

XIII. West Acton Boardwalk and Nature Center [NO AS NOW PROPOSED]

The Friends of West Acton Boardwalk request \$45,716 to replace the existing boardwalk at Fort Pond Brook together with several enhancements, including two new observation points (a new ramp and removable floating dock), expansion of the existing observation deck, addition of a hand rail, and creation of an outdoor nature center with interpretive signage.

Under G. L. c. 44B, § 5, CPA Funds can be used for “the acquisition, creation and preservation of open space,” where “open space is defined under G. L. c. 44B, § 2, to include “land for recreational use.” “Recreational use” is defined to include “active or passive recreational use including . . . trails.” CPA Funds may not be used for “the rehabilitation and restoration of . . . land for recreational use” unless the recreation land or resource was “acquired or created using monies from [the CPA].” G. L. c. 44B, § 5.

The application does not indicate that the lots held by the Acton School system were acquired, nor the existing board walk created, with CPA funds. As noted in Section IV above, the Supreme Judicial Court has ruled that CPA Funds cannot be spent on improvements and upgrades to land currently in recreational use. *Seideman*, 452 Mass. at 478-479. This prohibition stands even when the proposed project increases accessibility to new users, including those who are disabled. *Id.* at 477. CPA Funds may be used for “preservation” of open space, narrowly construed as “protection . . . from harm, injury or destruction, but not including maintenance.” G. L. c. 44B, § 2.

Under the *Seideman* decision, there are three potential ways the application could be modified to come within the penumbra of permissible uses of CPA funds:

- If there were to be a Town Meeting approved “transfer” of the relevant portion of the land in question from the School Department to the Recreational Department (for the specific purpose of devoting it to recreational use) or the Conservation Commission (for the specific purpose of devoting it to conservation and recreational use), and if CPA funds were used as consideration for the transfer, then the land would have been “acquired” for conservation and/or recreational purposes using CPA funds. At that point, CPA funds could also be used for the rehabilitation and restoration of the open space and land for recreational use acquired using monies from the fund. See

the federal and state governments, for example, have various historic grant programs, which include grants to non-profit organizations. www.sec.state.ma.us/mhc/mhcidx.htm. **Typically, these programs result in the public acquiring an historic preservation restriction or receiving some other benefit to ensure that the grant is for public rather than private purposes.** For example, in an anti aid case involving state monies given to a non-profit group to rehabilitate the U.S.S. Massachusetts for use as a memorial and museum, the Supreme Judicial Court found the expenditure was for a public purpose because the property would be open to the public as a place to contemplate and honor those who died in the service of their country and to educate school children, who were admitted free of charge, about history. *Helmes v. Commonwealth*, 406 Mass. 873. In the case of the Grange property, we understand the town will acquire an historic preservation restriction and the organization must use the funds received in exchange to finance the rehabilitation. In other words, it appears the town is receiving an interest in the property to ensure that its investment of public funds benefits the public through the preservation of a piece of the town’s history.

Seideman, 452 Mass. at 479, note 12.

- Similarly, if the existing boardwalk at Fort Pond Brook ceased to exist for recreational purposes, then after the passage of time a future CPC and Town Meeting could appropriate CPA funds for the creation of the land anew for recreational use. See *Seideman*, 452 Mass. at 478.