrom shall be credited to the fund.

7 Monies to be paid into the fund shall include (a) the fees as set
8 forth in section 5, (b) income from investments as specified
9 above, (c) gifts from any source if so directed by the donor,
10 (d) government grants or reimbursements associated with land
11 acquisitions financed from the fund, and (e) proceeds from sales
12 of properties acquired with monies from the fund, subject to pro-
13 portional division of said proceeds among all sources of monies
14 used for such acquisition.

15 Monies shall be expended from the fund only for the purposes
16 set forth in sections 1 and 4.

17 The fund shall be maintained as two separate accounts, one for
18 housing and the other for open space and recreation. Thirty per-
19 cent of the fees set forth in section 5 shall be allotted to the
20 housing account and 70 percent to the open space and recreation
21 account. Investment income shall be allotted to the account pro-
22 ducing such income. Gifts shall be allotted as directed by the
23 donor. Grants, reimbursements, and proceeds from sales shall be
24 allotted to the accounts in proportion to the funds used from each
25 account in completing the project to which the grant, reimburse-
26 ment, or sale pertains.

1 SECTION 4. Town meeting shall have exclusive authority,
2 except as described in the following paragraph, to appropriate
3 monies from the fund to acquire land, including buildings thereon,
4 or interests in land consistent with the purposes listed in section 1.

5 As a means of preserving opportunities to acquire land until
6 town meeting votes to make an appropriation, monies in the fund
7 may be expended by the board of selectmen, after consultation
8 with the Land Bank Advisory Committee, to purchase options to
9 acquire land with town meeting authorization, including buildings
10 thereon, or interests in land, consistent with the purposes listed in
11 section 1.

12 Monies in the fund may be expended for payment of interest
13 and principal due upon loans undertaken for expenditures consis-
14 tent with the purposes listed in section 1, provided such loans
15 have had prior authorization by a two-thirds vote of town meeting.

1 SECTION 5. There is hereby established a fee on the transfer
2 or conveyance of real property interests in the town of Wayland.
3 Said fee shall be in the amount of one percent of the net purchase
4 price. The fee imposed by this section shall become effective only
5 upon notice of said fee by registered or certified mail to the
6 Middlesex South Registry of Deeds and upon posting of said
7 notice as required under section 8 of this act. Said fee shall be
8 paid by the purchaser and shall be an encumbrance on the title of
9 the purchaser for the purposes of section 21 of chapter 184 of the
10 General Laws and a tax assessed upon the land for the purposes of
11 section 37 of chapter 60 of the General Laws. Said fee shall be
12 paid to the collector. The collection of the land bank fee shall ter-
13minate at the end of the fiscal year ending on June 30, 2015,
14 unless extended by a majority vote of town meeting prior to
15 that date.

1 SECTION 6. The following transfers of real property interests
2 shall be exempt from the fee imposed by section 5 of this act:—

3 (a) transfers to the government of the United States, the com-
4 monwealth of Massachusetts, or any of their instrumentalities,
5 agencies, or subdivisions;

6 (b) transfers which, without additional consideration, confirm,
7 correct, modify, or supplement a transfer previously made;

8 (c) transfers made as gifts without consideration. In any pro-
9 ceedings to determine the amount of any fee due hereunder, it
10 shall be presumed that any transfer for consideration less than fair
11 market value of the real property interests transferred was made as
12 a gift without consideration to the extent of the difference between
13 the fair market value and the amount of the consideration claimed
14 by the purchaser to have been paid or transferred, if the purchaser
15 shall have been at the time of the transfer the spouse, lineal
16 descendant, or lineal ancestor of the seller or the seller's spouse,
17 by blood or adoption, and otherwise it shall be presumed that con-
18 sideration was paid in an amount equal to the fair market value at
19 the time of transfer;

20 (d) transfers to the trustees of a trust in exchange for a benefi-
21 cial interest received by the seller in such trust and distributions
22 by the trustees of such a trust to the beneficiaries of the trust;

23 (e) transfers by will or by operation of law without actual con-
24 sideration, including, but not limited to, transfers occurring by
25 virtue of the death or bankruptcy of the owner of a real property
26 interest;

27 (f) transfers made in partition of land and improvements thereto
28 under chapter 241 of the General Laws.

29 (g) transfers to the public, any charitable organization as
30 defined in clause Third of section 5 of chapter 59 of the General
31 Laws or any religious organization, provided that the real property
32 interests so transferred will be held by the purchaser solely for its
33 public, charitable, or religious purposes;

34 (h) transfers to a mortgagee in foreclosure of the mortgage held
35 by such mortgagee, and transfers of the property subject to a mort-
36 gage in consideration of the forbearance of the mortgagee from
37 foreclosing said mortgage;

38 (i) transfers made by a corporation or partnership at the time of
39 its formation, pursuant to which transfer no gain or loss is recog-
40 nized under the provisions of section 351 of the Internal Revenue
41 Code of 1954, as amended;

42 (j) transfers to a stockholder of a corporation, and transfers
43 made to a partner of a partnership in dissolution of the partnership;

44 (k) transfers consisting of the division of marital assets under
45 the provisions of section 34 of Chapter 208 of the General Laws
46 or other provisions of the law; and

47 (l) transfers of property consisting in part of real property
48 interests situated in the town of Wayland and in part of other
49 property interests, to the extent that the property transferred con-
50 sists of property other than real property situated in the town of
51 Wayland, provided that the purchaser or seller shall furnish the
52 collector with such information as he shall require or request in
53 support of the claim of exemption and manner of allocation of the
54 consideration for such transfer.

1 SECTION 7. Fees payable under this act shall be collectible
2 against the purchaser and the property in accordance with chap-
3 ters 59 and 60 of the General Laws. The collector shall have

4 available all property tax collection remedies for the collection of
5 said fees.

6 The fee shall be paid to the collector and shall be accompanied
7 by a copy of the deed or other instrument evidencing such
8 transfer, if any, and an affidavit signed under oath or under the
9 pains and penalties of perjury by the purchaser or his legal repre-
10 sentative, attesting to the true and complete purchase price and the
11 basis, if any, upon which the transfer is claimed to be exempt in
12 whole or in part from the fees imposed hereby. The collector shall
13 promptly thereafter execute and issue certificate indicating that
14 the appropriate fee has been paid or that the transfer is exempt
15 from the fee, stating the basis for the exemption. The register of
16 deeds for Middlesex County, and the assistant recorder for the
17 land court registry district of Middlesex county, shall not record or
18 register, or receive or accept for recording or registration, any
19 deed or other instrument evidencing such transfer, except a mort-
20 gage deed, to which has not been affixed such a certificate, exe-
21 cuted by the treasurer. Failure to comply with this requirement
22 shall not affect the validity of any instrument. The fee imposed
23 hereunder shall be due simultaneously with the transfer upon
24 which it is imposed.

1 SECTION 8. The collector shall notify a purchaser by regis-
2 tered or certified mail of any failure to discharge in full the
3 amount of the fee due under section 5 and any penalty or interest
4 assessed. The board of assessors shall, within 60 days, hold a
5 hearing on the matter of the imposition of said fee, or of any
6 penalty or interest assessed, if a petition requesting such hearing
7 is received by said board within thirty days after the mailing of
8 said notice by the collector. Said board shall notify the purchaser
9 in writing by registered or certified mail of its determination con-
10 cerning the deficiency, penalty, or interest within 15 days after
11 said hearing. Any party aggrieved by a determination of said
12 board concerning a deficiency may appeal to the district or supe-
13 rior court within three months after the mailing of notification of
14 determination of said board. Upon failure to petition for a hearing
15 or appeal within the time limits hereby established, the purchaser
16 shall be bound by the terms of the notification, assessment, or
17 determination, as the case may be, and shall be barred from con-
18 testing the fee or interest or penalty determined by said board. All

19 decisions of said courts shall be appealable in accordance with
20 law. Every notice to be given under this section by said board
21 shall be effective if mailed by certified or registered mail to the
22 purchaser at the address stated in a recorded or registered instru-
23 ment by virtue of which the purchaser holds any interest in land
24 the transfer of which gives rise to the fee which is the subject of
25 such notice; and if no such address is stated or if such transfer is
26 not evidenced by an instrument recorded with the Middlesex south
27 registry of deeds or registered in the land court registry district of
28 Middlesex county, such notice shall be effective when so mailed
29 to the purchaser in care of any person appearing of record to have
30 a fee interest in such land, at the address of such person as set
31 forth in an instrument recorded or registered in said registry of
32 deeds or registry district.

1 SECTION 9. A Land Bank Advisory Committee shall be estab-
2 lished by the board of selectmen, consisting of one member repre-
3 senting the planning board, one representing the conservation
4 commission, one representing the park and recreation commis-
5 sion, one representing either the housing partnership or the
6 housing authority, and three members at large. The members shall
7 be appointed for staggered three year terms.

8 The Land Bank Advisory Committee shall prepare, and
9 maintain in current condition, a land bank plan which shall
10 include (a) an inventory of relevant real estate in the town, both
11 land already owned by the town and private land, which is of
12 interest for open space, recreation, and housing; (b) an assessment
13 of the needs of the town and the desires of the citizens with
14 respect to open space, recreation, and housing; and (c) guidelines
15 for the selection of parcels to be acquired with monies from the
16 land bank. The land bank plan and its periodic revisions shall be
17 made available for public review and shall be submitted to the
18 board of selectmen for its review and approval.

1 SECTION 10. Nothing in this act shall affect the eligibility of
2 the town of Wayland to receive funds under the program created
3 under section 11 of chapter 132A of the General Laws or under
4 any similar state program, or to receive state housing assistance.

1 SECTION 11. This act shall be submitted for acceptance to the
2 voters of the town of Wayland at an annual or special town elec-
3 tion in the form of the following question which shall be placed
4 on the official ballot at such election: "Shall an act passed by the
5 General Court in the year 1997 entitled 'An Act establishing a
6 land bank in the town of Wayland' be accepted?" If a majority of
7 the votes cast in answer to said question is in the affirmative, this
8 act shall take effect, but not otherwise.