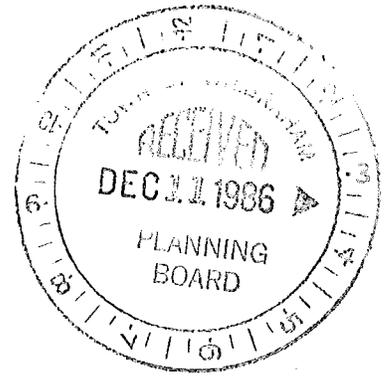


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P R E L I M I N A R Y R E P O R T

FROM THE LAND USE STUDY COMMITTEE

TO THE BOARD OF SELECTMEN

SEPTEMBER 24, 1986

RECOMMENDATIONS OF THE LAND USE STUDY COMMITTEE FOR
WILBRAHAM BOARD OF SELECTMEN

1. PRESERVING UNIQUE LAND ASSETS(all land should meet "Criteria for Purchase", set forth by the Land Use Study Committee. Att. A)

A. Wilbraham Mountain

I. Keys to preservation

- a. From the west side of the mountain to the Eastern Town border, increase the zoning requirement from R₇60 to R₇120 (2 3/4 acres).
- b. Recommend to the Planning Board to change the slope grade from 8% to 7% or 6%.

B. Wetlands

- I. Minimumly protected by Conservation Commission and Planning Board restrictions.
- II. We encourage the development AND passage of Conservation Bylaws. We recommend a 100 foot setback from any wetlands to be required when building.

C. Open Space

- I. Have Planning Board update the Zoning Bylaws and the Subdivision Rules and Regulations and include creative zoning methods such as:
 - a. Require open space or green areas on accesses to new developments from Town roads.
 - b. Allow a building lot to have less than the required frontage if the depth of the land allows for a larger setback.

D. FARMLAND ₇ should be purchased by Town in lieu of development

- I. Establish a fund of \$100,000.00 or more to be available for the Selectmen, or an appointed committee to make a deposit for the purchase of land. This would require a Town vote.
 - a. Establish the proper procedure so that the Town can apply for up to 80% reimbursement under the state's various programs.
 - b. Perform perc tests immediately, upon receiving a purchase offer. This would help in establishing whether or not the purchase is necessary.

2. FURTHER STUDY OF A LAND BANK FUND (financed by a transfer tax)

Enclosed is sample Land Bank legislation tailored to the needs and addressing special features which the Land Use Study Committee believes is appropriate for the Town of Wilbraham. Attach. B.

3. BUDGET FUNDS FOR CONSERVATION LAND MAINTENANCE

I. Budget \$10,000 - \$15,000 minimum.	
2 people @ 4.50/hr. for 6 months	8640.00
Materials, equipment & expenses	1360.00
	<u>10000.00</u>

Recommended by the Conservation Commission to have the workers be students/interns who are studying either Landscape Architecture, Environmental Studies, Recreation or another related field. Not recommended to use untrained personnel in sensitive conservation areas.

4. MUNICIPAL NEEDS

I. Both Fire and School Departments were sent a request to express future needs but neither expressed any immediate concerns.

5. CONTINUE CONTACT WITH PIONEER VALLEY PLANNING COMMISSION

I. Keep updated on what other cities and towns are proposing.

ATTACHMENT A

CRITERIA FOR PURCHASE OF LAND

1. Availability of land.
2. Well-traveled visible land (i.e. the mountain).
3. 10+ acre size unless it has unique characteristics
4. Land that enhances the Town's natural beauty (i.e. entrances to the town, the mountain).
5. Land that abuts conservation land, or land that is presently owned by the Town.
6. Enhances the rural atmosphere of the Town.
7. Land that enhances passive recreation (i.e. bikeways, walkways).
8. Small areas that allow access to larger areas
9. Land that is farmland
10. Land abutting the Chicopee River and any other major waterway/pond/lake.
11. Developable land
12. Land that preserves and/or protects aquifers.

AN ACT TO PROVIDE AN OPEN SPACE LAND BANK FUND IN THE TOWN OF
W I L B R A H A M

SECTION 1. To preserve the open space of the Town of Wilbraham.

SECTION 2. For the purposes of this Act, the following words and phrases shall have the following meanings:

"Collector" the tax collector of the Town of Wilbraham.

"Fund" municipal land bank funds established under Section 3 of this Act.

"Institutional lender" any bank defined in section one of chapter one hundred sixty-seven, any insurance company defined in section one of chapter one hundred seventy-five, and any mortgage company or investment company which has recorded more than twenty mortgages accepted by it within the calendar year preceding the year of the relevant mortgage for the purposes of subsection (m) of section twelve, and any national bank, federal savings and loan association, federal savings bank, bank holding company, or state or federally chartered credit union.

"Land Bank" the land bank established under Section 3 of this ACT.

"Land Bank Commission" a Commission consisting of five persons appointed as follows: two by the Board of Selectmen, one by the Conservation Commission, one by the Planning Board, and one by the Recreation Commission. Members shall be residents of the Town of Wilbraham and shall serve without compensation for a five year term, except the first members who shall serve terms of one, two, three, four and five years respectively. The Commission shall elect a chairman, a secretary and a treasurer, from among its members, and may adopt reasonable rules and regulations for the conduct of its affairs and the management of its holdings not inconsistent with the provisions of this Act. Decisions of the Commission shall be by majority vote of those present and voting and no business shall be transacted without three members present. The Commission shall keep accurate records of its meetings and actions, shall submit a budget of its fixed costs for approval at the annual town meeting, and shall file an annual report to be printed in the annual town report.

"Land Bank Plan" the OPEN SPACE AND RECREATION PLAN prepared by the Open Space Committee, and the CRITERIA FOR THE PURCHASE OF LAND established by the Land Use Study Committee.

"Limited Capital Improvements" shall include: creation of garden plots; maintenance of preexisting structures; construction of small structures incidental to allowed uses of the land; maintenance of existing trails, stone walls, culverts bridges etc.; creation of trails and parking spaces and installation of fences and signs as deemed appropriate; maintenance of open space through mowing, tree and brush removal, and burning; and forest management practices.

"Purchaser" the transferee, grantee or recipient of any real property interests.

"Purchase price" all consideration paid or transferred by or on behalf of a purchaser to a seller or his nominee, or for his benefit, for the transfer of any real property interest, and shall include, but not be limited to, all cash or its equivalent so paid or transferred; all by or on behalf of the purchaser to discharge or reduce any obligation of the seller; the principal amount of all notes or their equivalent, or other deferred payments, given or promised by or on behalf of the purchaser to the seller or his nominee; the outstanding balance of all obligations of the seller which are assumed by the purchaser or to which the real property interest transferred remains subject after the transfer, determined at the time of the transfer, but excluding real estate taxes and other municipal liens, other than the tax established by section one, which are not overdue at the time of the transfer; and the fair market value, at the time of the transfer, of any other consideration or thing of value paid or transferred by or on behalf of the purchaser, including, but not limited to, and property, goods or services paid, transferred or rendered in exchange for such real property interest.

"Real property interest" any present or future legal or equitable interest in or to real property, and any beneficial interest therein, including the interest of any beneficiary in a trust which holds any legal or equitable interest in real property; but which shall not include any interest which is limited to any or all of the following: the dominant estate in any easement or right of way; the right to enforce any restriction; any estate at will or at sufferance, and any estate for years having a term of less than thirty years; any reversionary right, condition or right of entry for condition broken; the interest of a mortgage or other secured party in any mortgage or security agreement; and the interest of a stockholder in a corporation, or a partner in a partnership.

"Register" the register of deeds for the Hampden County registry district.

"Seller" the transferor, grantor or immediate former owner of any real property interest.

"Time of transfer" of any real property interest the time at which such transfer is legal effective as between the parties thereto, and, in the event, with respect to a transfer evidenced by an instrument recorded with registry of deeds or registered with the assistant recorder of the appropriate registry district, not later than the time of such recording or filing.

SECTION 3. There is hereby established in the Town of Wilbraham a Land Bank Fund, to be administered by the Land Bank Commission for the purpose of acquiring, holding and managing land and interests in land of the types set forth in Section 4 of this Act, in order to provide for the existing and future aesthetic enjoyment, open space, passive recreation and conservation needs of said municipality, its residents and visitors. The establishment of the Land Bank Fund shall not affect eligibility or priority for any other open space funding program.

SECTION 4. There is hereby established a tax on the transfer or conveyance of any real property interest in real property in the Town of Wilbraham. Said tax shall be in the amount of one (1) percent of the purchase price, or such other amount as may be hereafter established by a two-thirds majority vote of an annual town meeting but not to exceed two (2) percent. The tax imposed by this section shall be paid by the purchaser. Said tax shall be paid to the register, who shall be designated as a deputy collector of taxes by the collector of the municipality, and paid over to the municipal treasurer who shall maintain a separate account of the same for the purposes of this section. Such funds may be expended by the Land Bank Commission in accordance with the Land Bank Plan for any single purchase, whether it be for land acquisition, or interests in land, purchases of less than fee-simple interests, including conservation restrictions, development rights, agricultural preservations, trail easements and rights of way, conservation restrictions and remainder interests, purchase of the right of first refusal options, or any other single expense incidental to land acquisition, without further appropriation, except for eminent domain takings as provided for in section 8 (C) of chapter forty. Such funds may also be expended for purposes judged not harmful to the environment by the Land Bank Commission as fixed costs. The fixed costs shall be established annually for maintenance, management, limited capital improvements to acquired lands, and acquisition of agricultural and forest lands or

interests held under chapters sixty-one and sixty-one A and open space lands acquired under the so-called "Self-Help" program of the Executive Office Environmental Affairs, Division of Conservation Services or any other program providing assistance to communities for protection of open space. The Commission is authorized to spend up to \$ 250,000.00 for any single purchase, or purpose set forth in this section without approval by a majority at town meeting. Any purchase exceeding \$ 250,000.00 must be authorized by a majority at town meeting. The acquisition of any property interest hereunder may be by and through the Land Bank Commission acting either singly or jointly with any other governmental agency or private party or combination thereof, and such title may be held singly or jointly by any such persons or entities. Debt incurred for the purpose of acquisition of land for conservation, habitat management, passive recreation, or open space purposes, whether such debt or acquisition has been incurred or taken place before or after acceptance of the Act, may be retired by expenditures from the fund established hereunder.

SECTION 5. The tax imposed by Section 4 shall be due and payable at the time of the transfer relative to which it is imposed and the deed or other such instrument of conveyance shall have attached thereto or as part thereof a statement signed under oath or the penalties of perjury by both the seller and the purchaser, or their legal representative, attesting to the true and complete purchase price and the basis, if any, upon which the transfer is claimed to be exempt in whole or in part from the tax imposed thereby and the Register of Deeds shall certify thereon for the record that the tax has been paid or that the transfer is exempt from such tax and the basis for such exemption. The Register of Deeds shall not accept for recording a deed or other such instrument of conveyance unless it is in compliance with the requirements of this section. Failure to comply with these requirements shall not affect the validity of any instrument, but may constitute breach of contract, and would lead to having a lien placed against the property.

SECTION 6. The Register shall post a conspicuous notice informing the public that the tax established in Section 4 is in effect and the rate thereof.

SECTION 7. The Town of Wilbraham shall meet its financial obligation by directing the Land Bank Commission to draw upon the Land Bank Fund, to be set up as a revolving account within its treasury. deposits into the Fund shall include (a) funds appropriated to be deposited into the Fund by vote of the town meeting members, (b) voluntary contribution of money and other liquid assets to the

Fund, (c) revenues from fees imposed upon the transfer of real property interests as set forth in Section 4 of this Act occurring after the effective date of this Act, and (d) proceeds from disposal of real property or interests. All expenses lawfully incurred in carrying out the provisions of this Act shall be evidenced by proper vouchers and shall be paid by the town treasurer only upon submission of warrants duly approved by the Land Bank Commission. The treasurer shall prudently invest available assets of the Fund, and all income thereon shall accrue to the fund.

SECTION 8. The Land Bank Commission shall keep a full and accurate account of its actions, including a record as to when, from or to whom, and on what account money has been paid or received relative to this Act, and as to when, from and to whom and for what consideration real property interests have been acquired, improved or disposed of. Said records and accounts shall be subject to examination by the director of accounts or his agent pursuant to section forty-five and chapter thirty-five of the general laws as amended by section twenty of chapter eight hundred and forty-nine of the Acts of nineteen hundred and sixty-nine.

SECTION 9. The Land Bank Commission shall retain any real estate property interest relating to land and water areas acquired pursuant to this Act predominantly in its natural, scenic or open condition except as provided for by this section. On lands administered through the land bank program established herein, there shall be no: (a) significant alteration; (b) construction or placing of buildings, roads, billboards or other advertising utilities, or other structures on or above the surface except as may enhance the open space uses of the land; (c) dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials; (d) removal or destruction of trees, shrubs, or other vegetation except in accordance with recognized forest cutting and conservation practices for management purposes and to enhance natural systems, and adhering to fisheries and wildlife needs, (e) excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance in such manner to affect the surface, except as may enhance the open space uses of the land; (f) surface use except for purposes permitting the land or water area to remain predominantly in its natural condition, (g) activities detrimental to drainage, flood control, water conservation, erosion control, or soil conservation, or (h) other acts or uses detrimental to such retention of land or water areas.

Lands acquired with land bank funds or gifts of land received under the land bank program may be disposed of or removed from use as open space and passive recreation use only by a majority vote of the Land Bank Commission, and a two-thirds majority vote of a town meeting. Land may be transferred or acquired for the purpose of active recreation if approved by a majority vote of the Land Bank Commission and approved by a two-thirds vote at town meeting.

SECTION 10. The following transfers of real property interests shall be exempt from the tax established by Section 4:

(a) Transfers to the government of the United States, the Commonwealth, and any of their instrumentalities, agencies or subdivisions.

(b) Transfers which, without additional considerations, confirm, correct, modify or supplement a transfer previously made.

(c) Transfers made as gifts without consideration. In any proceedings to determine the amount of any tax due hereunder, it shall be presumed that any transfer for consideration of less than fair market value of the real property interests transferred was made as a gift without consideration to the extent of the difference between the fair market value of the real property interests transferred and the amount of consideration claimed by the purchaser to have been paid or transferred, if the purchaser shall have been at the time of transfer the spouse, the lineal descendant, or the lineal ancestor of the seller, by blood or adoption, and otherwise it shall be presumed that consideration was paid in an amount equal to the fair market value of the real property interests transferred at the time of the transfer.

(d) Transfers to the trustees of a trust in exchange for a beneficial interest received by the seller in such trust; distributions by the trustees of a trust to the beneficiaries of the such trust.

(e) Transfers by operation of law without actual consideration, including but not limited to, transfers occurring by virtue of the death or bankruptcy of the owner of real property interest.

(f) Transfers made in partition of land and improvements thereto, under chapter two hundred forty-one of the General Laws.

(g) Transfers to the public, any charitable organization as defined in clause three of section five of chapter fifty-nine of the General Laws, or any religious organization, provided that the real property interest so transferred will be held by the purchaser solely for its public, charitable, or religious purposes.

(h) Transfers to a mortgagee in a foreclosure of the mortgage held by such mortgagee, and transfers of the property subject to a mortgage to the mortgagee in consideration of the forbearance of the mortgagee from foreclosing said mortgage.

(i) Transfers made to a corporation or partnership at the time of its formation, pursuant to which transfer no gain or loss is recognized under the provisions of section three hundred and fifty, one of the Internal Revenue code of 1854, as amended.

(j) Transfers made to a stockholder of a corporation in liquidation of the corporation of the corporation, and transfers made to a partner of a partnership in dissolution of the partnership.

(k) Transfers consisting of the division of marital assets under the provisions of section thirty, four of chapter two hundred and eight or other provisions of law.

(l) Transfers of property consisting in part of real property interests situated in the municipality and in part of other property interests, to the extent that that the property transferred consists of property other than real property situated in the municipality; provided that the purchaser or seller shall furnish the register with such information as he shall require or request in support of the claim of exemption and manner of allocation of the consideration for such transfers. Except as otherwise provided, the purchaser shall have the burden of proving that any transfer is exempt hereunder.

SECTION 11. A purchaser who fails to pay all or any portion of the tax established by Section 4 on or before the time when the same is due shall be liable for the following additional payments in addition to said tax:

(a) **Interest:** Interest on the unpaid amount of the tax to be calculated from the time of transfer at a rate equal to fourteen percent per annum.

(b) **Penalties:** Any person who, without fraud or willful intent to defeat or evade the tax established by Section fourteen, A, fails to pay all or a portion of the tax within thirty days after the transfer, shall pay a penalty equal to five percent of the outstanding tax as determined by the collector for each month or portion thereof thereafter that the tax is not paid in full; provided, however, that in no event shall the amount of the penalty imposed hereunder exceed twenty, five percent of the unpaid tax due at the time of transfer. Whenever the collector determines

that all or a portion of a tax due under this act was not paid due to fraud or with intent to defeat or evade the tax imposed by this act, a penalty equal to the amount of said tax as determined by the board shall be paid by the purchaser in addition to said tax.

SECTION 12. (a) the collector shall notify a purchaser by registered or certified mail of any failure to discharge in full amount of the tax due under Section 4 and any penalty or interest assessed. the board of assessors shall grant a hearing on the matter of the imposition of said tax, or of any penalty or interest assessed, if a petition requesting such hearing is received by such board within thirty days after the mailing of said notice by the collector. the board shall notify the purchaser in writing by registered or certified mail of its determination concerning the deficiency, penalty or interest within fifteen days after said hearing. Any party aggrieved by a determination of the board concerning a deficiency, penalty or interest may, after payment of said deficiency, appeal to the district or superior court within three months after the mailing of notification of determination of the board. Upon the failure to timely petition for a hearing, or appeal to said courts, within the time limits hereby established, the purchaser shall be bound by the terms of the notification, assessment or determination, as the case may be, and shall be barred from contesting the tax, and any interest and penalty, as determined by the board. All decisions of said courts shall be appealable. Every notice to be given under this section by the board shall be effective if mailed by certified or registered mail to the purchaser at the address stated in a recorded or registered instrument by virtue of which the purchaser holds any interest in land, the transfer of which gives rise to the tax which is the subject of such notice; and if no such address is stated or if such transfer is not evidenced by an instrument recorded or registered in the public records in the county or registry district, such notice shall be effective when so mailed to the purchaser in care of any person appearing of record to have fee interest in such land, at the address of such person as set forth in an instrument recorded or registered in the county or registry district.

(b) All taxes, penalties and interest required to be paid pursuant to this chapter shall constitute a personal debt of the purchaser and may be recovered in an action of contract or in any other appropriate action, suit or proceeding brought by the collector, said action, suit or proceeding shall be subject to the provisions of chapter two hundred and sixty.

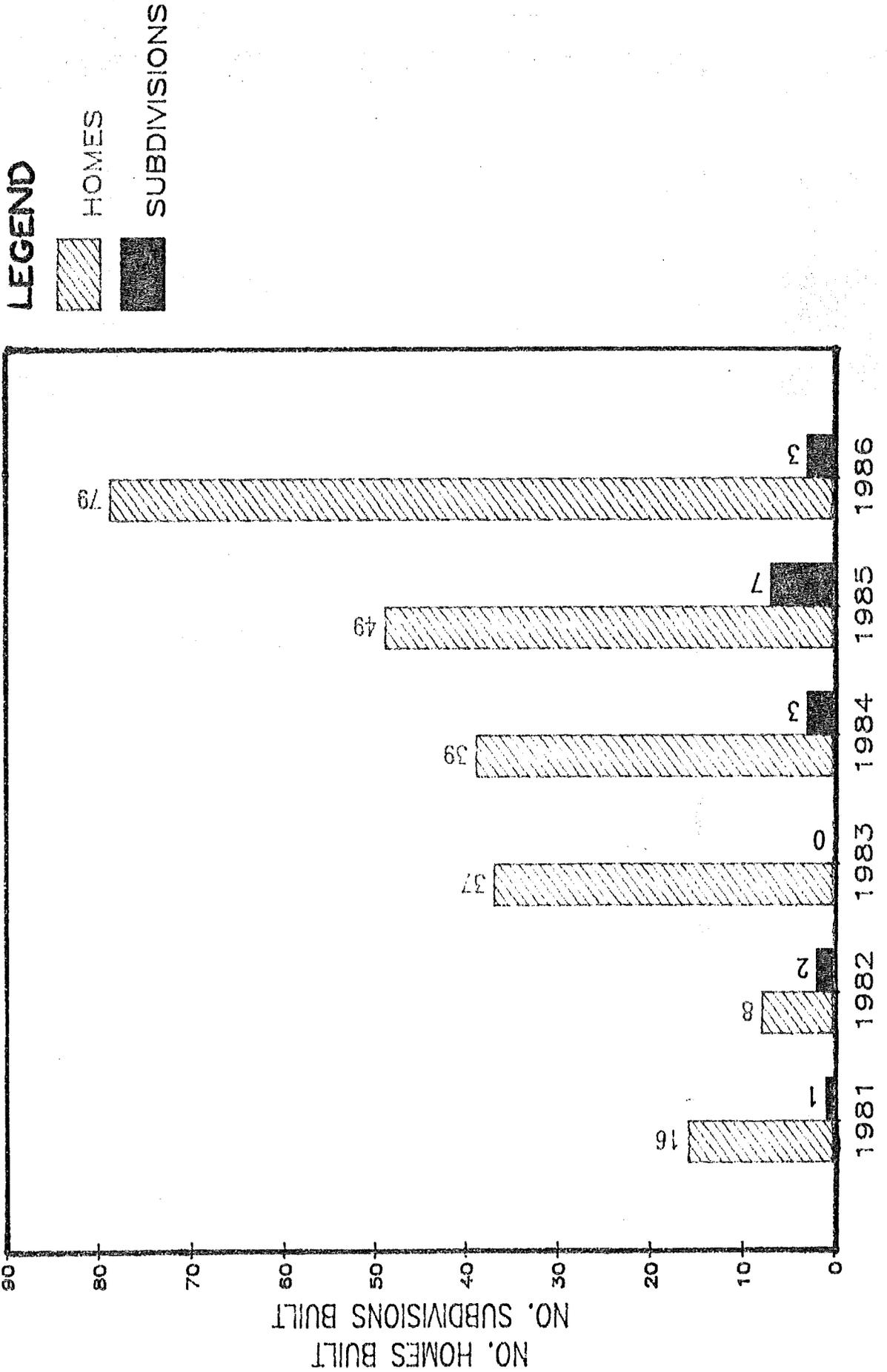
(c) the collector may issue a waiver or release of any lien imposed by this section. Such waiver or release shall be conclusive evidence that the lien upon the property covered by the waiver or release is extinguished.

SECTION 13. Sections 1, 12 of this Act shall take effect if the following matter is approved by a majority vote (at any regular or special town meeting on a ballot of general circulation) "Shall the Town of Wilbraham vote to accept the provisions of Sections 1, 12 of Chapter (citation of this act of the legislature) of the Acts of (year of passage) which provide that an open space land bank fund for the purpose of acquiring open space land for the Town be established?"

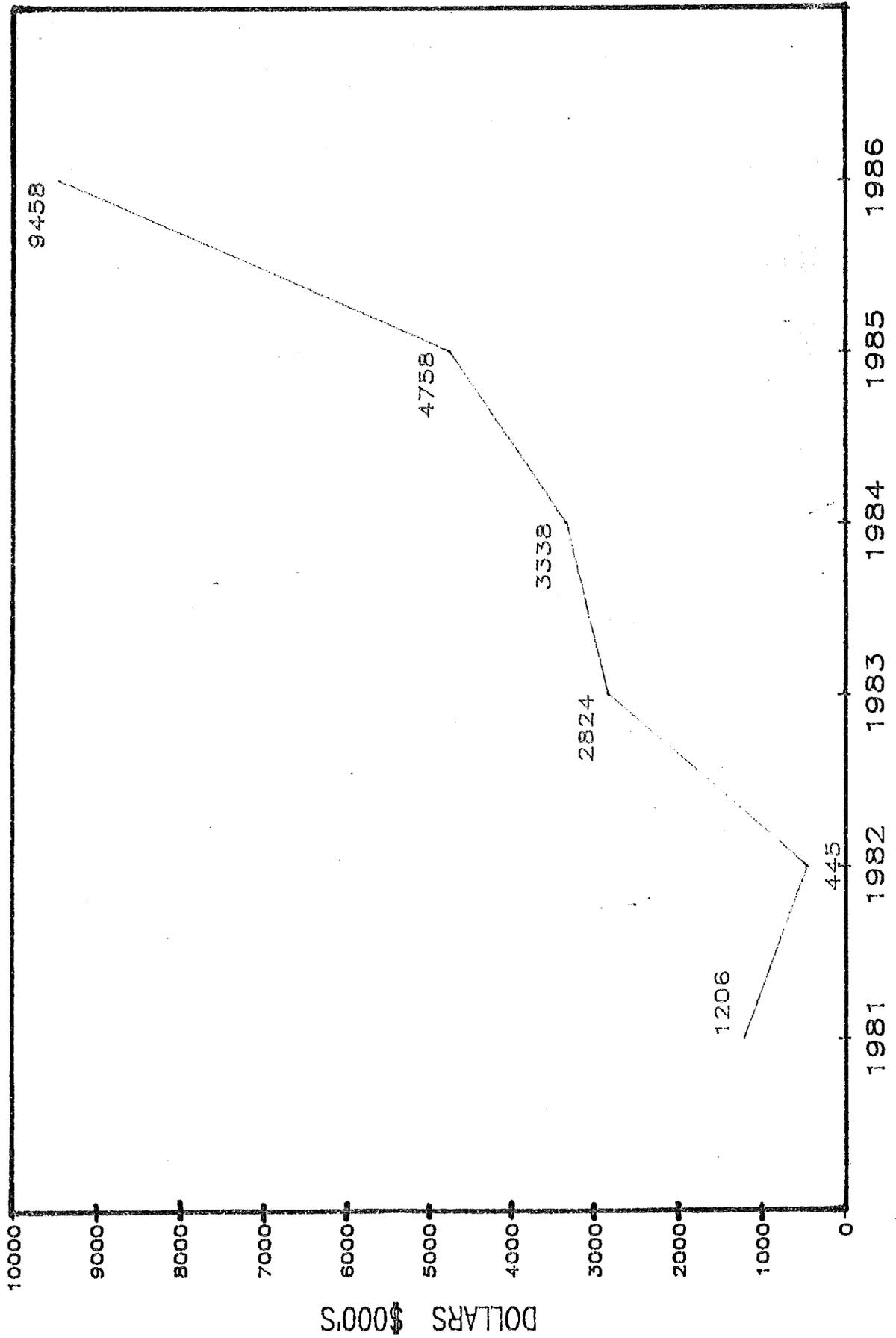
SECTION 14. If any provision of this Act or the application of any such provision is held to be invalid, the remaining provisions shall not be affected thereby.

SECTION 15. Except as otherwise provided, this Act shall take effect upon its passage.

TOWN OF WILBRAHAM NEW HOMES/SUBDIVISIONS



TOWN OF WILBRAHAM NEW HOME ASSESSMENTS



TOWN OF WILBRAHAM NEW HOMES/SUBDIVISIONS

